

Bulletin No. 12

September, 1967

Annual General Meeting

"Organization of new insurance companies - what should a supervisory authority require?" This is the subject on which Professor Spencer L. Kimball (University of Michigan Law School) has chosen to address the Association following the a.g.m. on Monday, 25 September, 1967. Full details have been circularised to members and it is hoped that as many as possible will make the effort to be present on this occasion. Professor Kimball has recently been engaged in the revision of the insurance laws of Wisconsin and has spent some time in Europe investigating the work of European supervisory authorities. His subject will be of special relevance in the light of the new company legislation which particularly affects the supervision of insurance operations in the U.K.

We are pleased to report that another distinguished visitor from the States, Professor Herbert S. Denenberg of New Jersey, has accepted an invitation to be present. He has been working in close conjunction with Professor Spencer L. Kimball in the Wisconsin insurance law revision.

We also hope to welcome members of the British Institute of International and Comparative Law who will be joining with us on this occasion.

The a.g.m. takes place at 5.45 p.m. in the Council Chamber of the Law Society, Chancery Lane, London, W.C.2, and at 6.15 p.m. Professor Kimball will give his address.

Luncheon Meeting

There are a few vacancies for the luncheon which will also be held on Monday, 25 September, 1967, in the Council Luncheon Room at the Law Society's Hall at 12.30 p.m. for 1 p.m. If members who have not already responded to the invitation wish to join the luncheon party, perhaps they would kindly let the Hon. Secretary know by telephone - 01 - 606 - 3835.

Paris Congress, 1970

As already announced, the venue for the next A.I.D.A. World Congress will be France. It will be held in Paris on 27, 28 and 29 and the morning of 30 April, 1970 (not May, as previously intimated)

at Le Centre Parisien des Congres internationaux, 120 Avenue Emile Zola, Paris (XV^o).

Two subjects will be discussed:

1. The rights of third parties against the insurer (creditors, victims, beneficiary third parties).
2. Insurance and fluctuations in monetary value (particularly indexing and payment of claims).

Each national section is invited to send in a report on these two themes. Your Committee have agreed that two working parties should be appointed to produce reports on behalf of this Association. Any member wishing to join one of these working parties is requested to let the Hon. Secretary know as soon as possible. It is hoped to begin work in preparation for these reports soon after the a.g.m., as national reports are required by the French section of A.I.D.A. by 1 January, 1969, in order to permit of translation into the five official languages of the Congress.

The Law relating to Contractual Liabilities

This will be the theme of our November meeting. Your Committee have accepted an invitation from the Association of Insurance Managers in Industry and Commerce to hold a joint meeting with their members. Details of time and venue will be announced later, but in the meantime perhaps members would reserve 8 November, 1967, in their diaries. Mr. Rex Wyeth has agreed to address the joint meeting on this subject, and two other members, Messrs. K. S. Cannar and G. W. Shaw, together with Mr. Rex Wyeth will form a panel to deal with questions. The insurance managers in industry and commerce are devoting their sessional meetings this winter to a consideration of public liability, products liability and guarantee insurance as part of a general theme entitled "Planning an Insurance Programme in Industry". They are looking to our Association to supply the legal background to this study at the joint meeting.

Membership

Your Committee have been considering ways and means of interesting more people in the Association's activities. Suggestions at present being considered include:

- (a) that meetings should be held bi-monthly, with greater variation of subjects;
- (b) that regular luncheon meetings should be arranged;
- (c) that members should be given more opportunity for participating in meetings and for social activities;

- (d) that more joint meetings should be arranged with, say, the Solicitors' Association for Law and Commerce, the Bar Association for Commerce, Finance and Industry, the Holborn Law Society, etc.

Members who have other ideas for stimulating interest and increasing membership are invited to submit their suggestions to the Hon. Secretary.

Change of Address

It would be helpful if members who change their address would send a note of the new address to the Hon. Secretary. Several communications to members have been returned recently marked "Gone away".

Police Reports of Road Accidents

Recommendations were made recently by the Home Office to Chief Constables to make available statements and information about road accidents to parties contemplating civil proceedings. The recommendations include:

- (a) that statements made by witnesses should normally be supplied on request to those involved in the accident without first obtaining the consent of the witness;
- (b) that photographic copies of a constable's report book recording an accident should be made available on payment of a £1 fee. Only the constable's views on how the accident occurred and whether criminal proceedings should be instituted would be omitted.

