The following paper has been prepared by Mr. A.L. McCrindell and Mr.A.J.Dolden. It is intended to be given at the 1978 World Congress and any comments or criticisms members may like to make will be of assistance to the authors in their preparation of the final version.

Editor.

"PREVENTION AND INSURANCE"

PART 1. GENERAL

(A) Introduction

The literal meaning of the word "Prevention" in English is such that any event or accident which is apprehended will not happen at all: as a result of the prevention measures. However, it is sometimes used rather "loosely" in the sense that the measures will reduce the possibility of the event happening but not eliminate the risk entirely. There is an English cliche that "Accidents will happen" and the corollary of this is that, in theory at any rate, the application of "prevention" would put Insurers out of business.

A more logical approach to bringing our paper within the limits envisaged by the AIDA Committee is to look at Risk Management. To a large extent British Insurers took the first steps towards risk management 100 years or more ago and it was only after the second World War that Brokers emerged as potential advisers on risk management. However, the Americans appreciated towards the end of the 19th century that the best person to assess risks was a full-time employee and the Association of Insurance Buyers was formed; Broker opposition to the "in-house buyer concept" delayed this development in Britain but there is now an Association of Risk Managers in Commerce and Industry.

What are the functions of a Risk Manager? To identify all potential causes of material or financial loss to his employer's business and deal with them in any of the following four ways:-

(i) Eliminate (i.e. literally "prevent" the risk)

(ii) absorb the risk: this involves the acceptance of a series of known and regular losses and treating the financial consequence as a business expense.

(iii) reduce the risk by taking positive steps such as the installation of fire sprinklers or burglar alarms.

(iv) transfer the risk to an insurer or contract out. We consider that our immediate task is to elaborate on (iii) which can be called either "Risk reduction" or "minimisation". "Prevention" would come under (i) and the risk would thus be removed.

(B) The Duty of Insurers to the Community

The system of using fire marks and Company fire brigades which was in vogue 300 years ago was destined to endure in parts of Britain until the early twentieth century. In this context, it is perhaps worth quoting from an Insurance Institute of London Study Group Report on "The work of the Companies in combatting and preventing fire" issued in 1966:

> "The Companies always undertook in their own interests as well as that of the Insured to try to protect people from their own foolishness".

The Metropolitan Fire Brigade Act of 1865 consolidated the pioneer work of the individual Insurers by a unified control with Government backing but it is worth recording that for the next 100 years Companies were compelled (by that Act) to pay an annual levy based on insured values within the City of London. Implementation of centralised control from the Home Office gradually took place over the whole country starting in the great industrial towns in the north but only completed when the Companies' brigade at Ludlow in Shropshire was disbanded in 1920.

It is clearly the duty of the State to maintain adequate fire services - if only on grounds of protection of human life. But when it comes to saving property why should "A" who is prudent enough to insure his property permit some of his premiums to be used in extinguishing a fire in the property of his neighbour "B" ? This seems an unanswerable argument and one can only conjecture that Insurers in Britain "clung to their fire brigades" partly as a matter of prestige and also perhaps because even then there was a fear that the business might be nationalised if the fire services were nationalised. The argument rages on today in certain states in Australia where brigade levies are still quite heavy and to which even Reinsurers are obliged to contribute.

(C) Life Versus Property

It is of course the prime duty of the Government, State or Municipality to give priority to the personal safety of its populace: the safety of a property is for them a secondary consideration but this factor is important to insurers. Two tragic examples of the conflict of these interests occurred in Britain during the "sixties", the circumstances being almost identical. In the basement of a

warehouse in London which contained valuable goods and which had been protected by iron bars at the instigation of Insurers, several employees were trapped and perished in a fire because they were unable to escape. The other incident was in a bonded warehouse in Glasgow: in this case, of course, the physical confinement was enforced by Customs security.

Because of a series of hotel fire disasters, fire precautions are now drastically enforced but while the principle of easy access to escape ladders has been retained, the need to keep "fire floors" closed results in great discomfort by restricting ventilation in hot weather. A permanent resident on the top floor would probably prefer the increased fire risk of a spreading fire to weeks of sleepless nights in stifling heat.

