

## BRITISH INSURANCE LAW ASSOCIATION

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Bulletin No. 2December, 1964Annual General Meeting

Since the issue of the first bulletin, the Annual General Meeting of the Association has been held and the following Officers and Committee were re-elected for a further year:

President	- Professor Denis Browne
Vice-President	- Dr. C.E. Golding
Chairman	- Gordon W. Shaw
Vice-Chairman	- H.A.L. Cockerell, O.B.E.
Hon. Secretary	- D.C. McMurdie
Hon. Treasurer	- R.A. Sims

R.W. Boss  
 D.J.B. Gatenby  
 Dr. E. Jenkins  
 V.J. Sawle  
 R. Wyeth

Messrs. D.M. Cheatle and H.C.D. West felt that they were unable to stand for re-election and their resignations from the Committee have been regretfully accepted. It is desired to place on record here appreciation for their services on the Committee of the Association during its formation period.

Professor Jan Hellner of Stockholm University presented a valuable paper on "The Role of an International Insurance Law Association". Copies of this paper have been circularised to all members. Further copies are available on request to the Hon. Secretary.

Quarterly Meeting

"The assessment of damages in bodily injury claims" was the subject of a meeting of the Association held in the Bonnington Hotel on the 8th December under the Chairmanship of Mr. Gordon W. Shaw. It was undoubtedly the most lively and stimulating session which the Association has had to date. The subject was introduced by a panel of speakers, representing the points of view of a claims manager,

an actuary and a practising barrister.

Mr. F.N. Eaglestone, LL.B., F.C.I.I. of the "Federated Employers" presented the claims manager's point of view. He raised several pertinent problems which confront insurers and invited the comments of his colleagues on the panel. He referred to the lack of consistency in the awards which the courts make so that insurers have difficulty in estimating their claims or negotiating a settlement. In particular, he recommended the abolition of jury trials since juries do not have evidence of other awards in broadly similar circumstances to guide them. Is there a tariff of damages for injury? was another question the speaker posed. He referred to some recent cases before the Court of Appeal which seemed to indicate that the Court recognised the need for some standard tariff although Sellers, L.J. has been careful to emphasise that "there is no statutory schedule and there never can be a sum to be established as the right sum to be awarded for the loss of an eye or a limb or any other bodily injury."

After dealing with problems concerning the payment of medical expenses and weekly payments for pain and suffering for slight injury claims, the speaker referred to recent attempts to justify the use of actuarial evidence in personal injury and death litigation where the expected length of life is material. He expressed the view that if the courts were to take notice of actuarial evidence, the general level of awards would increase considerably and ultimately this expense would have to be passed on to policyholders by way of increased premiums.

The actuarial point of view was put by Mr. R.E. Beard, M.B.E., F.I.A., an Assistant General Manager of the "Pearl Assurance". He recognised from the outset that there should be flexibility in the approach to the subject to allow for developments in the social structure. "Ad hoc decisions" said Mr. Beard, "and assessments based on localised environments without regard to sound basic principles will generate inequity in treatment. In the absence of consistent principles the only method is the tabulation of individual decisions and the establishment of broad averages."

Mr. Beard wanted to eliminate the insurance contract from the discussion as he felt that the question of damages arose from social considerations. "The presence or absence of insurance is irrelevant", said the speaker, although its existence "has facilitated the increase of awards." In the main, Mr. Beard concentrated on the actuarial help which he felt could be provided when the question of setting a present value for a series of payments arises. He went on to point out the inequity which is introduced when an attempt is made to award a lump sum in lieu of annual payments in cases where no insurance is involved, where a national insurance fund is available and where there is voluntary insurance.

Mr. Beard concluded that flexibility in the method of settlement was desirable, "it should not be a question of either awards as annuities or as lump sums, but for small items lump sums, large items annuities, with a middle range in which either method might be adopted, depending on the circumstances."

The Barrister's approach to the subject was historical. Indeed, he said that in assessing damages on the 8th December, 1964, little progress had been made since 8th December, 964! He instanced the Anglo-Saxons with their fixed scale of payments for the life of every freeman and less. The fixed sum would be augmented according to the age or circumstances of the defendant. In Roman Law the XII Tables prescribed a fixed penalty for a wrong, while the Germanic tribes had an immense system of monetary compensation ranging from homicide to minor injuries.