It is hoped that the adoption of these recommendations will lead to a uniform practice on the part of Chief Constables and so avoid the restrictions which exist in some areas and which sometimes prejudice a person's chance of recovering damages.

Chief Constables are also being asked to adopt a similar procedure for reports of forensic scientists and vehicle examiners. The name of the doctor who examines a party to an accident will be made available, but not his report, unless he consents to its disclosure.

All such statements will be withheld when police proceedings and inquests are pending, while Chief Constables will always have an overriding discretion as to what is disclosed.

The Law Commission

The Second Annual Report 1966-1967, Law Com. No.12, was published at the end of July, and may be obtained from H.M.S.O. price 3s.6d. The report is in four parts: Part I deals with the way in which the Commission is organised and its working methods; Part II reports progress made with the first programme of law reform; Part III comments upon the interest shown in law reform by the lay public and lawyers alike and upon the sources from which proposals for law reform reach the Commission; Part IV concerns current questions of law reform which are particularly important for the future.

Members of this Association will be most interested in Part II which deals with progress made on matters relevant to insurance contracts. We learn with interest of a tentative draft of a contract code which will be common to England and Scotland. Exemption by Contract from Common Law Liabilities has been the subject of a joint Working Party of the Law Commission and the Scottish Law Commission and, in particular, consideration has been given to contracting out of the conditions and warranties implied by the Sale of Goods Act, 1893. Some preliminary proposals are expected to be available shortly and will be sent for comment to bodies representing a wide range of interests and different points of view.

On the subject of Civil Liability for Dangerous Things and Activities, the Commission anticipates the preparation of a comprehensive enactment or series of enactments specifying the circumstances in which the specially dangerous character of things or activities should give rise to a strict liability, and indicating the persons who should be respectively subject to and protected by that liability. It is hoped to make uniform in the same legislation the conditions of liability and the limited range of defences to be permitted.

Consultations on the subject of Civil Liability for Animals have been held with insurance interests and other bodies. A Report and a draft Bill are now in course of preparation. Further progress is also reported on the work of the ad hoc committee on the jurisdiction and procedure in personal injuries cases which was set up under the chairmanship of Lord Justice Winn. Consultations are also nearing completion on yet another topic, viz., Civil Liability of Vendors and Lessors for Defective Premises.

Companies Act, 1967

This Act, which came into force on 28 July, is of considerable interest to our members. Part II makes extensive and important amendments and additions to the Insurance Companies Act, 1958, and the two Acts have now to be read together as the Insurance Companies

Acts, 1958-1967. The marrying up of the relevant provisions of the Act of 1967 and of the earlier legislation is a complicated matter, and we are indebted to one of our members, Mr. G. D. James, who has undertaken the task in a lucid and concise guide which we publish elsewhere in this Bulletin. The New Law Journal in its issue of 17 August, 1967, contained some strictures on the Government for failing to practise what they preached when they established the Law Commission and set it the task, inter alia, of simplifying statute law by consolidation and codification. Their comments are worth quoting:

"The very opposite of consolidation and codification is illustrated in particular in regard to the new law relating to insurance companies that is found in the Companies Act, 1967. Section 130(3) of that Act refers to 'the Insurance Companies Acts, 1958 to 1967' but there is no such Act as the Insurance Companies Act of 1967. 'The Insurance Companies Acts, 1958 to 1967' is merely the mode of citing the Act of 1958 together with the relevant provisions (Part II, Schedule 5, and Part I of Schedule 6) of the Companies Act, 1967. The reference to an Insurance Companies Act of 1967 serves, however, as a reminder of what might have been; for the need to legislate further in regard to insurance companies was the urgent need of 1967. If the more general and less urgent company accounts and reports provisions of the new Companies Act had been held over for the next session (when the problem of non-consolidation is to be further increased by yet another Companies Bill) there would have been time during the session that has just ended to pass an Insurance Companies Act which would have consolidated the old law and the new."

We take this opportunity of drawing attention to the Report on One-Day Conferences on the Companies Bill 1966-67. The conferences were organised by the Chartered Institute of Secretaries in association with the Chartered Insurance Institute and the report of the proceedings may be obtained from the C.I.S., 16, Park Crescent, London, W.1, price 12s.6d. It contains the paper presented by Mr. S. A. H. West, M.C., F.C.I.I. (an Assistant General Manager of the Sun Alliance & London Insurance Group), on the Insurance Provisions of the Companies Bill.