(D) Self-enlightened "Protection" - Engineering Insurance

In the mid-19th century, the greed of the industrialists in England was such that they were blind to the death toll resulting from the explosion of boilers whose materials and fabrication had been weakened by economic considerations. When the famous Lord Campbell's Act 1846 obliged employers to compensate the relatives of employees fatally injured, the Manchester Steam Users Association was established. Its function was purely one of "precaution" by means of regular inspection services coupled with experimental research in the boiler field. They were opposed to the concept of boiler insurance which they considered would put a premium on carelessness and economy but in 1858 they decided to offer the dual facility of inspection and insurance and the Steam Boiler Insurance Company was founded. The principle of inspection (which could perhaps be described as advance loss prediction) has now been extended to lifts, lifting tackle and a vast variety of machines such as turbines, the failure or disruption of which could cause serious loss of life or injury as well as material damage. The principle has also been extended into the field of breakdown risk where the risk of physical injury is slight but machine repair costs and consequential loss can be serious handicap to the business. Engineering insurance is unique as a class in the context of our subject - simply because the bulk of the premium is absorbed in the cost of the inspection service as a consequence of which actual claims cost is reduced to 10% or less.

(E) "Ad hoc" risk reduction by Insurers

Although the adverse effects of competition obliged Insurers to co-operate in many important fields of loss reduction, the phrase "Accept subject to survey" is as familiar today as it was 100 years ago. Traditionally the Company Surveyor

in relation to material damage insurance (and sometimes business interruption) has virtually dictated the Underwriters terms of acceptance of a risk and the "Acceptance" qualification just quoted could well be followed by a formal letter of declinature: 50 years ago an Underwriter was not concerned with the effect such a decision might have on a Broker's account with his Company, whereas today many broking offices employ their own Surveyors whose ideas differ appreciably from those of the Company Official. It could, perhaps be said that a Risk Manager is more co-operative.

The Company Fire Surveyor will be an expert in chemistry, electricity, building construction and fire extinguishing appliances. He will also be able to assess the value of gaps between buildings and party walls as fire stops in making estimates of maximum possible loss - for reinsurance purposes. (In this connection there is a vast difference between maximum probable loss and maximum possible loss: the former term is sometimes used as an excuse for increased retention).

His burglary colleague will be an expert in locks and burglar alarms but his imagination will extend to means of outwitting thieves intent on a wage-snatch. The burglary Surveyor will also be more heavily involved in the domestic insurance field - for example with the owners of large art collections or valuable jewellery.

Although the Factory Inspectorate (H.M. Government) has traditionally supervised safety of machine operatives in factories, many of the Company (and especially mutual ones specialising in a particular trade) insist on a survey before acceptance and "check" visits at subsequent intervals. Renewal surveys are also normally conducted as routine by fire and burglary Surveyors.

In other fields - such as Contractors All Risks Insurance - site visits are regarded as essential for underwriting purposes and the difficulties of insuring an athletic club against public liability or a manufacturer against products risks are more easily appreciated by a personal inspection.

When the survey has been completed, as already stated, the Underwriter will decided on acceptance and fix terms: these will be a combination of rating and sanctions. The sanction normally applied will be in the form of a "Warranty" which affirms that "something shall or shall not be done or negatives or affirms a particular state of affairs". Almost inevitably the

purpose of this is to minimise the probability of loss and any breach of such a warranty can prejudice the validity of the Policy - see below under Part II.

(F) Market Warranties

Under the fire tariff system applied to most industrial risks which are rated by the Fire Offices Committee, the hazards of each particular trade are specified in a list of warranties. If certain (numbered and so identified) warranties are deleted as being not applicable the rate is adjusted upwards or downwards according to the hazard being non-existent or present and admitted.

These "collective" or "serial" warranties are of course compulsory for member Offices of the F.O.C. - Independent Insurers and Lloyd's Underwriters may please themselves.

However, in the marine market there is a much greater degree of co-operation between Lloyd's and the Companies, (The Institute of London Underwriters), who issue standard clauses for special types of risk and who also conform to the Institute Warranties which proscribe the navigation of the insured vessel in certain waters between certain dates - because of the hazards of fog, ice and magnetic variation. Here again - within rather fine limits - concessions can be obtained on payment of an agreed additional premium.

