further £537 payments towards the AIDA Congress. Tie sales included in sundry income of £713 is £481. You will see that the stock of ties is valued at £438 making a total of £919. The shortage of £163 (1082 - 919) is attributable to free presentations. The payments of £537 for the AIDA Congress was £428 paid in July 1984 and £110 in May of that year.

On the Balance Sheet, I would draw your attention to Subscriptions owing of £297. We are doing our utmost to collect these during the present financial year.

In my view, the success of the Association ventures together with the accumulation of interest shows that the Association is in a healthy position.

Bryan Lincoln

Our 1985-86 programme of lunchtime talks was opened on Friday, 15th November, when Mr. Frank Marks, a partner in the firm of Dunhill Morgan Walker Gibbs, Sydney, spoke about

"Workmen's Compensation Legislation in Australia:
Pitfalls for Insurers".

The following is a summary of what he had to say.

As and from the 1st July 1985, a new basis for the fixing of premiums for workers' compensation insurance has been introduced in New South Wales. The basis is a complicated

formula which in essence relates to the actual claims experience of an employer over the last three years. The rates fixed according to this formula are maximum rates, although an insurer is entitled to give a discount. The impact of this new basis of fixing premium rates is that an insurer will no longer be able to fund its tail from future premiums and if an insurer is not adequately reserved for its tail, it will encounter financial problems as the tail materialises.

As an additional means of cutting workers' compensation costs, the New South Wales Government has outlawed the charging of commission by brokers for arranging workers' compensation business. This has had a disastrous impact on some brokers who specialise heavily in the workers' compensation area. Brokers are ameliorating the impact of this measure by engaging in risk management control activities and charging a fee for these services.

Employers in New South Wales will now be required to bear the first $500 of any claim. Whilst this might be absorbed by larger public companies, it will create a burden for private companies. There is an exception to this where the premium payable is less than $2,000 per annum. In this case, an employer is allowed to insure for the first $500 of any claim. Although premium rates have dropped as a result of these new measures, the overall costs to employers may well be higher when one takes into account the payment of the first $500 of any claim. In New South Wales the move by some employers to become self-insurers under the Workers' Compensation Act may now accelerate.

In Victoria, after a Government enquiry, it was decided to create a sole statutory fund operated by the Government. After much debate, it was determined that benefits would be fully funded and rights to common law damages would be retained. Those rights would also be funded through the State operated scheme. Private insurers have been allowed to become claims

handling agencies for the Victorian scheme and they are paid a claims handling fee. Thus, the cash flow for workers' compensation premiums in Victoria has now been denied to private insurers.

In South Australia, the Government has issued a discussion paper which proposes that a State run statutory scheme be established. Elections are due to take place shortly and if the Labour Party wins these elections it is likely that this scheme will be introduced.

Queensland already has a State funded scheme. The only other State of substance is Western Australia where the Government appears not to be interested in taking over the funding of workers' compensation benefits.

It is interesting to look at some workers' compensation statistics. I shall confine these to New South Wales where unfortunately, the latest figures available are for 1983 only. In that year, total workers' compensation premium income in New South Wales was of the order of $600,000,000 per annum, and currently it is thought that it exceeds $800,000,000 per annum. As at 1983, the number of claims for that year - excluding claims relating to incapacity for work of less than three days - was 118,000 and of these 90% were for a duration of less than eight weeks. Total compensation paid in 1983 was $500,000,000, of which $41,000,000 was paid by way of medical expenses and $30,000,000 for hospital charges.

Of total new claims registered in 1983, there were 244,814 which represents approximately 10% of the work force. This figure includes claims made for common law damages.

Reference was made earlier to the aberration resulting in a dramatic increase in workers' compensation rates brought about as a result of heavy discounting in New South Wales. It is interesting to observe that between June 1973 and June 1982,

average weekly earnings in New South Wales rose by over 310%. During the same period, total premiums paid to licensed insurers rose by 270%. Despite substantial increases which occurred in 1974 and 1975, taken over a ten-year period the actual cost of workers' compensation benefits in New South Wales decreased.

In New South Wales, we can expect tighter controls over insurers under the new licensing scheme. I predict that there will be fewer licensed insurers. The Government intends looking much more closely at the reinsurance arrangements made by licensed insurers and as to the viability of reinsurers. The Australian Insurance Commissioner who is charged with responsibility of assessing the financial viability of insurers generally, is concerned about the inability of some insurers to fund the emerging tail bearing in mind reduced premium income from workers' compensation benefits and bearing in mind also the inability to fund that tail from future premiums. In addition, the reduced access to the workers' compensation market has resulted in greater competition between insurers for the remainder of the available market. Many insurers have announced publicly that they intend increasing their share of the domestic market in 1986.

