C. GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION AND OTHERS v. TANTER AND OTHERS[1]

A decision of Mr Justice Hobhouse of the Queen's Bench Division, 21 October, 1983.

This recently reported decision concerns, inter alia, the duty of care owed by a broker to underwriters (concurrently with the duty owed to his principal).

The prospective owner of the "Zephyr" asked his insurance brokers to obtain all risks insurance for the vessel. The broker also obtained quotes from various underwriters for total loss reinsurance. Within about two weeks of underwriters going on risk the vessel suffered serious damage due to adverse weather conditions and, subsequently, was declared a constructive total loss. The total loss reinsurers repudiated liability for the claim. Proceedings were instituted by the reinsureds against the reinsurers. The reinsurers denied liability and also claimed against the brokers in contract or tort in respect of an alleged excess liability under the reinsurance slip. This was on the basis that the broker, who had a reputation for obtaining over-subscription on the slips that he broked, gave a signing indication as to the anticipated signed line's percentage of the written line.

Hobhouse J. rejected the reinsurers' arguments that the broker was liable, first, on an agency basis and, secondly, that there was a collateral contract. He said that the fact that the plaintiff and defendant were on different sides of a commercial transaction did not mean that they could not owe duties of care to each other. Furthermore, the duty in tort can include duties which can be described as "assumpsit" duties — that is, positive duties which arise because a party has voluntarily assumed them. Hobhouse J. found on the evidence that the London reinsurance market recognised an obligation on the part of a broker to use his best endeavours to achieve an indicated signing down. The Court accordingly held that there was a legal duty of care of the *Hedley Byrne*[2] type. The Court found that there was no legal reason why a duty of care upon a broker to take reasonable steps to see that the signing down indication was achieved should not be recognised. The trial judge also found that, even where there was no express signing down indication, there was still a duty of care owed by the broker to the reinsurers. He held that it was well known to the market and well known to the particular underwriter that the broker's method of broking was to procure a heavy over-subscription of the slips so that they signed down.

A further interesting question decided by the judge was whether the brokers could limit the amount of damages for which they were

[1] [1984] 1 Lloyd's Rep. 58.

[2] *Hedley Byrne & Co. Ltd* v. *Heller & Partners* [1964] A.C. 465.

liable to some of the reinsurers when the reinsurers had themselves reinsured the lines that they had written. Hobhouse J. found that, notwithstanding the fact that the relevant transactions took place within the marine insurance market, the case fell within the principles stated in *Bradburn* v. *Great Western Railway Co.*[3] and applied in many subsequent cases, which recognised a principle that insurance recoveries are to be left out of account. The Court considered it a sensible approach that it should regard the plaintiff as recovering in his own name and in the interest of any persons who may have insured him.

[3] (1874) L.R. 10 Ex. 1.