# INSURANCE LAW WORLD CONGRESS

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The systematic study of insurance law received a great impetus from the Second World Congress of Insurance Law, held at Hamburg from July 28 to August 2. The Congress was attended by 577 academics, legal practitioners and insurance men. Germany provided one-third of the delegates (191). Next came Italy with 14 per cent (84) and France with 7 per cent (40). Great Britain's delegation came fifteenth in size with 1½% (8), equal with Israel and exceeded by countries such as Tunisia (16), Jugo-Slavia (15), Denmark (10) and Greece (9). In all 35 countries were represented.

The Congress was held under the auspices of the International Association for Insurance Law (A.I.D.A.) whose president is Professor Antigono Donati of Rome. Professor Donati was responsible for the First World Congress held at Rome in 1962. It was he and Professor Möller of Hamburg University who took the lead in forming A.I.D.A. in 1960. Fittingly, therefore, at a short ceremony on July 27, Professor Donati received at the hands of the Dean of the Faculty of Law of Hamburg University a diploma conferring on him the honorary degree of LL.D. (Hamburg).

Sponsors of the Congress were the German chapter of A.I.D.A. membership of which is identical with that of the Study Group on International Insurance Law of the German Association for Insurance Science. Its chairman is Professor Reimer Schmidt, also of Hamburg University. On Professors Möller and Schmidt therefore the main burden fell. They were ably assisted by the scientific secretaries of the Congress, Dr. Werner Pfennigstorf and Dr. Ulrich Schlie.

The mind boggles at the task of organising a World Congress with five official languages, English, French, German, Italian and Spanish. A.I.D.A. now has nearly forty national chapters, each of which was asked to supply a national report on two general themes and four special themes. All these required four translations. The work could not be completed in the time available but a great effort was made to supply delegates ontheir arrival with duplicated or printed copies both of the national reports and of the general reporters' comments in a language that each delegate understood. The papers that I received in six neat folders weighed upwards of fifteen pounds. One and a half million sheets of paper were used for the matter circulated.

Arrangements were made at the meetings for simultaneous translation into the five official languages. Apart from some microphone trouble they worked as well as could be expected though some languages, especially German, and some speakers, especially from Latin countries, do not lend themselves to simultaneous translation, either because of complicated sentence-structure on the one hand, or because of accelerating speech on the other.

Wives were also invited to the Congress and about 150 came. The social arrangements included coach tours, a full-day Sunday trip down the river Elbe, a Congress dinner at the Atlantic Hotel with a few short speeches, interspersed among the courses, a concert, and a reception by the City State of Hamburg at the famous Rathaus. Private hospitality was both generous and imaginative. For example, some of the English delegates were invited to the Lubeck Yacht Club to see the last half of the World Cup Final on television. At the exciting conclusion of the match the losers toasted the winners in German sparkling wine and presented to the English delegates a pennant of the Yacht Club with a suitably inscribed base.

Most congresses have their proportion of thos who "go to the funeral but just for the ride". At Hamburg this proportion was notably small, indeed non-existent, among the British delegation. The business meetings throughout were fully attended. Contributions to the discussions were usually rationed to one per national delegation and even so the sessions were not long enough to accommodate all who wished to speak.

The general reporters performed their task of synthesis admirably. It was hardly possible to come away from a session without new ideas, even on the most familiar of topics. The blend of contributions from academic lawyers and from practising insurance men must have been of value to both sides. It is of course possible to overstress the contribution that law can make to the solution of insurance problems which essentially demand a practical solution, but are we not in Great Britain in danger of understressing them? From our country no academic lawyers came at all, and only one company employee - from a reinsurance company. It is well understood that when solutions to insurance legal problems have to be found only the insurance market itself can say what it wants. But this does not necessarily preclude previous open discussion by all those interested of the difficulties that have to be overcome. In recognition of this, some very senior men, including, for example, the President and other officers of the European Committee for Insurance, found it worth while either to prepare papers or to come to Hamburg, recognising that the best basis for action is the previous spread of information and discussion.

Among those attending werejudges, controllers of insurance, general managers, practising lawyers, professors and insurance practitioners, as well as those with only a personal interest in insurance law. All had something to contribute from their fund of experience. The Congress passed no resolutions. It may therefore be hard for some to see what the meetings accomplished. But that they did accomplish something there can be no doubt among those who took part. Each came away with the knowledge that there can be more than one solution to the problems that face insurers.

