

Germany. The regulation of Lloyd's receives excellent and up-to-date treatment. Historical background is provided wherever it is desirable. The only omission (and it is a deliberate one) is of regulations special to industrial life insurance.

Keeping the work up-to-date is going to be a problem for the authors. For example, it is stated on page D2 - 15 that the Irish Insurance Bill 1982 will proceed no further, although page E20 - 7 is written as if the Bill might become law.

One minor curious feature is the treatment of the Chartered Insurance Institute. On page D1. 5 - 10 the Life Insurance Association is described as "a specialist version of the CII for life assurance, albeit with a somewhat higher public profile". In a section that lists and describes representatives of government, insurers, intermediaries and consumers the CII is not mentioned, but the Insurance Institute of Ireland gets a page and a half.

In the main thrust of the work I find nothing to criticise.

Hugh Cockerell

AIDA NEWS

THE FOURTH AIDA LATIN-AMERICAN CONGRESS RIO DE JANEIRO (BRAZIL) 5 - 8 AUGUST 1984

The fourth Latin-American Congress AIDA was held in Rio de Janeiro from 5th to 8th August 1984. It was chaired by Prof. Theofilo de Azaredo Santos, member of the presidential council of AIDA and president of the Brazilian section of our international association. There were about 130 participants.

The Congress was entirely devoted to motor insurance. There were four themes: 1. the introduction of a "green card" system in Latin-America; 2. the civil liability system with respect to motor accidents; 3. the motor insurance system; 4. the bonus-malus. Themes 2 and 3 are related to existing legal situations and were presented by South American reporters, both members of the presidential council of AIDA, Prof. Efrem Ossa (Colombia) for theme 2, and Prof. Juan Morandi (Argentina) for theme 3. Themes 1 and 4 dealt with the introduction of reforms which were considered as desirable by the organisers; as these mechanisms already function in Europe, European reporters were asked to describe the experience in that continent: MM. Rafaele Deidda, Director of the Ufficio Centrale Italiano, for theme 1, and myself for theme 4.

Theme 1. The insurance problems of cars crossing frontiers, which were solved in Europe by the "green card" system and the creation of national "bureaux" does still exist in South America, although international automobile traffic is important, e.g. between Brazil and Paraguay, or Argentina and Uruguay. The introduction of a similar system would smooth many difficulties. It is known that the special programme in Insurance of UNCTAD advocates the creation of regional agreements between developing countries (see the article of Mr. M. Habib-Makar in the AIDA Newsletter, No. 16, p.267).

Mr. Deidda presented a report showing that from a technical point of view, the introduction of this innovation is quite feasible. In his written report, which was distributed to the participants as Congress material, he gave the reasons for this advice and proposed the text of an agreement, introducing a system which could be called the "yellow card".

After the description of these mechanisms, which were new for many participants, and perhaps difficult to grasp for some of them, there was a discussion about the way in which this aim can be achieved. One of the questions raised was, whether this

would be better done by an agreement between governments, or by private agreements between federations of insurers. Having in mind the special situation of the South American markets, in which the federations of insurers are well organised, the reporter suggested that the second method can be used. With this method it is easier to work out, in a first stage, a cooperation on a smaller scale, between a limited number of countries, and if satisfactory results are achieved, to have other federations join later. It is also easier to change the rules than to adapt them to any new situation. The Congress voted that a permanent working group should be appointed, to study this problem and, if possible, to make a proposal. The working group has been appointed by the presidential council held on August 7th.

Theme 2 and 3. These themes are very closely related to each other and Mr. Ossa and Mr. Morandi divided the work between them to avoid overlapping.

In his report, Mr. Ossa described the civil liability system in various Latin-American countries, especially with respect to motor insurance. He examines the base of the liability, and the legal questions with respect to the functioning of liability and insurance: notion of third party, direct action regress of the insurer, notion of accident and occurrence in motor insurance, fault of victim, gross negligence of the insured, etc. In the second part of his report, he described the situation in various countries with respect to the introduction of compulsory motor insurance, which, as is known, exists only in Brazil and Costa Rica (in some other countries, there is compulsory motor insurance for road transporters). Prof. Ossa stated that the difference in the legal mechanisms about liability are not important so that harmonisation could take place (the legal base for the liability is always the civil code).

Mr. Morandi discussed the basic question "should the liability system be abandoned with respect to death and physical injuries, and replaced by a first party insurance system ("no fault"), or should the Latin-American states go on with the traditional third party liability system?" This is the "big question" which the developing countries - and not only them - are encountering now (in No. 16 of the AIDA Newsletter, p. 263, there is reproduced an intervention of Mr. Guy Levie, chief of the special program in insurance of UNCTAD, at the 4th Third World Insurance Congress Casablanca about which we have reported in the AIDA Newsletter No. 15, p. 240).

Mr. Morandi - who is one of the UNCTAD experts - without denying the defaults of the traditional liability system, expressed preference for the maintaining of it: some of the inconveniences mentioned by Mr. Levie are not always present (e.g. in Argentina and most other American countries, the financial base of the system is sound and the insurance companies pay in full the amounts awarded by the courts).