(G) The Franchise and Deductible

The traditional Lloyd's S. G. Form of marine Policy (the wording of which has been preserved for nearly 300 years) provides that "Corn, fish, salt, fruit, flour and seed are warranted free of average (i.e. meaning that damage by sea water is not covered) unless general or the ship be stranded; sugar, tobacco, hemp, flax, hides and skins warranted free of average under three pounds per cent unless general or the ship be stranded". This is known as the Memorandum and was designed to protect the Underwriters of the 17th century against losses which were either routine or inevitable but considerable importance attaches to the phraseology and its interpretations. Under modern conditions, it is invariably over-ridden by standard clauses but it is essential to be clear on the actual wording. As quoted this is regarded in English as a "franchise" - that is to say that if, for example, a ship is damaged to the extent of 2% there is no claim but if the degree is 4% the whole claim is paid. However, because of "moral hazard" which tempted an Assured to augment the damage to the required level to justify a claim, the franchise has now been more or less universally replaced by an "Excess" or "Deductible" which in itself gives the Assured an incentive to avoid a loss and indeed to act as if he were uninsured.

Very large deductible (expressed in real as opposed to percentage terms) are now applicable in relation to marine insurance on the hulls of vessels and ever since motor insurance was transacted the sanction of even quite a small excess of £10 was sufficient to encourage a driver to be careful. An excess of £50 is now applied almost universally in the case of new drivers or those under 25 with little or no experience. The development of risk management has caused large industrial firms to seek deductibles on fire and material damage insurance but the discounts granted have been considered insufficient to justify acceptance and moreover there is no element of compulsion such as exists in the marine and motor insurance markets. Certain types of machinery brakdown Policies styled "Time loss" Policies have what is in effect a deductible but which is termed a "waiting period" i.e. there is no claim for the first 48 hours of stoppage. This contrasts with the retention of the "franchise" in certain types of sickness Policy where for example if the Assured is incapacitated for at least a week he can claim benefit from the original date of capacity. But this must not be confused with "waiting periods" under permanent sickness contracts where the amount of the premium reduces as the "waiting period" increases and there is no question of claiming "ab initio".

In certain types of professional negligence insurance, there is not only a substantial deductible but the insured must, in addition, be responsible for a specified percentage (usually 10%) of the amount of any claim after application of the deductible. This is known as Co-insurance and is administered in the same way as a collective Policy where several Insurers act in parallel.

(H) Collective action by Insurers

In the early 18th century, the effects of competition and rate-cutting caused some offices to recognise the danger signals and for certain recognised hazardous risks and areas not only was technical information pooled but the foundations of a tariff system were laid. Whereas these early agreements had only involved relatively few Companies, as many as 22 different Companies declared their assent to a tariff for Liverpool Warehouses in 1828. This move was followed by similar co-operation on warehouses in other areas (notably Glasgow and Manchester) but competition in other directions continued apace and it was the London Tooley Street riverside fire of 1861 which caused the liquidation of certain Insurers and the creation of the Fire Offices' Committee.

Reference has already been made (in the previous section) to the sanctions imposed by rating and in fire insurance and member Companies of the Fire Offices Committee are also obligated to use identical policy wordings. However, the work of the Committee extends into the field of loss reduction in other directions. Dockside warehouses in most ports are regularly inspected and over a long period the Committee has collaborated with H.M. Government in the testing of building and structural materials for their fire resistance. All forms of fire extinguishing equipment and alarms have to be approved by the Fire Research and Testing Organisation. Whereas the Committee and its members are independent of and to some extent compete with Lloyd's Underwriters, both Companies and Lloyd's collaborate through the Fire Protection Association which conducts research into the cause of fire, has an extensive library and produces films and leaflets.

