General Insurance Current Issues Newsletter

as at 1 March 2005

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1. Government and regulatory issues

As far as General Insurance is concerned, it has been a quiet start to the year in terms of UK regulatory issues. Here are a couple of anticipated future developments:

1.1 ICAs and the FSA

The FSA has discussed with several insurers their ICAs and there has been talk of a paper of some description, outlining what it perceives to be good practice within the ICAs that it has seen. At this stage it is not anticipated that the paper – if and when it finally appears – will be prescriptive, rather that it will be providing pointers to assist insurers in enhancing their ICA models and processes.

1.2 ICAs and Lloyd's

Lloyd's is currently following a similar process, and indeed is expected in the next few weeks to circulate its thoughts on the ICA models that it reviewed at the end of 2004/start of 2005.

1.3 Insolvency directive and Lloyd's

The EU directive on *The Reorganisation and Winding-up of Insurance Undertakings* came into force in the UK on 20 April 2003. The Directive applies to both life and non-life companies and to the Lloyd's market, but not to reinsurers. The Directive changed the order of claim priority on the winding up of an insurer, by introducing a new class of creditor, called "insurance creditors", which ranks behind secured and preferential creditors but ahead of unsecured creditors (previously, policyholders were considered merely as part of the mass of unsecured creditors).

As always with Lloyd's, its unique structure meant that the application of the Directive was not straightforward. Therefore, the Treasury undertook to draw up proposals as to how this Directive should apply in Lloyd's. Now, nearly two years after the Directive came into effect, it has published those proposals.

The main question is to whom or what within the Lloyd's structure should the Directive apply. The Treasury proposes that it should apply to the "association of underwriters known as Lloyd's" rather than to the Society itself or to individual underwriting members, it being considered that the existing Lloyd's rules provide adequate creditor protection in the event of individual insolvencies.

The consultation period on these proposals runs until 11 March 2005. Assuming that the consultation process highlights no major glitches, the Treasury hopes to bring forward legislation by May 2005, for enactment soon after.

2. Solvency II

2.1 As has been noted in previous Newsletters, much has already been achieved regarding the general shape of Solvency II. It will follow the Basel 3-pillar approach, it will be risk based, and the use of internal models will be encouraged, at least to some extent. It is, however, in the detail of how that the agreed general shape will be achieved that there is still much work to be done.

2.2 CEIOPS (this might sound like a creature from ancient mythology but is really the Committee of European Insurance and Occupational Pensions Supervisors) is due to finalise in October this year its consultation document regarding the detail of the Solvency II proposals. Indeed, it is due to have prepared its initial draft in June this year. This speed is necessary if Solvency II is to keep on course for a 2008 implementation (but see below).

2.3 As part of this, the Commission has issued a paper calling on CEIOPS to answer some specific questions. The ones that are of particular interest to general insurance practitioners are as follows:

(i) How to establish technical provisions that are sufficient to cover the liabilities with a quantified degree of confidence?

(ii) How to establish an appropriate solvency capital requirement ("SCR")?

(iii) How to establish internal models that are appropriate for each insurer?

(iv) How to deal with outwards reinsurance in the solvency assessments?

(v) What safety measures would be appropriate in the new solvency framework?

All this has to be done so that the resulting rules and principles make sense (where relevant) in every member state. It also has to be done very quickly.

2.4 CEIOPS is taking its actuarial advice from the Groupe Consultatif, rather than directly from the relevant actuarial bodies in each of the member states. It also occasionally refers to the IAA. Therefore, the majority of the UK profession's input is via the Groupe Consultatif. It is also in close contact with the UK Treasury which, along with the Finance teams from the other member states, is contributing, albeit possibly on more nationalistic lines.

2.5 For those interested in further detail, a couple of websites worth visiting:

CEIOPS:
http://www.ceiops.org/cgi-bin/ceiops.pl?sprache=1&verz=06a_Re$q$uests_for_Advice&cm=nm

Groupe Consultatif:
http://www.gcactuaries.org/solvency.html

2.6 As already mentioned, Solvency II is slated for implementation across the EU in 2008. But there remain doubts as to the practicality or desirability of this timetable. In the minds of many, Solvency II is inextricably linked with the introduction of the new International Accounting and Financial Reporting Standards, the development of which has experienced delay after delay. It is hard to see Solvency II being launched in all its glory until those standards have also been introduced. On the other hand, many also feel that Solvency II cannot wait indefinitely as the arcane thought processes of the IASB and the IFRS development team inexorably rumble on. Meanwhile, the EU ploughs on with Solvency II, with 2008 still the official year of implementation.

3. Irish issues

3.1 Personal Injuries Assessment Board ("PIAB")

This has been the subject of much to-ing and fro-ing in recent weeks.

The PIAB was established last year to set the level of compensation awards in personal injury cases. Two of the stated intentions behind its establishment were to speed up the settlement rate and to reduce the cost of establishing compensation awards. To those ends the PIAB originally refused to deal with solicitors. It subsequently indicated it would deal with solicitors. However, it later decided that it would only deal directly with claimants, but conceded that it would copy correspondence to solicitors if so requested by the claimants.

