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AVIATION INSURANCE AND LLOYD'S OF LONDON

DENIS P. THEOBALD*

I have for very many years followed with great interest, from afar, your annual seminars. I have ever been impressed by the topics covered and the great skill with which each speaker has covered his particular subject. Last year I was able to move from a reader to an observer, and to experience at first hand one of your gatherings. I came away greatly impressed. The increasing attendance each year pays its own tribute to the University and other organizers. It is against this background that I was both pleased and honoured to receive an invitation to address such a distinguished assembly. I trust that what I have to say this lunchtime will be of interest and hopefully new in parts, if not in total, to at least some of you.

I do not intend to enter into the realms of law or aviation technicalities as you are more skilled in these areas than I. I therefore would like to take this opportunity to talk about Lloyd's, or at least some aspects, together with comments in other areas. For those who like titles, the nearest descriptive one I can give you is "idle thoughts of an idle fellow." But before I commence I must make one condition and that is, any inaccuracies are mine and any views I may express are mine alone and must not be taken as by way of an official view.

I DO NOT PROPOSE to go over the history of Lloyd's from its beginnings in 1688, but rather to explain if I can how the

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Lloyd's Market functions. To do this I will start with the basic question "What is Lloyd's?" It is a question that I have no doubt has been asked many times, but the occasion I have in mind is the one when a lady visitor asked it of William Farrant, who was for many years in the late 1800's the waiter who occupied the seat beneath the Lutine Bell. William Farrant's reply was "Individually, Madam, we are Underwriters; collectively we are Lloyd's." As a succinct definition this cannot be bettered.

Lloyd's does not subscribe policies of insurance; that is the business of the underwriting members. The term Lloyd's is the generic name of the organization and the market within which members transact business. The organization or corporation of Lloyd's does not accept risks; that is the exclusive province of the members. Members subscribe policies "each for himself and not one for another." It is very many years since each individual underwriter wrote his own name on the policy. Nowadays members, or *names* as they are more generally called, are grouped into syndicates varying in numbers from those with only ten or twenty names up to the larger syndicates with well in excess of 1,000 names. It should be remembered, however, that this grouping of names does not alter in any way the individual, unlimited liability of each member. The formation of syndicates enables a professional underwriter and staff to be employed to conduct the business of each individual member of the syndicate.

To give you some idea of the size of the overall market at Lloyd's and to indicate the growth that has taken place in the last decade, I will give you some statistics. In 1971, our premium income was \$2 billion, with a membership of some 6,000 British males. The fund into which our worldwide dollar premiums go, the Lloyd's American Trust Fund, had just reached \$1 billion. Ten years later our premium income is approaching \$5 billion. Our membership has moved from a chauvinistic and national base to take in both women and other nationals. It has expanded to some 10,000, of which about 1,000 are from this side of the Atlantic. Women represent around nineteen percent of the total. Moreover, the American Trust Fund,

which recently passed the \$3 billion mark, now makes us the largest holder of United States Government securities of any insurance organization in the world.

Now to bring this into the area of Aviation Insurance at Lloyd's let me give you some facts and figures about that particular market. In 1950 the Aviation premium income was \$15 million with ten specialist syndicates. This grew to a premium income of \$300 million in 1978, the last year for which figures are available, due to the three year accounting basis used at Lloyd's. This income was produced in a market containing forty-six specialist aviation syndicates. Of course, claims took back the lion's share. In fact, in 1978 just over 100 percent was taken. This fact highlights the problems in the worldwide aviation and other insurance markets, of rates that are too depressed.

It is not, in my view, the function of any underwriter to write business at a loss and hope his investment income will turn red ink into black ink in his accounts. High interest rates could disappear very quickly at the whim of any government. To aim for an underwriting profit is not wrong. Profit must be the aim of every business. I might add that rates which are too low do not benefit insureds either. If the air transport industry requires a stable insurance market to be available continuously to meet both the big and small claims, then the market must be able to make an underwriting profit. From time to time competitive forces drive market rates below the burning cost. The market can only survive this situation in the comparatively short term by spreading the risk over the reinsurance world. This situation cannot last forever. Long term stability demands true underwriting profit in the long term, without which the market will surely disappear.

