

consequences of it can be followed daily in the financial press accounts of the major fraud trials now under way, in the number and significance of DTI investigations, and in the sudden litigiousness within the Lloyds community. Any sense of complacency should have been dispelled when Her Majesty's Government elected a few years ago to sue a major US professional firm, which had the misfortune of involvement with the De Lorean affairs in Northern Ireland, charging fraud and seeking treble damage recoveries under the RICO statute. The "short, short distance from negligence to fraud" manifest in that complaint is a fine reflection of the advice in the ABA article. If indulgence in American excesses is fine for Her Majesty's Government, can it be very far behind for her citizens?

Initiatives have begun in the US to treat some of the symptoms of the disease. A wide range of Tort Reform initiatives were undertaken following the mid-1980s hard market crisis of liability insurance capacity. Although the early initiatives were promising, the lengthy process of achieving legal and regulatory reform, coupled with the return of capacity, undermined most of those efforts. However, continuing attention is being paid to some of the most pernicious conditions requiring correction, including the need to revise "joint and several" liability rules and to constrain the award of punitive and exemplary damages.

Regrettably, I do not expect Tort Reform to achieve any significant successes in either the US or the UK until there is a general recognition of the nature and causes of the problem. Those who assume that liability insurance represents a "bottomless well" of resource that can be drawn upon to benefit society's noble victims must be made to understand that there is another side to the coin: excessive liability awards bearing little or no relation to the fault of the defendant, also represent a "bottomless pit" for the insurance industry and its clients.

## **1991 LONDON COLLOQUIUM**

One hundred and seventy nine delegates and accompanying persons attended the 1991 BILA Colloquium held at University College London between 17th and 19th July. The subject matter was "Green Issues and Insurance Law" and delegates came from no less than twenty four countries as far apart as Japan, Taiwan, Argentina, Australia, Canada and United States. Nearer to home we welcomed delegates from Poland, Hungary and Rumania as well as the majority of the other European Countries which included fourteen delegates from Sweden alone.

Prior to the four main sessions a dinner was held at the Naval and Military Club, following a DTI reception at Dartmouth House hosted by John Redwood MP., Minister for Corporate Affairs. Both events were most enjoyable on what turned out to be a warm summer evening. Later, receptions were held at The Guildhall, in the presence of the Lord Mayor of London, and on the final night a special reception was given by "Willis Corroon" in the splendid Tower Room at Ten Trinity Square, hosted by their Chairman, Mr. Roger Elliot.

After a welcome introduction by our Chairman, Michael Pugh, the *First Session* dealt with "The Scientific Approach, 'Green' Legislation and the Reaction of the Courts". The business sessions began with a special guest speaker, Dr. David Goode, the head of the London Ecology Unit. He brought the environmental issues into focus on a human scale. By the introduction of slides and examples he demonstrated how man can use or abuse the environment. David Fleming, of the Strategic Workshop painted the background to the problem, quoting the various types of incidents involving environmental damage and warned us about the loss of biodiversity effecting all forms of life on earth. He also explained that the catalytic convertor on your car takes ten minutes to become effective and as a large number of journeys by car are of very limited duration, it makes one wonder whether these convertors do in fact have much impact. Dr. Fleming felt that insurers should take a more positive attitude to green issues and asked "When will we begin to hear about Green Insurers?" He also suggested that if we had had greater research in the past, we would not have the problems of today.

Andrew Bryce, a partner in Cameron Markby Hewitt, spoke about "Current Trends and Developments in liability for Environmental Damage including trends in EEC regulations." The danger area for banks was highlighted where cases of insolvency occurred when environmental damage has an impact on land values. James Cameron, a barrister and Director of the Centre for Environmental Law at Kings College, spoke about the effect on the Global Insurance Market as a result of various Directives such as the Directive for Civil Liability for Damage and Waste, which deals with the transfrontier movement of hazardous waste. He concluded that "Global environmental regulation was struggling with out of date legal "technology" to find solutions to these global environmental problems".

*Session II* dealt with the Insurers Response to Pollution Issues. Our first speaker, Steve Paris described 22,000 active or abandoned hazardous waste sites in the United States with a clean up bill running into sixty billion dollars. He explained that as insurance coverage is regulated by State Law in America, each State may come to separate and different conclusions. Mitsutsune Yamaguchi, from the Tokyo Marine

and Fire Insurance Company Ltd. gave a vivid description of the pollution problems in Japan particularly in the 1950's and 1960's including the famous Minamata cases where the liability of the Japanese Government has still to be decided. Due to the gap widening between the risks that corporations are being confronted with and available insurance cover, his company had pioneered a form of consultancy service to advise valued clients of information on European and American environmental laws, focussing on the risks they might find in overseas operations even without providing them with insurance coverage. (Good risk management in other words). Harald Ullman of "Skandia" in Sweden talked about the Swedish approach to the problem. He discussed the role of "Pools" in various countries in Europe. Cover, except in dangerous areas, is now available in Sweden from the two largest insurers, mainly due to the fact that claims regarding impairment to the environment are rare. The draft Swedish 1986 Environmental Damage Act has a 25 years limitation period effective from the date when the harmful act took place. Finally in this session Michael Mendelowitz described Reinsurers' response to the Pollution Issues and to current case law. Problems still remain and the speaker believed that the Insurance Industry is conscious of the need for a solution which will eliminate years of litigation and felt it depended to a large extent on whether there was a political will to succeed.