Enter into this confusing picture an Offaly butcher by the name of Declan O'Brien. He claimed that his constitutional right to be legally represented was breached by the PIAB's refusal to deal directly with his solicitor. And in a key ruling in the High Court in January 2005, Justice McMenamin agreed with Mr O'Brien, telling the PIAB that if a claimant wished the PIAB to deal directly with his or her solicitor then that is what the PIAB must do.

This is the latest development in an increasingly bitter battle between the PIAB and the legal profession in Ireland. The PIAB does not appear willing to accept the judgement and has already lodged an appeal with the Supreme Court. If that fails then apparently it plans to lobby the Department of Enterprise, Trade and Employment to rewrite the legislation in order to keep the PIAB a "lawyer-free zone".

3.2 IFSRA inquires into broker's commissions

The IFSRA have started a detailed trawl of reward structures in the insurance broker sector. Its initial view, published last October, is that brokers may be flouting their legal duty to act in their client's best interests by accepting override commissions from insurance companies specifically for channelling agreed volumes of business their way. Existing legislation bans life brokers from negotiating override deals unless all clients are told about them. But currently there is no similar embargo in respect of non-life business.

The review will be completed early this year, whereupon legislation is expected to outlaw non-explicit override deals throughout the Irish insurance market.

3.3 New Law to shake up personal injuries cases

Anyone thinking about taking a personal injuries action would be well advised to read the Civil Liability and Courts Act 2004, which became effective in October 2004. The principal features of the new act are as follows:

1. The period within which a claim for damages in a personal injuries case can be made has been reduced from three to two years from the cause of action or the date of knowledge of the cause of action whichever occurs later.
2. A plaintiff must serve on the alleged wrongdoer a letter of claim setting out the nature of the wrong alleged to have been committed. This letter must be sent within two months of the cause of action or the date of knowledge of the cause of action.
3. All claims for personal injuries will be initialled from next March by a document known as a personal injuries summons.
4. A plaintiff must at the request of the defendant provide details of other personal actions including those which were withdrawn or settled.
5. In addition a plaintiff must provide a defendant with certain documents relating to his earnings, taxes paid or social welfare receipts.
6. Any person, who swears an affidavit which is false or misleading, shall be guilty of a criminal offence.

3.4 Insurance firm wipes Wales off the map

In a move of which the Black Prince would have been proud, an insurance company has declared that Wales no longer exists. In a letter to a customer, the company declined to renew his existing policy as the insurance was only available to residents of the UK and Ireland. As this particular customer lived in Wales, which the insurer deemed 'an unknown country', he was clearly ineligible for further cover.

This should add some spice to the forthcoming clash between Ireland and Wales in the "5 Nations and an Unknown Country" rugby tournament.

4. Other international issues

4.1 Bermuda

Following a review by the IMF, the Bermuda insurance regulatory authority is making some changes and clarifications to its regulatory procedures. These will result in the regulator being more proactive in its review and monitoring of Bermudan insurers, a key part of which will be that insurers will need to appoint an approved Loss Reserve Specialist ("LRS") who will be required to produce an annual opinion statement. In general, to ensure approval, the LRS will be an actuary with appropriate experience and of good repute.

4.2 The Netherlands

Recently, the Dutch regulator issued a paper including a proposal for a Financial Assessment Framework. This deals with a view the regulator has on capital requirements that economic capital should be set on a market value basis. The paper also refers to reserves set at a minimum confidence level of 75%.

4.3 Europe and compulsory PI

European Union plans to introduce compulsory professional indemnity ("PI") insurance for a wide range of service providers has met with a frosty reception from an unexpected quarter, the providers of the PI cover, i.e. the insurers.

The EU's proposal sets out that "*Member states shall ensure that providers whose services present a particular risk to the health or safety of the recipient, or a particular financial risk, are covered by professional indemnity insurance appropriate to the nature and extent of the risk.*"

But the Comité Européen des Assurances (CEA), the European insurers' trade association, said the proposals presented "serious technical feasibility problems". The main problem appears to be capacity, with many member states having only a very limited number of local PI providers. However, it is thought unlikely that the major PI providers, such as various members of Lloyd's and the London Market, would be keen to meet the increased demand, at least not initially, due to the myriad of legal systems and local requirements currently operating across Europe.

No date has been set for a decision to be made on the proposed directive.

5. Product news

5.1 Pay-as-you-drive motoring

Norwich Union has announced plans to introduce a pay-as-you-drive motor insurance product. This product will be aimed at 18-21 year olds who will be charged for the amount of driving that they do, with higher rates being charged for driving between 11pm and 6am, the hours during which accident rates are highest for this particular age group. Customers taking out this type of contract will also have to buy the necessary in-car technology (cost roughly £200) but Norwich Union believes that the consequential saving in insurance premiums – for those who do not indulge in extensive late-night driving – will more than offset this cost.

5.2 A shallow cycle?

Studies of the terms being offered as part of the European January renewals has led A.M. Best to comment that underwriting discipline is being maintained, despite wide capacity availability. Overall, they have seen premium rates decreasing moderately, with some increases in U.S. property lines exposed to the hurricanes in 2004.