There are fifty-two aviation syndicates today out of a total of 423 syndicates at Lloyd's, all with their boxes (the name given to their desks) in the underwriting room, either on the floor of the main underwriting room or in one or two cases in the "Yellow Submarine." This is the name that has unofficially been given to the area in the basement opened up as additional underwriting space. If you saw the decor you would

understand the reason for the name. Each syndicate is trying to attract the prospective purchaser, the Broker, by quoting competitive rates or attractive conditions, or a combination of both.

I have, and will return to and stress again the individuality of the member of the Society of Lloyd's because the lack of understanding in the world becomes noticeable when a suit is brought against insurers. Not infrequently do we see the name of "Lloyd's" appearing as a defendant. I hope I have already made it clear that this is incorrect. A representative name, supplied by the leading syndicate, is used. The representative is used because by custom it is unnecessary to name all the members subscribing in the particular policy in dispute because they will accept the decision against the one as binding on them all. Imagine the reaction of attorneys faced with the task of preparing and prosecuting say 10,000 similar actions, not to mention what I would imagine would be the court clerk's reaction. I personally would suggest this custom has something to do with the reputation, built through the centuries, that the Lloyd's underwriter's word is his bond. I trust this is not wishful thinking.

Because Lloyd's underwriting syndicates can only be seen by representatives of accredited broking firms, which number 270 individual firms, I feel it is appropriate to make some comments about their place in the scheme of things. Let me start by quoting from an unknown subscriber of 1774 who had this to say about brokers, "Although they may be deficient in gentlemanly-like address, at least they should try and develop a curt and candid personal behaviour." I will refrain from making any comment.

It is by means of a slip that the market functions. A slip is a document that contains the terms of the proposed contract. The broker takes it to the underwriters he considers will be interested. If an underwriter is so interested he will put the percentage he is prepared to accept, together with his syndicate's identification on the slip. The broker will go to see both Lloyd's underwriters and London based insurance companies until at last 100 percent is placed. For a variety of reasons

more than 100 percent is often subscribed, in which case the broker has the responsibility of seeing that the acceptances are equally reduced so that the total of the acceptances is exactly 100 percent. It is this slip that is the basis of the contract between the insured and the insurers. Once an underwriter puts his "line" down on a slip, which is complete in all details required to make a binding contract, he is bound. The policy that eventually is issued replaces the slip as evidence of the contract. When a claim arises it is mostly the slip that is used. An exception occurs if the slip refers to a non-standard wording or clause.

It is in the area of claims that to my mind confusion possibly arises as to the position of the Lloyd's broker, because the claim papers are kept by him. The broker will have in his claims file a large amount of paper that can be divided as far as ownership is concerned into three groups. The first group consists of the advices the broker received from the insured, the notification of the claim being the most obvious. These, I consider, are the property of the insured. The next group of papers includes such items as the various pieces of paper relating to the collection and dissemination of monies in connection with the claim. Also included in this group will be correspondence by the broker to the insured on his behalf. These documents I regard as the broker's property. The third group is comprised of reports from lawyers and adjusters which, if addressed correctly to underwriters, together with the letters or telexes sent by the broker on the underwriter's behalf, constitute underwriter's property. I stress the "addressed to underwriters," as this will preserve the client/attorney privilege. These papers are with the broker as a matter of convenience only. This method of handling claims is to the advantage of insureds and underwriters because the brokers have the staff to take the files to the interested underwriters. Since there are up to 100 insurers that both Lloyd's and companies can subscribe to a particular risk, any other method would lead to serious handling problems. Lawyers should never forget that the broker is the insured's agent, and our courts have, on more than one occasion reminded underwriters that brokers

should not be put in a position where their duty to the insured might conflict with their pedestrian function for the benefit of underwriters. Therefore, lawyers and adjusters must find alternative methods of communication when reporting or discussing coverage issues.

To me as a claims man, it is not so much how competitive the rates are, but it is of importance that valid claims are dealt with fairly, and quickly. This is how, to my mind, the insurance industry is ultimately judged. One must never lose sight that this is a service industry and that once a claim is agreed and is both equitable and just, then every effort should be made in most cases to see that funds are quickly transmitted. This is not such an easy task. The formidability of the task becomes apparent when it is noted that Aviation Insurances placed by Lloyd's brokers, particularly in the case of the larger airline or manufacturer risks, are placed not only with Lloyd's syndicates, but with British insurance companies, and with overseas companies, either through their London offices or directly with their national offices. Seeing that each party pays his share so the total may be transmitted is not simple.

