

brokers took far too much comfort from that. As a statement it was not much use unless it was correct, and as an attempt to limit liability it came too late to be an effective part of the broker's contract with his client. The second problem was where the broker was dealing with an underwriting agent and it was subsequently denied by the reinsurer that the agent had proper authority. It was difficult to argue that no responsibility fell on a broker to investigate the authority of the agent with whom he is dealing.

The use of arbitration in the resolution of reinsurance disputes was the subject of a two part presentation by Mr. Richard Yorke QC, and Mr. Bob Kiln, followed by a mock arbitration, chaired by The Hon. Mr. Justice Leggatt, which concerned the consideration of an arbitration problem drafted by Mr. Andrew Pincott (Elborne Mitchell & Co) involving an allegation of material non-disclosure, and an alternative argument that a loss was outside the cover afforded by a retrocession policy.

AIDA NEWS

(taken verbatim from AIDA Newsletters No. 18 and 19)

NEWS FROM THE NATIONAL SECTIONS

AIDA-US - ANNUAL MEETING AUGUST 6, 1984 (CHICAGO)

The first order of business was a report on the membership campaign for the past year. Over 1,900 letters inviting participation were sent out from LOMA. In addition, members of the presidential council had also contacted other individuals. This resulted in a net increase of 34 regular members and 14 academic members.

Spencer Kimball had been working on extensive amendments to the constitution, which he moved for adoption. Rabel recommended that the offices of vice-president and scientific secretary be

filled. The vice-president is responsible for the annual meeting program, and for the biennial colloquium. Ronald Jacks had already accepted those assignments, and the presidential council, acting as a nominating committee, asked him to accept the vice-presidency for a term of one year. Werner Pfennigstorf had agreed to accept the nomination as scientific secretary.

Rabel reported that four copies of the AIDA-US Newsletter had been published during the year-October, January, May and June. Copies of the international newsletter were distributed at the same time to hold down postage and handling costs.

All members of the chapter have been surveyed for their interests. Fifteen have indicated an interest in participating on an international working party.

Rabel reported that the financial position of the chapter is sound.

The presidential council has authorized a payment of \$1,000.00 to AIDA's international office to support the cost of the newsletter.

Jacks announced that the biennial symposium will be held on December 12 in Washington, D.C. This is during the time of the NAIC meeting. Jacks and Frank Nutter, past president of AIDA-US, will be responsible for the program and arrangements surrounding the symposium. The next annual meeting of AIDA-US will be held in Washington, D.C., in August, 1985, during the meeting of the American Bar Association. The format will include a luncheon and a speaker. Jacks will also be responsible for the meeting.

Beginning immediately, Ambrose Kelly will write a regular column concerning international insurance law and the activities of AIDA-US for the International Insurance Monitor. The Monitor appears once a year.

The group felt that a working party on the solvency of international insurance carriers might be worthwhile. Spencer Kimball is going to investigate the area and report back.

SWEDEN - CONSUMER PROTECTION
A Swedish Case on Theft and Negligence

According to sect. 31 in the Swedish Consumer Insurance Act of 1980 payment from an insurance may be reduced if the insured intentionally or negligently has acted contrary to his duties as described in the insurance conditions. The reduction must be reasonable concerning the relation of the insured's action to the damage, how great the damage is, the intention or negligence of the insured and other circumstances.

When regulating the insured's duty of care as to preventing theft in their homes and houses, the insurance companies have prescribed certain principles. According to one of them the insured must lock the front door while leaving his house. If this rule is not complied with, no payment should be due on his house insurance. That is to say, payment will be reduced to zero.

There was some discussion if this and other conditions were valid or contrary to sect. 31 Consumer Insurance Act.

The Swedish Supreme Court has dealt with this question in a judgment of 7 November 1984, the so called Engquist Case.

In this case all the family Engquist had been away from their house during a certain day. Mrs. Engquist, who left as the last, had forgotten to lock the front door. During the day property was stolen from the house. The insurance company refused payment and referred to the conditions on duty of care and locking and the rule of full reduction in cases like this.

The lower courts supported the view of the insurance company. The Supreme Court, however, after a thorough discussion of the preparatory works of the Consumer Insurance Act, concluded that in this case a reduction with 50% - or even with 25% if the insured had argued otherwise - would be reasonable. According to the Supreme Court the deterrence of rules of duty of care is not so important, considering, among other things, the risk of loss of property. The negligence in this case was not extreme, since anyone may sometimes forget to lock his front door. A partial reduction of insurance payment was consequently a better solution than a complete reduction.