It was the British Insurance Association which first appreciated that all these activities directed against fire were regarded by the official fire authorities as "amateur" and that the conflicting aspects of safe-guarding life and property to some extent influenced this. Accordingly, the B.I.A. set up Fire Prevention Panels on a regional basis - to secure better co-operation between the fire authorities, fire Insurers and their Surveyors and above all the industrialists whose property is at risk. The B.I.A. found a similar contempt by the Police for the recommendations of burglary surveyors and regional Crime Prevention Panels now ensure smoother concerted action in the general interest. The nomenclature here of "Prevention" has probably (but incorrectly) been used to avoid confusion with the Fire Protection Association. The British Insurance Association (which consists of the majority of the British Companies) also affords valuable advice on the protection of domestic premises in the form of the leaflets giving advice on security, fire and weather hazards. In addition it has arranged for the making of and distribution of films depicting the consequences of failure to take precautions in the various sectors of business. In collaboration with Lloyd's, the B.I.A. operates a Repair Research station, although this is directed more at car repair costing than safety.

The Chartered Insurance Institute (the body which organises the professional examinations and award of diplomas) runs courses for both fire and burglary surveyors at the College of Insurance.

Reference has already been made to the fundamental nature of engineering insurance - a precautionary operation which in most cases detects and remedies circumstances which could result in serious damage or injury. Some of the Engineering Insurers operate a system of research on a combined basis - through the medium of the Associated Offices Technical Committee - which, inter alia, is highly efficient in non-destructive testing of metals.

Whilst the value of a medical examination for either life or permanent sickness insurance can benefit the proponent as an individual and give warning of suspected weakness, it seems doubtful if this process can be classed as a "loss reduction" process. On the other hand, the life Offices Associations have set up the British Life Assurance Trust which uses statistics to the general advantage of the industry and the medical profession.

(1) Action by Insurers after a loss

Whilst strictly speaking the activities of the Salvage Association (marine) and the Salvage Corps (fire etc.) do not reduce the risks of losses occurring each is designed to minimise the effects of a claim once it has happened. These organisations (the formers sponsored by Lloyd's, the Companies and the Shipping community and the latter by the Fire Offices) are simply mentioned to avoid confusion.

PART II - THE INSURANCE CONTRACT AND PREVENTION

(A) Before conclusion of the contract

(1) To what extent must the insured refer to security measures? The answer to this depends on the class of business and the size of the risk. It is settled in English law that an insured does not have to disclose to an Underwriter facts which in the ordinary course of business the Underwriter should be expected to know. In this category would come building standards, but not necessarily compliance with fireprecautions which may go by default.

It is the duty of the insured to observe all statutory regulations so it is unlikely that he would be asked about this. An Underwriter would gauge his rate to the known hazards and legal sanctions for safety in a particular trade. The very basis of liability insurance is to protect the insured against the consequences of his negligence and contravention of a Government safety Regulation does not deprive the Insured of his right to recover. It is the Raison D'etre of the Policy.

(2) Action by Insurers

Completion of a proposal form is not always required (indeed the practice is confined to certain classes of business and its main purpose is to elicit information about the Insured's claims history). Sometimes the circumstances of a previous claim(as disclosed on a proposal) may be attributed to lack of protection which

will, in any case, presumably have been rectified. Increasingly, however, if the risk is of any size the Insurers prefer to make their own inspection (as described in Part 1) with a view to checking on the degree of protection as well as the quality of the Management. During this process the Insured must not conceal any special hazard or weakness in protection from the Surveyor, such behaviour entitles an Underwriter subsequently to avoid the Policy.

The Surveyor's report will contain recommendations which fall into four categories:

(i) Those which must be implemented before the risk is accepted, for example the fitting of a particular type of lock in the case of a burglary risk;

(ii) Those which must be carried out within a specified period during which provisional cover is given; for example moving a machine to give greater freedom of movement to the operatives where an employers liability risk is proposed;

(iii) Suggestions (of a long term nature) for risk reduction which would also merit a reduced rate but these would not be mandatory - for example the installation of a sprinkler system in a large industrial fire risk;

(iv) Rejection of the risk on any terms.

In effect the inspection will determine whether the risk is to be accepted or not and if it is, further protection measuresmay be compulsory. It is the Underwriter who determines the rate for the insurance.