Some speakers had visions of a world in which uniform insurance laws would prevail. This is obviously a long way off but it is clear that the efforts of the Common Market countries to achieve a harmonisation of their insurance laws will shortly take a great step forward. It would be a pity if the views of the common law countries were not to be expressed at all in gatherings such as these when opinions start to form in minds. As some speakers from countries with detailed insurance legislation pointed out, we may not live for ever in a world where Lord Mansfield's dicta and the Life Assurance Act 1774 remain as the principal rules for our conduct of affairs in the twentieth century. Yet the dangers of codification were often seen. Codes may crystallise a state of affairs that is itself outdated. For example the reports on marine insurance mention that the provision in German law regulating the beginning and termination of a Marine cargo insurance (section 824 of the German Commercial Code of 1897) was obsolete from its inception. The Norwegian Marine Insurance Plan, which dates from 1930, was also stated to have become out of date and due for replacement which cannot however take place before 1968.

In a changing world both law and practice need constant re-examination to ensure that they meet the needs of the community. To take only one example the courts of many countries are glutted with litigation arising fromroad accidents so that years may elapse before an injured person can obtain a decision on a claim for damages. Jurists of many countries are seeking ways either of accelerating justice or of changing the rules for the compensation of victims. Motor insurance procedures are also coming in for scrutiny. Sooner or later Britain will have to decide whether to implement the 1959 European Convention on third part motor insurance. Discussion can focus the problems involved and point out potential difficulties in advance of legislation rather than afterwards. Unless those with practical experience in insurance are encouraged to take part in such discussion the public will hear only the point of view of academics or politicians who are not necessarily friendly to insurers. It was for reasons such as this that the British Insurance Law Association, which is now the British Chapter of A.I.D.A., was formed.

Nobody should minimise the difficulties faced by BII.L.A., British insurers do not recruit to the same extent from lawyers as do the insurers of some other countries. In France, for example, the majority of those who have gained the diploma of the Centre for Higher Insurance Studies, and thus are destined for management, are lawyers. No doubt this situation is paralleled elsewhere in Western Europe. But if British insurance lawyers are in short supply there is all the more reason for making the most use of a scarce resource. Without seeking to encroach on the work of established bodies, B.I.L.A. can find plenty of useful work to do. At the Hamburg Congress British reports were submitted on three of the six themes offered for discussion and a British reporter was the principal speaker on a fourth. Thanks to B.I.L.A., therefore, the voice of this country did not go entirely unheard. B.I.L.A. isnot yet three years old. Before the 1970 Congress we may hope to achieve further progress, so that our efforts in the field of legal

theory will not fall too far short of that of other countries. An International Congress of Actuaries with only $1\frac{1}{2}$ per cent participation by British actuaries would look lopsided. Should we rest content with that proportion when insurance law is under international discussion?

## REPORT OF THE BUSINESS SESSIONS AT THE INSURANCE LAW WORLD CONGRESS

The Congress opened on July 28 and closed on August 2. Professor A. Donati (Italy) presided at the opening and closing sessions.

The opening was held in the Auditorium Maximum of Hamburg University. A message was received from the President of the German Federal Republic as Patron of the Congress which was also addressed by Dr. Richard Jaeger, Federal Minister of Justice and Professor E. Frey. A civic welcome was offered by Dr. Wilhelm Drexelius, a Burgomaster of Hamburg. who recalled that Hamburg had long taken a leading place in insurance. The City State pioneered fire insurance and its life assurance dates from 1801. Sixty years ago Hamburg had a seminar on insurance law and, from 1919, the only German chair of insurance science. A.I.D.A. itself, he said, sprang from a meeting in Hamburg in 1960.

The closing meeting took place in the ultra-modern Unilever House, where most of the earlier sessions had been held. Among the elections to the Council were those of Mr. Ambrose B. Kelly (U.S.A.), Mr. Gordon W. Shaw (Great Britain) and Professor Peter Steinlin (Switzerland).

Professor Andre Besson conveyed an invitation from France for the holding of the next Congress in 1970. A.I.D.A. encourages regional activities and it was announced that the next Pan-American Congress would be in 1968 at Buenos Aires. Other delegates expressed the hope that the Congress would eventually visit their country, Japan being among the claimants.

The Congress decided to set up a documentation centre. The Jugoslav Chapter offered to act as the receiving and distribution point.

## STATE ACTION IN REGARD TO PROPERTY AND CASUALTY INSURANCE COMPANIES IN FINANCIAL DIFFICULTY

Recent events in Britain gave a topical interest to the first general theme considered by the Congress. The reporter was Professor Joaquin Garrigues Diaz-Canabate of Madrid University. Financial difficulty, he pointed out, ranged from insolvency in the legal sense to a temporary inability to meet current payments. An insurance company may be legally insolvent and yet able to meet current payments. Or it may be able to make such payments only at the expense of not fulfilling legal requirements as to reserves.

State supervision is designed to protect policy-holders. It disposes of many means. There may be legal requirements as to memoranda and articles of association, policy wordings and other documents; financial requirements as to capital, deposits and reserves; technical and economic requirements as to premium rates; and requirements as to forms of account. Despite all these it is possible for insurance companies to drift towards insolvency. The Insurance Committee of Europe, said Professor Garrigues, has been considering what common course of action is best calculated as a safety precaution and what is known as the "maximum solvency margin" has been adopted as an important step towards solving the problem.

