1996 FOLIO 2032

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice,
Strand, London WC2

3 November 2000

Before:

THE HON. MR JUSTICE CRESSWELL

BETWEEN:

THE SOCIETY OF LLOYD'S

Claimant and Defendant to Counterclaim

and

SIR WILLIAM OTHO JAFFRAY BT

Claimant by Counterclaim

Mr. Charles ALDOUS Q.C., Mr. Richard JACOBS Q.C., Mr. David FOXTON and Mr. Stephen HOUSEMAN (instructed by Freshfields Bruckhaus Deringer) for the Society of Lloyd's.

Mr. Simon GOLDBLATT Q.C. and Mr. Vincent NELSON (instructed by More Fisher Brown) for certain members of the United Names Organisation.

Mr. Patrick TALBOT Q.C., Mr. David DRAKE, Mr. David CRAIG and Mr. Giles RICHARDSON (instructed by Grower Freeman and Goldberg) for other Names.

Sir William Otho JAFFRAY Bt. and other Names appeared in person.

JUDGMENT

I direct that pursuant to RSC Order 68 r. 1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

The Hon. Mr. Justice Cresswell

Dated: 3 November 2000

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1.HEADNOTE

This action forms part of the Lloyd's Litigation. The Lloyd's Litigation is the largest and most complex piece of civil litigation this jurisdiction has ever seen. The Commercial Court's approach to the case management of the Lloyd's Litigation is referred to in chapter 5. The Court decided a number of preliminary issues which (subject to appeal) were designed to assist in resolving issues of principle common to one or more of six categories of cases (LMX Cases, Long-Tail Cases, Personal Stop Loss Cases, Portfolio Selection Cases, Central Fund Litigation and Other Cases). The Court in addition selected from cases in a particular category lead or pilot cases for trial as to liability (and principles relating to quantum) in the hope that decisions in these cases would provide broad guidance in relation to other cases in the same category.

At the time of the R&R settlement offer of July 1996 there were about 90 syndicate based Action Groups with relevant litigating syndicate years of account.

In September 1996 a market settlement was arrived at. About 95% of Names accepted the market settlement. 1,752 Names did not accept. About 180 Names have since reached individual settlements with Lloyd's. Of the remaining Names, 216 Names are parties to this action.

Appendix 1 hereto contains a list of cases forming part of the Lloyd's Litigation (and related litigation) both before and after the market settlement in September 1996.

There are (or have been) proceedings against Lloyd's in the United States of America, Canada, Australia, Belgium, and before the European Commission.

This trial is concerned with the Threshold Fraud Point being the issue whether Lloyd's made misrepresentations which it knew to be untrue and/or as to which it was reckless whether they were true or false, and whether such misrepresentations were communicated to the Names and if so, when? The trial is confined to allegations of fraud during the Relevant Period 1978 to 1988. The Names' case is in tort for fraudulent misrepresentation. The Names say that certain alleged representations derived (i) from the Brochures and (ii) from the Lloyd's Aggregate Results/Global Reports and Accounts as at 31 12.81 to 31.12.87 made by Lloyd's to external Names when they were applying to join Lloyd's or considering whether to continue as underwriting members of Lloyd's, were false and fraudulent to the knowledge of Lloyd's. The Names say that Lloyd's knew or was reckless as to the fact that: (i) the Lloyd's market's exposure to asbestos-related claims required reserves and RITC to be set at figures far in excess of those which were set out in the Lloyd's Aggregate Results/Global Reports and Accounts as at 31.12.81 to 31.12.87; and (ii) to the extent that there was under-reserving, the burden would be borne by Names underwriting in future years.

Lloyd's deny that they made the alleged representations in the Brochures and the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 31.12.87. Further Lloyd's say that none of the elements of the tort of deceit are made out and in particular all allegations of fraud are emphatically denied.

The relevant legal principles as to the tort of deceit are set out in chapter 9. In order to sustain an action in deceit, there must be proof of fraud. Nothing short of fraud will suffice. Fraud is proved where it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. To prevent a false statement from being fraudulent, there must be an honest belief in its truth.

The Names' case must be judged against the relevant structure and background. It is necessary to have regard to and understand the way the Lloyd's market worked in the Relevant Period. Thus it is necessary to consider the administrative structure and governance of the Lloyd's market (chapter 10); the regulatory background for the auditing and accounting regime at Lloyd's (chapter 11); the rules and procedures governing the admission to underwriting membership of Lloyd's and related matters (chapter 12); RITC - the role of the managing agents/underwriter (chapter 13) and the role of the auditors (chapter 14).

I set out in chapter 15 a broad description of the evidence of the witnesses and my assessment of that evidence.

An overview of the nature and development of asbestos-related claims in the United States is set out in chapter 16. Between 1973 and the beginning of 1981 there were 8,000 to 10,000 asbestos-related claims. In the period between 1981 and the Wellington Agreement (June 1985) the filing pattern was remarkably steady at 500 new claims per month. The opening inventory of the ACF in mid-1985 was about 25,000 claims. In the 18 month period after the Wellington Agreement the rate of claims rose initially to 700 per month and then to around 1,000 per month. In 1987, the claims rose to 2,000 per month (a fourfold increase in the level of claims pre the Wellington Agreement), and then went up to 3,000 per month, before settling at 1,500 per month for a while. By 1990, this had risen again, so that in the early 1990s the rate was about 24,000 a year; an annual total which was broadly comparable to the entirety of claims between 1973 and 1983.

The current rate of claims is around 60,000 a year. The current total volume of claims (including those that have been settled) is approximately 450,000. There were a number of interlinked reasons why things looked so different at the end of the 1980s and in the early 1990s, from the way in which they had looked in the early 1980s.

Differing views were held as to the likely outcome of asbestos-related claims in the Lloyd's market (and elsewhere) in the late 1970s and early 1980s. One illustration of this is the fact that Outhwaite, Merrett, Meacock and other syndicates wrote a number of run-off contracts.

The Brochures and the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 31.12.87 did not contain the alleged representations. Further the other ingredients of the tort of deceit were not made out. In particular the Names have not proved fraud in the relevant sense.

The Names' case is confined to asbestos-related losses. The losses suffered by the market in and after the Relevant Period were caused by a number of factors in addition to asbestos-related claims including (i) pollution and other long-tail claims; (ii) the North European storms in 1987; Piper Alpha and Hurricane Gilbert in 1988; Hurricane Hugo, the San Francisco Earthquake, Exxon Valdez, and Phillips Petroleum in 1989 and the North European storms in 1990; and (iii) the LMX Spiral.

As the Names' case is confined to asbestos-related losses, it is necessary to single out the impact of these losses.

Significant protections should have been afforded to Names on long-tail syndicates by the role and duties of the managing agents/underwriter and of the auditors. Further it was for the members' agent (not Lloyd's centrally) to advise prospective Names/ Names as to the risks inherent in long-tail syndicates, along with all other material risks.

If there were factors which affected or might affect the adequacy of the reserves, the syndicate auditor was required, under Clause 3 of the Audit Instructions, to report to the Committee and obtain their instructions before issuing the Audit Certificate/Syndicate Solvency Report. The letter from Neville Russell dated 24 February 1982 as to asbestos-related claims, was written pursuant to Clause 3. I find that the Murray Lawrence letter was sent to all underwriting agents (including members' agents) and all active underwriters, as stated in the final paragraph of the letter. Further, I find that the Murray Lawrence letter and the Randall letter (both dated 18 March 1982) were an honest response to the issues raised by the Neville Russell letter.

The allegation that Lloyd's knew or was reckless as to the fact that the Lloyd's market's exposure to asbestos-related claims required reserves and RITC to be set at figures far in excess of those which were set out in the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 31.12.87, is rejected. The Committee/Council of Lloyd's were generally entitled to assume that auditors were performing their duties competently. The allegation that the 1979 year of account should have been left open by syndicates affected by asbestos-related claims is also rejected.

For the reasons set out in the judgment I find for Lloyd's, and against the Names, on the Threshold Fraud Point. The costs of these proceedings will be subject to rigorous taxation.

I make a number of further observations (see chapter 25). It is high time that the Lloyd's Litigation and related litigation here and overseas came to an end.

Despite all the reforms described in the judgment, the catalogue of failings and incompetence in the 1980s by underwriters, managing agents, members' agents, and others (established by judgments of the court, by disciplinary hearings and other means referred to in chapter 24) is staggering (and brought disgrace on one of the City's great markets). External Names (whether they accepted R&R or not) were the innocent victims of the failings and incompetence. Many Names have suffered enormously in financial and personal terms. A fair overall solution (as between Lloyd's and those who did not accept R&R and have not settled since R&R) is unlikely to be achieved without independent assistance. Such an overall solution is in the interests of Lloyd's and the Names. An independent review by an independent panel set up by Lloyd's should consider the individual cases of those Names who did not accept R&R (and who have not settled since R&R).

2.THE IMPACT IN PERSONAL TERMS

I wish at the outset of this judgment to refer to the impact in personal terms, on Names and others, of the events at Lloyd's in and about the 1980s.

On the one hand (i) membership of Lloyd's involved considerable risks; and (ii) asbestos and pollution claims, the exceptional number of catastrophes in the late 1980s and other factors would have caused widescale losses if managing and members' agents had acted

competently throughout.

On the other hand there was widespread incompetence on the part of some underwriters/managing agents (and some members' agents). I recognise that no words can adequately describe the devastation that has been caused to many individuals in financial and personal terms.

I asked the parties to attempt to agree a short statement as to the impact on Names and others but they were unable to do so. I accordingly set out their respective positions.

The Names

The Names say that the difficulties that Lloyd's faced during and after the Relevant Period caused (a) average losses per person of approximately £120,505 for working Names: (b) average losses per person of approximately £263,400 for external Names: (c) average losses per person of approximately £469,051 for Jaffray litigants. The resulting hardship varied on an individual basis.

Many UNO members suffered financial ruin.

The UNO membership has paid to Lloyd's, through drawdowns on bank guarantees, loss of funds deposited at Lloyd's and by direct payments approximately £66,000,000 (an average of £308,000 each). The same people, together, have judgments against them amounting to approximately (a further) £50 million in respect of Equitas premia. This does not include the Central Fund writs which Lloyd's have reinstated.

Currently, 14 UNO members qualify for Legal Aid. As the result of drawdowns of bank guarantees, or other bank borrowing to pay Lloyd's, 62 UNO members have been evicted from or forced to sell their homes and/or businesses and are living with relatives or in cheap rented accommodation.

Many non-UNO Names (accepting and non-accepting) have been made bankrupt by Lloyd's and by banks and institutions.

