

## REPORT ON 8TH WORLD AIDA CONGRESS-

Over 500 delegates (from 42 countries) including thirty five BILA Members from the United Kingdom attended the 8th World Congress at Copenhagen which was held between 18th and 22nd June 1990. 'Wonderful Copenhagen' lived up to its reputation as a beautiful city and the Official receptions held at the Copenhagen City Hall and the Royal Arsenal Museums were an added bonus by allowing delegates into parts of buildings not normally visited by tourists. The final banquet at the Hotel Marienlyst at Elsinore close to 'Hamlet's Castle' and within sight of Sweden turned out to be an idyllic location helped by a lovely Midsummer Day's evening. Our hosts, the Nordic Insurance Associations, are to be highly congratulated on the splendid occasion, the food and refreshment being of the highest quality and in very generous amounts.

The opening ceremony, aided by trumpeters and addressed by the Danish Prime Minister, Mr. Poul Schuter, was impressive. Mikael Rosenmejer, Chairman of the Organising Committee, referred to 1,000 years ago when the Vikings introduced strict liability, compensating farmers by imposing pre-fixed awards for damage to neighbours' property. Another speaker referred to the cost of crime in Norway as £1,000 per inhabitant and described it as a 'Pollution of the human soul'. A new Working Party was announced to consider the difficulties of insurance law in Eastern Europe countries in the new prevailing commercial climate and there was obvious interest by virtue of the presence of many delegates from Poland, Czechoslovakia, Hungary and Rumania.

The afternoon of the first day was taken up by meetings of the various standing Working Parties at which considerable discussion took place. At the new one on Eastern Europe a delegate from Yugoslavia disclosed that a new Act passed on 16th March 1990 allowed foreign insurers to set up in his country, although this did not apply to reinsurers. However, at the present time, after competition was introduced in 1981, there are now eight Insurers and four Reinsurers operating in Yugoslavia.

It was interesting to learn from one company writing household business in Western Germany that when they started recently to look for cover in Eastern Germany they found the State Insurer's policy wording to be wider than their own! However, there was no appeal if the claim was turned down. They also found that on the whole the buildings were in a poor state of repair and the underwriter concerned suggested that issuing a policy with full reinstatement cover was like sending out the document with a box of matches!

The second day concentrated on Theme I - Damage from International Disasters in

the Light of Tort and Insurance Law introduced by the General Reporter, Professor Peter Wetterstein from Finland. National Reports, including one from the United Kingdom, had been submitted from 25 countries and are available in written form in the Conference Papers, the majority in English.

Concern was expressed that a number of EC countries had Liability wordings on a 'Claims Made' basis with the result that cover ceases after expiry of the policy, particularly if the insurer declines to renew. There were many questions to be answered such as:- In view of the international nature of disasters, should liability insurance be made compulsory? Germany, Italy and Denmark were considering this. International Conventions already covered Nuclear, Oil Pollution and Space Objects disasters, but it was thought that there was a need for international agreements to cover pollution damage sometimes arising from several sources. An example of cross-border pollution was, as described by the Swiss delegate, the famous Sandoz fire of November 1986 at a storage building when vast amounts of water mixed with chemicals and polluted the Rhine. Claims in France took two years to settle due to the organisation handling all the claims on behalf of all claimants being unable to agree the division in payments. It was extraordinary that no interest was asked for in the agreed settlement, neither were the insurers asked to deposit a very large sum in a French Bank. Final settlement, as disclosed in the Swiss Report, was Fr.Fr.46 Million.

Gordon Comish (BILA Chairman) introduced the UK report which was based on a questionnaire sent to all chapters of AIDA and which had been prepared together with Nick Hughes of Barlow, Lyde and Gilbert, Professor Hugh Cockerell and Sebastian Salama of the Commercial Union.

It dealt specifically with the problems resulting from 3 UK international disasters, "Torrey Canyon" (1967), "Piper Alpha" (1988) and the Pan Am crash at Lockerbie (1988), together with disasters abroad affecting the UK, namely Chernobyl (1986) and "Herald of Free Enterprise" (1987). Mention was made of the 'Mid-Atlantic' type settlement in the Lockerbie case and the possible future use of Class Actions to speed up settlements.