Individual insurances are usually accepted on the basis of a completed proposal form: largely because the cost of inspecting each and every household case would be prohibitive and also because it would be difficult to detect moral hazard (that is the risk of a deliberate act to provoke a claim). There is a saying that "an Englishman's home is his castle" but paradoxically it is the larger "castle" type of risk which will probably be surveyed before acceptance. Great importance is attached to the completion of a proposal in motor insurance and here the sanctions of a deductible and restricted cover are applied by the Insurer - as a means of loss reduction.

(B) During the currency of the Contract

The concept of loss reduction and its application can be applied in one of three ways in the Policy document - as an exclusion, as a condition or as a Warranty.

(1) Exclusion

A risk can be excluded in two ways: first by qualifying the peril itself. For example "Fire not occasioned by or happening through earthquake". This places the onus of proof that the fire was not due to an earthquake on the Insured whereas the second alternative of "this Policy does not cover destruction or damage by earthquake" necessitates proof by the Insurer that the fire was due to an earthquake. Obviously no one can prevent an earthquake but a similar qualification is usually inserted regarding property undergoing a process involving the application of heat. In theory this will tend to make an Insured more careful about any heat treatment, although if such process causes a fire he would be indemnified for damage to all other property.

(2) Conditions

Policy conditions generally refer to change of risk or interest and the Fire Policy stipulates that any alteration whereby the risk of destruction or damage is increased must be admitted in writing by the Insurers. Otherwise the Policy will be avoided. There is no reference to protection measures as such and it is debateable whether this condition (or a comparable one in relation to other classes) actually contributes to loss reduction.

A notable exception to this generality, however, occurs in motor insurance. Whereas in marine insurance there is an implied warranty that the vessel is seaworthy (see below) and regulations ensure that all aircraft must possess a current "Certificate of Airworthiness", the only official sanction on motor vehicles is that all those more than three years old must obtain a Ministry of Transport Certificate as a prelude to relicensing. However, as a result of a case some years ago in which a taxi driver was refused indemnity because of the condition of the tyres on his vehicle, all Policies now contain a condition that the Insured shall maintain the vehicle "in a roadworthy condition throughout the currency of the insurance".

(3) Warranties

In relation to normal commercial contracts a warranty is a term of a contract which is not so fundamental as a condition. A warranty has been described as a subsidiary

promise which does not go to the root of the contract. In practice the difficulty is to determine whether a stipulation for a contract is merely a warranty or whether it amounts to a condition.

The importance of the distinction lies in the remedies available to the aggrieved party in the event of a breach of a term of the contract. Where there is a breach of a condition the aggrieved party may:

(a) treat the contract as discharged and/or claim damages; or

(b) affirm the contract and fulfil his obligations under it, but treat the condition as a warranty and claim damages.

Where there is only a breach of warranty the only remedy available to the aggrieved party is to claim damages; he cannot treat the contract as discharged.

However, the term "Warranty" in relation to insurance contracts is much more stringently applied: "A warranty in a contract of insurance is a condition or a contingency and unless that be performed there is no contract" was the dictum of a case in 1786. It is thus that a breach of warranty gives the Insurer the right to avoid the contract from the date of the breach.

But there are some supplementary aspects which can be said to operate "too harshly" against the Insured (see below). For example if a fire policy contains a warranty that waste material must be removed from the building before evening closure and the Insurers discover failure to observe this "promissory undertaking" he is entitled to avoid payment for a fire the cause of which was not related to breach of the warranty. Even if the waste material could not burn (e.g. if it consisted of steel off-cuts) and the warranty is breached, the Insurer would still be within his rights in repudiating liability. Furthermore, if the waste is combustible and the employee responsible for its removal goes on holiday (during which time the warranty is "broken") the policy cannot re-attach after he has returned.

Clearly, the excercise of rights in this fashion would be bad for "insurance public relations" and it is interesting to note that although insurance has been excluded from the Unfair Contract Terms Bill which is currently under discussion as a result of "consumer pressure" members of the British Insurance Association are endeavouring to formulate an official renunciation of their existing legal rights in circumstances similar to those described above.

Ironically, it is probably far easier for an Insurer to prove a breach of this type of warranty (where the Insured may be innocent) than where the underwriter has insisted on night-watch patrols, the provision of an escort for an employee taking cash to or from the bank, or the application of the Keys Clause which obligates those in charge of safes to take the keys off the premises at night. (Where large amounts of cash or bullion are transported, it is usual to insist on the employment of a security company specialising in this type of operation).

