REPORT ON THE COLLOQUIUM
HELD BY THE DANISH CHAPTER OF AIDA

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It has become the practice for the various national Chapters of AIDA to hold conferences between the quadrennial world congresses of the Association. This year, for the first time, the Danish Chapter held a Colloquium from the 29th June to the 1st July, at the Training Centre of the Danish Insurance Association which is situated about 30 Kilometres outside Copenhagen at Rungstedgaard, a fine country house, part of which was built for a sister of Baroness Blixen, the distinguished writer, better known under her pen name of Isak Dinesen whose family seat is nearby.

The Colloquium was attended by delegates from some 13 countries as far apart as the United States of America and Turkey. The president of the Association itself, Professor Moller of Hamburg University, was present as were other members of the Presidential Council, including Ambrose B. Kelly of the U. S. A., your association being represented by the author of this report and Mr. David Sasserath, a member of the Executive Council.

The proceedings opened with a reception by the Lord Mayor of Copenhagen, Mr. Egon Weidekamp, himself, until he took office this year, an insurance man, as General Manager of ALKA, at the Copenhagen Town Hall, an impressive building featuring the interior covered courtyard which seems to have been so favoured by Scandinavian architects towards the end of the last Century and in the first two decades of this. After an address of welcome from Mr. Jørgen Hansen, the President of the Danish Chapter, the delegates repaired to Rungstedgaard where the Congress itself opened in the afternoon with a discussion, chaired by Professor Moller, of a paper prepared by Mr. Munksgaard Nielsen on the question of the payment of premium for life assurance and personal accident insurance, the starting point being the terms of the Danish Contracts of Insurance Act 1930 which Mr. Nielsen contended, after the passage of some 50 years or more, no longer met the legitimate requirements of assureds. Professor Moller observed from the Chair that so far as the payment of premiums was concerned, the questions he felt should be considered were :-

(1) The fate of the premium, that is to say what happened to any payments which the assured may have received?

(2) Any distinction which might exist in the national laws, as it did in Germany, between the initial premium and subsequent premiums.

Professor Moller pointed out that in Germany if the initial premium was not received within 3 months after the commencement of the policy and provided the insurer had not commenced proceeding to recover the premiums, something which did not occur in practice, the policy was deemed to have been rescinded. While cover continued where subsequent premiums were not received until the insurer wrote to the policyholder fixing a period of at least two weeks for payment and pointing out the consequences of non-payment. The learned Professor remarked that the conditions of the German life assurance policies were uniform but he felt that there should be unification within the EEC on what happened in the event of failure to pay a subsequent premium. In other words, whether the assured was to have the option of surrendering a policy or continuing the cover on a paid-up basis with reduced sum assured.

Mr. Kelly observed that in the United States there was no cover unless initial premium was received or there was a total failure of consideration, but so far as subsequent premiums were concerned the assured usually had 30 days of grace in which to make payment. He then raised the interesting question of what was the position of payments which had been made to a broker who failed for one reason or other to pass them on to the insurer. A matter of some considerable interest in the United States due to the large volume of life assurance placed through brokers. Mr. Kelly remarked that a number of States had passed statutes making a broker an agent of the insurance company for the receipt of premiums only.

Professor Moller stated that in Germany it was settled that a broker was the agent of the assured but that in some policies there was what was known as a "broker's clause" which provided that payment to the broker was to constitute payment to the insurer.

Mr. H. Nielsen remarked that generally the position in Denmark was the same as in Germany and although there might be strict terms in the policies of assurance themselves, these were not always enforced by the insurer. Professor Fredericq of Belgium, commented that the influence exerted by the Common Market towards

harmonisation was considerable in Belgium and this had lead to the revision of the old 1874 Insurance Law, although the question relating to the payment of premiums, as regards life and motor business only, has been regulated by the law of 1930 under which the position was also very much the same as that in Germany.

For the socialist states Professor Warkallo of Poland, remarked that there was only one state company and most life insurance was covered under group schemes although there was voluntary life assurance and in such cases cover did not commence until 1 day after receipt of premium. Monsieur Deprimoz, of France, pointed out that it was always possible to agree with the assured to modify the requirement of the law of the 30th July 1930 which regulated the payment of premiums in his country. Mr. Vinther-Larsen then raised the practical point of the difficulties that could arise in connection with proving that the necessary notice of cancellation of a policy for non-payment of premiums required by the Danish Insurance Contracts Act had actually been received by the assured where this process had been computerised.