These movements seem to imply that the underwriting cycle, although still moving downward, is shallower than previous cycles. This will be confirmed, or refuted, by renewals during the rest of the year.

6. Asbestos angle

6.1 FAIR Act (part CXXVII)

The latest attempts in the US to set up, through legislation, a $140bn trust fund to pay asbestos victims and limit the exposure of firms to lawsuits have got off to an uncertain start. At a hearing in January 2005 into the proposed Fairness in Asbestos Injury Resolution ("FAIR") Act, no clear consensus was reached over the issue.

Insurers remain keen to establish that the establishment of the fund will draw a line under their liabilities, i.e. that asbestos claimants accessing the fund would be removed entirely from the tort system, so that insurers would face no further liability on that front. They are also keen to for it to be made clear that, should the fund subsequently be exhausted, the industry will not be asked to contribute further. Individually, insurers and reinsurers are also concerned about how much they will have to contribute relative to their competitors.

For those affected insurers from outside the US (including Equitas) it is not clear how the proposed legislation will affect them – will it reduce their costs or will they find all claims outside the trust fund limit coming their way?

With so many competing interests, the bill's progress is likely to be far from smooth. But the Republicans (including the President himself) have spoken of the need to resolve this issue once and for all. With the large Republican majority, it is possible that it will actually get through the current Senate.

6.2 Indirect exposure to asbestos

Whilst there has been much concern over the last few years that the UK judiciary is starting to rewrite Liability policies as Compensation policies, the Court of Appeal recently went against this trend when reversing an earlier damages award.

Former boilermaker James Maguire worked during the early 1960s for shipbuilders Harland and Wolff. Whilst there his wife Teresa dutifully and regularly washed his work clothes, but in later life contracted lung disease, allegedly from exposure to the asbestos dust absorbed in her husband's clothes.

Harland and Wolff were found liable at a High Court hearing in Manchester last year for the illness contracted by Mrs Maguire. She died shortly after she was awarded £82,000 damages. However, the Court of Appeal reversed the earlier decision and cancelled the award. As part of the judgement Lord Justice Longmore said: "It was not reasonably foreseeable between 1960 and 1965 that a wife washing the clothes of a husband who was exposed to asbestos to a negligent degree would herself be likely to suffer risk of personal injury."

This could affect many other cases of indirect exposure to the deadly dust.

6.3 Pleural plaques

Pleural plaques are scars within the lungs. They are a common result of exposure to asbestos dust. However, they do not necessarily cause debilitating symptoms and very often are not precursors of other, more serious, asbestos-associated conditions or diseases, such as mesothelioma.

Despite this, court cases have been brought against employers by people with pleural plaques and some have been won, with provisional damage awards of between £5,000 and £7,000, rising to £12,500 to £20,000 for final damages.

In the face of this, Norwich Union and Zurich FS, alongside British Shipbuilders, brought a counter case, claiming that pleural plaques should not be categorised as an illness or disease. The implication of this would have been that pleural plaques claims would henceforth have been dismissed.

The case concluded in mid-February with the Court appearing to steer a middle path. The judgement accepted that pleural plaques is not an illness or disease but then ruled that the anxiety caused by having pleural plaques diagnosed (diagnosis would make the patient aware that he/she had been exposed to asbestos and therefore stood a chance of contracting an asbestos-related disease at some point) was itself worthy of compensation. Therefore, the judge upheld the claims made by those with pleural plaques but reduced the compensation payments to between £3,500 and £4,000 for provisional payments for people with pleural plaques, rising to around £7,000 if the claimant went on to develop a full-blown physical illness from their asbestos exposure.

Whilst on the face of it this seems a pragmatic decision, there is a concern that this will lead to a rash of claims, fuelled by claims management companies travelling the country with 'scan-vans', offering to identify people who have pleural plaques. Ironically, it is the identification that triggers the anxiety.

At the time of writing this newsletter, the insurers and British Shipbuilders were apparently considering whether or not to appeal against the ruling.

6.4 Very dangerous hairdryers

In the last edition of the *Current Issues Newsletter*, we mentioned the potential dangers of low-level magnetic fields, such as those emitted by hairdryers. At that point we were unaware of a tragic case involving not magnetic fields but most certainly hairdryers.

In this particular case a Mrs Watson died from mesothelioma, contracted, it is believed, from exposure to asbestos dust, contained (or rather not contained) within the lining of hooded dryers at the hair salon where Mrs Watson worked for many years.

Anxious to quell fears amongst his members, the general secretary of the National Hairdressers Federation stated that this should be very much an isolated case as asbestos has not been used in European dryers since the Second World War, and the import of models from the Far East that might have contained asbestos was outlawed in the early 1960s.

6.5 "Well, of course, I blame the parents"

General Motors has filed a lawsuit in Michigan against Royal & SunAlliance, seeking payment of multi-million dollar asbestos-related claims it alleges the UK insurer has withheld, as well as damages. GM argues that it should have been able to recover these claims under liability policies written by RSA's US subsidiaries between 1954 and 1971.