There are a number of emerging trends connected with workers' compensation benefits which are of interest:

Benefits themselves are increasing in line with inflation. In New South Wales, they are adjusted every six months according to variations in the Consumer Price Index.

The concept of an injury arising "out of or in the course of employment" has been subjected to a great deal of examination by the Australian Courts. It seems to me that the concepts which have evolved will be of interest to UK insurers because these words are used also in connection with employers' liability cover in the United Kingdom. Basically, an employee

will be in the course of his or her employment when undertaking anything which an employer could reasonably expect, anticipate or have authorised the employee to do.

In Australia, the concept of the course of the employment has been expanded by statute to accommodate injury sustained away from the work place but during an ordinary recess or lunch break, injuries suffered during period journeys between place of work and place of abode, and injuries suffered during an authorised absence from a place of work which may be unrelated to any work activity. Finally, Trade Union Officials are deemed to be in the course of their employment when carrying out activities associated with their Trade Union duties.

In Australia, we have had an outbreak of a disease called by a variety of names including repetitive strain injuries, overuse syndrome or tenosynovitis. These conditions which relate in the main to rapid and repetitive use of the upper limbs are difficult to diagnose with accuracy and have assumed epidemic proportions. Whilst these are conditions which have been suffered by workers for many years, it appears that the pain tolerance levels in Australia have diminished.

An emerging trend relates to the impact of stress in the work environment. A great deal of research has been conducted in this area in Australia. Any situation bringing about incapacity for work as a result of the impact of stress which is work related will entitle a worker to bring a claim for compensation benefits. Alcoholism causing incapacity for work which is work related will fall within the same category. Thus, where an employee was literally driven to drink by an over-zealous supervisor or where an employee was encouraged to drink at lunchtime or after work in work related activities, compensation benefits may well be payable.

As to common law damages, I suspect that the duty of care imposed on employers in Australia is somewhat higher than that

recognised by the UK Courts. In Australia, we judge whether there is entitlement to common law damages by assessing whether there was a risk of injury which was reasonably foreseeable and whether there were means reasonably available to the employer to avoid that risk of injury. In determining whether the employer has discharged that duty, it is important to have regard to the realities of the employment situation however, namely that employees are often careless, inattentive, disobedient or even stupid. It is only when one takes these matters into account that one can properly assess foreseeability. It is in this way that a stricter standard has been established by Australian Courts.

It should be observed that the increase in common law verdicts in this area seems to have plateaued and we have now reached a level which appears to be below that established by our colleagues in the USA.

There is one other interesting area where the case law in the workers' compensation area may be of assistance in other insurance areas. This relates to the question of causation, because under workers' compensation legislation it is imporant to establish that incapacity for work results from an injury. A parallel can be found in general insurance where one speaks of damage resulting from an accident. Unfortunately, the use of terminology such as "accidental damage' has resulted in the intrusion of uncertainty into what had previously been a reasonably certain area of the law. There is a vast difference between an injury resulting from an accident and accidental injury. By way of example, the contraction of AIDS is probably an injury if one takes the parallel workers' compensation cases of the entry of a virus into the body as being an injury. If one used the expression "accidental injury" in a personal accident policy, then it is likely that the contraction of AIDS would fit within this description. Using the well-known expressions found in insurance policies, the contraction of AIDS would be accidental (in the sense that it was fortuitous

or perhaps unfortuitous), external visible and violent. If, however, a personal accident policy defined the payment of benefits by reference to injury resulting from an accident, then it could never be said that the contraction of AIDS resulted from a distinct accident in the sense that the event was unlooked for, even though the contraction might also satisfy the terms violent, external and visible. My clients' policies all have the expression "injury resulting from accident caused by violent, external and visible means".

Even though insurers in the United Kingdom and lawyers in the United Kingdom do not enjoy the benefits of workers' compensation legislation, it is hoped that some features of the system will be of interest to insurers generally.

THE E.C. PRODUCTS LIABILITY DIRECTIVE

To most people's surprise the seemly dormant volcano in Brussels suddenly poured forth on 25th July 1985 the so-called "Council's Directive on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products". The first draft had been put forward by the Commission on 9th September 1976.

Now that the Directive is a reality, a reality which will lead to new legislation in the United Kingdom by July 1988, one can perhaps look back and identify a gratual trend in certain European countries at least from the traditional concept of liability based on fault towards strict liability.

In England we have progressed from a requirement on the plaintiff to establish fault to a presumption of negligence in