About 60 UNO members are currently in receipt of statutory demands/bankruptcy petitions from Lloyd's and fear they will be made bankrupt.

Fear of bankruptcy and homelessness continues to take its toll on UNO members, litigants in person and other Names. Names say that Lloyd's difficulties were the cause of, or probable explanation for, 15 suicides - also of marriage breakdowns, divorce and the break-up of families. Two non-UNO Names have attributed the suicides of their children to Lloyd's.

Many Names, of all categories, have suffered. Doctors have attributed a range of serious illnesses to Lloyd's problems.

Lloyd's Comments on the Names' Submissions as to the Hardship Caused as a Result of the Difficulties Faced by the Lloyd's Market

Lloyd's regrets the undoubted financial hardship and distress caused to many Names and their families from the massive losses incurred in the very late 1980s and 1990s. Similar statements of regret were made by Mr. Murray Lawrence and Sir David Rowland, both former Chairmen of Lloyd's, during the course of their evidence in this case. Indeed throughout the 1990s (starting with his appointment as chairman of the Task Force in 1991) the principal focus of Sir David's work at Lloyd's was to find a way of assisting Names to meet their liabilities at Lloyd's, permitting them to trade through where appropriate and achieve finality where they so wished.

The culmination was, of course, the R&R Settlement Offer worth £3.2 billion to Names. R&R provided very substantial assistance to many Names, being accepted by an overwhelming majority of membership. Lloyd's never sought to argue that the settlement could undo the hardship many had already suffered, but it was the best alternative that could be provided and was the result of an enormous amount of work over a period of years. Sir David summed up the position when introducing the detailed terms of the offer in the Settlement Information Document:

"I deeply regret the events that have made the reconstruction plan necessary. They must never be allowed to recur. I am reminded daily of the damage membership of Lloyd's has caused to thousands of people. We in the Lloyd's market have a clear responsibility to develop a solution that offers the best prospect of alleviating this damage.

I believe we have such a solution in the reconstruction plan. It is not perfect: we do not command unlimited resources and time is no longer on our side. But it offers better prospects than continued litigation. It offers assistance not otherwise available for those Names who have

borne the heaviest losses. And it offers Names the chance to carry on with their lives, relieved of the uncertainty caused by their membership of Lloyd's.

I have said many times that no compromise settlement can eradicate our recent history; the losses and their consequences were real. We have sought - and I believe achieved - the best result possible in the interests of the whole Society".

Lloyd's questions the reliability of the figures put forward by the Names as to the personal effect of the losses at Lloyd's. Lloyd's does not believe that these figures can or should be relied upon as representing an accurate statement of the position.

Based on their finality statements, Lloyd's has provided the court with the aggregate total gross and net liabilities as at the same time of R&R of the 216 Names who are parties to this action. On average, each of these Names faced a gross liability of £364,000; the average amount they would have had to pay under R&R was £64,000. Only one of the 216 Names had to pay in excess of £100,000. Others would have qualified for additional assistance had they accepted the offer, reducing their net liabilities even further. Post R&R means based settlement offers were made to 63 Jaffray Names. Lloyd's does not accept that there is any justification for any Jaffray Name who is unable to pay his/her Lloyd's debt not seeking a settlement with Lloyd's.

Only 7 of the 216 Names who are parties to this action have been put into bankruptcy on the petition of Lloyd's. Following the Garrow decision, any statutory demands against Jaffray Names were set aside and any outstanding bankruptcy petitions were dismissed.

The Names say that they have identified 15 individuals who were Lloyd's members and who, they say, committed suicide for reasons that were or may have been associated with losses they suffered through underwriting at Lloyd's. Of these individuals three were formerly working members of Lloyd's. In correspondence with More Fisher Brown, Lloyd's has questioned the reliability of the figures produced by the Names for Lloyd's related suicides. Lloyd's further questions the ability to ascribe reasons for the circumstances surrounding the suicide of an individual without examining the detailed facts in each case.

3.GLOSSARY OF TERMS AND ABBREVIATIONS/ACRONYMS

GLOSSARY OF TERMS

Active Underwriter	In relation to a syndicate, the person at the underwriting box with principal authority to accept risks on behalf of the members of a syndicate. The active underwriter is usually a director or employee of the managing agency for the syndicate.
Accumulation	Concentration of risk, for example where an insurer has written many policies on liabilities that could result in losses occurring at one and the same time.
Agent Orange	A chemical defoliant used by the US army in Vietnam which caused serious bodily injury to US personnel who happened to be exposed to it, because it contained a suspected carcinogenic substance known as dioxin.
Aggregation	(1)see "Accumulation" above. (2)a provision in an excess of loss reinsurance contract whereby the cost of successive claims may be added together for the purpose of establishing the sum recoverable.
Aggregate limit	A provision in a (re)insurance contract which caps the (re)insurer's maximum liability at a ceiling beyond which the (re)insurer ceases to be liable. The ceiling is reached when all the (re)insurer's liabilities under the contract added together equal the level at which the ceiling is set.

Asbestos	A fibrous silicate material which achieved wide usage by reason of its physical properties such as the ability to withstand fierce heat, corrosion and decay under almost every condition of temperature and moisture. Its uses included roofing, plasterboard and fireproof wallboard, floor tiles, an ingredient in paints and sealants, car brake linings and clutch facings.
Asbestos Working Party ("the AWP")	A body set up by the non-marine market in about August 1980 with a view, inter alia, to providing a forum for discussing problems relating to asbestos-related claims, to collecting and making available information relating to the asbestos problem.
Asbestosis and other diseases associated with asbestos exposure	Asbestosis, emphysema, lung cancer and mesothelioma.
Attorneys' reports	Reports obtained from firms of US attorneys in relation, inter alia, to pending litigation in the United States and in relation to the level at which notified claims against particular assureds were expected to settle. These reports were collated by AWP and made available to all interested underwriters. Particular attorneys' reports were commonly to be found on the claims files of syndicates exposed to claims the subject of those reports.
Binding authority	An authority given by an insurer (or reinsurer) to a broker or other agent authorising that agent to accept risks on the (re)insurer's behalf.
Casualty business	Liability or third party business. Particularly used for those classes of US business where liability arises for accidents or events causing bodily injury or property damage.
Cedant	An insurer which cedes business under a reinsurance agreement.
Closed year	In relation to Lloyd's syndicates which adopt a three-year basis of accounting, a year of account for which a result (profit or loss) has been declared following the reinsurance of all remaining liabilities attaching to the account, both known and unknown.
DES	Diethylstilboestrol – a drug which had been given to pregnant women in the United States and which had been blamed for causing cancer in, amongst others, their female offspring.
Direct insurance	Insurance as opposed to reinsurance.
Discounting	The reduction in amount of a loss reserve to take credit for an anticipated future growth through investment of the sum reserved, before the claims fall to be paid.
Exposure	(1)The state of being subject to the possibility of loss. (2)The measurable extent of risk. (3)A basis for determining the scope of coverage under an occurrence based policy which requires the claimant against the assured under the policy to have been exposed to the cause of the injury during the policy period (cf. manifestation and triple trigger).
Incidental non-marine	Insurance business written by a marine underwriter as an adjunct to his marine insurance account.
Incidental non-marine syndicate	A mirror syndicate to a marine syndicate (with identical composition of stamp) into which a marine underwriter could write incidental non-marine business.

Incurred but not reported (IBNR)	A term used for claims arising from insured events which have occurred but of which the insurer has not yet been advised. At the end of a period of account (usually 36 months in the case of Lloyd's syndicates) a reserve is established to cover the expected cost of such losses ("the IBNR reserve").
Incurred losses	The aggregate of paid and known outstanding claims.
Leading Underwriter	An underwriter who is regarded in the market as being an expert in a particular class of business and who therefore "leads" risks by taking the first (often relatively substantial) line on terms which are then adopted by the following market as well.
Line slip	An authority (or facility) given in writing by a number of underwriters which enables the leading underwriter(s) to agree to proposals for insurance of risks within a prescribed class on behalf of all underwriters subscribing to the line slip provided that the proposed insurance is within the scope of the terms of the authority.
Loading	An additional factor or amount taken into account in loss reserving (e.g. to increase notified outstanding claims to take account of IBNR).
Long-tail	A term used to describe classes of insurance business (e.g. US casualty, including asbestos, pollution, medical malpractice) where it is known from experience that notification or settlement of claims may not take place until many years after the writing of the business.
Managing Agent	The underwriting agent (normally a limited company or partnership) which has the day-to-day conduct of a syndicate or group of syndicates on behalf of all names who are members of the managed syndicate or syndicates.
Manifestation	A basis for determining the scope of coverage under an occurrence based policy which requires the injury sustained by the claimant against the assured, to have manifested itself during the policy period.
Members' Agent	The underwriting agent (normally a limited company or partnership) which advises names on their choice of syndicates, places names on the chosen syndicates and provides general advice to names in relation to their underwriting affairs.
Name	An underwriting member of the Society of Lloyd's, who subscribes to policies of insurance through membership of one or more syndicates for particular years of account. When an insurance is subscribed by the active underwriter on behalf of the syndicate, each name is liable for his stated fraction only of the insurance but not for the fractions of other members ("each for his own part and not one for another … and in respect of his due proportion only"). The personal liability of each name is unlimited.
Occurrence basis	A policy is said to be written on an occurrence basis if it covers the consequences of events occurring during a period of insurance even though claims may not arise or be made until after expiry of the period of insurance (compare claims made policies which confine the liability of the insurer to claims made during the currency of the policy).
Open year	A year of account in respect of which the ultimate financial outcome remains to be determined. Each year of account of a Lloyd's syndicate must remain open for 36 months and may remain open beyond 36 months.
Outstanding claims	A claim which has been notified to the insurer but has not yet been settled.