The unusual element of this case is that it names the parent company, RSA, in the suit, as well as its US subsidiaries, which are mostly no longer writing new business. GM alleges that the parent company controlled the US subsidiaries and that therefore it is liable for the claims.

If the US carmaker succeeds in proving the parent company is liable it could open the way for other insurance litigants.

7. Compensation corner

7.1 Australia

In 2002, state laws were introduced in New South Wales aimed at reducing compensation awards by putting the emphasis back on individuals taking personal responsibility. The effect of these state laws was brought into question recently following the award of Aus$3.75m to a Bondi Beach swimmer. The swimmer was awarded damages after suffering severe spinal injuries from diving into a wave and hitting a sandbar. The damages were awarded after he successfully sued the local council for negligence. The original judgement was overturned on appeal but upheld in February 2005 by the High Court. The swimmer argued that his personal responsibility had already been taken into account by the jury reducing by 25% what would otherwise have been an Aus$5m award. It has been reported that, since the introduction of the 2002 reforms to the law, there has been a 21% fall in the number of public liability court cases.

8. Other claims/legal issues

8.1 Tsunami

RMS has released its latest analyses of the devastation caused by the 26th December tsunami in the Indian Ocean. These place the total insured cost at just under $4 billion. The spread of that cost emphasises the low penetration of insurance in that part of the world. Roughly half of the cost is accounted for by roughly 450 Indonesian properties, one of which, a cement works, accounts for $100 million by itself. And over 20% of the cost is attributable to life assurance, mostly connected with the foreign tourists who were caught up in the disaster.

Lloyd's has estimated the exposure of its members to total £100m.

The estimated total death toll is now pushing 300,000.

Meanwhile, several hundred Iranians died, with thousands made homeless, as a result of an earthquake towards the end of February 2005. Again, the insured cost is expected to be negligible.

8.2 Courts Act

The Courts Act was expected to be operative by November 2004 but, owing to difficulties experienced by the Rules Committee in converting the Act into the Civil Procedure Rules, this date was not achieved. It is now more likely to be at least March 2005 before the Courts Act will be implemented.

It has been reported that the impaired life annuity market continues to be limited with underwriting particularly uncompetitive. A lack of competition may lead to high impaired annuity prices and force insurers to self-fund. One of the key players in this market continues to offer only annuities capped at £1m, again limiting the availability of suitable annuity products.

8.3 Independent

The liquidators of Independent Insurance Company Ltd have launched a lawsuit against Watson Wyatt in what is likely to be a multi-million pound claim. At the time of writing the details of the claim were yet to be made public but it is thought to allege negligence in the work done by the firm in reviewing the level of Independent's reserves.

Independent crashed in 2001 when a huge shortfall in its reserves became apparent.

Last year the liquidators also filed a claim, for £8m, against former Independent chairman Garth Ramsay. Meanwhile, the Serious Fraud Office continues to sniff around the carcass of Independent but has yet to lodge any charges.

Watson Wyatt has confirmed that it is also facing further negligence claims over its work for Cotesworth, prior to the collapse of that insurer.

8.4 Lloyd's vs Swiss Re

Nearly two years ago, Lloyd's launched arbitration proceedings against Swiss Re and various following reinsurers in respect of a stop-loss policy which Lloyd's had bought to protect the Central Fund.

The disputed policy was a five-year contract under which the insurers were supposed to cover any claims over £100m made against the Central Fund, with an annual limit of £350m and an aggregate maximum £500m over the life of the cover.

Lloyd's was attempting to recover almost the whole amount of the coverage for claims made against the Central Fund in 2002 and 2003 – roughly £480m. The premium paid was about £85m.

Now Round One has concluded – with, rather confusingly, both sides claiming victory. Although the arbitration proceedings are supposed to be confidential, it appears that the tribunal's view was that Lloyd's interpretation of the policy wording is correct but that, based on the way the risk was presented to Swiss Re, Swiss Re was *prima facie* entitled to avoid the policy.

In subsequent Rounds, the arbitration panel will also consider whether or not Swiss Re affirmed the policy and therefore would still be bound by its terms irrespective of how it was presented in the first place.

Round Two – where the other insurers on the slip get their chance to speak – kicked off on February 21.

A key concern is the effect of any rulings in this case upon Lloyd's credit ratings. However, various rating agencies have said that their assessments have already taken into account the risk of Lloyd's action failing and so the risk of Lloyd's losing its "A" rating due to this case would appear slight.

It is thought that, if Lloyd's failed completely to recover any of the £480m, the net impact, after deduction of the premium and tax, would be £276m. Net assets of the Central Fund, after tax relief, would fall from £801m to £525m as at 31 October 2004.

8.5 Sorry seems to be the costliest word

Brokers Marsh & McLennan have reached a settlement of civil fraud charges with the New York State attorney general, Eliot Spitzer, and with the state insurance department. The deal requires the firm to apologise to its clients and to pay $850m in restitution for clients allegedly cheated by Marsh brokers. Spitzer had accused the company of rigging bids for insurance contracts and steering business to insurers who paid Marsh special "contingent commissions". The settlement amount roughly matches the amount of these commissions pocketed by the firm in 2003.