The second day of the conference started with a consideration of the paper comparing some provisions of the Danish Insurance Contracts Act with those of the general legislation, which had been prepared by Miss Jantzen and Mr. Teisen, the meeting being under the Chairmanship of the author of this report. One of the points at issue being the conflict between the restrictions placed on testamentary freedom by the requirements of most civil codes that a portion of the estate must pass to the statutory heirs, usually close members of the deceased's family, and the provisions of the Danish Insurance Contracts law which allow considerable latitude as regards the nomination of the beneficiary under a policy of life insurance.

It was pointed out that some aspects of this subject were foreign to Anglo-Saxon lawyers because freedom of testamentary disposition had been the rule in Common Law jurisdictions for many years and indeed, if it had been otherwise, it would seem to him that half the English novels published in the 19th Century could not have been written. Mr. Kelly took up this point observing that it was not unknown in the United States for provisions to be made in a Will for a person to be left one dollar, the object being not that the legatee should receive a dollar, but to emphasise what the intention of the testator really was. Some considerable time was spent considering the effect which the making of a life policy could have on the amount to be received by the statutory heirs. In Germany, for example, it

would appear that if the designated beneficiary of a life policy was a statutory heir of the assured, then while the beneficiary would receive the sum assured under the policy on the death of the assured, the beneficiary would have to account to the estate for the amount paid by the assured in premiums which would then be distributed among the statutory heirs.

It appeared that there was a party lead by Professor Lynsø of Arhus University, which favoured the assimilation of the formalities for testamentary disposition and the designation of a beneficiary under a life policy. However, it was remarked that it should not be forgotten in this context that while life assurance may have commenced with the commendable purpose of making provision for the assured's family, there were now two other elements which had to be taken into consideration, namely that a large number of policies were effected for taxation reasons and to secure credit. An interesting discussion then took place on the extent to which the designation of a beneficiary placed policy monies outside the reach of creditors and it would appear that in many countries in Europe, where the beneficiary had been irrevocably designated, the question as to whether the proceeds of a policy would be available to creditors depended upon the period of time over which the premiums had been paid. Mr. Sasserath then outlined the position in the United Kingdom, pointing out that the principal legislation under which Insurance business was supervised was the Insurance Companies Act, 1974, but that the collection of premiums was basically self regulated although there were different rules for short term and long term business. Where short term business was concerned the position depended upon whether the case was a cash or credit one. In the former instance, no payment means no cover and in the latter, whether it was directly placed or through an intermediary the cover was effective and the only remedy for non-payment was to sue the assured for the premium. Where long term business was concerned, however, the first premium payment by the assured was normally due within thirty days after the acceptance of a proposal and the cover only became operative on receipt of the premium by the assurers. Mr. Sasserath concluded by saying that a Life Policy did not normally acquire any surrender on paid-up value until it had been in force two years.

The third subject of the Conference "Misinformation when taking out a life assurance" was chaired by Mr. Kelly and the discussions centred around a paper prepared by

Professor Lynsø in which he put forward the theory that the rules requiring disclosure in the Danish Insurance Contract Act, like the corresponding rules in foreign countries, were based on an assumption that it was essential for insurance companies to obtain exact knowledge of the risk and that this assumption was no longer valid. That, in fact, it was no longer essential to obtain such information. A point of view which it must be said seemed to obtain more support from representatives of consumer interests and academic lawyers than it did from the insurers present.

There followed a comparison between the effects of non-disclosure and misrepresentation in the various countries ranging from the right of avoidance in the United Kingdom through the German system which provides for avoidance where the loss is causally connected with the loss to the French proportional system. It was interesting to hear from Mr. Stroihski, that in Poland they overcome the effects of misinformation by means of a waiting period of from 6 months to a year, plus a medical examination for so-called voluntary Life Insurance.

Again, the point was made by the insurers present that although the insurer possessed rights both under the provisions of the law and the terms of his policies, they were not as a general rule, strictly enforced against the assured except in the most extreme cases. Indeed, it was observed that insurers were extremely reluctant to take such defences and when they were used it was quite often because the insurer had good grounds for disputing liability often for reasons discreditable to the assured, but found some technical defence much easier to prove.