But it is in the fire department where an insurer can be most seriously handicapped in proving breach of warranty - simply because the evidence has been destroyed in the blaze. Also the remarks quoted above in relation to burglar alarms can apply to sprinklers, alarms and detectors which may become ineffective due to circumstances beyond the control of the insured.

It is because of this factor (i.e. complete ignorance and innocence on the part of the Insured) that it is possible (in the fire department) to insure a landlord against breach of warranty by one of his tenants.

There are no "implied" warranties in English law - except in marine insurance where the implied warranties of "seaworthiness" and legality of the adventure are assumed to apply. Here again, there is a parallel with the situation described in the foregoing paragraph where an independent cargo owner can secure a "seaworthiness admitted" clause in his policy. The expression "implied warranties" can be mistaken for "implied conditions" of which, in fire insurance, there are four - utmost good faith, insurable interest, existence of the subject-matter and its identity.

Before proceeding to the next sub-section, it should be stressed that there are two further uses of the word "warranty" in British insurance policies which are unrelated to loss prevention or minimisation. The first applies solely in marine insurance where there is an extension of the idea of the "Franchise" already mentioned to policy exclusions such as the "Warranted free of capture and seizure" clause which can be deleted by payment of extra premium. Contrast these "Warranties" which limit the scope of the cover with "Warranted shipped under-deck" (on a consignment of unpacked new cars) or "Warranted professionally packed" (on household goods).

There is also another aspect which affects classes of business where a proposal form is deemed to form the basis of the contract and where in signing it, the Insured

"warrants the truth of the answers". Here again, public relations considerations and the exception of insurance contracts from the Unfair Contract Terms Bill have caused the Insurers to agree to amend their proposal attestations by using the words "completed according to the Insured's knowledge and belief".

PART III - SOCIAL SECURITY AND PREVENTION

(A) Introduction

It is not entirely clear to us what is intended in this heading: "Social Security" in Britain implies the making of financial grants and allowances by the State to individuals and families who are in need. However, in the framework of the subject generally it would seem that this section should examine the role of Insurers in relation to Government Rules and Regulations concerning the personal safety of the individual. In Section 1 (c) it was noted that there can be an unfortunate conflict between measures for preserving the safety of property and for safeguarding life and limb.

(B) The first ever measure for protecting the safety of workers was the Factories Act 1833 and since that time there have been developments in all directions culminating in the Health and Safety at Work Act of 1974 which purports to consolidate all previous legislation in this area. It also provides for the establishment of a Commission to create an Executive which is responsible for enforcing the manifold regulations which are to be up-dated. In addition, provision is made for approved codes of practice. Inspectors have powers to issue Improvement and Prohibition Notices. The separate staffs of existing organisations such as those dealing with factories, mines and quarries, explosives, nuclear installations, alkali works, clean air and the Safety in Mines Research Establishment as well as the Employment Medical Advisory Service have been taken over by the Executive.

The new measure is, however, all-embracing inasmuch as it covers all employees except agricultural workers, who are catered for by the Ministry of Agriculture, and domestic servants. It is estimated that five million workmen hitherto unprotected were brought within the scope of the Act. The general obligations extend to employers and self employed as well as representatives of the employees themselves. Protection is also effective for members of the public who may be affected by the activities of people at work. It also imposes liabilities on the suppliers or manufacturers of harmful machines or materials. The Fire Precautions Act 1971 was at the same time amended so as to make the Fire Authorities responsible

for means of escape from fire in work places. The Commission has power to make building safety regulations and the Act itself applies to building construction sites.

Other "Social" legislation which should be quoted here includes The Offices, Shops and Railway Premises Act 1963 and the Occupiers Liability Act 1957 which were primarily designed to protect members of the public.

(C) Special Security Agencies

The Royal Society for the Prevention of Accidents is neither a Government body nor is it controlled by Insurers, although they contribute towards the cost of organisation. It is always ready to deal with urgent problems which have not been foreseen and to bring pressure to bear where new legislation is needed.