The deal also includes a commitment by the brokers to a new business model that eschews the contingent commissions and other payment arrangements that create conflicts of interest.

But this is not the end of this sorry tale, indeed it might only be the end of the beginning. Mr Spitzer is continuing to probe insurance practices, with the help of Marsh and six individuals (mostly from insurance companies), who have pleaded guilty to criminal charges for their roles in the alleged scheme. More guilty criminal pleas by cooperating individuals and civil settlements with other insurance brokers and companies are expected.

Marsh also faces an unfair-business-practices civil suit filed by Connecticut's attorney general, and other regulators also are examining its business practices. Class-action litigation filed by shareholders looms as well.

8.6 Finite investigation at AIG

Mr Spitzer has been a busy man. He has also found time to issue subpoenas to the American International Group (AIG) seeking information on its non-traditional insurance products and reinsurance transactions, particularly its accounting for them.

Many commentators thought the AIG's finite insurance issues were now behind it, after it paid US$126m to investigators last year relating to its provision of such contracts to other organisations as a means of manipulating their balance sheets. Hence, these latest subpoenas were something of a surprise. Therefore, there is now speculation that the latest investigation is focusing on what use, if any, AIG made of these products to manipulate its own balance sheet.

8.7 WTC and business interruption

In February a Federal Appeals Court ruled that the janitorial service for the buildings destroyed in the WTC attacks could claim as much as $127m from Zurich on its business interruption insurance. This ruling is expected to promote further business interruption claims relating to the events of 9.11.

8.8 WorldCom settlement unravels

A settlement involving the personal assets of 10 former WorldCom directors has unravelled after a judge ruled that the deal was unfair to banks named in the shareholder lawsuit.

The settlement had called the directors to pay $18m of their own money, slightly more than 20% of their collective net worth. This was a unique agreement that held the company's board members personally responsible for corporate chicanery whilst they were in charge. But, under this agreement, any damages from the shareholder lawsuit for which the directors were liable would have been limited, which would have thus exposed the other defendants in the case, namely 16 banks, to potentially larger payments.

The $18m payments were to be supplemented by a further $36m from insurance policies covering WorldCom.

8.9 US tort reform

A major development in US tort reform occurred in mid February 2005 when the Class Action Fairness Act passed into law. This Act had been stalled several times in the past as legislators split down party lines. However, the Republicans' strong recent election showing gave it extra momentum this time around.

The legislation is aimed at pushing more class action litigation into federal courts and making it harder for plaintiff lawyers to 'venue shop', where lawyers file cases in 'plaintiff-friendly' states, such as Illinois, with few links to the claim.

The bill's success has been met with dismay from class action lawyers and glee from US big business.

8.10 Blowing in the wind

Tropical Storm Risk, a London-based consortium sponsored by Benfield Greig, R&SA and Crawford & Co, have estimated that 2005 is likely to be another bad hurricane season for the Caribbean and for US coastal areas. The forecast, based on primarily on studies of the trade-winds and sea temperatures, largely repeats one made by the consortium this time last year, a forecast that proved largely accurate.

8.11 Tobacco Road

US legal action against tobacco giants continues to meander along an ever-more confused path. In September 2004 the US Government's huge lawsuit, claiming that tobacco firms conspired to hide the risks of smoking and demanding $280 billion (yes, billion) of their thus ill-gotten profits, came to trial. However, in February 2005, a federal appeals court ruled that claims on the firms' profits would not be allowed.

If this ruling sticks then the Government's scope for sanctions – whatever the ruling on the conspiracy claim – will be severely limited, possible no more than additional restrictions on marketing. However, the Government, having already spent heavily on this crusade, seems in no mood to back down and is likely to contest the ruling in the full appeals court.

Elsewhere, non-governmental actions against the tobacco firms continue. In Florida the Supreme Court has been invited to reinstate the $145 billion verdict (yes, billion again – don't these guys know where the decimal point button is on their word-processors? – that's 35 times the insured costs of the tsunami!) originally won, and then overturned, in the Engle case. And the Illinois Supreme Court is considering a $10.1 billion award against Philip Morris, won by smokers claiming that the firm had duped them into buying its supposedly healthier (but definitely more expensive) "light" brands of cigarettes. There are further "light cigarette" claims in the offing.

8.12 One in the eye for insurers?

New medical research has, for the first time, suggested a link between long-term computer use and eye disease. If substantiated, this could lead to glaucoma becoming the next long-tail disease to hit employers' liability insurers.

The research, which focused on workers employed in the Japanese electronic and steel industries, is preliminary and further work is required to confirm the link and ascertain the extent of the problem.

The link suggests that those with myopia (short-sightedness) are most affected, indeed those with normal sight might not be affected at all. There also appears to be a link with smoking and high blood pressure.

Glaucoma is caused by a build-up of pressure on the optic nerve and it is the leading cause of preventable blindness. If detected early enough it can be treated with drops, laser or conventional surgery.