Other points emphasised included the growing effect in procedural matters of the 1982 Civil Jurisdiction and Judgements Act, the April 1990 decision in *Merlin v. British Nuclear Fuels Ltd* which saw a claim for pure economic loss caused by nuclear contamination turned down and the arbitration award in the "Herald of Free Enterprise" dispute which included sums for several psychological problems including pathological grief.

Some countries, so it was reported, have reciprocal assistance treaties in case of disasters and severe accidents such as the Swiss-French Treaty in force from April 1st 1989. Other important issues such as strict liability, offset by a limit in amount and time limit shorter than 10 years, are under consideration in France. Some countries claimed Sovereign Immunity which made settlements very difficult indeed.

There still remained many unanswered questions such as where should the action for damages be brought, in the country of the event, or the country where the damage occurs, or even the country of the claimant? In the Federal Republic of Germany the Civil Code states that the injured party should be able to choose between the legal rules of the country of the event and the country of effect according to which is the more advantageous to him/her. It is hoped that first party insurances would play a larger role, thus taking the pressure off liability insurers. In Denmark, for example, the possibility of the direct insurer claiming compensation from the party liable for the injury/damage is very limited indeed. Life, accident, sickness and other personal insurances are excluded and in other cases gross negligence has to be proved.

Wednesday (3rd Day) was spent discussing Theme II - The Financial Supervision of Insurance Companies, with particular regard to the financial resources required by insurance operations, the General Reporter for which had been Professor Reiner Schmidt of West Germany. Again, National Reports had been submitted by 31 countries, including Great Britain, presented by John Gardner.

This session looked at all aspects of the theme and Professor Schmidt introduced it in a clear and masterly fashion. The purposes of supervision included enabling the government to be in a position to provide the benefits promised, although it was generally felt that it should still enable active competition to play a significant role.

Insurance company solvency was identified as a key area of concern in the light of the spate of liquidations during the 1980's and the general impression created during the discussions was one of an area which is in considerable state of flux, not only in the EC with its avalanche of Directives on what appears to be every conceivable aspect of carrying on insurance in one or more Member States.

The final day Thursday was taken up by a General Meeting at which our own John Butler was elected AIDA President for a four year term. This is a great honour for Great Britain and everyone wishes him good luck in his new office. Gordon Shaw is also to be congratulated on being elected an Honorary President of AIDA. Other countries are considering applying for membership, such as Indonesia, and members are reminded that the next AIDA World Congress takes place in Sydney, Australia,

from 14th to 18th August 1994, where everyone is certain to receive a very warm welcome. Details will emerge in a year or so.

On the afternoon of the final day the remaining Working Parties, who had not met on the first day, held their meetings. At the Products Liability Working Party, discussion centred on Product Recall and mention was made by a French delegate of the recent Source Perrier case. Cover was in force for only Fr.5M but the cost of product recall exceeded over Fr.200M. The Company has already set aside Fr.439M. in the 1989 Accounts and a further Fr.400M. provision is to be made for this year - ("The Times" 30/06/90). A salutary lesson for all manufacturers. A West German delegate recalled how a German Government Official had announced that their largest Pasta/Noodle Manufacturers had included a contaminated egg product in their manufacture of the noodles. The result was that, with the fall off in sales, the Company went bankrupt. A recent action taken against the Government found in favour of the manufacturers (who had denied the allegation) and damages are yet to be agreed. The Company's annual turnover had previously been DM 47M. The Working Party plan to discuss regulations for product control as a future project.

Finally, our thanks to Alan Waters and Penny Schmith of the Commercial Section of the British Embassy for hosting a reception for the British delegates together with invited guests. The "British" downpour failed to cloud yet another pleasant interlude in a very enjoyable and instructive five days.

D.G.C. & G.C.

## **INSURANCE AND THE LAW SEMINAR 1990**

Following the first Insurance and the Law Seminar at Birmingham University in 1988, April 1989 saw the event hosted by Professor John Birds at Sheffield University; and so in April 1990 the event moved back to Birmingham, being held at Lake Hall on 25th to 26th April. The concept underlying these seminars, organised under the auspices of the Association of British Insurers, is to bring together insurance law academics and insurance practitioners for an intensive session at which various aspects of a chosen theme can be dealt with in depth. This year the overall topic was insurance law in the European Community.

The seminar was given a most convivial start in the form of a cocktail reception hosted by Birmingham solicitors Pinsent & Co, after which we moved on to dinner at which the guest speaker was Andrew Longmore Q.C. Mr. Longmore had inter alia a light-