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The Institute

The Insurance Institute of Hong Kong was founded in 1967 and is an independent professional body. It has more than 400 individuals and a growing number of corporate members.

The Institute's principle aim is to promote and advance the professionalism of the insurance industry and a well-recognised local qualification for the industry.

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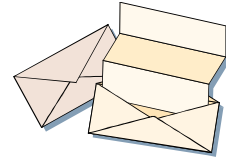
This issue September 2010

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PRESIDENT'S LETTER



The wheel has turned full circle. In past years the demand for professional qualifications in the insurance industry reduced as employers were desperate for staff and were willing to rely upon relatively new recruits who were provided with “on-the-job” training and specific product knowledge.

With the recession jobs became more scarce, graduates were seeking jobs and employers became more selective. The demand for people with specific professional qualifications has risen dramatically. We have seen enquiries increase about examinations and professionalism and our links with the CII have shown us that there is a recognition of value in insurance qualifications worldwide.

Membership numbers have increased for the IIHK (and for CII in Hong Kong) and our newly presented AGI examination has attracted over 40 new participants during two examination sittings

The AGI examinations will be held at least twice a year and they provide a very useful base for all new entrants to general insurance and to those who have not previously worked in the GI field.

As part of the drive to encourage professional qualifications the IIHK has initiated an “Alumni” comprising those industry practitioners working in Hong Kong who are holders of the FCII or ACII designation. The inaugural gathering in June was a success and will be followed-up by a second event on the 30th November 2010.

The aim of the Alumni is to encourage high level practitioners to meet and exchange views in a social atmosphere and to provide leadership to market entrants and more junior colleagues. We aim to start a “mentoring” system whereby senior professionals can provide advice and tutelage for younger staff

We would invite all of you who have reached the highest levels of qualification to attend the function. It will be our intention to invite the 40 AGI candidates to attend to commence the mentoring programme.

Overall our relationship with the CII has strengthened and we are pleased to represent that organisation in Hong Kong. However, the IIHK is an independent body owned by its members and we maintain excellent relations with other institutes in China, Taiwan, Japan, Singapore, India and of course Australasia.

The local education scene in respect of CPD and value added seminars continue to dominate. In the 2010 year the IIHK will have arranged over 20 English language seminars both in its own right and for the CIB. These continue to be very well supported.

The bi-annual face-to-face workshops continue to attract full attendance with the forthcoming presentations on Professional Indemnity and Directors’ & Officers’ Liability topic in October already is virtually full.

Of course the big news of the moment in Hong Kong insurance circles is the consultation paper for an independent Insurance Authority.



The IIHK views this as a real opportunity to focus the education aspect of the market and we will be submitting a paper to the Financial Services and Treasury Bureau before the 11th October deadline.

And, of course, we have our annual dinner scheduled for the 5th October and we hope to

see a record turn out for what promises to be an excellent event

Many thanks for your continued support

Mike Haynes

President ◆◆◆



2011 CII Credits Exemption Arrangement for Hong Kong Diploma in Insurance Studies (IIHK Diploma)

As a result of the changes in the CII qualification framework, the existing CII credits exemption (**Note**) for the Hong Kong Diploma in Insurance Studies (IIHK Diploma) will be adjusted starting from 1st January 2011. IIHK will publish the new exemption details when it is confirmed in due course. At this stage IIHK Diploma students and holders should pay particular attention to the followings:

For IIHK Diploma Students, if you are going to complete the IIHK Diploma in 2010 and your application for exemption will reach CII no later than 31st January 2011, you will be eligible to apply for the 85 credits currently granted by CII.

For IIHK Diploma Holders, if you have not applied for CII's 85 credits and would like to do so, you are required to submit the exemption application to CII as soon as possible (application form can be downloaded from <http://www.cii.co.uk>.) All applications shall reach CII no later than 31st January 2011, otherwise, new credits will apply.

For further information regarding the above, please contact IIHK at 2520-0019 or 2520-0098.

Note:

- *Currently, IIHK Diploma holder can apply for 85 credits exemption from CII (including unit P05 (25 credits at Diploma level) plus 60 non-unit-specific credits at Advanced Diploma level.*
- *All CII credits are granted solely at the discretion of CII.*



Don't tell – do advise!

Jones v Environcom Ltd & Ors Commercial Court Steel J

Brokers' duties to their clients continue to come under the judicial spotlight. Here, Environcom brought a claim under its commercial combined policy for a serious fire loss. Insurers sought to avoid the policy on the grounds of material non-disclosure relating to the use of plasma guns in a fridge recycling process and the occurrence of prior fires. The dispute settled but Environcom claimed against its broker, Miles Smith (MS), alleging that MS had been negligent in failing to advise Environcom adequately as to its duty of disclosure.

