Clarification from BIBA provides a valuable grounding on the crucial topic of limitation of liability reports Graeme Trudgill

The BIBA Professional Indemnity Insurance Initiative has launched a new publication in order to provide clarification to brokers on the issue of Limitation of Liability when advising clients. It is available on the BIBA website and all BIBA broker members should receive a free hard copy.

The new publication entitled Facts about Limitation of Liability aims to help brokers to manage their financial risk and ensure that it is proportionate to client engagement.

This document is in direct response to members’ concerns on a key subject that they need to adhere to from a regulatory and legal perspective. It also explains how clauses must be drawn to the client’s attention, avoid ambiguity, not restrict liability for death or personal injury caused by negligence, fraud or misrepresentation and much more.

So, what is a Limitation of Liability clause? It is a clause in an agreement that seeks to exclude or limit the extent of potential liability owed by you to a client. It seeks to exclude any responsibility to pay compensation to a client, or at least reduce the amount you may have to pay, if you break your terms of business with your client, or if other things go wrong.

It can restrict the types of losses that are recoverable for you by the client and can apply a financial cap on the total amount that may be recovered from you. BIBA has a panel of accredited professional indemnity insurance brokers; they have seen brokers struggling with this complex issue.

Tim Coles, Chief Executive of BIBA-accredited PI broker, Howden Insurance Brokers, and a BIBA LMRC member, comments: “BIBA’s London Market Regional Committee (LMRC) set a major objective in its 2010 business plan to achieve greater clarification on the practice that many brokers, and other professions, already undertake. This demonstrates the value of BIBA to its members and to the industry as a whole. It is the first document of its kind and should allow brokers to understand the legal, ethical and financial risks that are faced when advising a client.”

And Alan Eyre, Managing Director of BIBA-accredited PI broker Towergate, says: “This is a very complicated subject fraught with potential pitfalls for brokers, with both legal and regulatory restrictions. This legal opinion helps to clarify the situation. Brokers should talk to a BIBA accredited PI broker to ensure the liability clause reflects their Professional Indemnity insurance cover.”

Meanwhile, Neville Miles, Partner with BIBA-accredited PI broker Lockton, comments: “This is really about brokers putting their own risk management advice into practice while still providing their clients with a good level of protection. In the past there was the potential for errors to occur; the BIBA document should help clarify these complex issues.”

Legal opinion was sought from Lawyers Beachcroft and Partner Emma Bate explains: “A limitation of liability clause should not be seen as a means of reducing a broker’s responsibilities, and a broker should not enter a contract expecting to rely on it. Instead these clauses should be viewed as a means to allocate risk fairly in extreme circumstances.”

The document:
- Explains what a Limitation of Liability clause is, taking into account the ethical, legal and financial risks you face when advising a client
- Provides a broad description of the legal and regulatory background of limiting your liability
- Offers a more detailed technical analysis of a standard Limitation of Liability clause
- Makes brokers who limit their liability aware of the practical considerations
- Outlines the Legal Risk, Prudential Risk, Operational Risk and Reputational Risk.

BIBA recommends you should always seek your own legal advice before entering into any specific agreement that limits your liability.

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