



GREENWAY CHAMBERS

# Swashplate Pty Ltd v Liberty Mutual Insurance Company

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Edward Cox SC

## Austbrokers Aviation / LIU - Helicopter Transit Insurance Facility

### PLACEMENT SLIP

CLASS	Helicopter Cargo Insurance (single transit)
POLICY NUMBER	SY-HEL-17-900043
INSURED	Becker Helicopter Services Pty Ltd and/or Swashplate Pty Ltd
INTEREST INSURED	Bell 427, serial number 56044
PERIOD OF INSURANCE	From : 19 May 2018 To : Date of Arrival at Sunshine Coast Airport QLD
BASIS OF VALUATION	Delivered Cost
AGREED VALUE	US\$ 1,250,000

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**POLICY WORDING**

LIU-AUS-MAR-CAR-A-06-12

**CONDITIONS**

1. Coverage includes loading and/or unloading but not the risk of disassembly/re-assembly/packing/unpacking of the units.
2. Cargo professionally packed, stowed and carried and/or package and stowage overseen by a qualified aircraft engineer.
3. Rotorblades packed, stowed and carried in own box.

**EXCLUSIONS**

1. Damage from vibration.
2. Cover whilst the unit is under its own power or in use and/or being worked upon and directly resulting therefrom.
3. Any pre-existing damage.
4. Loss and/or damage attributable to mechanical, electrical or electronic derangement unless there is evidence of external damage to the interest insured.
5. Any loss or damage due to rust, oxidation, discolouration unless caused by a peril insured under Institute Cargo Clauses (C) unless the helicopter is fully containerised and then Institute Cargo Clause (B) will apply.

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<b>EXTENSIONS</b>	Coverage is extended to include Static Cover for up to 5 days prior to loading
<b>CONVEYANCE</b>	Approved vessels and/or air and/or rail and/or road conveyances
<b>VOYAGE</b>	From Picayune (Mississippi) to Sunshine Coast (QLD)
<b>GEOGRAPHICAL LIMITS</b>	Worldwide (excluding US Embargo Countries)
<b>DEDUCTIBLE</b>	US\$ 25,000 each and every loss
<b>BROKERAGE</b>	20%
<b>PREMIUM</b>	US\$ 1,562.50 (being 0.125% on US\$ 1,250,000)

SECURITY : 100% Liberty International Underwriters



Signed :  A.B.N. 61 086 083 603

Dated : 22<sup>nd</sup> May 2018

# ICC A Clauses

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## Clause 8.1, Duration. (Transit Clause)

Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit,  
continues during the ordinary course of transit ...



# ICC (A)

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## Clause 11.2

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Subject to Clause 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.



# ICC (A)

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## Clause 4.3 (Exclusion)

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loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses “packing” shall be deemed to include stowage in a container and “employees” shall not include independent contractors)



# Allsop CJ

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## At [61]

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The applicant submitted that the reasonable business person would not read “19 May 2018” adjacent to “Period of Insurance” as precisely and demandingly contractual. A number of matters may, perhaps, be seen to tend in the direction of that submission. First, no precision as to it being local standard time is given in the operative placement slip. Such precision was given in the Master Slip when identifying the times after and before which the risk must attach (by the terms of the policy) to fall within the facility being provided for. Secondly, and relatedly, such clarity and precision might perhaps be expected if one were changing the nature and form of the cover from an anticipated voyage policy, its attachment and termination determined by the understood terms of the incorporated wordings, to a time and voyage policy with its inception by attachment of cover importantly changed to a precise time in Picayune. Thirdly, and also relatedly, this change in the nature and form of the cover (if it be correct so to characterise it) is done by reference to the placement of a date in the place on the form of the operative placement slip that was previously used in the Master Slip for dates fulfilling another purpose, that is, identifying





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[61] continued at [72].

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the local Picayune dates and times between which attachment must occur by reference to the terms of the anticipated wording. Fourthly, objectively, there was no expressed or apparent intention to depart from the nature, form and structure of a policy anticipated by the Master Slip: a voyage policy whose attachment occurred by reference to identified wording as long as that attachment, referable to anticipated terms, occurred prior to an identified date within a given range, being prior to midnight on 22 May 2018. I am not intending to give any relevant contractual force to the Master Slip. But it was a document that reflected a commercial relationship for anticipated cover for risks attaching within a range of dates and attaching by reference to identified policy wording. One might perhaps expect some objective expression through the terms of the cover for it to be importantly different from that anticipated by the facility under which it was arranged.