Outstanding claims reserve	A reserve held by an insurer to meet claims notified but not yet paid.
Reinsurance to close ("RITC")	The method by which the underwriting account of a Lloyd's syndicate is closed (usually after 36 months). The reinsurance to close is effected by means of a reinsurance to close contract - an agreement under which underwriting members (the reinsured Names) who are members of a syndicate for the closed year of account agree with the underwriting members who comprise that or another syndicate for a later year of account (the reinsuring Names) that the reinsuring names will indemnify the reinsured Names against all known and unknown liabilities of the reinsured names arising out of insurance business underwritten through that syndicate and allocated to the closed year, in consideration of: (a)payment of a premium; and (b)the assignment to the reinsuring Names of all rights of the reinsured Names arising out of or in connection with that insurance business.
Retrocession	Reinsurance of reinsurance.
Roll over policy	Such policies can take various forms and an all-embracing definition cannot be given
Run-off contract	A run-off contract is a policy of reinsurance by which a syndicate or insurance company is reinsured, subject to the terms of the policy, against outstanding and potential future liabilities, claims and expenses in respect of business written into past underwriting years or into such past years of account as are specified in the policy. Such an excess of loss reinsurance contract may provide the reassured with protection which is unlimited both in aggregate amount and in time and which covers the reassured's whole account or a defined part of it.
Short tail	A term used to describe classes of business where it is known that for the most part claims will be notified and settled within a short period after the insurance was written.
Stamp capacity	In relation to a syndicate, the aggregate of the syndicate premium limits of all the members for a given year of account of the syndicate.
Stop loss reinsurance	A form of reinsurance under which the reinsurer pays the cedant's losses in any year to the extent that they exceed a specified loss ratio or amount. The reinsurance is usually (though need not be) subject to a specified monetary limit.
Syndicate	A group of underwriting members underwriting insurance business through the common agency of a managing agent, each underwriter taking a proportion of the insurance for himself/herself, without assuming liability for the proportions taken by the other members of the syndicate.
Syndicate auditor	In relation to a syndicate, the auditor responsible for (i) auditing the syndicate's annual financial statements and (ii) carrying out the work required for the purposes of the annual solvency test.
Time and Distance policy	Such policies can take various forms and an all-embracing definition cannot be given. They could include policies of reinsurance where recovery under the policy is not made until a period of time after the policy is taken out and where the amount of available indemnity is determined by the investment income on the original premium over that period of time.

Triple-trigger	A basis for determining the scope of coverage under an occurrence based policy whereby the policy is triggered if any part of the injury process from first exposure to manifestation of injury occurs during the policy period including so-called "exposure in residence" (i.e. progressive injury occurring after exposure to asbestos has ceased). The triple-trigger theory was first adopted in Keene Corporation v Insurance Company of North America 667 F 2d 1034 US Circuit Court of Appeals, District of Columbia Circuit. Pursuant to that decision the insured could choose the policy year from which to pursue recovery and the chosen insurer was required to meet the total liability of the insured even though part of the injury process may have occurred at times when the policyholder was uninsured or had no proof of insurance coverage.
Year of account	Each syndicate operates with a given membership for one calendar year only. The calendar year of a syndicate is called the syndicate year of account (e.g. the 1985 year of account of a particular syndicate).

ABBREVIATIONS/ACRONYMS

AARD Accounting and Auditing Review Department

AASC Accounting and Auditing Standards Committee

ACF Asbestos Claims Facility

AGGREGATE RESULTS Financial information, produced by Lloyd's prior to the Global Accounts as at 31 December 1982, relating to the underwriting results of the Lloyd's Market and released to underwriting agents and the public.

ALM Association of Lloyd's Members

ANNAN Association of Non-North American Names

APCAuditing Practices Committee of the Consultative Committee of Accounting Bodies

AR Attorneys' Report

AWP Asbestos Working Party

BIBA British Insurance Brokers' Association

CCAB The Consultative Committee of Accounting Bodies

CCR Center for Claims Resolution

CEG Chief Executive's Group

CIS Claims Information System

DES Diethylstilbestrol

DTI Department of Trade and Industry

ECG Environmental Claims Group

EPA US Environmental Protection Agency

GAD Government Actuary's Department

IBNR Incurred but not reported

ICA 1982 Insurance Companies Act 1982

ICA 1974 Insurance Companies Act 1974

LATF Lloyd's American Trust Fund

LAUA Lloyd's Aviation Underwriters' Association

LIBC Lloyd's Insurance Brokers' Committee

LMCS London Market Claims Services

LMUA Lloyd's Motor Underwriters' Association

LMX London Market Excess of Loss

LNAWP Lloyd's Names Association Working Party

LPSO Lloyd's Policy Signing Office

LUA Lloyd's Underwriters' Association

LUAA Lloyd's Underwriting Agents' Association

LUCRO The Marine Market Claims Office

LUNCO Lloyd's Underwriters' Non-Marine Claims Office

LUNMA Lloyd's Underwriters' Non-Marine Association

MAIR Members' Agent's Information Report

Merrett Judgment The judgment of Cresswell J in Henderson v Merrett Syndicates Ltd [1997] LRLR 265

MSSC Members' Solvency and Security Committee

MSSD Members' Solvency and Security Department

MPRs Minimum PercentageReserves

Murray Lawrence letter The letter of 18.3.82 set out in full in chapter 19

NDA Names Defence Association

OPL Overall Premium Limit

PI Premium Income

PSL Personal Stop Loss

PTF Premiums Trust Fund

RBUA Richard Beckett Underwriting Agencies Ltd

Relevant Period 1.1.78 to 31.12.88

RITC Reinsurance to close

SRF Special Reserve Fund

SSC Solvency and Security Committee

SSOB Statutory Statement of Business being the annual return required by statute to be furnished by Lloyd's to the Board of Trade or the DTI (known as Annual Statements prior to 1982 year end).

UAAD Underwriting Agents and Audit Department

UNO United Names Organisation

XL Excess of Loss

4.THE SCHEME OF THE JUDGMENT

This action forms part of the Lloyd's Litigation. An account of the Lloyd's Litigation is set out in chapter 5, followed by a summary of proceedings against Lloyd's in other jurisdictions (chapter 6).

In view of the significance of this case domestically and internationally, I set out below in some detail the way the Lloyd's market worked in the Relevant Period, so that the essential background to the issues in this case is identified.

This trial is concerned with the Threshold Fraud Point (chapter 7) being the issue whether Lloyd's made misrepresentations which it knew to be untrue and/or as to which it was reckless whether they were true or false, and whether such misrepresentations were communicated to the Names and if so, when? The Names' Pleaded Case and the Names' Case as Summarised in Closing Submissions are set out in chapter 7. Lloyd's Case is set out in chapter 8.

The Relevant Legal Principles are set out in chapter 9.

The way the Lloyd's market worked in the Relevant Period is described in chapters 10 to 14:-

- The Administrative Structure and Governance of the Lloyd's Market (chapter 10);

- The Regulatory Background for the Auditing and Accounting Regime at Lloyd's (chapter 11);

- The Rules and Procedures Governing the Admission to Underwriting Membership of Lloyd's and Related Matters (chapter 12);

- RITC - Some General Principles - The Role of the Managing Agents/Underwriter (chapter 13); and

- RITC - The Role of the Auditors (chapter 14).

I set out in chapter 15 a broad description of the evidence of the witnesses and my assessment of that evidence.

There follows:- an Overview of the Nature and Development of Asbestos-related Claims (chapter 16), an account of the Differing Views as to the Likely Outcome of Asbestos-Related Claims and The Writing of Run-Off Contracts (chapter 17), and reference to the extent to which the number of Open Years increased during the Relevant Period (chapter 18).

In chapter 19 I set out a chronology of certain important events in 1978 to 1988 being The Years in Question. 1989 and Subsequent Years are considered in chapter 20 and Developments in Relation to Capital Structure in chapter 21.

My analysis of and conclusions as to the Threshold Fraud Point are set out in chapter 22.

In chapter 23 I consider E&O Cover at Lloyd's and in chapter 24 The Market Scandals and The Failings revealed by the Lloyd's Litigation.

My conclusions are set out in chapter 25.

The Tables and Appendices are listed at the beginning of this judgment.

5. THE LLOYD'S LITIGATION

The Lloyd's Litigation is the largest and most complex piece of civil litigation this jurisdiction has ever seen.

The Commercial Court's approach to the case management of the Lloyd's Litigation has been described in earlier judgments. The Lloyd's Litigation was divided into the following categories:-

(a) LMX Cases.

(b) Long-Tail Cases:-

(i) Run-Off Contract Cases

(ii) Reinsurance to Close Cases.

(c) Personal Stop Loss Cases.

(d) Portfolio Selection Cases.

(e) Central Fund Litigation.

(f) Other Cases.

The Court identified and decided a number of preliminary issues which (subject to appeals) were designed to assist in resolving issues of principle common to one or more categories of case.

The Court in addition selected from cases in a particular category, lead or pilot cases for trial as to liability (and principles relating to quantum), in the hope that decisions in these cases would provide broad guidance in relation to other cases in the same category. A variety of case management techniques (e.g. use of sample Names and limitations on formal discovery) were employed in group cases.

I refer to the statements issued by the court from time to time reporting on progress in the six categories of cases listed above.

The R&R settlement offer of July 1996 listed 85 syndicate based Action Groups with relevant litigating syndicate years of account. A letter from More Fisher Brown dated 24 July suggested that there were at least five additional Action Groups.

In September 1996 a market settlement was arrived at. About 95 % of Names accepted the market settlement. 1,752 Names did not accept. About 180 Names have since reached individual settlements with Lloyd's. Of the remaining Names, as at 1 November 1999 about 148 were claimants in this action and about 1,420 were not. A number of the remaining Names have joined this action since 1 November 1999. Thus there are 216 Names who are parties to this action.

I refer to the three statements I made in relation to the management of this case on 1 November 1999 and 21 January and 3 February 2000.

Appendix 1 hereto contains a list of cases forming part of the Lloyd's Litigation (and related litigation) both before and after the market settlement in September 1996.

6. PROCEEDINGS AGAINST LLOYD'S IN OTHER JURISDICTIONS

A. United States of America - California

An action by David, Deborah and Susan West was until recently proceeding against Lloyd's in the Superior Court in the State of California (the State Court). I was informed by letter dated 2.11.00 from Freshfields that this action had been settled on terms which are confidential.

B. Canada

(I) New Brunswick

There are a number of actions ongoing against Lloyd's. None of the plaintiff Names are parties to the Jaffray action.

Ten Names have commenced proceedings directly against Lloyd's. These proceedings were commenced in 1997/8. The Names claim that they were victims of fraud and fraudulent misrepresentation by Lloyd's inducing them to apply for membership of Lloyd's and that the information provided to them was a violation of the New Brunswick Securities Act. The factual allegations underlying the Names' claims of fraud cover similar ground to the allegations being made by the Names in the Jaffray action. (The New Brunswick Names also allege inter alia that Lloyd's acted fraudulently in respect of the "LMX spiral activity".)

In respect of these proceedings Lloyd's has brought motions permanently to stay the actions on applications based primarily on the Names' execution of the General Undertaking which provided that any disputes relating to their membership of or underwriting at Lloyd's would be subject to the jurisdiction of the English Courts and subject to English Law and in the alternative on forum non conveniens grounds.