There are already health & safety guidelines in force in the UK regarding computer usage. How successful they will be (or will have been) in preventing the development of glaucoma is open to question. So too is the likely attitude of the courts to glaucoma cases. For example (and one needs to bear in mind that cases might well relate to periods of employment dating back many years), what documentation should an employer maintain to demonstrate its enforcement of health & safety best practice? To what extent should claimants' use of their home computers be considered to be contributory negligence? And does fault lie also with the manufacturers of these dangerous pieces of equipment?

8.13 Australian storms

Residents of New South Wales, Victoria and Tasmania would have been well advised at the start of February to tie their kangaroos down, along with anything else that moved, as the states were lashed by heavy wind, rain and hail storms. Latest estimates of insured losses are at about Aus$250m.

Just over a year earlier, Melbourne and the surrounding parts of Victoria state were hit by thunderstorms and related hailstorms that caused as much as Aus$100 million in insured property losses overall. At the time, those storms represented the biggest natural disaster to hit Melbourne in more than 30 years.

Australia's biggest natural disaster, as measured by insured losses, was a hailstorm that hit Sydney in April 1999, generating claims of about Aus$1.7 billion.

8.14 Towering inferno

Fire gutted a 32-floor skyscraper in Madrid's finance district on 12 February. It is estimated that the cost of the damage will total US$108m, making this the most expensive fire in Spanish history. The Windsor Tower had been Madrid's fourth tallest building and had housed offices of Deloitte and Touche.

8.15 Sudan 1, Premier Foods 100m

In mid-February 2005 the Food Standards Agency ordered food retailers to recall more than 470 products and to remove the unsold produce from their shelves. All of these products contain Worcester Sauce, supplied by Crosse & Blackwell and made by Premier Foods. It had been discovered that the sauce contained chilli powder that had been contaminated by Sudan1, a banned dye that had been linked to cancer.

Various experts have commented that the cost of a large-scale food recall could cost up to £50m, but the scale of the Sudan 1 scare is such that the recall could cost up to £100m. Who has to pay for what is not entirely clear but many retailers are keen to pass their costs on to Premier Foods, as supplier of the contaminated sauce. Premier Foods, meanwhile, might well try to recoup their costs from their own suppliers and/or from their insurers.

Premier Foods is not the only manufacturer affected by the Sudan 1. Many others across Europe have also discovered that they have used supplies of the contaminated chilli powder. However, the apparent popularity of Worcester Sauce as an ingredient in processed foods has meant that Premier Foods has been more heavily implicated in the incident.

Premier Foods has not had a good six months. One of its factories in Suffolk suffered a major fire in October, halting production of Branston products and Lloyd Grossman sauces, and leaving its end-of-year sales figures in something of a pickle.

8.16 Motorists lose 'free fortnight'

Motor insurers are withdrawing the traditional "grace period" under which drivers were covered for up to 14 days while their policy was being renewed. Now motorists must renew their insurance before it expires or they will be driving without proper protection.

The "grace period" (whereby temporary cover notes were issued by agents or brokers) has been common market practice for many years, and basically reflected the time taken for post to travel to the insurer's head office, for the renewal to be processed, for the cheque to be cleared, and for all the required documentation to find its way back to the policyholder. Now, with all these processes greatly speeded up (and in general more reliable), the need for the "grace period" has largely disappeared.

Many motorists will feel disappointed, having seen it as a fortnight of free cover, whereas in reality (assuming the policy was properly renewed) it was merely cover provided in advance of payment.

8.17 MPs probe card protection insurance

A Commons committee has called for an investigation into payment protection insurance due to "serious concerns" about the way it is marketed.

The Treasury select committee, which had otherwise been looking into the use of credit cards, said that the insurance, which pays off loans or credit card debts in the event of job loss, was being sold to customers who could be ineligible for payments, such as the unemployed and long-term ill. It requested the FSA to examine the marketing used.

8.18 Britney hits Lloyd's (one more time) for $9.8m

Seven Lloyd's insurers who allegedly refused to pay out when Britney Spears cancelled an American concert tour are being sued by the singer for $9.8m. In a lawsuit filed at the New York State Supreme Court, the American superstar is demanding reimbursement of the costs she incurred when forced to cancel her Onyx Hotel tour last year following a knee injury. It appears that the insurers disallowed her original claim on grounds of non-disclosure. Although it was stated on insurance applications that she had no pre-existing injuries, it subsequently became apparent that Ms Spears had undergone minor orthopaedic surgery on her left knee some five years earlier. Her lawyers have described her failure to recall the injury when applying for cover as an "innocent omission" that was "not material" to the insurers' decision to provide coverage.

8.19 Fraud busting motor database rolled out.

The ABI has replaced the Motor Insurance Anti Fraud and Theft Register (MIAFTR) with a new national database which will contain details of all vehicles written-off following an accident or reported stolen.

According to the ABI, it is estimated that the register will save £20,000 a day, or £7.3m a year, in detecting and deterring fraudulent motor claims.