There are a series of symptoms that can point towards potential insolvency. It is the task of the controlling authority to diagnose the potential risk and to intervene to prevent creditors from being deprived of their rights. In doubtful cases the controlling authority must take preventive action and attack insolvency at its source so as to avoid the necessity for liquidation by legal process.

Government and specialist international organisations are exerting themselves to analyse the causes that give rise to financial difficulty either in the short, the medium or the long term. Such causes may be subjective or objective. By subjective causes Professor Garrigues meant the personal qualities of the management, whether by way of incompetence, lack of prudence in underwriting, negligence, failure to observe legal requirements, or bad professional reputation. Such causes, he considered, were difficult to evaluate.

Objective causes include inadequate rates, unsound contracts, overtrading, maldistribution of business, faulty reinsurance arrangements, risks going bad, and economic deterioration. The supervising authority should keep an eye on all these. Systematic causes of deterioration can be controlled but insurance transactions are also subject to chance factors, only some of which are measurable.

State intervention, said Professor Garrigues, must be directed towards incorporating in the law norms for the calculation of mathematical reserves for current risks and for outstanding claims.

Additionally, Spain has, in its Consorcio de Compensacion de Seguros, a form of solidarity among insurance companies to provide for abnormal or catastrophic losses.

Professor Garrigues then considered the remedial measures mentioned in the various reports. In most cases financial difficulties arose from the personal qualities of the management of the companies concerned. It appeared to him therefore that the first step should be to reprimand the management and to require it to change its conduct. Failure to do so would result in a call for resignation. In most States of the U.S.A. legislation allowed the insurance commissioner to require sworn answers to questions. Failure to give such answers would be a ground for action against the company requiring its rehabilitation or liquidation.

German legislation requires as a condition for the operation of an insurance company that the managers shall be "honest and with an adequate professional training". The control office is empowered to intervene directly in the affairs of a company to eliminate irregularities. Swiss legislation allows the Federal control office to order a change of management.

Preventive measures in relation to the donduct of insurance business operate in many countries. In Germany the control office can even modify the terms of current policies. In France, upon notice by registered letter, the company must within fifteen days submit constructive proposals for rehabilitation or for transfer of its portfolio. In Italy the supervising authorities can set a time limit within which a company that has not been observing legal requirements or that appears to be functioning badly must put its house in order. The authorities in Sweden and Switzerland also have considerable powers.

Many supervising authorities have considerable powers to require companies in financial difficulty to take specified action at the risk of losing their authorisation to transact business.

Tunisia pointed out that companies charging inadequate premiums might continue for years to pay claims. If, for example, a company were selling insurance at 5 per cent below cost, it could perhaps go on meeting claims for eighteen years without difficulty. Only in the nineteenth year might it be seriously short of cash.

Some countries, such as Sweden and Switzerland, have power to require companies to increase their capital.

Professor Garrigues reviewed the present legal requirements as to solvency margins such as operate in France and the United Kingdom and are being introduced in Holland. He referred to the work of the recent Conference of European Supervisory Services. An investigation had shown that failures of insurance companies were relatively rare

and unimportant. Most supervising authorities had adequate legal powers. He concluded however that the future promised a greater risk of insolvency than the recent past and that measures should be taken to reduce the risk. Among these measures should be better calculations of technical reserves, a closer study of investments and more collaboration. between supervising authorities of the various countries.

Professor Garrigues then described the conclusions reached by the O.E.C.D. Working Group on solvency margins. The E.E.C. method had been adopted. The margin is calculated with referemce both to premiums and to claims, whichever gives the higher requirement being adopted, on the basis of the following table:

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| Premiums | up to $10 million | 18% |
| | $10 - 25 million | 12% |
| | over $25 million | 8% |
| Claims | up to $7 million | 26% |
| | $7 to 17.5 million | 20% |
| | over $17.5 million | 16% |

From calculations made for O.E.C.D. countries these figures were found to conform to existing facts, nearly all companies having such a margin.

Professor Garrigues then dealt with the question whether, when an insurance company failed, its liabilities should be assumed by the rest of the insurance market. He said "It does not seem just that responsible solvent companies should be affected by those that are not responsible and solvent, and even less just that, to avoid loss to certain policy-holders, the policy-holders of other companies should have to suffer the effects of one company's insolvency". In Spain, he said the Decree Law of 3 October 1964 had established a guarantee fund to meet the liabilities of insolvent motor insurers and in France there was a bill with the same object. But the difference between them lay in the fact that whereas the French proposal was for the fund to be supported solely by insurance companies, the Spanish fund also received money from the State.

