

## BRIEFING

# Business Interruption Insurance: A Broker's Duty

The duty of care owed by insurance brokers to clients when placing Business Interruption Insurance has again been considered by the court in the recent judgment of *Eurokey Recycling Limited -v- Giles Insurance Brokers Limited*.

This case concerned a claim for £17m which Eurokey, a waste recycling company, brought against its former broker, Giles, for negligence and breach of contract.

### Background

*Eurokey* suffered a major fire which caused significant damage to its main premise and interruption to its business. *Eurokey's* insurers took the view that they were significantly underinsured – a point which was not disputed – which led to the business interruption claim settling at a significantly reduced sum. It transpired that the level of cover for business interruption was based upon incorrect turnover figures supplied by *Eurokey* to *Giles*.

An action against *Giles* was pursued by *Eurokey*, alleging that *Giles* had negligently failed to explain how the sum for business interruption should be calculated to ensure adequate cover was in place. *Giles* argued that it had not acted negligently because the level of cover was based upon turnover figures provided by *Eurokey* and it was entitled to rely on these figures.

### Judgment

Mr Justice Blair handed down judgment in favour of *Giles* and dismissed *Eurokey's* claim. *Giles* was found to have provided an adequate explanation of the basis of business interruption insurance and had no reason to doubt *Eurokey's* turnover figures.

### Points of Discussion

In dismissing the business interruption element of the claim, Mr Justice Blair provided some guidance regarding the duties of a broker when arranging business interruption insurance which will be of interest to the insured client and the broker alike:

- It is a matter for the commercial client to calculate the business interruption sum insured or choose an indemnity period. The broker is not expected to calculate this figure for the client. However, the broker must provide an explanation – in sufficient detail – enabling the client to calculate the figures. In doing this, the broker must take reasonable steps to ascertain the nature of the client's business and its insurance needs, although, a broker is not necessarily expected to conduct a detailed investigation into the client's business.
- The scope of a broker's obligation to assess the commercial client's business interruption insurance requirements will depend upon the particular circumstances of the case, including the client's degree of sophistication and the number of times the broker has met with the client in the past. However, a broker must remain mindful that levels of sophistication can vary amongst clients, to the degree that SMEs may not have any understanding of the nature of the insurance.

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- A broker's duty owed towards the client will not be diminished by virtue of the broker offering a superior service at additional cost.
- It may not be necessary for a broker to repeat insurance advice annually, however, this assumes the responsible person remains the same. Moreover, this also assumes that the giving of the advice can be properly demonstrated and the onus will rest with the broker to show this.
- If the client appears to be well informed about their business and provides information to the broker, the broker is not expected to verify that information unless he has reasons to doubt its accuracy.

This judgment provides useful clarification on the scope of the duty owed by brokers to their clients when arranging business interruption cover. In particular, it confirms that, faced with a sophisticated client, the broker need not second guess information provided by the client. However, as always, much will depend upon the circumstances of each case, and the particular circumstances of the insured.

For more information on this case visit:  
<http://www.bailii.org/ew/cases/EWHC/Comm/2014/2989.html>

## Contact Details

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