The Institute of Standards is, however, a quasi-Government body which examines materials, machines and so on and gives it a "Kite-mark" of approval. The Institute has, however, little mandatory power and is virtually an advisory body.

(D) The role of Insurers

Just as the Engineering Insurers become the "protectors" of the workmen so it was that some specialist Companies (when the Workmens Compensation Act 1906 was introduced) followed the same policy of "enlightened self interest" as described in Part I (D). Many Companies - embracing a particular industry or a particular district - were formed on a mutual basis and a Company operating in Birmingham set up its own surgery for the treatment of workers. Reference has already been made to the role of Surveyors in relation to employers insurance and some Companies (in the wake of the new Act) have set up Industrial Safety Division which not only provides inspection facilities but operates a wide range of educational and research activities.

(E) Rights of the injured worker

(1) There is a State operated insurance scheme which - in terms of the Industrial Injuries Act 1948 - affords an injured person weekly benefits on a higher scale than he can claim in respect of illness. It also provides for payment of capital sums for death or permanent disablement (according to reduction in earning power as medically assessed). The higher scale benefits become payable not only in respect of incapacity following upon an injury but also following upon a "scheduled" industrial disease such as silicosis or asbestosis. In either case the worker has to establish that the injury or the disease "arose out of and in the course of his employment". Subject to this the worker's entitlement to higher scales is not dependent upon his having to show that his employer was guilty of any fault (to include negligence and/or breach of some safety regulation). On the other hand the benefit will not be reduced in any way

on proof that the worker was himself either wholly or in part to blame for the injury suffered or the disease contracted. Under the State scheme the worker who refuses to wear goggles which have been provided by his employer and sustains an injury to the eye as a consequence, will not be deprived of his higher scale benefits or have them reduced.

A self employed person is not entitled to receive the higher scale benefits.

(2) In addition to the right to receive the higher scale State benefits above referred to a worker may have in addition a claim at Common Law for damages either against his employer and /or against some other person. He must, however, establish that his injuries and/or disabilities were caused by negligence and/or want or care on the part of his employer or some other person or that they have resulted from a breach by his employer or some other person of one or more of the safety regulations laid down by Statute (Act of Parliament). Not every breach of such regulations gives an injured person a right of action at Common Law but a breach of the majority of regulations which are laid down for the safety of workers will in fact give an injured worker a right of action at Common Law against the person who breached the regulation.

Many of the duties laid upon employers under Statutory Regulations are absolute in their nature and a breach will automatically make them liable to compensate the injured person and this is so where there has been no want of care or negligence involved. In other cases the duty is less strict (e.g. the employer must take all "reasonably practicable" steps to avoid causing injury).

(3) In a case brought for damagesat Common Law the Court must have regard to want of care on the part of the worker himself for his own safety. Again where the worker has breached a duty cast upon him by some Statutory Regulation the Court must have regard to this and if the want of care or breach of Statutory Duty has caused or contributed towards the accident giving rise to the injury or has worsened the injury, then a Court may reduce the amount of the compensation which would otherwise be awarded to the worker. In a case for example where safety equipment such as helmets, goggles and safety harness or breathing masks are supplied by an employer and a worker refuses to wear the same and this causes or contributes towards the accident or the extent of the injury, then a Court will normally reduce the compensation awarded. It is quite possible in such cases that the employer may be found not to have been negligent or in breach of any regulation. Regulation may require him merely to supply safety equipment. On the other hand, Courts will normally require in addition an employer to instruct and/or encourage

his workers to use the equipment provided. In a case where a worker is killed his dependents may be entitled to claim for damages on the grounds that they have lost his financial support. In such cases any contributory negligence of the deceased will bring about a reduction in damages awarded to the dependents.

