

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 not 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

answers at point of claim. It is important however not to allow an applicant to be deceived as to the purpose of any tests. If a medical practitioner can be guilty of assault and battery for taking a blood test without disclosing that he is testing for AIDS, a life office presumably could also be a party.

An insurer who offers less favourable terms to an applicant because of his sexual orientation might be open to accusations of discrimination, but it does not seem that an insurer should have anything to fear from this. The applicant would have to show that the treatment was less favourable *because of his sex* and *not just because of his orientation* and the insurer might well be able to justify his decision under section 45 of the Sex Discrimination Act 1975 if he has sufficient data to back him.