

AIDA Working Party on Pollution and Insurance

By Ken Davidson

The Working Party on Pollution and Insurance was established by the Fifth World Congress of AIDA in October, 1978, to continue the studies begun in preparation for that Congress. Ambrose B. Kelly of Chicago is the Chairman, and Werner Pfennigstorf of Chicago is the Secretary. At the end of 1981, the Working Party had 32 members from 23 countries.

The guiding principles for the work of this group were laid down in its first meeting in London in 1979, and were published in the Introduction to the first issue of the AIDA POLLUTION INSURANCE BULLETIN. Basically, the Working Party seeks to collect and exchange information concerning compensation and insurance for pollution-related losses, and, based on that information, it tries, through discussions among its members, to develop solutions for the legal problems arising in the context of compensating and insuring pollution losses.

During 1981, the Working Party focused its attention on four specific areas as those that are causing the greatest concern for insurers at the present time:

(1) the fixation in time of a pollution incident for purposes of determining insurance coverage and specifically the definition of "occurrence" and the distinction between one and several occurrences: (2) the question what types of releases should be covered or excluded from coverage and specifically the meaning and importance of such criteria as "expected or intended", "continuous or repeated", or "sudden and accidental", (3) the apportionment of liability among several actual or potential polluters: and (4) the admissibility of probability based on statistical data in establishing a relevant casual connection between a certain pollution incident and certain harmful effects.

Reports on these subjects were made at the third meeting of the Working Party in Budapest on October 12th 1981 and it is worthy of note that this meeting was attended by 40 participants.

At the fourth meeting of the Working Party in London during the AIDA Congress of April 1982, it was agreed that research would continue with regard to the four study areas but that three further studies would be undertaken:- (5) Strict Liability for Pollution Damage (6) Claims-made Policies (7) Clean-up Expenses Incurred with Respect to the Insured's Own Premises. These additional studies will form the basis of the next Working Party meeting in Stockholm in September 1983.

The Working Party's main vehicle for the collection and exchange of information has been the AIDA POLLUTION INSURANCE BULLETIN, of which four issues have been published and articles from this have been regularly published in the BILA Bulletin. Among the various National Sections of AIDA, the interest in the BULLETIN has not been as strong as anticipated. Very few requests for additional copies have been received and only one Section (BILA) has reprinted items of the BULLETIN in its own publication.

The cost of publishing the BULLETIN and the office expenses of the Working Party have been borne by the United States Section of AIDA. The Working Party has also been supported indirectly by the American Bar Foundation.

It is the opinion of the Chairman and the members of this Working Party that the problems associated with the insurance of environmental risks can be expected to become even more serious in the future, and that further international exchange and comparative studies will be necessary to solve these problems. It has been recommended, therefore, that the Working Party on Pollution and Insurance be continued for at least four more years, until the Seventh World Congress of AIDA.