PART IV - LEGAL ASPECTS

What appear to us to be the main legal aspects of protection have already been mentioned in Part II. However, looking at the questionnaire, it would seem that the following comments may be useful:

(a) There is no connection between the Insurance Control Laws and Protection as such. The application of compulsory insurance for motorists, employers (and also horse-riders) cannot really be said to provide any sanction or contribute to a reduction in accidents;

(b) Contrariwise the laws quoted in the appendix make no reference to insurance;

(c) Insurers would only advise on methods of protection but the cost of the installation would always be borne by the Insured. A loan for the purpose would not be regarded as a desirable investment;

(d) It is possible for an industrialist to obtain cash grants and income tax concessions against the cost of installing fire defence systems;

(e) Although there are not, so far as we are aware, any treaties or international agreements with other countries, there is a frequent exchange of technical information and statistics -especially with European countries and the United States. Nothing has as yet emerged from Brussels in regard to a Directive on any aspects of protection - apart from that on Products liability already noted;

(f) The Health and Safety at Work etc. Act applies, as mentioned to workers on building sites. However, there has been an interesting step in the field of reducing defects in the construction of houses which only manifest themselves after some years. The National House-Builders Registration scheme which operates like a guarantee under which defects occurring within 10 years are remedied free of charge in exchange for an initial premium of £25. We understand a similar arrangement is compulsory

for all structures erected in France. However, outside the guarantee this type of risk will not be insurable in the market. (The foregoing has no connection with the recent spate of subsidence claims under household policies).

PART V - INSURANCE ENTERPRISES ETC.

This has already been dealt with in Part 1.

Property Insurance	Minimisation by Insurers 'Ad Hoc'	Insurers Collective Action	National All-purpose Organisation	Legal Sanctions
Atomic Risks		Pooling of Risk	British Atomic Energy Authority	
Building Guarantees		Pool of approved Builders	Houseowners Registration Council	
Contractors All Risks	(1) Exclude faulty design workmanship and materials (2) Approve sub-contractors (3) Deductible			Health and Safety at Work etc. Act 1974
Fire etc. (Domestic)	Advice Survey Warranty	B.I.A. Leaflets B.I.A. Films F.P.A. Information		Health and Safety at Work Act etc. 1974
Fire etc. (Industrial	Advice Survey Warranty	above plus F.P.A. Technical F.O.C. " F.I.R.T.O. B.I.A. Fire Panels Elstree	Ministry of Environment	Fire Precaution Act 1971

Property Insurance	Minimisation by Insurers 'Ad Hoc'	Insurers Collective Action	National All-purpose Organisation	Legal Sanctions
Machinery Breakdown (Including Boilers)	Regular Inspection	Research Laboratories A.O.T.C.	Standards Institution	Health and Safety at Work etc. Act 1974
Theft cash	Advice Survey Warranties	B.I.A. Leaflets B.I.A. Films Crime Prevention Panels		
Theft Domestic	Advice Survey Warranties	B.I.A. Leaflets B.I.A. Films B.I.A. Crime Prevention Panels		
Theft Industrial	Advice Survey Warranties	C.I.I. Surveyors Course		

Other Classes	Minimisation by Insurers 'Ad Hoc'	Insurers Collective Organisation	National All-purpose Organisations	Legal Sanctions
Employers Liability	Surveys Risk Managements	Accident Offices Association	R.S.P.A. National Safety Council Institute of Standards Institute of Packing	Health and Safety at Work etc. Act 1974 Offices Shops & Railways Premises Act 1963 Fire Precaution Act 1971 Occupiers Liability Act 1957
Public Liability	Ditto		Ditto	Ditto
Products Liability	Ditto Contract Terms		Ditto	Supply of Goods (Implied Terms) Act 1973 Arsenic in Food Regulations
Professional Negligence	Excess Co-insurance			

Other Classes	Minimisation by Insurers 'Ad Hoc'	Insurers Collective Organisation	National All-purpose Organisations	Legal Sanctions
Motor	Deductible Restrict Cover Nominated Drivers	Thatcham A.O.A. Testing		MOT Testing Construction and Use Regulations (Road Traffic Act)
Hijacking & Kidnapping				
Personal Accident		B.I.A./L.O.A. Leaflets/Films	R.S.P.A.	Safety of Life at Sea Fire precautions Acts. Health and Safety at Work etc. Act 1974
Permanent Sickness	Medical exam			Ditto
Life	Medical exam	British Life Assurance Trusts		Ditto
Fidelity Bonds etc.	(1) Systems of check (2) Counter-Guarantees			