This judgment means that the intentions behind the Consumer Insurance Act have been supported by the Supreme Court in a matter of great practical importance.

Carl Martin Roos
Stockholm University

THE CONFERENCE OF TRIESTE ON THE FREEDOM OF INSURANCE SERVICES

Organised by the Friuli-Venezia Giulia and Lombardia Chapters of AIDA took place in Trieste the 19 and 20 October, 1984, by the University, a conference on the theme "Insurance activity, Rome Treaty and freedom of services". The importance and great interest of the subject (which at present is in debate in Brussels, by the CE Council, where the government representatives of the associate Countries are examining a proposal of specific directive) has attracted in Trieste several Italian and foreign representatives of Ministries and insurance control authorities, University professors, insurers and experts in community and insurance law. The CE Commission was represented by its Vice-President Tugendhat, the General Manager Henriksen and the Director Imbert. Among the foreign guests are to be mentioned the Secretary General of the Comité Européen des Assurances Favre, the President of the Spanish

UNESPA Mansilla, the International Councillor of AIDA Schmidt. Among the Italian guests, the Italian Under-secretary of State Orsini, the International President de jure of AIDA Donati, the President of INA Longo, the President of "Generali" Randone. Here are the summaries of the reports.

"Actuality and development perspectives of financial services" by Mr. TUGENDHAT.

After having emphasised the meaning of "financial service" Tugendhat told that a freedom of financial services requires a great freedom in the movement of capitals among the Countries. The problem has then a public importance, concerning either the consumers protection or the monetary policy of each Country. Hence then the necessity of a State control of the financial services (and consequently also of the insurance services), but also the opportunity that this control be reduced to a minimum in order to satisfy the freedom of services foreseen by the Rome Treaty. Tugendhat admits that this would be easier in a system of co-ordinate laws. However, referring to the opinion of the Cour de Justice Europeene (judgment Cassis de Dijon), he told that when a transaction is lawful in a Country, the same, on principle and provided it does not damage the interests of the public order, ought to be admitted also in another Country. There is thus a preponderance of the home country control. The difficulties will continue however to exist with regard to the movements of capitals, as the Cour de Justice has not admitted in this field the immediate and direct applicability of art. 67 of the Treaty (judgment Casati). The CE Commission has therefore much work still to do with regard to financial integration.

"Rome Treaty and freedom of insurance services" by Mr. Henriksen.

Henriksen told that while the established freedom has been facilitated through a directive ad hoc of legislative

co-ordination, now adopted by all associated Countries, about the freedom of services the governments of these Countries have not come to an agreement within the CE Council, so as to issue a new directive aiming at making easier also this last directive. However, according to a uniform jurisprudence of the Cour de Justice, artt. 59 and 60 of the Treaty have an immediate and direct applicability. Their applicability in the judicial systems of the Countries cannot be in fact subordinated to a rule hierarchically of lower degree, as it is surely a directive.

Anyhow, Henriksen hopes that the directive may be issued, as, yet being not a condition to introduce the freedom of services in the insurance field, it would make easier the use of this freedom.

As regards the obstacles of a financial nature, Henriksen told that they do not exist, as the community rules have already set free the current transfers concerning the current transactions, such as the payment of premiums and claims.

"The Opinion of Community insurers" by Mr. Rousselle.

The reporter has outlined the situation now existing in the various insurance markets of CEE in the field of freedom of services. According to Rousselle, there are many differences among the markets, either at legislative level (control, measures for the protection of consumers, etc.), or at a technical and professional level. To apply, consequently, the rules on the freedom of services without a previous legislative co-ordination, to achieve through the directions of art. 57 of the Treaty, might influence greatly the balance of the markets. The resistances of the national juridical systems against the directive which liberalised the transactions of the community co-insurance and some reactions of the CE Commissions, such as the appeals to the Cour de Justice against the Countries which have not adopted this directive, must however give way to a greater mutual understanding.

"Operative aspects for the Italian insurers" by Mr. Padoa.

According to the reporter, the problem of the freedom of insurance services was stated from the beginning inexactly. Firstly, the insurance service does not exhaust itself at the time of distribution, as it might be deduced from the wrong community position, but it accomplishes its function through a very complete set of actions and interventions "after sale". Secondly, the action of free competition is very important for the insurers. The competition, then, must be safeguarded also against the differences of law treatments in order to avoid some positions of operative superiority already existing and to improve the competition capacity of the entrepreneurs. Thirdly, Padoa does not agree upon the community solution aiming to divide the insurance activity in two parts, according to the size of the risk or the profession of the insured. This means to refuse to recognise the homogeneisation role of the insurance portfolio and the impartiality of the State control for the protection of all policyholders. According to Padoa, the problem must be wholly reconsidered. Particularly, it is necessary to partake the tasks of the control authorities, to fix reasonable conditions of competition among the companies, to establish the equality of law treatments and the uniformity of rules which assure the transparence of accounts.