When he turned to our present day system, the barrister agreed with an earlier speaker that in jury cases there is no fixed scale but he thought that a case at present before the Court of Appeal, (Ward v. James) would see the end of juries in cases of assessment of damages for personal injuries. He explained that judges do have a scale although it is not published and the speaker explained the broad principles which judges apply. He recognised that the main defect of the system is the variation in application of the scale by different judges. The speaker went on to refer to the "cabbage cases" and said that it was both irrational and illogical that large sums should be awarded to people who will die without ever knowing about them.

The actuarial computations looked attractive, said the barrister, at first sight but are much more expensive than the present ad hoc method and would not result in any better justice. The speaker said that if the greater price of actuarial calculations were paid, while it would make for consistency it would not solve the greater problem of evaluating and compensating the loss of human happiness.

After some lively discussion, the President, Professor Denis Browne, gave a short account of his visit to the meeting of A.I.D.A. which was held in Mexico City in October in conjunction with the first Pan-American Congress on insurance law. This is reported elsewhere in this bulletin.

#### President's Visit to Mexico City

The President attended the Council meeting of A.I.D.A. which was held in Mexico City in conjunction with the first Pan-American Congress on insurance law in his capacity as a Vice-President of A.I.D.A. The President reports that the Congress which extended from October 26th-29th inclusive was Latin-American in its scope rather than

Pan-American, and the European Council members were observers rather than participants. Three topics were discussed:

Insurance in L.A.F.T.A. (Latin American Free Trade Association)  
Control systems in Europe and Latin America, and  
Transfer of insurable interest.

The title of the third topic obscures its real substance which concerned the effect on a contract of insurance of alienation of the subject matter, for example, a house or a car. The other topics were largely political rather than legal, but some interesting points emerged. The President said that it was "impressive to observe how determined the Latin-American countries are to establish their own Common Market, and the implications for British insurers who have at present an interest in that field are disturbing. It became abundantly clear, for example, that the constituent countries are determined to retain the reserves of insurance companies operating within LAFTA to fertilise their own economies."

The Council meeting was concerned in the main with studying the topics for the Hamburg Congress in 1966. Because of a limitation of time, the first meeting of the Council covered only the formal business and an adjourned meeting was convened for Friday, October 30th. As the President was journeying home that day, he was unable to attend but from subsequent correspondence it seems that the agenda for the Hamburg Conference is not yet complete.

#### President's Paper

It is regretted that the issue of the President's paper entitled "A General Review of Liability Insurance" has been delayed. This is now available and is being issued with this bulletin. Further copies are obtainable from the Hon. Secretary.

#### Membership of the Association by practising barristers

Further representations are being made to the Bar Council in the hope that it will rescind its decision against membership of this Association by practising barristers. The result of these representations will be notified as soon as possible.

#### Income Tax Relief

Application has been made to the Inland Revenue Authorities for tax relief on members' subscriptions, but the Chief Inspector of Taxes has intimated that under the provisions of Section 16 of the Finance Act, 1958, tax relief on members' subscriptions cannot be granted until the Association is in a position to submit 3 years' audited accounts. When approval is granted it will be retrospective to the date of our original application.

Meetings of non-practising barristers

It may be of interest to members of this Association to learn that a group of non-practising barristers is arranging a meeting in London on the 5th January, 1965. There are some 8,000 barristers in commerce, industry and the Civil Service and it is considered desirable that they should have adequate representation on the Bar Council. The object of the meeting is to consider how this can best be achieved. Further details of the meeting can be obtained from Mr. D.G. Fletcher-Rogers, Legal Department, Monotype Corporation Ltd., Salfords, Redhill, Surrey.

Pension Schemes in the European Economic Community and the U.K.

Members interested in this subject may like to know that a paper presented by Mr. A.R.N. Ratcliff, F.I.A. was published in the Institute of Actuaries' Journal, December, 1963.

A note for your diary

The next meeting of the Association will be held on the 23rd March, 1965, at 5.45 p.m. in the York Room of the Bonnington Hotel, Southampton Row, London, W.C.1. Members are asked to note the date and further details of the meeting will be issued later.

A note from the Hon. Secretary

It is hoped to issue three or four copies of the bulletin next year and members are invited to send to the Hon. Secretary items which are likely to be of interest to other members of the Association. The address of the Hon. Secretary is The College of Insurance, 30, Woodlands Road, Surbiton, Surrey.

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