The database is designed to make the most of available data on total losses and thefts, including information from the Police National Computer.

8.20 Gregg v Scott

The House of Lords ruling in this reinforced the principle of "causation" (the link between breach of duty and harm to the patient), despite the claimant's arguments for compensation because he suffered the "loss of a chance of recovery" as a result of the doctor's delay in diagnosing his cancer.

The Medical Defence Union feared that, had the case gone against it, it could lead to a rise in compensation claims for clinical negligence, with serious implications for its members and for the NHS.

9. Other news

9.1 Commission disclosure

This issue has been simmering away for many years but, since Mr Spitzer started rummaging around the accounts of Marsh, it is returning nicely to the boil. And, in a speech to the Insurance Institute of London at the start of February, Nick Prettejohn lobbed in his tup'n'worth.

His speech was, in general, about making the London Market more transparent. This would help consumers understand what was covered and what was not, would reduce the potential for subsequent disputes and would reduce the risk of regulatory sanctions being imposed. However, he goes on to say "Let us agree to shine a harsh spotlight on the economies of our business by agreeing to full disclosure of commissions through the distribution chain. And just as importantly, in doing so, let us explicitly acknowledge that what is being disclosed is where and to whom the money that the policyholder has paid is going."

This, he goes on to say, will ensure that the various parties "all have to justify their existence and earn a rate of return commensurate with the value that they add."

9.2 ABI Director General

Stephen Haddrill, currently a senior civil servant within the DTI, has been named as the successor to Mary Francis as Director General of the ABI. Mr Haddrill will take up his new position on 3 May 2005, when Ms Francis steps down.

9.3 Marie-Louise Rossi

Marie-Louise Rossi is leaving the IUA (International Underwriting Association of London) after more than six years as its CEO. In the IUA press statement, she said that she is planning to concentrate in the short term on her political activities, but hopes to return to the insurance market later in the year.

Ms Rossi was appointed CEO of LIRMA (the London International Insurance and Reinsurance Market Association) in 1993. When LIRMA merged with the ILU (Institute of London Underwriters) to form the IUA in 1999, Ms Rossi became the CEO of the new organisation

Ms Rossi's political activities currently are focused on her being the LibDem candidate for the Cities of London and Westminster constituency (currently held for the Conservatives by Mark Field). Before joining the Liberal Democrats in 2001, she was a Conservative councillor for eight years (1986-1994) and Chair of Education (City of Westminster), and former Vice Chair of the Conservative Group for Europe.

10. "Old news" previously published in *The Actuary*

The following items were reported in the news pages of The Actuary *since the publication of the last Current Issues Newsletter. They are included here for completeness.*

10.1 Asbestos and Pollution Developments

The US Senate judiciary committee examining the Fairness in Asbestos Injury Resolution Act (FAIR) has received evidence from the American Insurance Association on behalf of the US insurance industry. It is anticipated that, under the new administration, there will be a considerable degree of urgency to come to a resolution of the outstanding issues regarding the proposed trust fund under this legislation, especially following comments made by President Bush in his re-election campaign. In particular, consideration is currently being given to the matter of whether silica-related claims should be included.

St. Paul Travelers Cos. has recently announced a substantial fall in profits, emanating from a fourth quarter review of asbestos and environmental reserves which resulted in increases of $922m for asbestos and $84m for environmental claims.

Also, ACE has been hit by an estimated $339m reserve deficiency on its run-off subsidiary Brandywine; it is understood that this is the net impact of gross reserve deterioration amounting to $788m, over 90% of which arises from asbestos-related claims. Evan Greenberg, the ACE president has said that the parent company will provide the necessary support to Brandywine in spite of their legal right to let the company fail.

Equitas has announced that it has reached a full and final settlement with a further four major policyholders with asbestos liabilities, including Dana Corporation. In addition, a decision by three Mississippi judges has reduced the risk of claimants from outside the state taking advantage of the perceived favourable environment for asbestos claims in Mississippi. This is likely to reduce the scope for "forum shopping" by asbestos claimants.

The dispute in Australia between the building contractors, James Hardie, and numerous asbestos claimants has been settled by the establishment of a new fund to finance the claims, following the bankruptcy of the original Medical Research and Compensation Foundation. It is understood that an initial amount of A$1.5bn is involved in the new fund.

The US Supreme Court ruled late last year that the federal Superfund legislation does not permit a company to sue other potentially responsible parties (PRP's) until the Environmental Protection Agency has filed an action against the company. This overturns the established practice and may well act to slow down cleanup work at some polluted sites.

10.2 Contingent Commissions/ Placement Service Agreements

Following the Spitzer investigations reported in recent editions of *The Actuary*, the National Association of Insurance Commissioners (NAIC) has introduced tighter rules which will require all US insurance brokers to disclose all compensation received from insurers and customers in relation to the placing of the business.

In parallel with this the European Union have launched an inquiry into competition and pricing practices in financial services in Europe.

