included Reg Brown as the Expert Witness, Ken Davidson as the insurance underwriter together with Guy Cottam as the Production Manager, all entered into the spirit of the occasion. Counsel for both parties, Richard Aikens QC and Christian Bouckaert, ably assisted by George Leggart helped to bring reality to the case with their cross examinations and final speeches.

Finally I would be failing in my duty if mention was not made of the three excellent receptions held at Lancaster House, The Guildhall (complete with Lord Mayor, Aldermen etc.) and finally the ABi. The large number of delegates attending the final reception at ABI (when they might have been on their way home) was in the opinion of many a reflection on their appreciation of the support given by the ABI to BILA and the Colloquium as well as their satisfaction at what many felt to be the best colloquium BILA have held so far on a subject that had both instructive and practical applications. The last word must go to Michael Cohen and his staff whose Company ARA Conference Services handled all the adminstration with the usual efficiency. All we have to do now is to think of a worthy subject for 1991!

BROKER MANAGED FUNDS
Mark L Dawbarn - Company Secretary - Cannon Lincoln Group

Broker Managed Funds have been receiving attention from a variety of authorities ever since the Financial Services Act started to be implemented, and perhaps before. Those who have so far pronounced or regulated on the subject include the Department of Trade and Industry, the Inland Revenue, the Securities and Investments Board, LAUTRO, IMRO and FIMBRA.

Until 1987 the position seemed at least on the surface to be quite simple. An insurance intermediary would gather together a number of clients who were willing to put their trust in his investment expertise. He would find a life company willing to issue those clients with policies whose benefits would be linked to a fund managed by him. He would receive normal commission as an intermediary and in addition he would receive a management fee which in accordance with the policy terms would be paid out of the fund. He would be allowed to "cold-call" the arrangement if that was his chosen method of doing business.

In April 1987 the SIB published a paper on the subject in which they raised a number of points where they considered reform might be necessary. They saw for instance an "obfuscation" of the relationship between the various parties. It was not always clear in their view for whom the broker fund manager was acting or to whom he was responsible. Furthermore, the arrangements for paying management fees were not

always in their view made entirely clear to the clients. On the sales side SIB took the view that restrictions on the cold-calling of these arrangements should be considered and that in those cases where the broker fund manager was acting for the life company rather than the investor, additional protection to the investor should be called for. So far as the life offices were concerned, they called into question the practice of laying down volume criteria for accepting or continuing broker managed fund business.

Following this paper, SIB and the SRO's have now cleared up the areas of doubt affecting the relationship of the parties and the capacities in which they act. These measures have however introduced new complications of their own and have undoubtedly stemmed the growth of this type of business, at least temporarily.

The regulations promulgated by SIB and the SRO's have made it clear that the broker fund manager needs to be acting, not on behalf of the life office, but on behalf of the investor. Although theoretically he could still be appointed by and act for the life office, the regulations would treat him as being connected with the life office and therefore require him to adhere to the so called "better than best" advice rule. This means that he could only recommend his fund if he could demonstrate that every other investment in the market place was less suitable for his client: if some other investment was equally suitable he would have to recommend that one.

Having established that the broker fund manager is acting on behalf of the client, it follows that he will have to operate as an investment manager pursuant to the terms of a customer agreement. This will need to set out fully his entitlement to fees and benefits and he will be required to report regularly on performance. Sales activities are also reflected in that he cannot be a tied agent of the life company, he can only cold-call the arrangement under the terms of a customer agreement and life companies are now prohibited from imposing volume requirements.

But in spite of this environment of close regulation, one or two uncertainties remain. Firstly, the tax effects of the new arrangement are doubtful. If the broker fund manager is acting for the client rather than the life office, does this mean that fees payable to the fund manager are payable on behalf of the client? If so, this may be a policy variation and a chargeable surrender. In the case of a pension policy it may disqualify the policy for exempt treatment. The writer takes the view that it should be possible to set up an acceptable tripartite arrangement under which the regulatory requirements would be met without adverse tax effects, but the question cannot be said to be free from doubt.

Secondly, the Department of Trade and Industry still have a role in supervising insurance companies and have shown a continuing interest in this area. Even though a

broker fund manager has been selected by the client and even though he is acting under an authorisation from SIB or an SRO, the Department are likely to feel that the life office is responsible for overseeing his management decisions and competence. They will also be interested in seeing that the sale and purchase of units in internal funds operate fairly between all the policyholders concerned. The interest of the Department in these matters seems to be well justified in view of their duty to protect the reasonable expectations of policyholders.

We can expect to see further changes and development of market practice in this area.

IS THERE STILL A DUTY TO WARN?

Roger S Doulton, Solicitor, Winward Fearon & Co.

Heady days for Underwriters in the Professional Indemnity field! The neighbourhood really does get smaller: one's neighbours fewer and further between.

Often overlooked, however, in all the excitement (and more good news) is the question of duty to warn. Does it, in fact, still exist? Did it ever?

The general rule remains as ever it was. There is no general duty imposed by law on one party to a contract who is in breach of that contract to warn the other of his breach. However, and in early 1984, limited but significant inroads were made into this previously sacrosanct territory.

In *Stag Line Limited .v. Tyne Shiprepair Group Limited and Another* (1984) Mr Justice Staughton held that in the restricted circumstances of that case (ship repairers using the wrong material to re-line a tube which was unlikely to be inspected for 4 years) a duty to warn could exist. Three reasons are given for this finding:-

(a) The tube was unlikely to be examined for 4 years;

(b) The rules of the applicable classification society had been breached; and

(c) There was a possible danger of life and to very valuable property.

A similar point arose in *Equitable Debenture Assets Corporation Limited.v. William Moss Group Limited and Others* (1984) in which large and experienced builders, having decided that part of an Architect's designs would not work, were held to have