In three cases Lloyd's motion has been heard and in each case the decision of the Judge has been to order a permanent stay (one was by consent). In the two contested cases the orders (both made in January 1999) were subject to certain conditions should the Names bring action against Lloyd's in England (which they have not done), namely that:

(i) Lloyd's would not require security for costs;

(ii) Lloyd's would waive any precondition that any judgment it obtains against the Names would be satisfied before they could proceed; and

(iii) they would waive any contractual provision that required the Names to pay any contractual obligations arising between the Names and Lloyd's before any action might lie against Lloyd's by the Names.

In these two cases the New Brunswick Court of Appeal in January 2000 dismissed the Names' appeals. Leave was sought by both Names to appeal to the Supreme Court of Canada, but this was refused on 5 October 2000.

No hearing date has been fixed for any of Lloyd's other motions. There is an agreement amongst Counsel that the motions will be bound by the result in the matter in which leave is currently sought.

Eight Names have joined Lloyd's as a third party to proceedings brought by the Royal Bank of Canada against them for indemnity for monies paid by the bank to Lloyd's following calls made on letters of credit/bank guarantees held by Lloyd's as security for the Names' underwriting. Lloyd's was joined to the proceedings in April 1998 and brought motions permanently to stay the third party proceedings (on the same basis as set out above). The claims made by the Names in these third party proceedings are the same as in the direct actions referred to above. No hearing date has been fixed for any of these motions and Counsel have agreed again to accept the determination of the two contested matters.

(ii) Prince Edward Island

Eight Names commenced actions against Lloyd's in Prince Edward Island in January 1999. In this action the Names allege that Lloyd's, directly and through agents, subjected them to fraudulent misrepresentations and fraudulent, deceitful and reckless practices, but for which they would have neither become members of Lloyd's nor have undertaken particular underwriting obligations. The Names also allege that Lloyd's failed to comply with the licensing, prospectus and other disclosure and filing requirements of the Prince Edwards Island Securities Act.

The factual allegations underlying the Names claims of fraud cover similar ground to those allegation being made by the Names in the Jaffray action, to which these Names are not a party. (These Names also allege, inter alia, that Lloyd's acted fraudulently in respect of the "LMX Spiral" and made misrepresentations in connection with the use of time and distance policies).

Lloyd's brought motions permanently to stay these proceedings primarily on the basis of the forum selection and choice of law clauses in the General Undertaking executed by the Names, and in the alternative on the basis of forum non conveniens. On 7 April 2000 the Judge granted a stay subject to the same conditions imposed by the New Brunswick Court but with one further condition namely that:

"Should the plaintiffs proceed expeditiously to bring an action for fraud against the defendant [Lloyd's] in England and be denied access to English Courts for hearing the action, the plaintiffs can apply to this Court to end this stay of proceedings".

No appeal has been made though time for doing so has not yet expired.

C. Australia

Proceedings have been commenced against Lloyd's in Australia by 8 Names, all of whom are counterclaimants in the Jaffray proceedings. The most advanced of the 8 cases is White v Lloyd's. Proceedings were commenced by the Commonwealth Bank of Australia against Mr White in the Victorian State Court concerning letters of credit issued by the bank to support Mr White's underwriting at Lloyd's. Subsequently, in December 1998/February 1999 Mr White served Lloyd's with a Third Party Notice. As regards the other proceedings, a Mr Luxton issued proceedings against Lloyd's in the Victorian State Court on 2 September 1999, and 6 other Australian Names issued proceedings against Lloyd's in the New South Wales State Court on 3 September 1999. Apart from the White proceedings, none of the other Writs has been served on Lloyd's.

Lloyd's is not permitted to view the Writs issued (but not served) in the New South Wales jurisdiction, but has been able to view the Writ issued, but not served, by Mr Luxton, due to the different procedural rules in Victoria. That Writ sets out substantially the same causes of action and a similar factual basis as the Third Party Notice served by Mr White and, whilst it is not known, it is suspected that the same is the case with the Writs issued in New South Wales.

As regards the legal basis for his claims against Lloyd's, Mr White has pleaded several statutory causes of action arising under the Australian Trade Practices Act and the Corporations legislation, including:

· Section 51A and Section 52 of the Trade Practices Act 1974 (Mr White pleads that Lloyd's conduct was misleading and deceptive and relies on Section 51A of the Trade Practices Act, which deem a representation as to a future matter to be misleading unless the corporation has reasonable grounds for valuing the representation); and

· s.83 of the Companies Act 1961 and ss.169-171 of the Companies (Victoria) Code: Mr White pleads that Lloyd's made an offer or invitation to the public to subscribe for or purchase membership at Lloyd's and failed to perform its statutory obligations of disclosure.

In addition, Mr White has pleaded negligent misstatement against Lloyd's, and relies upon the doctrines of "public policy" and "unconscionable" bargain in seeking to impugn or avoid, amongst other provisions, the exclusive jurisdiction clause contained in the 1986 General Undertaking which Mr White signed. Whilst the legal basis for the claim is somewhat different to the fraudulent misrepresentations relied upon by the Names in the Jaffray proceedings, the factual basis for Mr White's claim is very similar to the factual basis of the claims being made by the Names in the Jaffray action and, indeed, the original White pleading appears to draw heavily on the original pleading in the English action.

Lloyd's challenged the jurisdiction of the Victorian Court to hear the claims made by Mr White on several grounds, including the fact that Mr White (like the other 7 Australian Names) had signed the General Undertaking 1986 (which contains an exclusive jurisdiction clause in favour of the English Court). On 29 July 1999, his Honour Justice Byrne decided that, notwithstanding the exclusive jurisdiction clause, the Victorian Court could hear the claims made by Mr White. Lloyd's applied to the Court of Appeal of the Supreme Court of Victoria for leave to appeal, but Lloyd's application was refused on procedural grounds. Subsequently, Lloyd's applied to the High Court of Australia for special leave to appeal, but special leave to appeal was again refused on procedural grounds by the High Court on 11 February 2000.

Following that judgment, Lloyd's applied for an anti-suit injunction from the English Court to restrain the 8 Australian Names from progressing their claims against Lloyd's in Australia, pending the outcome of the Jaffray trial. The application was made on notice, but Mr White and the other Australian Names chose not to be represented at that hearing, although they did lodge written submissions prepared by their Australian lawyers. Mr Justice Cresswell granted a temporary anti-suit injunction against the 8 Australian Names on 3 March 2000.

Since 3 March 2000, and in reliance upon the anti-suit injunction granted by the English Court, Lloyd's has sought a stay in the Victorian Court of the White proceedings pending the outcome of the Jaffray trial. In order to be able to apply for a stay, Lloyd's entered a Notice of Appearance in the White proceedings on 6 March 2000 and attended a hearing for directions on 10 March 2000. Lloyd's application for a stay was postponed and was later heard before her Honour Justice Warren on 18 and 19 April 2000. The decision of the Victorian Court

was handed down on 21 June 2000. Her Honour Justice Warren granted Lloyd's application to stay the White proceedings pending delivery of judgment in the Jaffray proceedings or until further order.

As regards the other 7 Australian Names, they were also subject to the temporary anti-suit injunction and, to date, have not served their Writs on Lloyd's.

D. Belgium: André Milhoux

Mr Milhoux is a Belgian Name who, in the summer of 1996, obtained an order from a court in Brussels which purports to have the effect of freezing his deposit at Lloyd's. His deposit is made up of a Bank Guarantee issued by the Banque Bruxelles Lambert. A demand has been made by Lloyd's on the guarantee but the Banque has not met this because of the court order. £55,449.24 remains of that Guarantee. Lloyd's has intervened in the proceedings, in the Tribunal de Première Instance, Brussels, seeking to have the court's order set aside.

Pleadings have not closed and a hearing date has not been set.

Mr Milhoux is a litigant in the Jaffray proceedings. In his Belgian pleadings, he claims that Lloyd's demand on the guarantee is a consequence of the fraud to which he claims the Names were victim and therefore fraudulent itself.

He alleges intentional fraudulent presentation of the yearly accounts, deliberate complicity by Lloyd's in the syndicates' failure to constitute sufficient reserves to cover asbestos claims, intentional fraudulent presentation of profits by Lloyd's in the annual accounts, tolerance of a false representations by the syndicates of their financial situation and he says that Lloyd's aggregate accounts encouraged 20,000 new Names to join, who would not have done so if they had realised the true state of affairs.

E. European Commission

(a) A short petition has been sent to the European Parliament with supporting documents.

(b) A complaint has been made to the European Commission alleging a failure by the UK government to comply with the First European Non-Life Insurance Directive (EC73/239).

7. THE THRESHOLD FRAUD POINT. THE NAMES' CASE.

This trial is concerned with the Threshold Fraud Point being the issue whether Lloyd's made misrepresentations which it knew to be untrue and/or as to which it was reckless whether they were true or false, and whether such misrepresentations were communicated to the Names and if so, when?

The trial is limited to and by reference to three selected or sample Names namely Captain Hindle who joined Lloyd's in 1979, Sir William Jaffray who joined Lloyd's in 1982 and Mrs. Dona Evans who joined Lloyd's in 1988. The trial is confined to allegations of fraud during the period 1978 to 1988.

Table 1 below sets out certain information which explains the background to the Threshold Fraud Point.

TABLE 1

AS AT 31ST DEC.	YEAR OF ACCOUNT	CLOSED INTO	BY SYNDICATES IN ABOUT WITH MANAGING AGENTS' + AUDITORS' REPORTS IN ABOUT	LLOYD'S AGGREGATE RESULTS/GLOBAL A/C's AS AT 31ST DECEMBER	PUBLISHED IN OR ABOUT AUGUST OR SEPTEMBER	REPORT LLOYD'S AGGREGATE/GLOBAL RESULTS FOR LATEST CLOSED YEAR (and two subsequent open years)	WOULD BE AVAILABLE TO BE SEEN BY JOINERS (and continuing Names) FOR YEAR	YEAR

1977	1975	1976	Mid 1978	1977 Aggregate Results	1978	1975	1979	1
1978	1976	1977	Mid 1979	1978 " "	1979	1976	1980	2
1979	1977	1978	Mid 1980	1979 " "	1980	1977	1981	3
1980	1978	1979	Mid 1981	1980 " "	1981	1978	1982	4
1981	1979	1980	Mid 1982	1981 " "	1982	1979	1983	5
1982	1980	1981	Mid 1983	1982 Global Accounts	1983	1980	1984	6
1983	1981	1982	Mid 1984	1983 " "	1984	1981	1985	7
1984	1982	1983	Mid 1985	1984 Global Report/Accounts	1985	1982	1986	8
1985	1983	1984	Mid 1986	1985 " "	1986	1983	1987	9
1986	1984	1985	Mid 1987	1986 " "	1987	1984	1988	10
1987	1985	1986	Mid 1988	1987 " "	1988	1985	1989	11

(1) The Names' Pleaded Case

The Names' pleaded case is as follows.