Professor Garrigues pointed out the international nature of the solvency problem and the difficulty of getting uniform action on an international scale. He considered that A.I.D.A., being a non-governmental and purely scientific body was well placed to provide pre-legislative studies on such a topic, especially as it comprised specialists from many countries not within the E.E.C. or O.E.C.D.

Among those who took part in the discussion was Maitre Jacques Basyn (Belgium), President of the European Committee for Insurance.

Professor Spencer Kimball (U.S.A.) said that he had recently been drafting a bill to deal with the liquidation of insurance companies or their rehabilitation. The practical difficulty was the early diagnosis of potential trouble. There was a need to intervene before insolvency arose, to see a difficulty developing and to take prompt action. Indications were to be found either from a continual decline in surpluses in the balance sheet or from a substantial increase in the number of complaints received about claims settlements. A company in difficulty tries to save money by squeezing its policy-holders. Difficulty may lead to wholesale resignations of staff. The difficulty may be common knowledge in the industry. He therefore considered that the supervising authority should have the benefit of an advisory committee from the insurance industry. The authority should be empowered to seize the books and other property of the company, particularly in cases of probable dishonesty on the part of the management. There were cases of slow decline, where rehabilitation might be possible, and others of sudden collapse. Rehabilitation is basically a management problem. The insurance advisory committee he proposed should be able to help by lending a suitable manager. In American conditions temporary suspension of business would be unsatisfactory. It would lead to collapse. In a free enterprise community a birth and death cycle was to be expected.

Professor H. Drion (Holland) wondered whether in protecting policy-holders a distinction could be drawn between policy-holders who bargain on an equal footing with insurers and policy-holders who are simply members of the general public. More pooling of statistics would give a better foundation for the scientific determination of risks. He praised the work of A.S.T.I.N. (Actuarial Studies in Non-Life Insurance).

Dr. U. Christinger (Switzerland) wondered whether a guarantee fund was justified and whether it might not finally lead to nationalisation.

Among the national reports before the Congress the French one was prepared by a committee consisting of Professor Andre Besson, Monsieur Laleuf (Director, C.A.P.A.), Monsieur Molin (Past President of the French Federation of Insurance Companies) and Monsieur Jean Pilot (Under-Secretary, Ministry of Finance, Insurance Section). Britain also submitted a report on this theme. The report, prepared some months ago, mentioned that the Board of Trade was reviewing its powers with the thought that greater flexibility might be an advantage.

## THE PRINCIPLE OF INDEMNITY

Sixty years ago a discussion on the principle of indemnity and the violations to it threatened by new-fangled ideas such as loss-of-profits insurance might have made the heart beat faster. Today the question is less what the law says or allows than how to find a form of words that reconciles theory with practice in such matters as reinstatement insurance.

The general reporter on the theme of indemnity was Professor Witold Warkallo of Warsaw. Unfortunately his general report is not yet available in English or French, though his national report for Poland has been issued in a French version. It does not seem from this that there is any fundamental difference as to ideas of indemnity in thelaws of capitalist and communist countries. Thus the Polish Civil Code provides that the indemnity due from the insurance organisation "shall not exceed the damage suffered by the insured". Professor Warkallo points out that the insurance of profits by the individual has little place in a socialist economy. However, the full probable value of certain crops (less probable future expenses) is the basis of settlement of claims for crops damaged by hail or flood which is the subject of compulsory insurance in Poland. Insurance "new for old" is applied in Poland only to durable subject-matter, the property of State enterprises or the like. This was permitted for light industry in 1959 and the principle is likely to be further extended in the future. Agreed value insurance is permitted though by the Maritime Code it is open to the insurer to prove that the sum insured exceeded the value of the property insured and in that case the insurer may reduce his liability to pay. In compulsory non-marine insurances the insurer pays only a percentage (40-100%) of the value insured.

The American report mentions that twenty States of the U.S. have by statute converted the standard fire policy into a valued policy, particularly with regard to the total loss of buildings. Thus the courts have often permitted the vendor to recover an amount substantially in excess of the price at which he had agreed to sell the property. The report cites a Federal case where the insured was permitted to recover the full insurance of $24,000 despite the fact that the property had been condemned and that he had received a condemnation award of $43,500. "Indemnity would seem to fly out the window", says the report, but adds that not all States take the same view.

When replacement value insurance was first introduced in the U.S. it was the subject of objection on the ground that it violated the principle of indemnity but it is now specifically authorised by legislation in some States.

In a subtle national report from Japan, Professor Tadao Komori, of Kyoto, questions whether the principle of indemnity is fundamental to insurance or whether it is simply a subsidiary rule introduced with others, such as insurable interest, to prevent insurance from degenerating into a wager. He favours the latter view and considers that it is therefore reasonable to allow the parties to agree freely

on each element as a basis for determining the insurer's liability, unless such agreement is contrary to public policy. Freedom of contract should be the cardinal principle.