"Statutes governing Fire and Accident Claims", by T. W. Marriott

A useful little booklet has been produced by Mr. Marriott, a legal expert with the Norwich Union and also a member of this Association, which should prove invaluable to all who are concerned with fire and accident claims. Mr. Marriott, recognising the enormous amount of research that is often necessary to ascertain the law relating to various features of insurance claims, has compiled extracts of all the important statutes governing such claims. These extracts were first published as a series in Policy Holder and are now issued in booklet form. It is a convenient size for carrying

in the pocket or briefcase for ready reference to the law, while the stiff covers bound in cloth will render it durable. The price is 17s.6d., plus 1s. postage, and it can be obtained from PH Press Ltd., Waterloo Road, Stockport, or 231 Strand, W.C.2.

Around the Courts

Brokers' Liability

Because an employer was in breach of statutory duty under S.14 of the Factories Act, 1961, by failing to fence securely a piece of dangerous machinery, an employee had her hand injured when it was trapped in a welding press. She was awarded £3,325 damages against her employer. The employer's insurance brokers were in breach of contract because they failed to effect employers' liability insurance covering the risk. An insurance company of high repute was contemplated as the insurer and their employers' liability policy contained a condition 4, which was a condition precedent to liability, to the effect that "the insured shall take reasonable precautions to prevent accidents and disease".

On appeal in third party proceedings by the employer against the brokers for indemnity in respect of the employee's claim, by way of damages for breach of contract by the brokers, the latter contended that the employer suffered no damage by the failure to insure, as insurers would have repudiated liability by reliance on condition 4.

The Court of Appeal held that damages were recoverable from the brokers for two reasons: (1) The onus of proving a breach of condition 4 would be on the insurers and this would be difficult to establish. They would have to prove that the employer's failure to take safety precautions was a reckless failure but the trial judge had found that the employer probably did not appreciate the risk and insurers would, on balance of probabilities, have failed to avoid liability. (2) There was the further reason that it was extremely unlikely that insurers would have raised the defence under condition 4 in the present case. Fraser v. B. N. Fuman (Productions), Ltd. (Miller Smith & Partners, Third Parties) (1967) 3 All E.R.57.

Traffic Accident or Factory Accident

A slinger was injured during the course of his employment when he was caught between the chains and the swivelling body of a mobile crane used in a scrap metal yard. He alleged that the appellant employers were in breach of their statutory duty to fence the offending part of the crane. On his action for damages, the House of Lords dismissed the employers' appeal on the grounds (1) that the essential question was whether, if the crane was part of the equipment of the factory, it contained machinery; (2) that if it did then S.14(1) of the Factories Act, 1961, applied in relation to it; and (3) that it was unnecessary to determine whether the piece of

equipment was basically a vehicle. British Railways Board v. Liptrot
(1967) 2 All E.R.1072.

Unfortunately, the House of Lords was precluded from deciding what particular part of the mobile crane was a dangerous part of machinery. Thus, the above decision settles that a mobile machine that is part of factory equipment is not outside the scope of S.14 by reason of its mobility, so that the possibility could arise in the future as to whether a particular part of machinery which causes an accident is a dangerous part of machinery and as such governed by S.14.

When Drivers Need Not Pay

It was decided by Judge Norman Carr at Ross-on-Wye County Court that car owners are not liable for repairs to their vehicles when their insurance company goes into liquidation. We are indebted to the B.I.A. for drawing our attention to this case reported in the Western Daily Press dated 9 June, 1967.

Mr. Geoffrey Gardner, owner of a garage in Ross, claimed £69. 9s. 9d. from Mr. Terence Cotterell of Cupsley, Hereford, for repairs to his car. He was insured with the Fire, Auto and Marine Insurance Company.

Judge Carr allowed only £3 of the claim - the cost of towing the car to the garage after an accident. He awarded costs against Mr. Gardner.

The judge said: "This is an unfortunate case where when an insurance company goes into liquidation some innocent person has to suffer, either the person who took out the policy or, as in this case, the garage which did the work. The real contract was between the garage and the insurance company".

Journal of World Trade Law

The Journal of World Trade Law is a new periodical devoted to the legal aspects of international trade, and the fact that it is edited by Dennis Thompson is in itself an assurance of the high standard of the publication. Members who are interested can secure copies from the Editor at 12A, Maddox Street, London, W.1. The annual subscription for six copies is 12 guineas; single copies are available at £2. 10s.