Knowledge or awareness on the part of Lloyd's are alleged to be references to the knowledge or awareness of the persons listed below during the period 1978 - 1988:

(i) Certain members of the Council and/or Committee of Lloyd's: Sir Peter Green, F. Barber, Richard Ballantyne, D.J. Barham, J.R.K. Beckett, I.R. Binney, P.G. Bird, B.J. Brennan, A.H. Chester, M.H. Cockell, D.E. Coleridge, P. T. Daniels, R.D. Hazell, C.O. Gibb, C.D.D.Gilmour, A.W. Higgins, V.V. Hudson, R.J. Kiln, W.N.M. Lawrence, S.R. Merrett, Sir Peter Miller, C.K. Murray, E.E. Nelson, A. Parry, I.R. Posgate, Sir David Rowland, C.H.A. Skey (including, where relevant, their membership of Audit and Membership Committees and their statements in the Global Reports and Accounts as LUNMA Chairmen respectively during the Relevant Period). The Names say that where any one or more of these persons acted during any year between 1978 and 1988 as Chairman or a Deputy Chairman of the Committee/Council of Lloyd's they carried special responsibilities in the oversight and administration of the Lloyd's market and had particular influence which was likely to be decisive in matters relevant to the problem of asbestos-related claims.

(ii) K.E. Randall.

(iii) H.R. Rokeby-Johnson, Robin Jackson, Bryan Kellett and Michael Williams (the other LUNMA Chairmen who contributed to the Global Reports and Accounts in the Relevant Period).

(iv) Certain members of the Asbestos Working Party during the Relevant Period (E.E. Nelson, H.R. Rokeby-Johnson, R.A.G. Jackson, D. Tayler, C.H.A. Skey).

The Names say that the persons listed at (i) to (iv) above were the principal sources of Lloyd's knowledge of the asbestos problem during the Relevant Period and constituted the directing minds of Lloyd's.

The Names say that by express decision of Lloyd's no mention of problems related to asbestos was made at Rota Committee interviews to persons joining as external Names for the years 1981 to 1989.

The Names say that by virtue of the Lloyd's Acts 1871 - 1982 Lloyd's had a continuing duty and responsibility to act at all times in good faith in accordance with its objects.

As to the Names' case in fraud, the Names say that certain representations made by Lloyd's to external Names when they were applying to join Lloyd's or considering whether to continue as underwriting members of Lloyd's, were false and fraudulent to the knowledge of

Lloyd's.

The Names say that from at least 1975 until 1988 it was the established policy of Lloyd's to encourage the recruitment of new members and the expansion of the market's underwriting capacity.

Lloyd's Representations - Representations Derived from the Brochures - Representations Derived from the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 31.12.87

The Names say that the Lloyd's Brochures from time to time contained statements which constituted representations to the effect that a Name joining Lloyd's:

(i) Could have confidence in Lloyd's as an institution to safeguard his/her interests;

(ii) Could trust those who were chosen by Lloyd's to regulate the Lloyd's market and manage its affairs;

(iii) Because of the way in which Lloyd's regulated and monitored underwriting accounts year by year:

(a) could rely on syndicate accounts;

(b) could in underwriting and/or deciding whether to remain a member of Lloyd's have confidence in the audited syndicate results, for results of past years;

(c) could be sure that Lloyd's as part of its regulatory duties would ensure that when prospective liabilities were reinsured by one syndicate year into another, such liabilities were being fairly assessed and quantified as between the two syndicate years.

The statements in the Brochures relied upon by the Names as supporting these alleged (derived) representations are set out in Appendix 3 to Sir William Jaffray's Re-Amended Points of Defence and Counter-claim. The statements relied upon include statements in:-

(a) Notes for Applicants for Underwriting Membership 1975/1977 version;

(b) Brochure for Applicants for Underwriting Membership: issued by Lloyd's January 1980;

(c) Brochure for Applicants for Underwriting Membership: issued by Lloyd's December 1981;

d) Brochure for Applicants for Underwriting Membership: issued by Lloyd's December 1983;

(e) Brochure for Applicants for Underwriting Membership: issued by Lloyd's December 1984;

(f) Membership: The Issues: December 1986;

(g) Membership: The Issues: December 1987.

The relevant documents allegedly seen by Captain Hindle prior to joining Lloyd's in 1979 were the 1975/1977 version of Notes for Applicants for Underwriting Membership.

The relevant documents allegedly seen by Sir William Jaffray prior to joining Lloyd's in 1982 were the 1980 edition of Lloyd's Brochure for Applicants for Underwriting Membership and a schedule of the previous 7 closed years of account of his proposed syndicates.

The relevant documents allegedly seen by Mrs. Evans prior to joining Lloyd's in 1988 were the 1986 edition of Membership: the Issues and the Global Reports and Accounts as at 31.12.84 and 85.

The Names say that Lloyd's knew and intended that prospective Names would read and rely upon the Brochures and where applicable Aggregate Results/Global Reports and Accounts as at 31.12.81 to 87 and the statements and representations contained therein, for the purposes of considering whether or not to become a Name.

It is alleged that induced by, and in reliance upon, the representations derived from the Brochures, Captain Hindle joined Lloyd's in 1979,

Sir William Jaffray joined Lloyd's in 1982, following Rota Committee interviews. It is alleged that induced by, and in reliance upon, the representations derived from the Brochures and/or from the Global reports and Accounts as at 31.12.84 and 85 (see below) Mrs. Evans joined Lloyd's in 1988, following a Rota Committee interview. The Names say that Rota Committee interviews gave Lloyd's an opportunity, which it did not on any occasion take, to correct misrepresentations made by it as to the sound financial position of the Lloyd's market by giving due warning to prospective Names as to the impact of asbestos-related liabilities on the Lloyd's market. By its continuing failure to give that warning Lloyd's invited Names joining Lloyd's during the Relevant Period to place continuing faith and reliance upon the image of Lloyd's contained in the Brochures including the above representations.

Captain Hindle underwrote business at Lloyd's for the years of account 1979 to 1994, Sir William Jaffray for the years of account 1982 to 1989 and Mrs. Evans for the years of account 1988 to 1993 (all inclusive).

It is alleged that in deciding to remain a member of Lloyd's for each of the further underwriting years beyond the first, Captain Hindle/Sir William Jaffray/Mrs. Evans continued to rely upon the above representations derived from the Brochures. Further it is alleged that (where applicable) in deciding to remain a member of Lloyd's for each of the underwriting years beyond the first, Captain Hindle/Sir William Jaffray/Mrs. Evans relied upon representations derived from the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 87.

The alleged representations derived from the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 31.12.87 were as follows:-

(a) that the Lloyd's market was in a sound financial condition;

(b) that Names could safely join Lloyd's and/or continue their membership of Lloyd's and/or increase their Premium Income Limit with confidence that known and projected claims had been prudently and adequately reserved to ultimate.

The Names rely on specific statements in the said Appendix 3 as supporting these representations. They say that Lloyd's knew and intended that Names and prospective Names would read and rely upon the said Aggregate Results/Global Reports and Accounts and the statements and representations contained therein for the purposes of considering whether to continue membership of Lloyd's and/or increase Premium Income Limits or to join.

It is alleged that induced by, and in reliance upon, the representations derived from the Brochures and the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 87 Captain Hindle, Sir William Jaffray/Mrs. Evans continued his/her membership of Lloyd's and/or increased his/her Premium Income Limit.

Falsity of Lloyd's Representations

The Names say that the representations derived from the Brochures were false at the time Captain Hindle/Sir William Jaffray/Mrs. Evans joined Lloyd's in that:

(i) The minimum audit reserves were manifestly inadequate in the light of Lloyd's knowledge of the Lloyd's market's exposure to asbestos-related liabilities such that:

(a) Lloyd's regulation of Lloyd's annual audit and solvency test was not stringent and could not be reasonably regarded as such;

(b) The annual solvency test was not a "searching" one in practice and could not reasonably be regarded as such; and/or

(c) Lloyd's annual audit procedures did not give "ample" margins of security, but in fact gave no margin of security at all.

(It is alleged that the MPRs as determined by the Committee for each of the relevant years were set to Lloyd's knowledge or recklessly below Lloyd's own estimate of what was required to maintain the solvency of Lloyd's).

(ii) Lloyd's failed to make proper and full disclosure, or ensure such disclosure was made, of material information relating to the exposure of the Lloyd's market to potentially huge and escalating asbestos-related claims and failed to regulate properly or at all the manner in which syndicates or their auditors reserved for and accounted for such potential liabilities;

(iii) Lloyd's had not strictly regulated the activities of agents operating in the Lloyd's market;

(iv) Lloyd's had in relation to the closing years of syndicates exposed to asbestos-related claims failed to implement or apply appropriate

audit regulations with the result that an equitable premium for RITC as between the reinsuring members and reinsured members was not assessed and charged having regard to the nature or amount of the liabilities to be reinsured;

(v) The insurance market at Lloyd's was not and had not been properly regulated by Lloyd's;

(vi) Those chosen to regulate and manage the affairs of Lloyd's and to protect Names' interests and disseminate information, prior to and from the date of Captain Hindle/Sir William Jaffray/Mrs. Evans becoming a member of Lloyd's, withheld from him/her and/or misrepresented information concerning asbestos-related liabilities to which he/she was likely to become exposed as a member.

The Names say that the Aggregate Results/Global Reports and Accounts for the period 31.12.82 to 87 were (insofar as a Name joined Lloyd's in reliance on the said Aggregate Results/Global Reports and Accounts) false at the time when the Names joined and false at the time when Captain Hindle/Sir William Jaffray/Mrs. Evans increased his/her Premium Income Limit and/or continued as a Lloyd's member and/or to underwrite from year to year in that as Lloyd's were well aware at all material times:

(i) Lloyd's syndicates were exposed to huge and escalating asbestos-related claims which had not been adequately reserved and/or reserved to ultimate;

(ii) the RITC represented in the Aggregate Results/Global Reports and Accounts as at 31.12.81 and subsequent years did not reflect the true exposure of the Lloyd's market for known and projected claims for asbestos-related losses relating to the closed year and to all previous closed years.

Further or in the alternative it is alleged that the representations derived from the Brochures and the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 87 became false.