Professor Warkallo detected in the national reports three differing viewpoints - one, that the principle of indemnity should be applied to all forms of insurance, including personal insurance; one, that it should remain in full force for property insurance; and one, that the principle has outlived its usefulness and should be amended. In practice, he thought, we should not over-estimate the importance of exceptions to the principle. In any case, agreed values were as old as insurance itself. Looking to the future he wondered whether insurance might not become possible against obsolescence, as when new developments rendered plant out of date shortly after its installation.

Dr. Konig of Switzerland said that if the principle of indemnity was treated as an overriding one some types of insurance would be illegal. Indemnity should be treated as a guide rather than a master. Professor Möller said that this was already the case in Germany.

Mr. Ambrose B. Kelly (U.S.A.) said that it was easy to say no one should receive more than the value of his property, but what was the value? Value is subjective as well as objective. America has pushed insurance to greater lengths than others. In that country there is not an insistence on reinstating property just as it was before; the insurance money just has to be used for rebuilding what is wanted for the future.

A German speaker said that practically all German house-hold insurances were now on a reinstatement basis. Germany had had reinstatement insurance for forty years. Even values under replacement insurance might prove inadequate, as when prices rise after a loss but before the reinstatement is effected.

Mr. M. S. Hempsell, who had produced Britain's report, asked what classical indemnity really was. In a relativistic universe, he said, there is no such thing as a straight line. He found the three forms of insurance under discussion (agreed value, reinstatement, loss of profits) acceptable and not against the public interest, provided that moral hazard is always taken into account. The more national law there is, the more problems are likely to arise.

Professor Hellner (Sweden) said there was a majority for regarding indemnity as a governing rule to prevent enrichment by insurance. A minority saw indemnity as a principle only.

For Dr. Ossa Gomez (Colombia) indemnity was a sacred thing.

LIABILITY INSURANCE

Nineteen countries, not including Britain, submitted reports on the theme "Means of reducing the financial burden of liability insurance - sum insured, franchise, cost of litigation". Judge H. S. Lowenberg of Israel gave the general report. He concluded that third party liability insurance, whether in industry or on the road, has come to be a social service which the insurance world renders to its customers. In most countries, he said, premium rates for motor business are controlled and it is difficult for insurers to get adequate rates. Switzerland's control is exceptional in that rates which are considered uneconomic will not be approved. The no-claim bonus and the franchise (or excess) can be made to work in reducing claim costs. The majority view was that the legal systems of most countries with regard to liability to third parties should not be altered. However, serious consideration was being given in Germany and the U.S. to new systems of liability. Legal costs appeared to be higher in Common Law countries than in those with codified laws. Many countries were seeking means of reducing administrative costs. Sweden suggested the use of computers as a means of cost-reduction. This was about to be tried in Israel. Yugoslavia claimed that the combining in one operation of licensing and insuring vehicles had reduced costs by 16%.

Monsieur M. Courgenay (France) said that medical evidence was the key to damages. French insurers had developed contacts with judges and doctors. On the medical side successful conferences had been held for the past three years. Reports of the proceedings were published in the Revue Générale des Assurances Terrestres.

Signor Paganisi (Italy) suggested that litigation could be reduced if a stated period was required to elapse before legal proceedings could be instituted. This was later opposed by Professor G. Wets (Belgium) who said that a cooling-off period would lead to refrigeration and claimants would have to make forced settlements.

Professor Sieg (Germany) thought that unlimited liability insurance for motor vehicles should not be allowed.

The Swedish reporter favoured simplifying the law relating to liability for road accidents. Strict liability would reduce conflicts with the public which were undesirable for insurers, and would therefore improve their public relations. Motor insurance would have to be regarded more and more as a social service. There should be public participation in discussion of liability rules. The question was not one for legislators and the courts alone. There were certain moral liabilities, such as that of a father for the acts of his children, or that of an employer for the unauthorised acts of his employees, that should be insurable. In some countries insurers have succeeded in reducing repair costs by discussions with organisations of repairers. One company had opened its own repair depots. Agreements had also been made with large transport concerns for the standardisation of their loss-of-use claims.

Mr. Rex Wyeth (Britain) said that liability for road accidents was a social problem rather than an insurance problem. Each country would therefore find its own solution. The fundamental question in each country was whether the public wanted liability without fault, as in workmen's compensation. If so, this was bound to mean restricted benefits. In his view a system of full damages upon proof of fault was much more popular. Recent advances in medical science kept more people alive and therefore gave rise to more large claims for damages. There was an increasing appreciation on the part of the public of the possibility of getting damages.

Professor Kimura (Japan) said that the Japanese State compensates the victims of accidents caused by unknown motorists.

