EDITORIAL

At the time of writing the temperature in the City is incredibly above 90°F! where are the icebergs of last summer? It is at such a time extraordinarily difficult to take either legal or insurance problems seriously, which is perhaps why most lawyers, sensibly are on holiday, and those insurance men and women still at their desks appear insensible to the heat!

This edition of the "Bulletin" is substantially given over to Pat Saxton's report on the very successful Colloquim held in July - and in those pages alone there should be sufficient material for many an autumnal disputation.

My regrets for raising false expectations in the last "Bulletin": I said I hoped to bring Maurice Bathurst to book and to print his paper on legal expenses insurance. But alas the talk was extempore and no written record remains to pass on to members unable to attend.

CURRENT LEGAL CHANGES

When Parliament rose for what is to be a shorter than usual summer recess the governments' Policyholders' Protection Bill was still in the hands of the commons: there is to be a "tidying up" period in October, when the business managers hope to get a number of bills through to Royal Assent, before the present session ends. Assuming that the Bill does become law, it seems certain that Fidelity Life Assurance will become the first company to fall within the terms of the new statutory rescue machinery. The D.O.T. moved late in July to put Fidelity Life into liquidation: this company is an English subsidiary of the US financial conglomerate Fidelity Corporation of Richmond, Virginia, which is in good financial shape; but the American parent has refused to inject £¾m of new capital, because the Bank of England will not assist Fidelity Life over the £1m it has on deposit with London and County Securities. The collapse of secondary banking will thus indirectly have its place in insurance history.

Two new sets of regulations have been made under the 1974 Insurance Companies Act: the Insurance Companies (linked Properties and Indices) Regulations came into force on 1st

July, while the Insurance Companies (Changes of Director Controller or Manager) Regulations are due to come into force on 16th September. The first set of regulations stem from the recommendations of the Scott Committee report on linked life assurance published in 1973, specifying five main categories of asset for linking and prescribe two indices - both produced by the Financial Times. The second set of regulations deal with proposed changes of control and enable the Secretary of State for Trade to "vet" new men before appointment; from now on the government will have great potential control over senior personnel in the insurance industry - the question is how it will exercise it.

The reform of our limitation law seems to be constantly under discussion either in committees or in Parliament, and so it comes as no surprise to have to report that yet another Limitation Act received Royal Assent on 1st August. This latest Act comes into force on 1st September and gives effect to the recommendations of the twentieth report of the Law Reform Committee published in May last year, by making detailed amendments principally to the 1939 Act in respect of actions for damages for personal injury. While the 3 year limitation period still stands, this can run from the date of accrual of the cause of action, the date of the claimant's knowledge, or the date of termination of legal disability, if such existed when the cause of action accrued; the courts have wide discretion to override these limits if it appears that it would be equitable to allow an action to proceed having regard to the degree to which the various parties would be prejudiced. As the new Act applies to causes of action that have already accrued, certain "stale" actions may be revived.

In June the Law Commission published three fairly short working papers - numbers 59 to 61 on Contribution, Firm Offers and Penalty Clauses and Forfeiture of Moneys Paid. As usual comments are invited - the deadline this time is 1st December. In these papers the Commissioners are concerned primarily with reforming the law of contract, and a quick perusal of the 3 papers suggests that the changes now cautiously recommended are unlikely to affect insurers' or brokers' daily transactions. A substantial section of paper 59 deals with the operation of the Law Reform (Married Women and Tortfeasors) Act 1935 and the judicial decisions thereon:

the anomalies of the existing law are well illustrated by practical examples, but the alternatives seem to be likely to be less satisfactory - I would think that insurers would opt unanimously for maintaining the status quo. Throughout my insurance life I have had to contend not only with the law of the Republic of Ireland but also with the lawyers in John Bull's other island, so it came as a nasty shock when reading paper 59 to find the Commissioners even tentatively suggesting that modern Irish law might have something to offer by way of alternative to our present tortfeasor law.

Though the legislature has not yet found time to enact the long promised seat belt law, the Court of Appeal went some way to settling the arguments that have raged in and out of court on the question whether it is contributory negligent as a motorist or front seat passenger not to wear a seat belt. Froom v Butcher will inevitably make its appearance in the law reports and the legal reference books, but Lord Denning's judgment leaves a number of questions unanswered. According to the Master of the Rolls, where the evidence shows that the failure to wear a seat belt made no difference to the injury sustained, damages should not be reduced; where the evidence shows that the failure to wear a belt made all the difference and that the wearing of a belt would have prevented injury altogether, there should be a 25% reduction of damages; where the evidence shows that injuries would have been substantially less severe had a belt been worn, then the reduction should be 15%. But how can the 25% rule stand? Surely if the injury would have been prevented altogether the proper percentage is 100? If so, whence comes the 75% of damages except by way of punishment of the defendant motorist and his insurers?

At the end of July new draft rules were published by the European Commission in Brussels, aimed at permitting a lawyer practicing in one member state to plead on behalf of a client in the courts of another member state. The Commission recognises that the duality of the profession in Britain poses problems for incoming lawyers, and so provides that the foreign lawyer must decide in the particular case in which capacity he will act here, and then stick to his choice of solicitor or barrister, as the case may be. Once the right so to offer services has been established, the much more

difficult question will have to be considered of granting the lawyer the right to set up in practice anywhere in the Community.

I.P.S.