The morning of the last day of the Conference was devoted to the question of Products Liability Insurance and conditions of delivery, under the Chairmanship of Mr. Vinding Kruse. Mr. Jørgan Hansen introduced his paper on this subject by posing the following questions for consideration: 1) Should the products liability risk for defective components be channelled to the producer of the finished product; 2) should the liability of the producer of component parts be limited and 3) what means would be adopted to achieve these ends. Thus, Mr. Hansen introduced the dominant theme of the morning's meeting, which was whether or not all liability for defective products should be place on the producer of the finished product.

Mr. Hansen was strongly in favour of such a solution and indeed, is the author of a clause currently under consideration for inclusion in Scandinavian Engineering Contracts which purports to effect this. This concept received some support from the representatives of Scandinavian industry present on the grounds, it would appear, that concentrating liability on the final producer should effect a saving in overall costs as it would mean that the manufacturers of component parts would not need to insure themselves against Products Liability which should result in the avoidance of a certain amount of duplication of cover.

However, it was pointed out that the premium for Products Liability was largely determined by the incidence of losses, so that the pure insurance element in the premium could not be reduced by any mere re-allocation of liability. In addition, it was remarked that component manufacturers would in all probability carry Public Liability cover and Products Liability was often written as an extension to such covers so that any saving in administrative costs would not be as great as might be thought. Indeed, as many component manufacturers were also manufacturers of final products, they would require Products Liability insurance in any event. It was also observed that as the E.E.C. Draft Directive provided for an injured party to be able to recover from manufacturers of components, as was already the case in most jurisdictions now, there was no means by which the producers of such component parts could be relieved of their liability contractually. This meant that the original producer would have to, as was provided in Mr. Hansen's clause, give them a form of indemnity. In other words, the final producer might be said to be offering some form of contractual insurance to its suppliers of components and the direct insurers covering the final producers liability might also be said to be reinsuring the manufacturer. In fact, in such circumstances, the final producer would be acting almost as an underwriter on its insurers behalf! If this was not to be so all changes of suppliers of component parts would have to first be referred to the insurer, a process which was not likely to result in any lowering of costs.

As regards the practical position in Great Britain, Mr. Sasserath observed that the whole chain of producers whether they were the producers of components or the finished products could be and very often were involved in produce liability claims. It being probably correct to say that the producer of the finished product was more likely to be the one against whom a claim was brought in the initial stages, because his name was usually on the finished products, although other parties might be involved at a later stage.

If a claim was made on the producer of the finished products his insurer would deal with the claim, and would look to the component parts producers for recovery in full or in part - using his subrogation rights - to recoup his loss, provided he could prove negligence on their part. On the other hand, a claim might be brought against several parties, in which case the parties, usually their insurers - will join in defending the claim and any amount paid in compensation being proportionate to the various party's negligence.

On the practical plane Mr. Sasserath informed the delegates that where liability could be catastrophic in nature, for example, in the aircraft industry, in the U.K. in the past schemes had been devised giving insurance protection for large limits of indemnity, say £20,000,000. Such schemes provided cover for all producers of component parts, and included the producer of a finished product, the aircraft producer. This was a voluntary scheme, and the rates were based on the turnover of the participating producers.

Another new scheme just introduced was for Pharmaceuticals, although no real details were available as to ratings at the present time. In addition, several professional indemnity schemes were available in the U.K. for service industries, such as Accountants, Solicitors and Insurance Brokers. The main point of having package deal concepts was the elimination of cross liabilities and therefore the saving of monies on expensive litigation. The types of schemes for the Aircraft industry and Pharmaceuticals were ideal for catastrophic situations but could be a little difficult to extend to all types of products. Undoubtedly, premium costings would be greater but would essentially depend on the claims ratio across the whole of the respective industry.

If any conclusion could be said to have been reached it was that whatever the merits may or may not be of channelling all liability to the producer of the final product it was clear that if this was to come about it would have to be as a result of legislation and could not be introduced as a result of contractual arrangements between producers and insurers.