The Names say that the representations derived from the Brochures and the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 87 were made by Lloyd's knowingly or recklessly without any honest belief in their truth and that Lloyd's omitted information known to it about the affairs of the Lloyd's market, with the result that the Brochures and Aggregate Results/Global Reports and Accounts, taken as a whole, deliberately gave a false impression of the profitability of the Lloyd's market and the financial risks posed to Names by becoming and/or remaining a member of Lloyd's.

Particulars of Lloyd's Knowledge/Falsity/Recklessness

The Names set out particulars of Lloyd's knowledge/falsity/recklessness by reference to each of the eleven periods/years in question.

The Names' Case Against Lloyd's as Summarised in the Pleadings

In summary the Names' case against Lloyd's is as follows.

The Names say that Lloyd's knew or was reckless as to the fact that:

(i) The Lloyd's market's exposure to asbestos-related claims (even to the extent that those liabilities could be quantified) required reserves and RITC to be set at figures far in excess of those which were set out in the Lloyd's Aggregate Results/Global Reports and Accounts as at 31.12.81 to 87; and

(ii) To the extent that there was under-reserving, the burden would be borne by Names underwriting in future years.

It is alleged that Lloyd's knew or was reckless as to the fact that the implications of asbestos-related liabilities were such that Lloyd's ought:

(A) To have made full and proper disclosure to Names, when publishing the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 87, of the estimates of the likely extent and growth of future asbestos-related claims;

(B) To have given, and repeated as appropriate, directions as to the minimum levels of reserves necessary for syndicates with any material exposure to asbestos-related claims to cater for their potential liabilities;

(C) To have given clear and appropriate directions to syndicates with any material exposure to asbestos-related claims, in relation to

keeping open the 1979 and subsequent years of account, wherever such syndicates were unable to assess and quantify fairly such claims for the purposes of fixing the RITC;

(D) To have given clear and appropriate directions to underwriting agents or otherwise have ensured that full and proper disclosure was made to all Names of their syndicates' exposure to asbestos-related liabilities and the treatment by those syndicates in their accounts of their liability to such claims;

(E) To have given clear and appropriate directions to Lloyd's auditors in relation to the treatment of asbestos-related liabilities in syndicate accounts so as to ensure that inequitable or inadequate figures for RITC were not incorporated into syndicate accounts.

The Names say that Lloyd's knowingly or recklessly failed at any material time to take the above steps or any of them.

Further, it is alleged that Lloyd's knowingly or recklessly failed to respond at any material time adequately or at all to the questions and issues raised in the letter sent to it by Neville Russell on 24 February 1982. The two letters both dated 18 March 1982, one addressed to Lloyd's Panel of Auditors from Mr. Randall, the other addressed to Lloyd's underwriters from Mr. Lawrence, were recklessly and/or deliberately concealed by Lloyd's from the members' agents and thereby the Names in that they were not sent to or received by the vast majority of members' agents. Further, it is alleged that Lloyd's knowingly or recklessly took no or no adequate steps to secure that appropriate measures were taken by syndicates and/or syndicate auditors in response to the letters from Mr. Lawrence and/or Mr. Randall.

The Names say that recklessly and/or deliberately, Lloyd's failed to advise or warn Names of the nature and extent of the asbestos problem facing Lloyd's at the material times.

It is alleged that the representations derived from the Brochures and the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 87 were made fraudulently in that Lloyd's published the Brochures and Aggregate Results/Global Reports and Accounts knowing or not caring that the representations contained therein were false or not caring or being reckless as to whether the representations were true or not and without any honest belief in their truth.

Alternatively it is alleged that Lloyd's fraudulently failed to correct the said representations knowing that they had become false and/or not caring or being reckless as to whether they were true or false. In so far as the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 87 published by Lloyd's were aggregations of syndicate results, Lloyd's knew or were reckless as to the fact that the aggregated reserves under-reserved for the asbestos liabilities overhanging the market and failed to deal equitably with RITC.

Further or alternatively the Names say that throughout the Relevant Period the accounts which Lloyd's published as Aggregate Results/Global Reports and Accounts were a mere aggregation of syndicate results. Lloyd's deliberately chose not to make an independent investigation and assessment of the global exposure of the Lloyd's market to asbestos-related claims (including IBNR). Instead, Lloyd's put forward as safe and reliable, year by year, figures which could not be reconciled with current claims information and closed their eyes throughout the Relevant Period to the implications for external Names.

Reliance

It is alleged that but for Lloyd's representations (derived from the Brochures and/or where appropraite the Aggregate Results/Global Reports and Accounts for the period 31.12.81 to 87) Captain Hindle/Sir William Jaffray/Mrs. Evans:

(i) Would not have proceeded to join Lloyd's as a Name and/or join any syndicates exposed to asbestos-related liabilities and/or would have resigned from underwriting business at Lloyd's; and/or

(ii) Would not have increased his/her underwriting premium limit in the years in which he/she underwrote business at Lloyd's; and/or

(iii) Would not have signed the General Undertaking effective from 1 January 1987.

In the event and in reliance on the representations derived from the Brochures and/or where appropriate the Aggregate Results/Global Reports and Accounts for the period 31.12.81 to 87 Captain Hindle/Sir William Jaffray/Mrs. Evans took (and in the case of resignation, failed to take) all the above steps.

It is alleged that by reason of the foregoing Captain Hindle/Sir William Jaffray/Mrs. Evans suffered loss and damage.

The issues to be determined at this trial include whether each of the sample Names relied upon any of the pleaded (fraudulent) misrepresentations during the period 1978 to 1988.

Alternative Claim

The alternative claim is outside the ambit of this trial.

Allegations not made by the Names

The Names' case is confined as follows:-

(i) No allegations of fraud are made against any of the Chief Executives of Lloyd's;

(ii) No allegations of fraud are made against any non-working (i.e. nominated or external) members of the Council of Lloyd's;

(iii) No allegations of fraud are made against any employees of Lloyd's, except Mr. Randall;

(iv) Except as above, no allegations of fraud are made against any underwriters on any Lloyd's syndicate, nor against any other persons concerned in the management of such syndicate or in its year-end audit;

(v) The Names do not seek to investigate at trial the position of any particular Lloyd's syndicates or seek to show that any such syndicates wrongly closed any years of account;

(vi) The Names do not make any allegations of fraud against any panel auditors, nor do the Names seek to investigate at trial the manner in which any particular firm or firms of auditors, or individual audit partners, conducted the audit of any Lloyd's syndicate for any particular syndicate year of account;

(vii) No allegations are made that any material information was withheld from underwriters or auditors by or with the connivance of Lloyd's, save that it is alleged that Lloyd's failed to distribute the Murray Lawrence letter of 18 March 1982 to members' agents, adequately or at all.

(2) The Names' Case as Summarised in Closing Submissions

Mr. Goldblatt QC summarised the Names' case in his closing submissions as follows.

The Names' case is one in tort for fraudulent misrepresentation. They contend that Lloyd's intended to make and did make representations in its Brochures and annual Global Reports and Accounts; that those representations were not true; that it did not honestly believe them to be true; and that external Names were intended to and did rely upon them in deciding whether or not to join Lloyd's or to continue their membership of Lloyd's.

The Representations - The Brochures

Lloyd's Brochures from time to time contained statements which constituted representations to the effect pleaded, see (1) above.

The Global Reports and Accounts

The representations to be derived from the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 31.12.87 were as pleaded, see (1) above.

The Falsity of the Representations

The Names say that these representations, made by Lloyd's, were untrue, for two principal reasons:

(i) that the market was under-reserved for asbestos-related losses; and/or,

(ii) that there were systemic problems affecting the market's ability to quantify accurately future losses for asbestosis such that the ultimate

cost of the asbestos losses which would affect the Lloyd's market was not capable of quantification.

The Names say that the evidence before the Court which proves both under-reserving and radical uncertainty comes in the following forms:

Under-Reserving

(i) The document provided to the Court by Equitas under the terms of the Court's confidentiality orders.

(ii) The numerous contemporary comments and documents of individuals both within and outside Lloyd's to that effect.

(iii) The information contained in the AU38 forms. These documents also provide clear evidence of the impact of asbestos liabilities on the Lloyd's market and demonstrate that it was very considerably under-reserved for asbestos liabilities even on the syndicates' own market projections.

(iv) The charts prepared by Mr Louw on the basis of Mr Rayment's figures.

Uncertainty

(v) The numerous contemporary comments and documents of individuals both within and outside Lloyd's to that effect.

(vi) The attorneys' reports coming into Lloyd's from US attorneys were a critical source of information to all within the market. Analysis of the reports demonstrates how consistently and powerfully these attorneys' reports detailed the massive scale of the asbestos liabilities and the indeterminacy of their ultimate cost both globally and to Lloyd's. One key feature of the attorneys' reports to be borne in mind is that, as Attorney H reported on 20/1/83:

'The Working Party wish to draw the Market's attention to the fact that no allowance is made for IBNR, due to the many uncertainties that exist'.

This remained the position throughout the Relevant Period, Attorney H reporting on 24/8/87 that:

'It is extremely difficult for us to provide any reliable advice as to how the asbestos problem is likely to develop over the ensuing years except to the extent that it now appears that the total insurance limits of most insureds could be consumed by this enormous problem'.

Knowledge

The Names say that the knowledge of relevant individuals of this under-reserving and uncertainty is proved by a variety of forms of evidence before the court:

(1) The attorneys' reports coming into Lloyd's from US attorneys, were a critical source of information to all within the market.

(2) Contemporary comments during the course of the Relevant Period by individuals amongst the 33 and other documentary evidence indicating their knowledge. The evidence of the key witnesses called by Lloyd's from amongst the 33, (Mr. Murray, Mr. Murray Lawrence, Sir Peter Miller, Mr. Kellett, Mr. Jackson and Sir David Rowland) was partial. Their purported lack of memory of key events and documents was unconvincing as were their attempts to explain away damaging documents.

(3) The inferences to be drawn in respect of those witnesses Lloyd's chose not to call.

(4) The critical period during the Relevant Period when the documentary evidence most clearly demonstrates such knowledge is from the latter half of 1981 to the first half of 1982. A key event within this period was the discussion of and issue of the Murray Lawrence letter by the Committee of Lloyd's. A further significant aspect of the Names' case relates to the restricted circulation of this letter. The Names say that the evidence points to a restricted circulation of the letter; to members' agents as a general body not receiving it as they ought to have done; and to Mr. Lawrence and/or Mr. Randall as being those most likely to be responsible for that restricted circulation.