During the discussion, there was a very interesting description of the Brazilian system of compulsory accident insurance for limited amounts, with a facultative liability insurance on top. The discussions centred on the necessity of introducing compulsory insurance about which principle everybody seemed to agree - and on the advantages and disadvantages of "no fault" with limited amounts.

The Brazilians, who are used to this system, expressed the view that it gives a good minimum protection for the victim, although the amounts provided for are very low for serious cases (maximum about \$US1,300, in case of death or permanent disability).

Theme 4. The fourth theme was that of the bonus-malus, as a means of reducing the number of claims handled by the insurance companies, with the corresponding saving of cost. In his

report, the undersigned had given examples of the reduction and the increase of premiums in various European countries. In the first stage, the bonus-malus consisted of constant reduction of premiums (e.g. 5%) for every year without any accident (with maximum of e.g. 7 years), and a loading of the premium (e.g. 10%), or deductible per accident in the case of bad claims experience.

The experience has been successful, in that a large number of small claims are paid by the insured himself, without reporting them to the insurer; so the objective of the system has been achieved. This success had as a side effect that, as more and more insured get in the "bonus" class, the total amount of premiums paid drops, and there is a danger that the system may become financially unbalanced. To take the French example: before 1976 - the introduction of the bonus-malus - one insured out of seven reported one accident per year in which the insurer had to pay. In 1984, this proportion had dropped to one out of nine. It had been expected that 70% of insureds would be in the bonus class, 10% pay the level premium, and 20% in the malus; it turned out that now 84% are in bonus, 10% at the level, and only 6% in the malus. This shows how unexpected the financial results can be.

In a second stage in France, the bonus has been diminished, the bonus-malus and the penalties "moralised", the increase of the premium depending on the circumstance of the accident. If somebody causes an accident under the influence of alcohol, the premium increase will be of 150%, if it is a "hit-and-run accident" (delit de fuite), it will be 100%.

In an appendix to this report, the reporter mentioned a second means of lowering the costs of accidents: the compulsory wearing of the safety belt in Brazil. This has been made compulsory in 1984 for roads but not in the cities. He gave details about the positive influence of the safety belt in reducing the number and gravity of injuries, and explained that

the safety belt should be compulsory in cities, for its action is specially efficient at low speeds. The Brazilian participants expressed the wish that their government should extend the obligation to wear the belt to town traffic.

Publication of the report:

As mentioned in the minutes of the presidential council meeting, the proceedings of the congress will be published by the Brazilian section. The readers of the Newsletter will find the necessary information when the publication will be available.

S. Fredericq

NEWS FROM THE NATIONAL SECTIONS

AUSTRALIAN INSURANCE LAW ASSOCIATION

(AILA): Election of the Committee:

At the first Annual General Meeting of the Association, the Constitution of the Association was adopted and the following Office Bearers duly elected:

President: Michael Gill

Secretary: John Hastings

Scientific Secretary: Robert Owen

Treasurer: Margaret Roberts

Committee: Frank Hoffman; Sid McDonald; Chris Henri; Stephen France.

Victorian Branch: Bill Magennis

Address:

The Secretary,

Messrs. Aitken & Pluck,

234 George Street,

Sydney, N.S.W. 2000, Australia

WORKING GROUP ON PRODUCTS LIABILITY INSURANCE

At its meeting on 18th July 1979, the presidency of AIDA decided to set up an international working group on products liability insurance. The task of organising the working group and, until further notice, supervising its work was entrusted to me.

Today, the working group is composed of representatives of the AIDA organisations of the following countries:

The Argentine, Austria, Belgium, Brazil, Denmark, El Salvador, Finland, England, Czechoslovakia, France, Israel, Japan, Mexico, The Netherlands, Nigeria, Poland, Sweden, Spain, Uruguay, and The U.S.A.

So far, the working group has held five international meetings, and a number of reports have been prepared in connection with the Group's work. The reports have been transmitted to the members and to the national AIDA organisations.

The following is a brief summary of the subjects which the Group has studied, and of the results of the Group's work:

1. The object of products liability insurance - like other types of liability insurance - is to protect the Assured against the risk incidental to the existence of compensation rules in society. Causing damage and injury is part of human behaviour, and the object of tort law is to distribute the risk of the occurrence of such damage and injury between tortfeasor and the injured party.

If a products liability policy is to fulfil its purpose, the insurance must cover the liability incurred by the Assured according to the rules of products liability and the judicial system applying to the evaluation of a claim.

Perfect coverage can never be achieved, because insurance considerations may rule out the coverage of certain cases

of products liability, but as a starting point for an assessment of the suitability of the products liability insurance it would be appropriate to compare the existing products liability contained in the law of tort.

