

AIDA Pollution Insurance Bulletin  
(Prepared by an AIDA Working Party)

The AIDA Working Party on Pollution and Insurance held its second meeting on October 17, 1980, in St. Vincent (Italy). Eight members were present at the meeting which lasted all day, with a break for lunch. Copies of the full minutes have been sent to all members of the Working Party. Professor Fontaine presented a report on the Belgian law concerning toxic wastes; Mr. Kelly reported on new developments concerning compensation and insurance for hazardous waste damage in the United States; Mr. Deprimoz described recent progress in marketing the French CARPOL policy, as well as the first claim under the new policy; Professor Volpe gave an update on developments in Italy; and Mr. Ullman reported on damage claims resulting from the Antonio Gramsci oil spill in the Baltic Sea. Some of the reports are reproduced or summarised in this issue of the Bulletin; the others will appear in the next issue.

In addition to the subjects covered by the reports, the participants at the meeting discussed the proposals to extend the principle of strict liability to damages caused by hazardous substances of all kinds carried on ships, the problem of guaranteeing the availability of compensation over long periods of time, and other issues relating to the insurability of pollution risks. They decided that the Working Party should undertake a number of special studies on some of these issues. These studies are described in more detail below.

Special Studies to be Undertaken in 1981

At its meeting in St. Vincent in October, 1980, the Working Party on Pollution and Insurance decided to undertake a number of special studies on issues that appear to be especially important for defining and expanding the range of insurability in the area of pollution damage. The objective of the studies is to obtain an overview of the latest progress in laws, insurance practices, and theory worldwide as a basis for renewed discussion of optimal approaches. The four subjects to be studied are:

1. The definition of "occurrence" and the distinction between one occurrence and several occurrences. This issue arises frequently where injuries or damage to several persons or objects can be traced to one original act or event. Since coverage limits in individual policies and retention limits in excess liability and reinsurance contracts are usually applicable "per occurrence" the definition and its interpretation by the courts are crucial factors in determining an insurer's or reinsurer's exposure and indirectly the price and availability of liability insurance coverage.
2. The definition and delimitation of "expected", "intended", "gradual", "sudden" and "accidental" releases. These are terms commonly used in liability insurance policies to establish which kinds of releases are covered and which are excluded. They can be understood and interpreted in many different ways, however, A more detailed analysis of the possible meanings as applied to different situations seems indispensable for a rational discussion of what can be covered.

3. Multiple polluters. This study deals with the problem of allocating the cost of compensation and determining the liable party in cases where several sources have, or may have, contributed to the pollution that caused the injury or damage.

4. Admission of probability proof. This study looks at possibilities of allowing compensation in cases where the causative link between a known incidence of pollution and a known harmful effect cannot be demonstrated with absolute certainty but only in terms of a certain degree of probability.

All members of the Working Party are expected to prepare reports on these subjects describing the situation in their countries. To facilitate comparison, outlines have been prepared for each of the four subjects and have been mailed to all members. The reports are expected to be accompanied by references to applicable statutory provisions, court decisions, contract terms, and literature. They are expected to be completed by July, 1981, in time to be circulated prior to the next meeting of the Working Party. If possible, general reports will also be prepared. The project should stimulate the discussion of some of the basic principles of compensation and insurance of pollution damage.

Suggestions, references, and contributions from persons who are not members of the Working Party will be welcome.

#### Next Meeting

The next meeting of the Working Party will be in Hungary in October, 1981. It will be held in conjunction with a conference on pollution liability and insurance organised by the Hungarian Chapter of AIDA. The members of the Working Party will be invited to present papers at the Hungarian conference.

#### New Members

The Working Party is pleased to welcome three new members. The Canadian Chapter of AIDA will be represented by Mr. Paul A.E. Thomson, Assistant Counsel of the Insurance Bureau of Canada; the Japanese Chapter will be represented by Prof. Toshiaki Kamei of the Faculty of Commerce of Kansai University in Osaka; and the Luxembourg Chapter will be represented by Mr. Albert Weitzel, President of the Court of Justice. Prof. Kamei is well known to the members of the Working Party as the author of the Japanese national report for the Madrid Congress. Mr. Thomson has already furnished a report on pollution and insurance in Canada which appears in this issue.

The Rumanian Chapter of AIDA, although not formally represented in this Working Party, has indicated its interest in informal co-operation, which will be conducted through Mr. Stefan Popovici, President of the State Insurance Administration. We expect the Brazilian Chapter to nominate a representative in the near future.

Mr. Marriott has resigned as the British representative on this Working Party. The British Chapter has designated Mr. Ken Davidson of Glasgow as its new representative.

#### Distribution of Bulletin

As the AIDA Pollution Insurance Bulletin starts its second year, it seems worth repeating that its principal purpose is to serve as a medium for exchange of information and opinions among the members of the Working Party on Pollution and Insurance, which was established by the International Association for Insurance Law in 1978. The contents of the Bulletin are determined therefore by the objectives, projects and activities of the Working Party, and by the information furnished by its members.

Copies of the Bulletin are sent free of charge to the members of the Working Party, to the member of the Presidential Council of AIDA and to the various national chapters of AIDA. The members of the Working Party and the secretaries of the national chapters are expected to bring the Bulletin to the attention of interested persons in their respective countries. Copies are also sent to all members of the United States Chapter of AIDA, in recognition of the financial support that Chapter has given the Working Party.

Beyond this initial range of distribution, copies of the Bulletin may be purchased at a price of \$2.00 per copy, which includes postage.

We are aware of the interest and expertise in pollution liability and insurance that exist outside the Working Party and outside AIDA. Therefore, we are not only glad to share our knowledge and opinions with others but we are also anxious in turn, to receive suggestions and information from our readers, regardless of whether they are members of AIDA.