[72] I do not see any basis for reading a part of the operative placement slip, the first of the contractual documents, as non-contractual and only indicative as to when the commencement of the voyage was anticipated.



# Full Court

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## At [70], approach to slip To/From

First, the Period of Insurance as specified in the Placement Slip had two aspects, a 'From' date and a 'To' date. If particular significance was to be given to the first aspect (being 'From: 19 May 2018') then significance of a similar kind must be given to the second aspect (being 'To: Date of Arrival at Sunshine Coast Airport QLD'). However, if the specified 'To' date was given significance as specifying when Liberty was no longer on risk then the detailed provisions in the ICC(A) concerning termination of the risk under the policy would be replaced by a provision that meant that risk terminated only when the helicopter arrived at Sunshine Coast Airport. The detailed provisions that terminated the risk if there was unloading at a place for storage before reaching the final planned destination would not apply. Further, the language used meant that there would be no certain date when the underwriter went off risk. If indeed Liberty was concerned to know precise dates as to when it was at risk then that was not reflected in the language used as to the end of the Period of Insurance. Therefore, this aspect was said to point to the Period of Insurance serving a different purpose to that identified by the primary judge.



# Full Court

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At [72], significance of master facility.

“... the Master Slip in referring to the Period of Insurance used the terminology of risk attaching. That terminology is to be found cl 8.1 of the ICC(A) as to duration.... Therefore, the scope of the Facility was defined on the basis that the insurance that would be arranged would attach in the manner provided for in the ICC(A).

... A construction of the Placement Slip that resulted in the risk attaching by reference to a specific date was not insurance of the kind contemplated by the Facility. It would be a different risk and would be rated differently. Yet, the Placement Slip included a premium and unadjusted policy wording as specified in the Master Slip.”



# Full Court

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At [75]

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“... insurance that started from a specified date that might occur part way through a continuous transit could lead to uncommercial results of a kind that single transit insurance as described by the policy wording the subject of the Master Slip avoided. In particular, when the subject-matter of the policy arrived damaged at the end of a single transit, if it was covered for only part of the transit it may be extremely difficult to attribute the damage to an event that occurred during one particular part of the journey that took place after a specified date. The evident commercial purpose behind a voyage policy was to enable the owner of the subject-matter to be able to look to the insurer for indemnity without inquiries of that kind. That commercial purpose was frustrated by the construction for which Liberty contended.”



# Full Court

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## At [88]

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“ ... the Period of Insurance in the Master Slip was defined by reference to the risk attaching in the manner described in the incorporated policy wording, relevantly ICC(A). It was not a period that could be described definitively until the time of first movement of the subject-matter for the purposes of loading was known. Therefore, if Austbrokers wanted to state to Liberty why a particular placement slip (in this case the Placement Slip) conformed to the period of time covered by the Master Slip it could do no more than provide an estimate of when it expected that date to be. It would be insufficient to simply state something such as the date of commencement of the transit in Picayune, Mississippi. Liberty would have no inkling from such a statement as to whether the proposed insurance fell within the Period of Insurance for the Facility. As to the transit to be covered, that could be made clear by specifying, as the Placement Slip did, that the Voyage was from Picayune to the Sunshine Coast. The subject-matter, being the helicopter could also be specified. In context, these are the particular matters that would be expected to be specified in a placement slip issued under the Facility recorded by the Master Slip. It is not to be expected that Austbrokers would specify a date when Liberty went on risk. Attachment of risk was addressed by the ICC(A) and the Static Cover extension.



# Curiosities

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- When is a broker's authority relevant or determinative of a policies construction?
- Do the decisions provide guidance for general policy construction where the placement slip suggests a different regime to the incorporated clauses?
- Would the policy have a different period if issued directly by the insurer without a broker?
- When is a statement on a placing slip contractual or merely descriptive?
- Would result be different if the insurer knowingly accepted a policy placed by a broker inconsistent with the master authority? Role for estoppel based on mutual assumption?
- Are statements as to anticipated loading time material statements for the policy risk?  
S.24, 26 MIA.



Swashplate Pty Ltd v Liberty Insurance Company [2020] FCA 15

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Swashplate Pty Ltd v Liberty Insurance Company [2020] FCA 137

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