The scope of MS's duty was undisputed; as in *Dunlop Haywards v Barbon Insurance*, the FSA's Insurance Conduct of Business Handbook (as was) was treated as persuasive. To prove it had performed that duty, MS relied on various documents it had provided to Environcom, including a 'Summary of Insurance' which stated:

"If you are aware of any fact which may affect underwriters' attitudes you should make it know (sic), whether it is specifically requested in the Proposal Form or not." This document, forwarded at Environcom's request shortly after it appointed a new manager to look after its insurance arrangements, was held to be "seriously inadequate" for the purpose. The key deficiencies appear to have been not explaining what would be material in this context and not assessing whether the client's new manager understood the concept of materiality.

In line with the expert evidence, Mr Justice Steel was not persuaded that it was sufficient to rely on written standard form warnings attached to proposals or policy documents. A broker must satisfy himself that the position is in fact

understood by the client and this will usually require a specific oral or written exchange, particularly if, as here, a new person had become the client's representative for insurance matters. This reliance on oral explanation is likely to be controversial for two reasons. Firstly, it seems impractical – brokers have to rely, to some extent, on standardised guidance, which does need to be in written form. The warning quoted above was certainly inadequate for an inexperienced client, but that does not mean all written guidance will be so. If the guidance is full and in plain English, how much more assistance does a commercial client need? Secondly, this was a direct UK placement so an oral dialogue with the insurance buyer was possible. But there is no discussion in the judgment about how this requirement can be addressed if, for example, the risk is an international one, or produced by a regional broker. There the London broker (who should know best what is material disclosure for the type of risk in issue) has no contact with the client; how, if not in writing, is it to discharge this duty to advise? A similar point arises with regard to the purchase of insurance over the internet, where brokers are rarely involved.

Steel J also found that where an inappropriate and incomplete explanation had been given to the client about its disclosure obligations, there must be an "enhanced" standard of care on the broker in eliciting arguably material information from the client by dialogue. Here, MS had not been under a duty originally to enquire about the use of plasma guns, a technical matter. However, had it complied with its obligations, the existence of the undeniably material earlier fires (and thereby their association with the use of plasma guns) would probably have been disclosed. Having eschewed that route, it was caught in breach of this enhanced duty.



As is necessary in such cases, Steel J then went on to consider the prospects of Environcom obtaining cover had full disclosure been made. If they could not prove that, they had not suffered a loss by MS's breach of duty. Steel J found those prospects to be purely speculative. Even if cover had been obtained, Environcom would still have failed to disclose a third point – that they were in breach of their Waste Management Licence – enabling insurers to avoid any such policy. Further, it would have been the pre-condition of a valid insurance that the plasma gun was not used, in which case the last, and serious, fire would not have occurred.

Consequently there would have been no loss and the cover would not have been called upon. MS was therefore held not liable.◆◆◆

The article was first published at [Ince & Co's Insurance & Reinsurance Law Update – 2010 Summer issue 26](#).

For any question, please contact Kelvin Lee, Insurance partner of Ince & Co Hong Kong office, at kelvin.lee@incelaw.com or by phone at (852) 28773221.



Members are welcome to contribute to the content of this Newsletter. If you find any interesting article(s) or like to provide your views on certain topic(s) please let us know by:

Tel: 25200098 or

Email: secretariat@iihk.org.hk



Breach of Warranty in Hong Kong: In Theory and In Practice – *Leung Yuet Ping v Manulife*

By M.Lister and Patrick Peng

Where an insured fails to provide his insurer with accurate information at the time of taking out an insurance policy, Hong Kong law provides the insurer with a number of potential remedies including: (i) the right to avoid the contract, and possibly to claim damages, for misrepresentation; (ii) the right to avoid the contract on the ground of non-disclosure, which arises out of the duty of utmost good faith; and (iii) the right to terminate the contract for breach of a warranty, which is effectively a pre-contractual promise that a fact is as stated.

Warranties are commonly used for three purposes: (i) to define the initial risk undertaken; (ii) to enable the insurer to take precautions in managing the risk; and (iii) to enable the insurer to avoid the liability under the contract should there be a change in the risk.

Under Hong Kong insurance law, any breach of a warranty will result in the contract being discharged automatically, which means that an insurer is not liable for any claims arising after the breach. Though English insurance law is in many aspects similar to Hong Kong insurance law, this draconian effect is to some extent ameliorated by the courts in England which tend to interpret warranties strictly so as to reduce any unfairness to policy holders that may result from this approach.

The High Court in Hong Kong in *Leung Yuet Ping v. Manulife (International) Limited* (HCA 2380 of 2006) recently upheld that a breach of warranty would entitle an insurer to avoid liability under a policy and reinforced the need for strict compliance with warranties (whether

they be material to the risk or not) in insurance contracts.