Summing up, Professor Lowenberg said that although motor insurance had become a social service it need not be a charitable institution. Motor insurers should be social organisations with a business attitude to risk. For road accidents liability based on negligence was being replaced by extended liability to all who, through no fault of their own, ran the risks of the road.

## THE INFLUENCE OF THE CONDUCT OF THE INSURED UPON THE CONTRACTUAL LIABILITY OF THE INSURER

Under this imposing title discussion centred mostly on our old friend uberrima fides. The general reporter was Professor Reimer Schmidt of Hamburg. His written report ran to 60 pages. Seventeen national reports were submitted.

Professor Schmidt in his report showed that there was fundamental agreement in the laws of all countries on the need for disclosure by the proposer. But there are many differences of detail. The effect of innocent misrepresentation varies from country to country. In some it merely has the effect of reducing the payment of a loss to the proportion that the amount of the premium payable if the true facts had been known bears to the premium actually charged. Again, how far is the proposer obliged to disclose facts that he did not know but that he ought to have known, or facts that were within the knowledge of a third party such as an employee, the broker, or the agent? And what if a misrepresentation, though material, has no bearing on the loss? Further, are all the answers to questions in a proposal form deemed to be material? And does the use of such a form mean that facts not asked about in the form shall be deemed immaterial? What is fraudulent concealment or misrepresentation? Some systems of law differentiate between degrees of fault on the part of the proposer, with varying effects. What should be the test of materiality? The States of the U.S.A. have at least two approaches. In some of these States, such as New York, the question is whether the fact misrepresented, if known to the insurer, would have led the insurer to refuse to enter into the contract of insurance. But in California the test is whether a reasonably prudent insurer would have regarded the fact as substantially increasing the chances of the loss insured against. The New york test is subjective, the Californian objective. The former may be dealt with by the judge as a matter of law; the latter is likely to be a question of fact for the jury.

Dr. Schmidt reports that a committee of experts from the six countries of the E.E.C. (including himself and five others present at the Congress) have proposed the following wording designed to harmonise their laws on the subject of misrepresentation:

> "The proposer, when concluding the contract, must declare to the insurer all the circumstances that would influence evaluation of the risk (or the insurer's opinion of the risk)."

> "If by wrongful act, bad faith, or fraud the proposer is intentionally guilty of suppression or false statement the contract is deemed to be of no effect ex tunc (or ab initio). Nevertheless the insurer cannot take advantage of this after the lapse of x months from the time that the insurer learned of the suppression or false statement."

> "If there was an omission or incorrect statement without wrongful act, bad faith, or fraud on the part of the proposer, the insurer is entitled, failing agreement between the parties

on a revised premium, to cancel the contract within x months counting from the day on which he learned of the omission or incorrect statement. If a loss occurs meanwhile the insurer is liable only for that proportion of it that the premium paid bears to the premium which would have been due."

"If the insurer has delivered to the proposer a questionnaire for the description of the risk that must be answered by the proposer, the questions contained therein are deemed, in the absence of proof to the contrary, to influence the insurer's evaluation of the risk, and omissions or incorrect statements in the answers given are presumed, in the absence of proof to the contrary, to have been made in bad faith."

Professor Schmidt also deals with warranties and increases in risk after its inception.

He also examines the duties of the insured at and after the time a claim arises, and reports the proposal of the experts of the Six for harmonisation of their laws on this subject, as follows:

"The insured and the person effecting the insurance have a duty, in the event of a loss, to do everything they can to avoid or minimise the consequences.

"Costs incurred in doing what is provided for in the preceding paragraph must be borne by the insurer within the limits provided by national laws, to the extent that such costs are reasonable, even though they do not have effective or positive results.

"In the event of failure to fulfil the duty set out in the first paragraph above, a condition invalidating the cover can only be operated in the event of wrongful act or gross negligence on the part of the insured or the person effecting the insurance. In other cases the insurer may only receive damages to the extent of the loss suffered by him."

Professor Schmidt also reports the proposals of the experts for harmonising laws relating to delay in notifying losses and providing the insurer with information. Other matters dealt with in his comprehensive report include deliberate acts, such as suicide of the life assured, and the rights of insurers against an offending insured when the insurers have been obliged by law to meet a third-party claim.

In the discussion Professor Sotgia (Italy) said that a distinction might be drawn between the ability of professional and business concerns to describe their risks to insurers and the ability of private persons to do so. A higher duty might be suitable for the former.

Monsieur Nancy (France) said there was a tendency towards the use of more detailed proposals for motor insurance. The more the insurer asked for on the proposal form the less he could object to the non-disclosure of matters not so asked about.

Mr. Gilbert M. Frimet (U.S.A.) would prefer to see disputes about non-disclosure referred to arbitration rather than to juries.