In order to cast light on this problem, I prepared in 1980 a study called "Products Liability - Analysis and Developments", which was communicated to the members of the Group and to the local AIDA committees, from which reports and comments were received from the following countries: Austria, Finland, France, Great Britain, Czechoslovakia, Israel, Japan, Korea, The Netherlands, Poland, Spain, and Sweden. The study and the reports received have been discussed at three international meetings.

Many products liability policies cover the Assured's "liability for injury to persons and damage to property". The presence of this expression in liability policies has a historical background. Liability insurance is a fairly new type of insurance. As this type of insurance was developed in the last half of the 19th century, a terminology which was well-known from property insurance policies was copied in the liability policies.

A limitation of the insurance so as to cover only injury to persons and damage to property is particularly inconvenient for products liability insurance. In a number of cases, products liability insurance may entail liability in damages for torts where no injury to persons or damage to property has occurred. The following are typical examples:

- a. Liability for expenses incurred in ascertaining that no damage has occurred: A firm supplied defective lubricating oil which causes a machine to overheat. The machine is stopped and has to be taken apart in order to find out whether any damage has occurred. The examination reveals that the machine has not been damaged, but the supplier of the oil is liable for the cost of checking the machine.

- b. Liability for functional defects: By mistake, a supplier of white concrete to a construction project delivers non-white concrete. The error is revealed after the concrete has been cast into the building. The supplier of the concrete is liable for the cost of putting the building in proper shape.
- c. Liability for losses caused by the risk that damage may occur: A manufacturer of concrete components for a construction project delivers, by mistake, a component which does not meet the strength requirements. This is not discovered until the component has been installed in the building. Nobody knows whether the building will ever suffer damage because of the defective component, but the fact that damage may occur necessitates a number of measures for which the supplier of the components is liable.
- d. Liability for damage and injury other than to property and persons: A chemical plant supplies a defective chemical. The buyer uses the chemical in his production, which entails a serious hazard to the health of his workers. Therefore, he suspends production for some time until the health hazard has been eliminated. The supplier of the defective chemical is liable for the buyer's loss of profits.

In all these cases, the Assured would be liable according to tort law, and in all these cases the Assured would need to have his liability insured. For the Assured, the liability in damages is equally real whether it is based on damage to property and personal injury or, alternatively, the liability is based on other types of loss protected by the rules of compensation.

The working group has discussed the expedience of drafting products liability policies so that they cover the products

liability that the Assured incurs according to the rules of products liability and so that any limitations in the coverage are expressly stated in the policies.

By way of limitation of the coverage, the working group has found it appropriate to exempt from the insurance coverage:

- liability for damage to the delivered, out defective, product itself;
 - liability for non-performance of contractual warranties; and
 - liability for malicious tortious acts.
2. The working group has also made a study of the concept of property damage. Professor Bill Dufwa from Stockholm has prepared a report entitled "The Concept of Property Damage", which was discussed at the meeting of the working group in London in 1984. The United Nations Convention of 1980 on international purchases of personal property was also mentioned at the meeting. The view was advanced that the Convention is inexpedient in relation to the rules of products liability.
3. Among the subjects which the working group has decided to study one might mention:
- cover of products recall; and
 - cover of loss of good-will

Through its meetings, the working group keeps up-to-date on the world-wide development of products liability and arranges for the exchange of such information amongst the members.

The address of the working group: Jorgen Hansen, LL.D., Attorney-at-Law, No. 34 Esplanaden, DK-1263 Copenhagen K., Denmark.

Jorgen Hansen

BIBLIOGRAPHY

Journal of Insurance Regulation

The National Association of Insurance Commissioners (NAIC), the association of the United States regulators, has started a new journal entitled the Journal of Insurance Regulation. The goal of the NAIC is to provide a place where academics, insurance regulators, lawyers and insurance industry personnel can exchange ideas.

Many of the articles focus on legal and technical questions which are important to regulators from all countries. Articles about areas, e.g. actuarial ratemaking, solvency, discrimination and underwriting are featured.

Two regular feature sections of the Journal cover articles that appear in other publications dealing with insurance regulation and court cases that directly affect insurance regulation.

Anyone interested in submitting an article or subscribing to the Journal should contact:

Dr. Claude C. Lilly, III
Editor,
Center for Insurance Research,
College of Business,
Tallahassee, Florida 3206, USA.

CONGRESSES AND COLLOQUIA

VANCOUVER (BRITISH COLUMBIA, CANADA)

August 18-21, 1985

American Risk and Insurance Association Annual Meeting

Information from: J. Davis Cummins
Harry J. Loman Professor of Insurance
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3641 Locust Walk
Philadelphia, PA 19104

FLORENCE (ITALY)

September 3-6, 1985
IInd International Congress
Logica, Informatica, Diritto (Automated Analysis of Legal
Texts)
Organised by the Consiglio nazionale delle ricerche and the
Istituto per la documentazione giuridica

Information from:
Istituto per la documentazione giuridica del consiglio
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BEIJING (CHINA)

September 14-20th, 1985
9th General Meeting of the Federation of Afro-Asian
Insurers and Reinsurers (FAIR)

Information from:
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FAIR 9th General Meeting
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