RECENT AVIATION CASE LAW
by Tim Scorer, Solicitor, Barlow Lyde & Gilbert

The Plaintiffs' search for an appropriate, willing and generous forum to claim damages in Aviation accidents continues to dominate the cases list. Apart from Stanford v. Kuwait Airlines and Holmes v. Bangladesh Biman mentioned in the last edition of the Journal, there have been recent cases both in England and U.S.A.

Societe Nationale Industrielle Aerospatiale v. Lee Kui Jak (TLR 1/6/87) before the Judicial Committee of the Privy Council, on appeal from the Brunei Court of Appeal, decided that a Plaintiff who had issued proceedings both in Brunei, against a helicopter operator and its manufacturer, and in Texas, against the manufacturer and others, would be restrained by injunction from pursuing the Texas proceedings. This followed the unsuccessful application by the manufacturer to the Texas Court that the suit be dismissed on the ground of forum non conveniens, and later the refusal of the Brunei Appeal Court to grant the manufacturer an injunction restraining the Plaintiff.

The manufacturer succeeded in showing that the Texas proceedings could result in serious injustice to him, (and on balance less injustice to the Plaintiff) if the injunction was not granted. In this regard the manufacturers had given the Plaintiffs certain undertakings to facilitate the Brunei proceedings. The case is significant for Defendants facing litigation in the U.S.A. involving non U.S. parties who are drawn into proceedings there by wrongful death statutes in certain states, which are able to extend their jurisdiction to those doing business in that state.

Where there is a U.S. manufacturer, the converse does not necessarily apply, as was demonstrated 6 years ago in the Piper Aircraft Co. v. Reyno case. This precedent was recently followed in litigation arising out of the Boeing Chinook helicopter accident in the North Sea in November 1986.

The District Court for the Eastern District of Pennsylvania in Jennings v. The Boeing Co. (May 1987) granted Boeing's motion for dismissal on the ground of forum non conveniens. Since Reyno had ruled that "The issue of overriding importance in a forum non conveniens analysis is that of convenience", the Court was able to note that where a Plaintiff brings suit in a forum far distant from his or her home, it is reasonable to infer that the choice of forum was based on factors other than the Plaintiffs convenience.

However two months later, the same Court and the same Judge, considering 32 death actions from the same accident, rejected Boeing's similar application for dismissal. The crucial difference between these decisions was the basis on which proceedings had been taken. In the Jennings case, suit had been filed pursuant to the Death on the High Seas Act and diversity of citizenship; the 32 claims, on the other hand, had been filed originally in the State Court pursuant to the Pennsylvania State wrongful death and survival statutes. In removing these cases from the State to the District Court Boeing had argued that the DOHSA preempted the state causes of action and that therefore death claims must necessarily arise under DOHSA. The Court did not agree, saying that the complete preemption did not apply to wrongful death actions.

LIFESTYLE AND LIFE INSURANCE
by M L Dawbarn, Cannon Lincoln Group.

The growing AIDS epidemic has naturally caused Life insurers to consider whether any greater than normal protection is called for against claims arising from the disease. Many will have policies already in force which may later give rise to Life or Permanent Health claims and they will have to make provision to meet the increased liability. They will also wish to protect themselves against taking on new policies where the life insured belongs to one of the categories which is perceived to be most vulnerable. Most companies are already taking action in one way or another.

This is a difficult path and the insurer has to be aware that in trying to limit the risk he may be touching on sensitive nerves. However, as English law stands at present, there do no seem to be any legal objections to an insurer selecting proposers whom it wishes to test for AIDS or to its proceeding with those tests, provided the subject gives his full consent. Nor is there any constraint on the insurer in offering whatever terms it may decide.

The position is very different in the United States, where in several jurisdictions insurers are not permitted to require tests for AIDS. In others reference to prior tests may not be required and laws against discrimination on grounds of sexual orientation are widespread. The laws are in a state of constant flux and the life industry fights a continuing battle to be allowed by the legislatures to underwrite free from restrictions.

Under the law of England and Wales there is no entrenched right of privacy which would prevent an insurer from enquiring into any matters affecting an applicant's health or from making further enquiries and checking the earlier