

The following names had been nominated for the Committee:

Mr. R. Hanson-James
Mr. A.J. Dolden
Mr. T.B. Houston
Mrs. S. Moore
Miss F.A. Olver
Mr. S. Salama
Mr. P.V. Saxton
Baron C. von Bechtolsheim

As there were eight nominations for six places on the Committee an election was held. As a result of the election the new Committee for 1986/87 is:

Mr. R. Hanson-James
Mr. A.J. Dolden
Miss F.A. Olver
Mr. S. Salama
Mr. P.V. Saxton
Baron C. von Bechtolsheim.

THE 1986 ANNUAL CONFERENCE

It had been decided to hold a conference for members on the same day as the Annual General Meeting and the following reports cover the principle papers given.

Members' Choice

1. ALTERNATIVES TO PROFESSIONAL INDEMNITY INSURANCE? INSURANCE ON THE PROPERTY RATHER THAN BY THE PROFESSIONAL by Paul Murrells

I am a Solicitor and have for the last seven years spent my professional time in advising members of the Royal Institution of Chartered Surveyors who are insured through my Company as to their potential liability to professional negligence claims. As with all the professions in recent years, chartered surveyors have suffered a massive increase in the premiums which they have

to pay for professional indemnity cover. Damages being awarded by the courts are increasing dramatically all the time. Very recently, the Government rejected a demand by solicitors and accountants for an enquiry into the possibility of such damages being limited by legislation. The Department of Trade and Industry said it needed to consider the public interest as well as sectional interests of the professions and that the former far outweighed the latter. Likewise, the Department seized on the fact that solicitors and accountants were not the only professions facing difficulties over increasing premiums. It is very sad that the approach to the Government was not made with the backing as well of the medical profession as well as architects engineers and surveyors.

As if this is not depressing enough, the Latent Damage Act 1986 comes into force this very Thursday, 18th September. The legislation is designed to cut out a lot of uncertainty that has arisen over the years as to the time when a claim has become statute barred. I, like many others, cannot help feeling that the Act may create more problems than it will solve. The overall long stop period of 15 years is introduced as a compromise between conflicting interests. Lord Denning and Co would have liked to see a much longer period whilst, not surprisingly, the professions including the RICS argued for a much shorter period. It is impossible at present for any chartered surveyor, let alone any other professional, to find a policy which will run for more than a few years at an absolute maximum let alone fifteen. Virtually all professional indemnity policies are upon an annual and claims made basis. Professional indemnity insurance is far from being the ideal answer to all the problems of the consumer. The Atkins Planning Report on Latent Defects In Buildings lists the limitations as follows:-

1. The cost, time, difficulty and uncertainty of proving negligence. Negligence is not always the cause of design faults. Continuing technological development and higher expectations of buildings have had a marked effect.
2. The professional indemnity policy will not assist if there has been fraud or perhaps a deliberate act of concealment on the part of the assured. I accept that special institution conditions may apply to some policies.
3. Even if there is negligence on the part of the professionals involved in the project, there may have been negligence by others involved who do not have similar indemnity cover, contractors for instance.
4. The policy must be in force at the time the claim is made. It is just conceivable that some other professionals involved may not be insured at

all. Sole practitioners may cease to insure after retirement and firms may merge or even cease trading.

5. There may be insufficient cover. Since 1st January 1986 chartered surveyors in private practice must have minimum professional indemnity cover each claim of £100,000 where their gross fee income does not exceed this figure or minimum cover of £250,000 each claim where it exceeds this figure. On the other hand, more professionals are finding extreme difficulty now in securing the level of cover they would like. Not many architectural practices have cover in excess of 1 million pounds each claim. Indeed, this may be an aggregate limit. Engineers, design and building contractors risk potentially large claims and may have limits of cover up to 10 million pounds or more each claim. Again, this may be aggregate. The uninsured excess on each policy is increasing all the time. This is one way that insurers can endeavour to contain premium increases as much as possible. Large practices may carry now excesses of £50,000 to £100,000 each claim. This must be found out of their own resources upon settlement of a claim.
6. In completing the proposal form or declaration the description which the professional gives for his business activities must be correct. For example, an architect may have insurance cover only for design work. If then he acts as project manager without notifying his insurers, he cannot expect to be indemnified.

Surely the time has come when we should be looking to the example set by other European countries. In 1979, ten year liability insurance on properties was made compulsory for all participants in the building industry in France. Such insurance relates to new properties. This prevents delays in necessary remedial work whilst the professionals involved argue out who may be responsible for what. A similar ten year liability period exists in Belgium and Holland making our new fifteen year period impossible to understand. It is a tragedy that we could not have learnt here from the example set in Denmark. There the professional liability period is restricted to five years from practical completion. Claims arising out of the sale of property are a matter for the vendor and purchaser and not the consultant. As if all this is not galling enough, maximum liability can be restricted to indemnity insurance cover.

The time must have come when we here should be looking very seriously at alternative forms of insurance linked to the property rather than the professional. A very strong case in support of this is put forward in the Atkins Planning Report to which I have referred already. Latent defects protection insurance is a possibility and would give further protection to

building owners in the event of the liquidation of a contractor or inadequate cover by a professional consultant. It would be very much upon the lines of the scheme operated in France. When last minute efforts were made in Parliament to obtain amendments to the Latent Damage Bill, the Solicitor General indicated that a committee was looking then into the possibility of such an insurance scheme for commercial premises. In time, I hope very much that this can be extended to private dwelling houses as well. Of course, it would relate only to new properties. I appreciate that the NHBC Scheme exists already but as many homeowners will know, this has its limitations. I hope very much that in time latent defects cover may become available as an extension to annual industrial all risks policies I accept the professional indemnity insurers must be called upon to give a lead.

2. INSURANCE OUTSIDE THE LAW

by Trevor Jones, Insurance Security Services Ltd.

Whatever the laws passed in the U.K. to restrict the opportunities for Insurance fraud and sharp practice, there will always be safe havens overseas from where such practices may be re-imported.

The "Offshore Pool" syndrome is again finding favour, having boomed in the mid seventies and crashed in the eighties. Let us exclude for the moment the tax audience risk retention pools such as ACE or Apex, backed by huge corporations. I will assume for the moment that I am the potential manager. The first thing I need is as many pool members as I can get. These will not be found in those areas where Reinsurance has a solid infrastructure – the participants would be too canny to take the bait. They already know what "Reinsurance is insurance between consenting adults". The developing world is my oyster, which I approach with the bowler and rolled umbrella expected of me, although they have all but vanished in the City. Image is all.

I explain that insurance in the London Market always makes a profit and prove this with detailed figures. Show them the current Lloyds Marine Syndicate results Do not show them the Non-Marine ones! To participate in this bonanza directly would mean the expense to an overseas underwriter of a London staff, D.T.I. approval etc. I, kind fellow that I am, believe I may be able to squeeze him on for a small percentage to my pool, set up ten years ago (and activated last week). The agency agreement is full of inexplicable clauses that let me as manager do whatever profits me most.

I have actually seen agreements that have a section heading, "Corkscrew Clause". Needless to say, the insurer was!