(iii) that the insurer does not waive any right to avoid the insurance contract for non-disclosure or misrepresentation, unless he acts with *full actual* knowledge of the facts and matters giving rise to his right to avoid.

4. UPDATE ON REGULATION INCLUDING FINANCIAL SERVICES

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Overall, there are a number of different trends in regulation:

Consumer legislation, a major form of regulation, has, I suspect, peaked: the present level of regulation may be expected to continue for some time.

Regulation of business and employment is now clearly in decline, and may well continue to be so under any government, save perhaps where monopolies and mergers are concerned.

In the financial field, two superficially conflicting but actually complimentary forces are at work: regulation and deregulation.

Deregulation aims to create greater competition and consumer choice. It is being applied in two ways. First, the ending of some restrictive practices concerning: the Stock Exchange (including single capacity limitations, recently imposed, however, at Lloyd's); advertising and promotion by the professions, charging agreements within them, and the Office of Fair Trading's enquiry into their partnership structures; and charges on unit trusts.

Secondly, the ending of legal and regulatory limits on competition between institutions together with changes in taxation, has enabled the extension of the range of sources for personal portable pensions, consumer mortgages, other financial services to Building Societies and to Unit Trust Groups etc. These formidable changes are producing greater competition and consumer choice whilst bringing a number of industries to one market place.

The changing financial world of one global securities market, developing with the UK well-positioned, gives us the need for both competition and regulation to international standards.

There is more competition betwen equity-based and fixed-interest products, leading to greater diversity, and the intermediary's position as adviser has developed. The present regulatory system does not cover all activities, life and pensions in particular.

An increase in the number of shareholders; personal identification with share ownership; the sale of council houses; and portable pensions; these are new political objectives which, through the spread of wealth amongst the population, make the proper behaviour of financial institutions a consumer issue worth votes.

Fraud has increased through the application of skilled minds to transactions of increasing size.

All of these factors call for the counterbalance of a modern effective and flexible regulatory system. Examples of its development can be seen in the Lloyd's Act 1982; the building Societies Act 1986; the Roskill Commission on Fraud; and the Neill enquiry; and the Financial Services Act of which the essence is in wide definitions of investments and of carrying on investment business, and in authorisation.

The most significant trend in regulation of those now emerging is the umbrella approach, bringing relatively disparate activities under one system. But how much further does this need to go? For some organisations are accountable to different regulatory bodies for their different activites: for example building societies to the Registrar for their main area of activity, and to the Securities and Investments Board or a Self-Regulating Organisation for its financial services activities (the Department of Trade and Industry's involvement with solvency matters makes the position of insurance companies even more complex); there are still anomalies both in the differing nature and degrees of accountability of different organisations: Lloyd's is accountable to Parliament, whilst the Securities and Investment Board is accountable to the Secretary of State for Trade and Industry, and the Bank of England to the Chancellor of the Exchequer. Prosecutions for different offences under the Bill will be carried out by different authorities (the Department of Trade and the Securities and Investment Board). The edges of the new Act are still blurred.

Other trends include the granting of legal immunity to certain groups; the concept of equivalence; and the legal concept of fairness which continues to develop; statutory backing for private sector regulation; the power to make regulations being substantially devolved from Parliament; and the clarification of the law of agency in relation to intermediaries; and the development of international co-operation between regulatory systems.

Finally there is need for rationalisation: in the area of compensation to clients; and in the field of ombudsmen and complaints procedures.

I have outlined major trends and problems in the regulation of financial services. Many of them point towards the need for a more homogeneous regulatory system, built on the Financial Services Act when it comes into force. But the desirability and practicability of this is nevertheless open to question; that will be the next great debate on regulation.

5. UPDATE ON REINSURANCE LAW
by Gordon Cornish
The Victory Reinsurance Co. Ltd.

In his magnum opus "Reinsurance: Principles and Practice" Dr. Klaus Gerathewohl of the Munich Reinsurance Company makes the bold assertion that, of all sources of reinsurance law, judge-made law is by far the least significant. Well, that may be the case in the Federal Republic, where arbitrations seem to take care of any lack of harmony between cedant and reinsurer, but over here the activity of our Commercial Court and Court of Appeal in reinsurance matters over the past few years has been nothing if not impressive.

It was in February 1984 that the landmark decision in CTI v. Oceanus has a look at what a material fact is within Section 18 of the Marine Insurance Act of 1906.

The Court's decision was taken in the context of marine insurance, but in April this year Mr. Justice Steyn in the Commercial Court was faced in the case of Highlands Insurance Company v. Continental Insurance Company with a similar question, but this time in the context of non-marine reinsurance. So: Did the CTI test now apply to non-marine reinsurance as well?

The dispute arose out of a claim which had led reinsurance to investigate the loss and which investigations has caused them to avoid the contract on the grounds of material misrepresentation.

His Lordship held that the matter which was misrepresented i.e. that the premises concerned were sprinklered, was a fact which a prudent reinsurance underwriter would have taken into account in his underwriting assessment and so he held the contract to have been validly avoided.

The defendants had also argued that, even if there was material misrepresentation, the plaintiffs were precluded from avoiding by, inter alia, an Errors and Omissions Clause which has been contained in the original policy and which, it was alleged, was incorporated in the reinsurance contract.