*Session III* concerned Defective Products - Liability, Prevention and Risk Management. Iain Goldrein, Barrister, explained in his usual forthright and amusing way the law with particular reference to the Consumer Protection Act 1987. Quality Control was paramount in prevention of loss. Iain was not in favour of no fault liability in respect of medical negligence claims as it took away personal responsibility which he felt was a good deterrent. However, his view was not shared by some of the delegates who felt this "desired effect" was over-exaggerated and there were other ways open to discipline those responsible for negligent acts. Anders Bergland of "Electrolux" from Sweden gave a fascinating account of his company's risk management and product risk control measures which are obviously of a very high standard. He also dealt with at some length the need for a clear and concise instruction leaflet issued with the product. He concluded by saying "Our way to reduce our product liability exposure is, quite naturally, to design and manufacture safe products, and to market and document them in a way that eliminates all risk of misconceptions as to their performance and mode of use. The most important instrument in seeking to achieve these goals is an effective and comprehensive quality control". This seemed to sum up the very best of policy statements by a leading European Manufacturer and no one present could have failed to be impressed by his paper.

Our friend of long standing from Hungary, Dr. Károly Bárd spoke about the pollution challenges in Hungary. He set out a list of conditions to apply if liability insurance was

to provide adequate coverage and hoped by the end of this century that accident-like environmental risks can be solved by insurance. Finally in this session we heard from John Champion from Canada, a specialist in Civil Litigation, who took us through the basic principles available to plaintiffs under the common law and the statutes which might affect products liability by fixing standards. He also reviewed recent developments as well as considering prevention and risk management issues. His twenty three point programme of product safety was a splendid example to all manufacturers.

*Session IV* dealt with Life, Disability and Pensions. All that had been discussed at previous sessions and the considerable input by the delegates following the presentation of each paper, resulted in the effect it had on the population as a whole so that in accordance with the sign on President Truman's desk - "The buck stops here".

Dr. Bertram Duck, a Medical Practitioner who had experience as a consultant with a major oil company, stressed the role of Management in avoiding risks causing health problems to staff. He felt insurers had an important role to play by insisting on certain risk prevention measures before granting cover following surveys including environmental audits. However, it was pointed out by one underwriter delegate that if he waited until the risk was to his liking, he would probably never have the opportunity to write any business, which would be snapped up by other insurers in a very competitive market. The answer was probably stricter control once the risk was placed with time scales laid down for the risk preventative measures to become operative. The realisation that in 1850 the population of the World was 1250 million, by 1970, 3500, and today 5200 million, which means that with an annual rate of increase of 90 million, the World population is set to double to 10 billion within the next generation. The twinned growth of population and technology is bound to give rise to many problems. Disease prevention had now become more urgent than medical care and had greater emphasis been placed on preventive medicine Dr. Duck felt that our National Health Scheme would be in better shape to cope with current demands.

David Scarlett, a Solicitor from Australia, discussed what appears to have been a down-under invention, known as RSI (repetitive strain injury) which amounts to a state of feeling unwell without any positive diagnosis of injury or illness. Examples were given such as tenosynovitis, frozen shoulder, tennis elbow, bursitis and headaches from sitting in front of a VDU all day. Whilst a number of cases have succeeded before the Australian Courts they had generally been overturned on appeal and the legal view was now that no claim would succeed without the full support of medical diagnosis. Perhaps the claims of this nature, in USA they are called UECTD - "upper extremities cumulative trauma disorders" and in Japan OCD - "occupational cervicovachial disorder," will continue to be pressed in the courts but proving

causation is bound to be a problem in the same way as providing medical evidence of injury.

Marie-Louise Rossi, a Consultant with Tillinghast, provided us with as a survey of recent incidents such as Legionnaires' outbreaks and the contamination at water works at Camelford in Cornwall. Disasters fall into two types:- "Sudden and Accidental Environment Impairment" and "Gradual Environment Impairment". She then discussed the response of Liability Insurers and the long term problems for affected individuals. In conclusion, mention was made that new risks are always appearing such as the possibility of power lines causing childhood cancers and Management must be on constant alerts to problems that may lie ahead.

Nick Rodes an actuary with NRG Victory Reinsurance Ltd., gave his views on the effect all this was having on actuarial tables and the acceptance of life and disability policies. He felt that with all the current environmental problems that the world is experiencing, some rates are likely to rise and insurers may need to reserve funds for future deficiencies.

It would not be right to end this report without mentioning the lunch time address on the first day from Sir Gerrard Neale MP. in whose constituency (North Cornwall) is the town of Camelford mentioned earlier. His review of the problems experienced there were fascinating especially the disclosure that all the padlocks on the security areas could be opened by the same key. The humour in others parts of his address were much appreciated and being a Solicitor in practice he was fully aware of many of the legal problems of pollution.

If one could point to a single theme that came out of this Colloquium it was the need for a higher degree of Risk Management in which everyone can play their part, particularly insurers when carrying out surveys. Industrial Management now have considerable responsibilities towards Green Issues and they are further exposed to claims covered under Directors and Officers Liability covers.

During the Colloquium the AIDA Council met in a full day session and various other AIDA Working Parties also held meetings.

Our thanks to all the Speakers, Session Chairmen, Reporters at each Session and to Michael Cohen, Nicola Cohen, and the team for organising such a successful Colloquium on a subject that could not have been more topical.

Derek Cole  
Vice Chairman