The Facts

The deceased applied for a life insurance policy for HK\$1 million on 18 June 2004 with Manulife. He was later diagnosed with colon cancer in June 2006 from which he died on 9 November 2006. The deceased's widow, the Plaintiff, applied to Manulife for payment of the benefits under the policy to her as the beneficiary.

Manulife discovered that the deceased had made a visit to his doctor following experience of an episode of shortness of breath and palpitations on 7 June 2006, merely 11 days before applying to Manulife for the relevant life insurance cover. The deceased was then advised by his doctor to consult a cardiologist but he did not follow that advice. There was no evidence of any recurrence of the episode and he was declared "healthy" after examination by Manulife's doctor.

The medical cause of death was given as colon cancer, though the death certificate did note evidence of coronary heart disease.

Manulife refused to pay out on the policy relying on the fact that the deceased had failed to inform them in the proposal (application) form and the medical examination form of the visit on 7 June 2006 to his doctor. In the proposal form, the deceased had answered "No" to a question asking whether within the 60 days prior to the application the applicant had consulted a doctor and been advised to have a diagnostic test or surgery that had not



yet been performed. The deceased also answered "No" to a question in the medical examination form about whether to his knowledge he had or had been treated for or had been told that he had any disease or disturbance of *inter alia* palpitation or shortness of breath.

The Plaintiff argued that the episode of shortness of breath and palpitations was an isolated matter and a once-only incident, which could not be reasonably required to be disclosed and reported in the proposal form, and that in any event, the deceased was examined by Manulife's own doctor who confirmed, as a matter of policy and procedure, that he was healthy.

The Court held that the information provided by the deceased in the proposal form was a condition precedent to attachment of the risk, or to the liability of Manulife under the policy, and was therefore a warranty. Under Hong Kong insurance law, Manulife would have a defence to any claim that arose after the warranty had been broken, even if there was no causal connection between the loss and the breach of warranty. In addition, where an insurance warranty is breached, the insurer was not required to consider the test of materiality. The Court found the answers given by the deceased in the proposal form and the medical form to be inaccurate and misleading. As the deceased had breached the warranties, Manulife was therefore entitled to repudiate the insurance contract.

The Court also considered that the nature of an insurance contract was based on the duty of utmost good faith and therefore the insured was under a duty to make full and frank disclosure in applying for an insurance policy

and was required to give accurate information in respect of all material facts when completing the proposal form and the medical form. In determining what facts would be considered material, Manulife was required to show that a prudent insurer would have taken the information regarding the visit by the deceased to his doctor on 7 June 2006 into account in coming to its decision as to whether to underwrite the risk and at what premium. In this regard, the Court held that the episode experienced by the deceased constituted material information which Manulife as a prudent insurer would have taken into account in deciding whether to issue a policy on the life of the deceased.

Once there is evidence of non-disclosure of a material fact or that a misrepresentation has been made, the insurer must show that it was induced by the non-disclosure or the misrepresentation to enter into the contract on terms that it would not have agreed if all the material facts had been known to it. The Court held that an insurer was not required to show that the non-disclosure was deliberate. The test relates to the conduct of the reasonable prudent insurer and not that of the reasonable assured. The Court held that Manulife was only required to show that the non-disclosure or misrepresentation was an effective inducement and that it need not have been the sole inducement to issue the policy.◆◆◆

[The article was first published in the Edwards Angell Palmer & Dodge quarterly newsletter 'Insurance & Reinsurance Review' \(September 2009 issue\)".](#)



IIHK Annual Dinner 2010

The 2010 Annual Dinner will be held
on
Tuesday, 5th October, 2010
at
The Hong Kong Bankers Club,
Gloucester Tower, The Landmark,
Central, Hong Kong.

* * *

Guest Speaker:
Mr. Stephen G. Vickers,
President & CEO of
FTI – International Risk

The event is opened for booking now.
Please contact Miss Tania Lee at
the secretariat office for details.
Tel: 2520 0098





CII Alumni Gathering in Hong Kong

IIHK and CII jointly held a CII alumni gathering in June this year. It was the first CII alumni held in Hong Kong and was attended by 55 CII members. With this great opportunity both IIHK and CII hope that members are re-united, stronger relationships are built, ideas are exchanged and sense of professionalism are strengthened. Everybody enjoyed a good and relaxed evening with a chance to meet and chat with friends of old and new.

A second gathering will be repeated later this year. Look out for details on our web site or you will receive news from the Secretariat via email.