It is one of the functions of the Lloyd's broker to arrange such collections. It should not be overlooked that it is a two-way street because underwriters have to wait for the broker to pay them the premiums out of which claims are paid. I find, from time to time, that criticism is made about the failure to send funds within a reasonable time and unfortunately the complaint is not always without foundation. What concerns me particularly in such a situation is the criticism which is automatically aimed at Lloyd's, which I take to mean Lloyd's underwriters. This is an attitude to which I very strongly object, because it is not always deserved. I would suggest that anyone who has occasion to complain about such delays should look more closely at the documents evidencing the insurance coverage. The difficulty arises in identification of where the delay arises. It may be in the process of getting a claim agreed by 100 or so underwriters, both Lloyd's and Companies, if it has any controversial aspect. It may be in the accounting arrangements between the United States producer

and the London broker.

There are, as in any complex system, many reasons for the difficulty. Perhaps it is created because there are too many places and too many people involved for the process to work smoothly and quickly all the time. I would like to see constructive criticism made, and not just a negative approach, so that delays can be reduced to an absolute minimum. This does not mean I am satisfied, or in any way complacent with the situation. Although only one small voice in the London market, I am concerned enough to give thought as to how improvements may be made in order to see that payment of settlement funds and even lawyers' fees are not delayed. I would suggest that those who suffer a serious delay should not hesitate to communicate directly with the leading underwriter. If the name of that party is unknown, please contact me and I will endeavour to find out. In most cases the leader is unaware of the delay, and would, I am sure, be able to speed things up once he knows there is a problem.

I turn now to litigation in your own country, and in my usual outspoken manner make some comments. That I confess ignorance of the subject will not preclude me from commenting. Any of my colleagues in London would confirm this fact.

Before coming to the present day, let me quote to you what our 1774 subscriber had to say about litigation. He said: "Litigation is becoming so rife there is necessity, however strange as it may appear, for the almost daily attendance which may be observed, of no less than four or five attorneys at Lloyd's Coffee House. What a degradation this is of mercantile character and abilities even in a single branch of commerce." Judged by the number of attorneys in attendance today things have not changed very much.

Even with such an apparent past record of litigation, I am concerned at the trend that I discerned in the past few years in the United States courts, with their ever-increasing generosity both as to awards and new and, may I be excused from saying, seemingly wild theories that they appear from time to time to accept. I am reminded of a comment made by Jean

Giraudoux, who said: "There's no better way of exercising the imagination than the study of law. No poet ever interpreted nature as freely as a lawyer interprets truth." Let us not get to such a social conscience that the law and justice no longer exist and no one dies from natural causes but rather as the result of someone else's fault. May I make a plea that frivolous lawsuits and excessive damages be treated by the courts in such a manner as to bring these practices to an end. Let it not be forgotten that the costs of defending such suits and the payment of such damages come out of the premiums paid by insureds to insurers. This assessment is in turn spread through society via increased costs. Surely such economic waste to satisfy the greed of a few is not justified.

To digress for a moment, I mentioned excessive damages a short while ago which, to my mind, does not fall in the same context as the general increase of awards made by courts both in your country and mine, and elsewhere in the world, due to ever-present inflation. Who thought in the 1960's that million dollar awards would be as common as they are today. But I believe something can be done about these, not so that the deserving widow or orphaned children receive less, but so that the monies available within the insurance industry are put to better and more economical use. This can be accomplished by making far greater use of periodic payment settlements. You have already heard about the technical aspects and the arguments for and against their use, but may I ask of all the lawyers present today, be they defense or plaintiff, that this method of organizing a settlement be seriously considered more often. It seems to have commendable advantages to plaintiff, his lawyer and the defendants.

I would also like to take this opportunity to make a comment on punitive damages. I do not think these recoveries should be for the benefit of one individual who becomes the benefactor from a lottery, nor should they fall upon insurers who had nothing to do with the act. I personally would like to see them removed from the civil system and transferred to the criminal jurisdiction. It seems to me that where an action is sufficiently wanton as to justify an action for punitive dam-

gages, then society at large has been offended and therefore society should inflict the punishment for its own benefit.

Let me conclude by quoting from my favorite source, the 1774 subscriber, who passed comment on the underwriters and brokers by saying: "The loose, hasty and even crafty manner in which insurances are effected in Lloyd's Coffee House, the frequent want of penetration, judgment or attention on the part of the assured and brokers, and especially the affected ignorance, silence and indifference as to material facts and circumstances on the part of these gentlemen-the Brokers." Have people changed!