After the reports, Mr. Imbert, Manager of the CE Commision, outlined the position of the Commission. After having taken note of the several blames against the trend of the Commission in the field of freedom of insurance services, he told that the Commission, owing to vainness of the Community works, has decided to support the existence de jure of the freedom of insurance services, without waiting the issue of a directive ad hoc, which depends from an agreement, now impossible, of the ten governments. The Commission has asked to the Cour de Justice the confirmation of its opinion. The Cour is already well-disposed towards the self-executing character of artt. 59 and 60 of the Treaty, and this through the four appeals above

mentioned. Imbert hopes in a reconsideration of the question by the governments, as he thinks that only through a good directive may be introduced within the Common Market a well-balanced system of freedom of insurance services.

The Conference was closed by a synthesis report of Prof. Scalfi, President of the Lombardia Chapter of the AIDA.

Adelmo Kohler

CONGRESSES AND COLLOQUIA

Gent (Belgium)

November 25-26, 1985

Colloquium organised by the Belgian section of AIDA. Themes:

1. Speeding up the handling of motor cases before the Courts
2. Bonus-malus
3. Insurance of goods against acts of violence
4. Insurance of natural catastrophes

Information from: S. Fredericq

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Genova and Santa Margherita (Italy)

May 28-30, 1986

International congress organised by Rencontres internationales des Assureurs Defense (RIAD)

Theme: Access to justice and Defence insurance

Information from: Dr. C. Isola

Secretary General RIAD

Via Serra 6, I. 16122 Genova (Italy)

Vienna (Austria)

July 1-3, 1986

Second International Conference on Structural Failure,
Product Liability and Technical Insurance

Information from: Doz. Dr. H.P. Rossmannith

Institute of Mechanics

Technical University Vienna

Karlsplatz 13, A-1040 Vienna (Austria)

Seventh AIDA World Congress, May 5-9, 1986

The Seventh AIDA World Congress will be held in Budapest, Hungary on May 5-9, 1986. Major themes to be presented and discussed are: 1) Insurance Confronted by the Changing Notion of Liability (General reporter: Prof. Eörsi); and 2) Risk Aggravation and Other Modifications of the Risk Situation (General reporter: Prof. Morandi). The Hungarian AIDA Chapter extends an invitation to visit Budapest, and notes that the visit can be combined with attractive package tours and travel arrangements; they offer their assistance with travel plans. If you would like to attend, please write to:

Dr. Karoly Bard, President

Hungarian AIDA Chapter

Hungarian Lawyers' Association

1368 Budapest, P.O. Box 191 Hungary

Rencontres Internationales des Assureurs Defense Congress of
May 26-30, 1986 (see RIAD note above)

The subject of the Congress will be "Access to Justice and Legal Expenses insurance". The main report will be introduced by Messrs. Mauro CAPPELETTI, professor in Florence and Stanford, and Nicolo TROCKER, professor in Florence and Siena.

Professor CAPPELETTI, the author - among others - of a well-known work "Access to Justice" is considered among the most distinguished specialists at international level, as far as this subject is concerned. He is chairman of the International Association of Jurisprudence.

Together with his American colleague, Mr. Bryant GARTH, he has been the general reporter at the VIIth International Congress of Procedural Law that took place in Würzburg in the year 1983 on the subject: "Effectiveness of Judicial protection and Constitutional order". The report of Messrs. CAPPELETTI and GARTH was entitled "The protection of diffuse, fragmented and collective interests in the civil litigation".

THE 1986 AIDA WORLD CONGRESS:
SUMMARIES OF THE UK NATIONAL REPORTS

1) CHANGING NOTIONS OF LIABILITY 1964-1984

An outline of the law in 1964 shows that liability arose through either breach of contract or tort. The main tort is negligence, involving breach of a duty to take care which results in damage of a foreseeable kind to one to whom a duty of care is owed. Damages are reducible by the plaintiff's contributory negligence.

In some cases liability was presumed without the need to prove negligence, e.g. where the plaintiff was in breach of a statutory duty such as one to fence machinery.

Legal actions had to be brought within a statutory period.

Changes since 1964 have occurred partly through statutes and partly through Court decisions. The fundamentals remain, but the effect of changes has been to extend the range of liability and increase awards.