(5) The charts prepared by Mr. Louw and the evidence of Mr. Sturge on the 'feel' which a simple set of calculations would have given the market are also relevant. A 'back of the envelope' exercise was a straight-forward means of gaining a 'feel' for what order of exposure to

asbestos Lloyd's had. Whilst it may be crude, it would certainly give such a feel and it is inconceivable that many of those at the heart of Lloyd's with knowledge of the market and of asbestos did not gain such a 'feel' themselves. The documentary evidence makes it plain that Mr. Nelson for one did precisely that.

The Names say that Lloyd's is fixed with the knowledge of these relevant individuals and hence liability for the misrepresentations because:

(i) In the course of the formal decision to publish the representations complained of there were people at Lloyd's who failed to speak out. These people were, or were amongst, the 33 against whom the Names allege fraud. Those with guilty knowledge who withheld it were the primary representatives of Lloyd's in relation to the critical omission (in failing to include a 'health warning' or qualification to the Brochure/ Global Reports and Accounts).

(ii) Those responsible for the content of the statements from the Chairmen of the Society and of the Market Associations of Lloyd's were amongst those identified above. (a) Such individuals acted as, or were held out as, agents for Lloyd's in making these statements. (b) These individuals were the primary representatives of Lloyd's in relation to the making of these statements. Either (a) or (b) is sufficient to fix their knowledge upon Lloyd's.

8. LLOYD'S CASE

Mr. Aldous QC for Lloyd's summarised Lloyd's case in his closing submissions as follows.

Many of the original allegations which may have encouraged some Names to reject the R&R proposals and to sue Lloyd's have been shown to be unreliable or are now abandoned.

The Names have adopted an inconsistent position concerning the Lloyd's market's reserving for asbestos and pollution. Further, in instituting these proceedings, the Names seem to have been unaware of:

(i) the extent of information about asbestos which was available to all syndicates and the role of the AWP in distributing up to date information across the market;

(ii) the extensive information about asbestos which was provided to panel auditors annually;

(iii) quite how the asbestos problems increased in ways which were not predicted within Lloyd's and the insurance market generally; and

(iv) the underwriting activities of many of the 33, including their personal underwriting, which were inconsistent with their alleged dishonesty.

It is essential to have regard to the context in which the allegations are said to have occurred:

(a) In considering the Names' allegations, it is of assistance to look at other events in the Relevant Period and see the attitude and approach of those accused of fraud, the atmosphere of the times and the views of external bodies who looked at the structure and governance of the Lloyd's market. During the Relevant Period there was a process of vigorous regulatory reform, the aim or purpose of which (better disclosure, new accounting standards etc) was the very antithesis of the allegations of concealment of and a connivance in under-reserving. There were also two independent inquiries into the regulation of the Lloyd's market, which did not disclose any of the failings in the Lloyd's system which it is now alleged were known to the 33 at the time, and whose recommendations were implemented with efficiency and zeal. There were crises which demanded urgent attention and response - such as the "scandals" of 1982 and the PCW affair - which were responded to by Lloyd's in a serious and open manner.

(b) The Relevant Period (11 years) cannot be approached as though it is a single or unified event. Perceptions, concerns and preoccupations altered as opinions were changed by developing events and the different perspective which they gave. In addition new issues emerged which demanded urgent attention. Market conditions and outlook also changed: there were periods when market conditions engendered real optimism for the future (in particular the period 1985 to 1987).

The Names' case is founded upon allegations of fraudulent misrepresentation contained in the various Brochures issued by Lloyd's during the Relevant Period and Global Reports and Accounts of market results.

(i) The Brochures and Globals were prepared and reviewed with considerable care to ensure their accuracy and published with the approval of the Committee or Council. The LUNMA Chairmen's statements were not produced or prepared by Lloyd's, but by the LUNMA Chairmen without interference.

(ii) The implied representations which the Names allege cannot be found in the Brochures. The contrived implications relied upon are a disguised attempt to impose regulatory obligations on Lloyd's which the Courts (in the Ashmore and Clementson decisions) have previously held do not arise. The contrived nature and content of these representations reflects the real heart of the Names' complaint, a claim of alleged regulatory failure by Lloyd's. To circumvent section 14(3) of the Lloyd's Act, the Names have sought to force this claim into a case of fraudulent misrepresentation for alleged breaches of obligations which the Court (having read the Brochures) had previously held Lloyd's had not agreed to undertake. Moreover the Names have no justifiable complaint against Lloyd's for alleged regulatory failure.

(iii) The collegiate nature of the decisions of the Committee and Council to publish the Brochures and the Globals is important when considering the test for attributing a particular state of mind to Lloyd's in relation to those documents. In order to establish that that state of mind was dishonest, it is necessary for the Names to show that the majority of the body who approved and made the decision to publish the Brochure or Globals had such a state of mind. In relation to the Chairman of Lloyd's statement, the Chairman had no authority to include a statement in the Globals without consideration and approval of the Committee (for the 1981 to 1984 years of account) and the Council (for the 1985 to 1987 years of account). His statement was a commentary on the results in the form in which the Committee/Council had approved them and cannot sensibly be separated out from those Global results when considering the issue of attribution. Again, therefore, it is necessary for the Names to establish that a majority of the Committee/Council were aware that the Chairman's statement was untrue or were reckless as to the same. In those areas where the Chairman's statement expressed his own view, it is necessary to show that the majority of the Committee/Council (as appropriate) were aware that the Chairman did not hold such an opinion.

(iv) The LUNMA Chairmen's statements were not statements made by or on behalf of Lloyd's, but individual statements by the Chairmen of one of the market associations. In order to establish that Lloyd's acted dishonestly in relation to the publication of such a statement, the Names would have to show both that the relevant individual had a dishonest state of mind in relation to the contents of his statement, and that a majority of the body approving publication were likewise acting dishonestly in publishing it.

There are a number of features of the Names' case which make an analysis of the structure of the Lloyd's market, and of the respective roles of Lloyd's, the managing agents, the members' agents and the auditors within that market, of crucial importance:

(a) The Names are forced to look for contrived representations in two types of document only, the Brochure and the Globals, because of the very limited interaction between Lloyd's and applicants or Names (the Name's principal relationship and channel of communication being with his/her underwriting agents, members' and managing).

(b) The representations alleged seek to fix Lloyd's with obligations (such as the obligation to advise Names) which are properly the members' agents responsibilities. The allegation that Lloyd's "turned a blind eye" by not conducting some form of macro-reserving project or second-guessing syndicates' audited results, is an attempt to impose on Lloyd's an obligation to perform the functions of managing agents and auditors.

(c) The allegations of fraud against Lloyd's are not premised upon any suggestion that Lloyd's had access to special information or insight not available to the participants in the market, be they managing agents, their auditors or members' agents (indeed the Council and Committee consistently had less knowledge than the market about asbestos).

(d) If the Names' allegations are factually correct, then it would follow that each managing agent of a syndicate exposed to asbestos-related claims, each firm of panel auditors concerned with such a syndicate, each members' agent advising Names on syndicate selection, and the DTI as the overall regulator of the insurance industry, should have drawn similar conclusions to those which the Names allege Lloyd's should have drawn. It would equally follow that each of these bodies, in their own conduct throughout the Relevant Period, also acted dishonestly, and "turned their back" on the obvious. The Names' case requires an acceptance of extensive dishonesty throughout the market and of all the bodies operating in that market; an entirely improbable state of affairs which the Names have not sought to assert, still less to prove. It entails the suggestion either that there was the (improbable) coincidence of a series of unconnected and individually dishonest acts which ensured that no single group revealed the dishonesty of any other group, or that the dishonest acts were somehow connected and inter-dependent (the grand conspiracy theory).

(e) This is also true of members of the Council and Committee who are not accused of dishonesty (including the two Chief Executives, the many working members of the Council against whom no allegations of fraud are made, and external and nominated members of the Council) and the many members of the Corporation staff against whom allegations of fraud have not been made, such as Mr Tony Parkington, Mr Simon Tovey, Mrs Catherine Stynes and Mr Alan Pollard.

(f) The evidence establishes that the solvency and audit system was perceived by Lloyd's to be operating properly during the Relevant Period. At no stage during the Relevant Period did the regulatory system signal that the process by which managing agents and auditors participated in establishing reserves was one which could no longer safely be relied on. On the contrary, through the increases in reserves seen in response to a deteriorating claims situation and the increasing number of open years, the system worked. The accounting reforms and developments implemented during the Relevant Period included the introduction of a requirement of true and fair accounting, the production of the Audit Manual, the publication of the Audit Brief and the on-going introduction of new firms onto the auditors' panel.

The argument that Lloyd's turned its back on under-reserving is premised on an allegation that Lloyd's perceived during the Relevant Period that the scale of asbestos claims was so great and their final number so uncertain that either reserves could not equitably be set, or the total of reserves established by the Lloyd's market was perceived to be manifestly insufficient based on some form of "back of the envelope" calculation. To support their allegations, whilst eschewing an allegation of fraud against the AWP in the order of 1 July 1999, the Names have alleged that the AWP decided that attorneys should not make reserve recommendations which reflected future projections and claims. Various quotations have been culled from reports and periodicals to support the allegation that asbestos was perceived as a claim which was too uncertain to permit reserves to be equitably set; and crude "macro" calculations have been put forward of the Lloyd's market's share of outstanding and future asbestos claims.

Lloyd's submits:

(i) The AWP was a market body whose members did their best to ensure that asbestos claims received the serious attention which they deserved, and that syndicates had access to the most accurate and up-to-date information available. Issues relating to IBNR were left to individual syndicates to determine, utilising that information in the context of their individual books of business and protections. The Committee of Lloyd's did not attempt to influence the form in which reserve advices were produced.

(ii) The insurance industry did not foresee the scale of asbestos claims which were eventually to come. Insurance companies throughout the world and Lloyd's syndicates believed that exposure to asbestos claims could be fairly reserved for. These reserves were later shown to be inadequate because of the unforeseeable manner in which asbestos claims continued to develop, with new classes of claims and new categories of assureds emerging. This deterioration did not present itself as a continuing and inevitable event, but as a series of developments which, as they occurred were factored into reserving calculations, but which did not themselves presage the further deterioration to come.

(iii) This perception of asbestos claims was not limited to the insurance industry, but extended to other bodies which made judgments as to the future number of claims. The views that assureds such as Johns Manville formed when settling coverage disputes, and which the US Bankruptcy Court formed when approving the Johns Manville reorganisation, were shown by hindsight to be equally inadequate, but were arrived at in good faith and were regarded as a proper foundation on which to take important decisions at the time.