The large brokers involved in the early investigations continue their discussions with Mr Spitzer's office, although no settlement appears to have been reached so far. As a consequence, a New York State Department hearing into the broking practices at Marsh McLennan Companies (MMC) has been deferred for a second time, and is now scheduled to commence on February 24. It is also reported that Robert Stearns, senior vice-president at MMC, has admitted certain charges of scheming to defraud clients.

Meanwhile the General Re subsidiary of Berkshire Hathaway has now also been included within the scope of Mr Spitzer's investigations into loss mitigation products which are designed to smooth the earnings of the cedant. This appears to be in parallel with similar investigations being carried out by the Securities and Exchange Commission (SEC).

10.3 Loss Reserve Adequacy

Two major rating agencies have reported that they believe there has been an improvement in the adequacy of loss reserves in the US property/casualty industry in the 2003 calendar year. The relatively limited analysis (excluding various categories of business, asbestos among them) by Conning & Co suggested that the deficiency had reduced by two thirds from the position at year-end 2002. The wider-ranging analysis by Fitch estimated a much more modest improvement.

10.4 European Union Gender Directive

This has now been adopted in a much-altered form which broadly pleases the UK insurance industry. The revised version allows for a degree of exemption for insurance products provided that the differences are justified by publicly-available statistical data which is regularly updated. In addition there is a two-year transition period. Such exemptions are, however, likely to be reviewed from time to time. The UK implementation of the directive now moves to the national government, and their handling of the various options will be monitored closely by the insurance industry.

10.5 Aviation business

2004 was an extremely good year for aviation losses with the lowest number of passenger fatalities (347) since 1946 and estimated claims costs at $1bn being no more than half the normal average. Although this is the third consecutive "good year", it may be wishful thinking that this is the beginning of a more favourable environment for aviation insurers. In addition, the major aviation brokers and insurers are reporting rating reductions of the order of 10-15% on the renewals in the fourth quarter of 2004 (the main renewal season for airlines) and as at 1 January 2005.

10.6 Enron/WorldCom

It is reported that ten former directors of WorldCom have agreed to pay $18m to settle a class action brought by investors in the company. This is in addition to $36m being claimed against the Directors' and Officers' (D&O) insurances. In a similar settlement with former directors of Enron, ten of them have agreed to pay $13m, in addition to the $155m total loss being paid from that company's D&O policies. In each case there remain a small number of other major directors with whom negotiations are continuing, or against whom criminal charges are being brought.

10.7 Large Losses

Recent notable general insurance incidents/losses include:

Indian Ocean Tsunami (26 December 2004) - This tragic event has received a great deal of press coverage over the period since its occurrence, both from the international media and the specialist insurance press, including a good summary in the Current Issues Newsletter (CIN). It does not therefore seem appropriate or necessary to repeat much of what has already been written. This is in no way to belittle the size and devastating consequences of the event. Suffice it to say that the latest estimates of the death toll are now even higher than those reported in CIN at around 300,000, probably the largest loss of life from a single disaster in the last 100 years. Other issues which have received coverage over the last few weeks are

- the lack of insurance coverage to protect the vast majority of those affected, leaving them dependent on charitable donations. Even those properties with insurance coverage may well have earthquake (and hence tsunami) exclusions. Thai insurers have announced an increase of 0.1% in property insurance rates to include earthquake cover, which was previously excluded.
- Overall estimates of the insured loss have been few, but tend to be no greater than $10bn, and this is not expected to cause widespread failure of insurers.
- The likelihood that premium rates for the limited insurance purchased in the south-east Asian area will increase following the tsunami.
- the lack of an early warning system in those countries affected, mainly due to the cost and the infrequent nature of such events (the last major one being over 100 years previously). By contrast, a warning system does exist in many countries exposed to a tsunami in the Pacific Ocean, and this resulted in a warning in Japan in mid-January, following an earthquake measuring 6.8 on the Richter Scale - the resulting wave measured no more than 30cm in height. Working through the United Nations, world leaders have, however, already commenced working on plans to establish an Indian Ocean warning system. The possibility that premiums for tsunami coverage in other parts of the world, where such coverage exists, will increase in light of the new understanding of how significant such losses can be.

Fire at Malaysian car manufacturing plant (18 December 2004) - This was rapidly brought under control, but damage and business interruption losses are likely to amount to around $50m.

Windstorm Erwin (8-13 January) - This led to flooding in Northern England (especially around Carlisle) which resulted in the evacuation of up to 10,000 people from their homes as a result of 6 inches of rainfall in 3 hours. The flooding was associated with severe storms, which caused 4 fatalities in UK. The storms then moved on to Denmark, Sweden, Finland and Russia where further flooding occurred and there were at least another dozen fatalities.

The above is a summary of current issues that might be of interest to UK General Insurance actuaries and that have come to the attention of the Current Issues Committee. As such it is not a complete list. Anyone who feels that relevant issues have been omitted or that the above summaries are in anyway misleading is invited to contact the Chairman of the Committee, Derek Newton.

The information provided has been derived from a variety of sources. The Committee has not been able to check independently the veracity of all of the facts stated. Any opinions expressed are those of the Committee members, and do not necessarily reflect the position of the Institute or Faculty of Actuaries.