IIHK Diploma in Insurance Studies

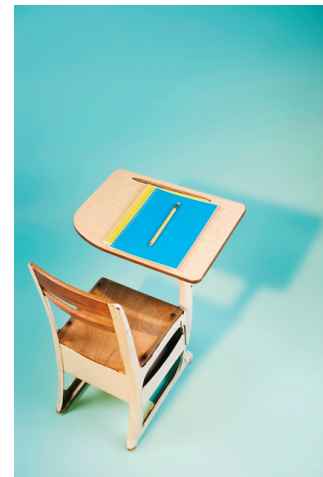
2010 2nd Series Examination

The Hong Kong Diploma in Insurance Studies Examinations (2nd series, 2010) now open for enrolment.

The Diploma aims to provide candidates with professional and practical knowledge in insurance. Being a local qualification in itself, it is also recognised by international professional institutes including CII and ANZIIF.

The Diploma comprises 4 subjects; each has one 3-hours essay exam. Candidates can prepare the examinations through preparation classes (optional) or self-study with the IIHK text books and study guides at their own convenience.

The coming examination will be held on 28 & 29 Oct, 4 & 5 Nov 2010. You could also visit this webpage <http://www.iihk.org.hk/examinations/> to view the syllabus, exam details and text book contents.



EXAMINATION SUBJECTS & TIME TABLE

Registration deadline: 14th October, 2010 at 5:00 PM.

<u>Subjects</u>	<u>Date of Exam.</u>	<u>Time</u>
i) Introduction to Insurance (100)	Oct 28, 2010	6:30 pm – 9:30 pm
ii) Legal Principles (120)	Oct 29, 2010	
iii) Principles & Practice of Insurance (110)	Nov 4, 2010	
iv) Insurance of the Person (130)	Nov 5, 2010	

*CII Face-to-Face Technical Insurance Training***Liability Insurance –
Professional Indemnity, Directors & Officers' Liability****Dates:** 25-26 October 2010, 9am to 5pm**Tutor: Mr. Neil Park from CII, UK
MA MBA FCII Chartered Insurance Practitioner****Course aims**

To provide a comprehensive analysis on the key elements of Professional Indemnity Insurance and Directors' & Officers' Liability Insurance, looking variously from the perspectives of Insurers, reinsurers, brokers and Insureds.

The course will be highly interactive as delegates will be given a series of exercises and case studies to reinforce their learning.

Course structure

The course is held over two days with Day 1 in Professional Indemnity and Day 2 in Directors' and Officers' Liability. Delegates are recommended to attend both days in order to gain a comprehensive understanding of the subject. However, delegates wishing to attend either day 1 or day 2 may do so as the contents can stand alone.

Who should attend?

This course is aimed at delegates with a reasonable knowledge of insurance and insurance market and is particular suitable for those who work in:

- insurance companies, insurance broking firms;
- corporate policyholders with insurance departments
- risk management departments of commercial organisations;
- law firms that carry out insurance-related work
- government departments working closely with the insurance industry;
- account managers; underwriters; claims managers and the like.

Venue: 4/F, PICO Tower
The Hong Kong Management Association
66 Gloucester Road, Wanchai, Hong Kong

Course fee:
HK\$5,500 (for 2 days)
HK\$3,000 (for 1 day)

HKCAAVQ Approval Code: 80/38/10
Duration: 2 days (6 CPD hours per day)

***Places for each day's course are limited to 26 and will be allocated on a first-come-first-served basis.
Early booking is recommended.***

Staff of IHK corporate member could enjoy a 5% discount.



MEMBERSHIP APPLICATION

IIHK Membership No.

(for office use only)

(Please complete in BLOCK letters)

Surname	_____	Given Name	_____
Chinese Name	_____	ID/Passport No.	_____
Sex	Male <input type="checkbox"/>	Female <input type="checkbox"/>	
Name of Employer (if any)	_____		
Position Held	_____		
Office Address	_____		
Home Address (Optional)	_____		
Tel. No.	Home _____	Office _____	
Fax No.	_____	E-mail Address	_____

Insurance Qualification: (Please tick whichever is applicable)

FCII <input type="checkbox"/>	ANZIIF <input type="checkbox"/>	Others : _____
ACII <input type="checkbox"/>	Mem. ANZIIF <input type="checkbox"/>	(Please specify in details)
Dip. IIHK <input type="checkbox"/>		

I hereby apply to join as:- (Please tick as appropriate)

Ordinary membership
 Non-Voting Membership
 Student membership
[For full time student]

of the Insurance Institute of Hong Kong Ltd and, if I am elected, I agree to abide by the Constitution.

I enclose my cheque HK\$150.00 payable to "The Insurance Institute of Hong Kong Ltd." being my subscription for current year.

Date : _____

Signature : _____

For further information, please call :
Tel : 2520-0098 Fax : 2295-3939 Email : enquiry@iikh.org.hk