The examination of the second part of the fourth subject "Products Liability Insurance and Maximum-Limit Liability" took place in the afternoon under the chairmanship of Professor Fredericq, again on the basis of a paper introduced by Mr. Hansen in which the latter outlined some of the reasons given in support

of the recommentaions for the introduction of limited liability as proposed under the E.E.C. Draft Directive, that is to say:-

(a) that it is a typical feature of products liability that accidents can occur in long series, with many people sustaining injury or damage as a result of a defective product. If products liability is widened, as suggested in the drafts, so that liability is imposed according to the rules governing liability without negligence (without culpa), the producer's risk is increased and with it the risk that producers are held liable for series of claims. In connection with assessment of this risk it is often mentioned that inclusion of development risk under products liability renders the product risk quite unforeseeable for the producer and for his insurer. The problem of forming an overall impression of development and the possible extent of a series of claims becomes easier to bear when a maximum limit is set on products liability.

(b) Particularly in the case of a series of claims, products liability can be so extensive that it cannot be borne by a single liable party. Implementation of legal liability in such a case simply means that the producer's bankruptcy is added to the consequences of the accident - without this producing any more funds to cover the claims of the plaintiffs. If a maximum limit is placed on the amount of products liability, it would provide a specific limit up to which the producer would bear the economic effects of a products claim and after which the claim would have to be borne by others. In a way, the limit is defined somewhere between the law of tort on the one hand and a natural disaster on the other. This limitation of the amount of liability means that both the producer and his insurance company can plan for the product risk in quite a different manner than would be the case if there were no limit. It means in turn that producers would be encouraged to contract products liability insurance - or to order that such insurance is effected - up to the maximum limit of liability. This arrangement would be fortunate for the plaintiff in that there would always be economic cover for products liability up to the agreed maximum sum - whereas in an uncontrolled situation claims by the injured parties would be limited to what individual producers happened to own or might have in the way of insurance.

(c) If it is desired to set up a national fund to cover products liability, such a scheme would normally require some kind of maximum limit on the amount covered, if the scheme were to be financed by producers. The Swedish proposal for a collective insurance scheme for product liability in connection with the sale of

medicine recommends a maximum limit on the amount of product liability that can be incurred.

(d) the fixing of a general maximum on the amount of product liability can help keep down the cost of products liability insurance. In cases where only individual companies contract products liability insurance with an insurance sum corresponding to the amounts named as maximum limits of liability, these insurances would be extremely expensive. If, on the other hand, all insurances were effected with the stated maximum, the risk would be spread and thereby held to bring down the cost of insurance. Counter-arguments mentioned by Mr. Hansen were:-

(e) If a maximum limit is placed on liability, there is a risk that claims may arise where the damage exceeds the fixed maximum. If the liable producer can in fact pay in such a case, there would be a disagreeable effect if - especially in the case of injuries to persons - the injured parties were prevented by the maximum limit from obtaining (full) compensation. If a limit is therefore to be placed on the amount of products liability, an assurance must be given that the individual plaintiff receives a compensation from another source, e.g. the State.

(f) Introduction of a maximum limit on products liability can apply locally or to specifically defined geographical areas, e.g. the Common Market area. But it could never apply globally. Introduction of a local limit of liability will therefore place plaintiffs within the area in an inferior position to corresponding plaintiffs outside - a fact that would undoubtedly seem disagreeable.

The argument of Mr. Hansen in favour of a limited liability that this would induce producers to contract Products Liability insurance up to the maximum limit of liability was used as a counter-argument by some speakers who pointed out that this would increase the costs of insurance and that of the product because the producer would be paying for cover which he did not need. However, Mr. Hansen challenged this by pointing out that he could not understand why if there was very little or no risk they should be very much charged for the insurance. This brought the retort that as nobody could guarantee that the cover would not be used, consequently some charge would have to be made for it.

Mention was also made of the proposed Draft of a Products Liability scheme elaborated by Professor Fischer of the University of Basle and others which would provide for a fund to be set up by Swiss industries to compensate for

uninsured losses. The contributions to the fund to be related to the volume and danger of the products made by the manufacturer, with provision that if the amount of the funds was not sufficient to meet liability in the event of losses of a catastrophic nature, the Federal Government should step in.

A few words from Professor Moller, expressing the thanks of the delegates to their Danish hosts both for their kind hospitality and extremely efficient organisation brought this very successful meeting to a close. A meeting which it may be said in conclusion once again served to illustrate the valuable function performed by AIDA in bringing together practical insurers, academic lawyers and others so that at least they learn something of one anothers prejudices, at the very least, if nothing more.