**AILA 2013 SYDNEY CONFERENCE 17-20/9/2013**

**DISTRIBUTION OF INSURANCE PRODUCTS WORKING PARTY SESSION**

**18/9/2013 11:30-13:45**

**Minutes of the Working Party Session**

Attendants:

* Ioannis Rokas
* Kyriaki Noussia
* Tim Griffiths
* Susan Viciles
* Christina Gibson
* Lindsey Charman
* Michael Gill
* John Gallagher
* Philippa Briggs
* Greg Hair
* Helen Fink
* Ian Enright
* Fiona Cameron
* David Lee
* Peter Banken-Hansen
* Kathryn Roach
* June Smith
* Hujala Taisto
* Birgit kuscke
* Giblett ray
* Jérôme kullman
* Samim unan
* Mark hunter
* Dallas booth

The WP meeting was held on Wednesday September 18th 2013 between 11:30 and 13:45 hrs at the Dalton House, Darling Island, Sydney NSW Australia.

The topic of the session was titled: “European issues: the paradigm of e-intermediation & conflicts of interest in fronting insurance”.

The Agenda included 3 speakers and has been conducted as follows:

Prof. Rokas welcomed everyone and informed the audience of the topics of the session as well as of the speakers presenting papers. He went on to make some introductory remarks on e-intermediation and on the arising conflicts of interest.

Mr Dallas Booth - CEO N.I.B.A. (Australian - National Insurance Brokers Association) noted that there have been some changes in the Australian ICA and that the transitional provisions have been complicated especially in regard to the e-communication.

Following, the concept of the obligation for disclosure for consumers was touched upon and some comments were made on the Australian perspective.

Prof. Rokas talked first and delivered a paper on the topic namely “Online insurance intermediation – protection via an ocean of information”. First he touched upon the obligation of (off)online insurance intermediaries (IIM) to proceed with notification in order to work under FoS in the EU (criteria for the notification in non online (offline) business, criteria for the notification in online business), then he went on to discuss the obligation of an IIM to establish in a host member state (criteria for the obligation to establish (FoE) in offline as contrasted to online business), then he talked of Third Country IIM (off)online business in the EU (criteria distinguishing offline services as solicited/unsolicited as well as criteria distinguishing online services as solicited/unsolicited). Following he analysed the issue of pre-contractual information which insurers have to provide as well as the issue of pre-contractual information which (off)online professional intermediaries other than insurers have to provide. He stated that the combined application of pre-contractual info is included in IMD 2, PRIPs, ECD, DMD and in MiFID 2 and that there exist six pieces of EU legislation introducing partially overlapping, partially asymmetric information (IMD 2 - ECD - Solvency II (non life insurance) - Solvency II (life insurance) – DMD - PRIPs - MiFID 2). Following, he talked of the results and on special Issues (the case of aggregators (aggregators which provide / do not provide IIM), the issue of the bank as tied intermediary, what distinguishes the border of the online market (geographical, technological and regulatory means) as well as the issue of Online FoS vs “traditional” FoS.

A discussion followed.

Prof. Jerome Kulllman then talked on the topic “Of mice and men” (allegoric) and elaborated on the acceptance or not of e-communication in insurance contracts in France. He stated the problem of consent over the internet (re insurance) under French law and juxtaposed it with the position under the E-Commerce EU Directive 200/31/EC 8/6/2000. Then he elaborated on the different approaches of the Cour de Cassation (Appeal Court) and the fact that French Courts are unwilling to accept one document (encompassing the declaration of the assured and the insurer’s questions) as enough.

A discussion followed.

Dr. Kyriaki Noussia then talked on intermediaries and conflicts of interest (the paradigm of fronting insurance). She set the scene and introduced the problem of dual conflict of interest between the first insurer and the insured and the insurer and the reinsurer in fronting insurance, then she elaborated on the issue of whom the broker really represents (case law, *Re Pritchards & Baird Inc.*  8 B.R. 265 (D. N.J. 1980) aff’d 673 F2d 1299 (3d Cir. 1981) and how since this ruling intermediary clause of reinsurance contracts expanded to stipulate that reinsurance intermediary (for payment and receipt of premium) acts as agent of reinsurer.She then elaborated on the European Response – IMD I & Proposal for IMD II, the position of the law in Australia and the way forward.

A discussion followed.

Professor Rokas then made the closing remarks, talked of future developments and announced the 2 next meetings of the WP ( Athens, 2014 - May and Rome, 2014 - September)

Athens 27/09/2013

*Dr. Kyriaki Noussia*

*Secretary to the WP Distribution of Insurance Products*