Professor Fanelli (Italy) said he spoke for the Committee of European Insurers as one concerned with the harmonisation of insurance law in the E.E.C. The co-ordination of insurance supervision legislation was at a very advanced stage. The Committee of European Insurers had appointed a group of jurists to produce a draft for the co-ordination of the law relating to insurance contracts. The draft would be published in the Revue Générale des Assurances Terrestres. Co-ordination leads inevitably to greater protection for the insured. Of the six E.E.C. countries three still have nineteenth century legislation based on traditional freedom of contract while three have laws protecting the insured.

Monsieur Djait (Tunisia) said that insurers had a quasi-social role to play. It was up to insurers to confirm as far as possible the statements made by the proposer.

Mr. Uri Yadin (Israel) said that the advent of insurance as a mass product meant that old ideas had come under attack for the past twenty years. The principle of uberrima fides works one way only. The insured always loses. Under it, even the most innocent non-disclosure entitles the insured to avoid the policy. The same applies to a breach of warranty on a trivial or absurd point. He was impressed by the more reasonable law of Norway. The insured in practice is often the weaker party and needs protection.

## GROUP INSURANCE WITH SPECIAL REFERENCE TO GROUP LIFE

The liveliest discussion of the Congress arose on this theme, perhaps because theoreticians and practitioners were equally interested now that so many large enterprises operate internationally with the need for insurance arrangements in many countries. Mr. Gordon W. Shaw, who combines insurance broking with active participation in legal discussion, was therefore well fitted to act as general reporter. He concentrated on group life insurance, as did the discussion.

Very few countries, Mr. Shaw pointed out, have any legislation designed to cover group life assurance. Antiquated rules stemming from ideas of law appropriate to individual life assurance policies have been strained to fit the young and fast-growing branch. A good starting-point is the 1956 Model Bill of the American National Association of Insurance Commissioners on Group Life Insurance Definition and Standard Provisions. Amendments and other proposals are currently under consideration by a Joint Committee on Re-examination of Group Policy of the American Life Convention and the Life Insurance Association of America. Mr. Shaw expressed the hope that A.I.D.A. would set up a study group on the topic with U.S. participation in view of the vast American experience of it. Many national reports complained of obsolete legislation. Most of the fifteen countries reporting had legislation or control measures providing freedom from income tax on contributions and freedom from estate duty if some form of nomination exists, with vesting of rights in the nominee. There were, unfortunately, no national reports from Britain or the U.S.

Group life insurance is a growth substantially of the past fifty years. It is not confined to employer-employee schemes.

Mr. Shaw distinguished three types of group life insurance; those where the employer is providing a social welfare (fringe) benefit, those where the employer is sharing the cost of meeting the providential desires of his employees, and those where the employee pays the premium so that the insurance is simply a medium for him to obtain preferential rates. Most legislation prescribes a minimum number of participants. U.S. legislation often seeks to prevent discrimination between classes of work people.

What is a group? Some national legislation declines to recognise artifical groups, or even groups such as professional associations.

The U.S. Model Bill prescribes certain standard policy provisions, for example, on days of grace and incontestability.

Should consent of the life assured be a pre-requisite? In Britain it is not, in Japan it is. In Belgium practice and regulation alike demand completion of a proposal form embodying the general policy conditions. Indeed, in most of Europe the concept of consent is deeply entrenched, though the French report considers that it could safely be abolished.

Mr. Shaw also dealt in his general report with the legal position relating to disclosure and nomination. He asked whether it was necessary to limit eligibility in any way. Finland, he pointed out, imposed no such limitations.

The Chairman said that group life insurance offered great possibilities for underdeveloped countries. The future lay with it.

Professor Hellner (Sweden) considered that group life needed encouragement by legislation. It was low-cost and was more accessible than ordinary life. There had been a great development of the business in Sweden but the law was very unsatisfactory. He suggested certain governing principles. As there were many forms of group life it was undesirable to stipulate that the employer must pay half the cost. That would only check growth unnecessarily. The assured should be protected legally at least as much as in ordinary life assurance. He should enjoy the same fiscal advantages. The consent of the life assured to the insurance should not be necessary. Nomination should be allowed.

Professor Steinlin (Switzerland) was anxious that legislation should not narrow the development of group life. Dr. Binswanger added that in Switzerland group insurance and the Swiss Institute de Prévoyance were part and parcel of social welfare. There was no firm line between private and social insurance as instruments of social welfare. Private group insurance should be both as "social" and as flexible as possible. He considered that medical examination was hardly necessary where the insurance was compulsory and that the Swiss minimum of fifty for a group was too high.

Senor Usera (Spain) thought it was dangerous for private insurance that any links should be established with social insurance. He regarded it as desirable that a group should be homogeneous and not simply, as in the Argentine, a set of people with some common interest other than life assurance.

Mr. Henriksen (Norway) said that in Norway the consent of the life assured was not required but there was provision for subsequent protest and exclusion. A difficulty had arisen in Norway over group household insurance. The Norwegian T.U.C. was proposing to provide household insurance for all its members and to increase its subscriptions to pay for it. Some members had objected to this principle and the matter was awaiting a decision of the courts.

Mr. Grabe (Sweden) drew attention to the position of the group representative as the one who certifies health, reports changes in group membership and pays premiums and, often, collects the benefits. In a voluntary group he may not be particularly careful or competent. Embezzlement may arise. Is the representative the agent of the insurer or of the assured?

# "WAREHOUSE TO WAREHOUSE" CLAUSES IN OCEAN MARINE CARGO INSURANCE

Although at least one academic member of the British Insurance Law Association is particularly qualified to deal with Warehouse to Warehouse Clauses, the Association is not yet strong in marine insurance membership and it did not prove possible to arrange for a United Kingdom national report to be submitted on this (optional) theme. The absence of a British report was commented on with regret by more than one speaker in the discussion. Discussion of a marine insurance theme without British participation was felt to be Hamlet without the Prince of Denmark.

The general report was submitted by Mr. Martin Rosen, Attorney and Counsellor at Law of New York. Fourteen national reports were submitted, ten being available in English or French. The German report was prepared by Herr K. F. von Schlayer, Manager of the Allianz, the Japanese by Professor Teruzo Katsuragi, and the French by a strong committee which included Monsieur Lenoir, Delegate to the Central Committee of French Marine Insurers, Monsieur Latron, Secretary of the Committee, and Monsieur Parenthou, Secretary General of the Committee of Marine Insurers of Marseilles.

In his general report Mr. Rosen pointed out that Warehouse to Warehouse clauses and transit clauses are in the main patterned on the Institute of London Underwriters' Institute Cargo Clauses. He drew attention to the new wording adopted on January 1, 1963, to cope with the judgment in John Martin of London Ltd. v. Russell (Lloyd's List L.R. 1960 Vol. 1). He also mentioned the American case of Kessler Export Corporation v. Reliance Insurance Co. of Philadelphia (207 F. Supp. 355) where goods had been damaged when loaded on the carrier's truck on the assured's premises, the truck remaining on the assured's premises overnight. The Court held that custody and control on the part of the trucker becomes important after the trucker has left the shipper's premises. Until that event there is no transit and it would stretch the imagination to believe that the parties intended otherwise. The French policy is careful to define the departure point of the shipment covered, which is the moment when the shipment leaves the warehouse of the sender in condition for the voyage. The merchandise is not covered, it is implied, while in the hands of the packager who is conditioning it for the voyage.

Norwegian law is under revision and it is hoped to introduce up-to-date provisions in 1968. Norway has a stricter time limitation than most countries. Cover at the port of discharge ceases on the fifth day after the goods are discharged from the ship and if the goods are shipped to their eventual destination by land conveyance, cover ceases on the second day after they were, or ought to have been, discharged from the conveyance by which they were brought to the final port.

Israeli law provides, in relation to the sixty-day period allowed after discharge from the vessel that prolonged storage in port must be beyond the control of the assured, whereas many other underwriters, including the British, grant the sixty-day period unconditionally.

Mr. Rosen noted that the association of marine underwriters in Holland is one of the few which binds its members to observe agreements accepted by the majority.

The Bolivian report mentions that in South America delays of up to 120 days must be allowed for shipments to the interior. Underwriters insuring shipments under "All Risks" conditions therefore stipulate that two inspections of the goods are permitted, the first at the customs house and the second in the assured's warehouse.

In some countries, notably Germany and Japan, where different laws regulate transit insurance and property insurance, it may be important to know which is applicable to a transit that is continued overland.

Mr. Rosen said, of the period allowed after the discharge of cargo,

> "Apparently under the English Institute Cargo Warehouse to Warehouse Clause the insurance continues after discharge without requiring further declaration by the assured. The American Institute Clause takes the view that the continued storage in port must be beyond the control of the assured before the fifteen or thirty days is allowed. It appears that the English clause grants the sixty-day period unconditionally as a matter of practice."

Mr.Rosen concluded his report by describing and contrasting the cover given by the Warehouse to Warehouse Clause on the one hand and the American Marine Extension Clauses and the English Warehouse to Warehouse Clause with extended cover on the other hand.

NUCLEAR ENERGY AND INSURANCE LAW

After the Congress programme had been drawn up it was decided to offer "Nuclear Energy and Insurance Law" as an additional theme. The discussion was organised in collaboration with the Fachausschuss Versicherung der Studiengesellschaft zur Forderung der Kernenergieverwertung in Schiffbau und Schiffahrt (KEST). As this session coincided with the discussion on group insurance it is not possible to report the proceedings but it is understood that some contributions were made from Eastern European countries of which a number, not however, including the U.S.S.R., were represented.