(iv) The Names rely on figures from the Califano statement, Dr Selikoff's research and the Commercial Union and MacAvoy reports, but have chosen not to rely on reports such as Conning and Munich Re. The figures which the Names rely on were regarded as at the outer fringes of contemporary statements of view, and remain so even with hindsight. The development of claims numbers during the Relevant Period was not consistent with the problem being one of the scale suggested by these figures. Many sources in the world insurance industry and amongst producers believed in the early 1980's that the likely total of claimants would be of the order of 40-50,000. Even towards the end of the Relevant Period, when matters had deteriorated considerably, the likely total was viewed as one in the 80,000-100,000 range.

(v) The Names' allegation that Lloyd's could and should have performed a "back of the envelope" calculation which would have revealed that the Lloyd's market was under-reserved for asbestos claims is misconceived. No witness with relevant expertise agreed that such an exercise could be performed, nor is there any evidence that anyone either made such a calculation, or believed that it could be made, at the time. Where it has been possible to test the figures for Lloyd's share of known outstanding claims put forward by Mr Louw, it is clear Mr Louw's figures wildly over-state the position.

The Names' allegations as to the various steps which Lloyd's should have taken during the Relevant Period are premised on a fundamental misconception of the nature of the Lloyd's regulatory role, and the fundamental distinction between that role and the executive, managerial, advisory and auditing role performed by agents and auditors.

The allegation that Lloyd's engaged in a strategy of recruiting Names or encouraging existing Names to increase their capacity in order to meet asbestos losses (the recruit to dilute allegation) was misconceived. The evidence establishes that the Lloyd's market capacity grew in response to external market factors, that growth was spread across different sectors of the Lloyd's market, and that Lloyd's competitors also grew to a similar or greater degree at this time.

The Names' allegation that MPRs were deliberately set at too low a level in order to encourage under-reserving should be rejected. The allegation misunderstands the purpose of MPRs and the alternative reserving tests almost universally applied to long-tail business. The proposed MPRs, and the market settlement statistics which were collected to assist in establishing the MPRs, were widely distributed to the DTI, the auditors and the market associations for comment and review and were initially suggested by Corporation staff. Again the allegation that MPRs were set deliberately too low entails allegations of dishonesty against many other persons and bodies.

The events of the pivotal period demonstrate an honest and entirely proper regulatory response to the issue of reserving for asbestos claims. Important and useful information was provided by Lloyd's to underwriting agents and to auditors to assist them in the audit. The auditors' concerns in the Neville Russell letter were treated with due seriousness, and received a proper response in the form of the Murray Lawrence letter. The evidence establishes that the Committee intended that that letter should be sent to all underwriting agents (members' and managing agents) and panel auditors; that it was so sent; and that thereafter asbestos was dealt with through the terms of the Audit Instructions and the annual meeting with panel auditors at which Lloyd's arranged for a member of the market body concerned with asbestos claims (the AWP), to give an up-date on the development of these claims. After the Murray Lawrence letter was sent, there was no occasion on which the auditors repeated the concerns they had expressed in the Neville Russell letter about the manner in which some syndicates were reserving for asbestos claims.

As to the Outhwaite syndicate, the existence of the run-off market in which this highly regarded syndicate was so heavily engaged, and the way in which different syndicates responded to that market, confirms that the perception of the future development of asbestos claims in the early 1980s was very different to that for which the Names contend. The series of events by which the Outhwaite 1982 year came to be left open in early 1985 reveal the proper working of the Lloyd's audit and agency system. Lloyd's did not acquire any information or insight from its involvement with the Outhwaite syndicate, whether in 1985 or thereafter, which suggested that there were any widespread problems in the audit system.

The PCW settlement of 1986/1987 confirms that even in the most difficult of circumstances, it was believed that equitable reserves could be established for syndicates with significant asbestos exposures. The subsequent deterioration of the syndicates' run-off reflects the unforeseen developments in asbestos and pollution claims. Nominated members of the Council and senior members of Corporation staff such as Mr Lord were intimately involved in the Council's consideration of the affairs of the PCW syndicates and did not themselves draw the conclusion that there was any problem with the audit regime.

As to the Names' allegation that Lloyd's should have warned Names in Rota of the risks posed by syndicates touched by asbestos, the Rota interview was the culmination of an extended admission process. Its limited purpose was to verify that the Name's agent had explained the fundamental features of membership to Names. It was not the context in which advice could be given, nor did this form part of the Rota Committee's role.

As to the Inland Revenue investigation into rollover policies and rollover policies themselves, the investigation was premised on the allegation that the Lloyd's market was over-reserved and seeking to defer the payment of taxable profit. Rollover policies (which in the vast majority of cases did not involve any impropriety on the part of the underwriters who took them out) evidenced the desire of syndicates to protect their Names against any risk of catastrophe claims or claims from the old years which had not been foreseen and for which no specific reserve had been allocated.

As to certain conspiracy theories which the Names have advanced during different stages of this trial (the allegation that the Bank of England sent Lloyd's a copy of a letter warning of "asbestos Armageddon" and the exposure of clearing banks to the Lloyd's market in 1982; the allegation that a secret Lloyd's department or committee, FOLDRUG, was monitoring the market's exposure to asbestos claims; and the allegation that Lloyd's had destroyed copies of Ian Hay Davison's book), each of these allegations is misconceived.

As to the allegations of reliance by the three sample witnesses, the claim that these Names either perceived or relied upon the representations alleged to be contained in the relevant Brochure or Global Reports and Accounts has not been substantiated. These Names have not even established that they received and considered the documents in question, still less that they understood them to make the representations pleaded, and relied on such representations. The evidence suggests that the Names relied on the advice of their members' agents.

9. THE RELEVANT LEGAL PRINCIPLES

The Tort of Deceit

The relevant legal principles as to the tort of deceit are as follows:-

(1) In order to sustain an action in deceit, there must be proof of fraud. Nothing short of fraud will suffice. Fraud is proved where it is shown that a false representation has been made

(i) knowingly, or

(ii) without belief in its truth, or

(iii) recklessly, careless whether it be true or false.

To prevent a false statement from being fraudulent, there must be an honest belief in its truth. (Lord Herschell in Derry v Peek (1889) 14 App. Cas. 337 at 374).

(2) It is not necessary that the maker of the statement was "dishonest" as that word is used in the criminal law. The relevant intention is that the false statement shall be acted upon by a person to whom it is addressed. If the false statement was made knowingly and that intention is proved, then the basis for liability for the tort of deceit is established. That conduct and state of mind was described as "dishonest" in Derry v Peek and may also be called "fraudulent"; but that is not necessarily using those words in their criminal sense. (Standard Chartered Bank v Pakistan National Shipping Corporation (No.2) [2000] 1 Lloyd's Rep. 218 at 224, Evans LJ).

(3) The misrepresentation which is necessary to found an action in deceit must be a representation as to a past or existing fact (Clerk & Lindsell on Torts, 17th Edition para 14-05).

(4) In order to give a cause of action in deceit, not only must the statement complained of be untrue to the defendant's knowledge, it must be made with intent to deceive the plaintiff, with intent that it shall be acted upon by him/her (Clerk & Lindsell supra 14-29 and the cases there cited). Thus to establish liability in deceit it is incumbent on the representee to show that the representor intended his statement to be understood by the representee in the sense in which it was false (Goose v Wilson Sandford, CA 14.3.2000).

(5) For a plaintiff to succeed in the tort of deceit it is necessary for him/her to prove that (i) the representation was fraudulent, (ii) it was material and (iii) it induced the plaintiff to act (to his/her detriment). A representation is material when its tendency, or its natural and probable result, is to induce the representee to act on the faith of it in the kind of way in which he/she is proved to have in fact acted. The test is objective. Inducement is a question of fact. (Downs v Chappell [1997] 1 WLR 426 at 433, Hobhouse LJ).

(6) In considering whether the elements of the tort of deceit have been established the relevant standard of proof is as follows:- the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence (Goose v Sandford supra citing the statement of Lord Nicholls of Birkenhead in Re H and Others (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563).

In What Circumstances Could Lloyd's be Held Liable in Deceit?

1. The preamble to the Lloyd's Act 1982 stated as follows. By the Lloyd's Act 1871 certain persons were united into a society or corporation for the purposes of that Act and were incorporated by the name of Lloyd's and various powers were conferred upon the Society by the 1871 Act. The 1871 Act established the Committee of Lloyd's to have the management and superintendence of the affairs of the Society and to exercise all the powers of the Society (except as otherwise provided), subject to control and regulation by a general meeting of the members of the Society. By the 1871 Act the members of the Society in general meeting were empowered to make byelaws for the purposes provided in the Act and generally for the better execution of the Act and the furtherance of the objects of the Society. Further powers were conferred on the Society and on the members of the Society in general meeting by Lloyd's Acts 1911, 1925 and 1951. It was no longer practical or expedient for the members of the Society to exercise in general meeting the powers reserved to them by the 1871, 1911, 1925 and 1951 Acts. It was expedient in order to enable the Society to regulate the management of its affairs that (a) there should be established a Council of Lloyd's to have control over the management and regulation of the affairs of the Society; (b) the Council should have power to make byelaws for the purposes of such management and regulation, including byelaws making provision for and regulating the admission, suspension and disciplining of members of the Society, Lloyd's brokers, underwriting agents and others; and (c) certain provisions in the Lloyd's Acts 1871 to 1951 should be amended or repealed.

The 1982 Act provided for the Council (section 3),the Chairman and Deputy Chairmen (section 4), the Committee (section 5) and the powers of the Council and of the Committee (section 6).

Section 14(1) of the 1982 Act exempted the Society from liability in damages at the suit of a member of the Lloyd's community (as defined in section 14(2)).

Section 14(3) provided that:-

"Subject to subsections (1), (4) and (5) of this section, the Society shall not be liable for damages whether for negligence or other tort, breach of duty or otherwise, in respect of any exercise of or omission to exercise any power, duty or function conferred or imposed by the Lloyd's Acts 1871 to 1982 or any byelaw or regulation made thereunder -

(a) insofar as the underwriting business of any member of the Society or the costs of his membership or the business of any person as a Lloyd's broker or underwriting agent may be affected; or

(b) insofar as relates to the admission or non-admission to, or the continuance of, or the suspension or exclusion from, membership of the Society; or

(c) insofar as relates to the grant, continuance, suspension, withdrawal or refusal of permission to carry on business at Lloyd's as a Lloyd's broker or an underwriting agent or in any capacity connected therewith; or

(d) insofar as relates to the exercise of, or omission to exercise, disciplinary functions, powers and duties; or

(e) insofar as relates to the exercise of, or omission to exercise, any powers, functions or duties under byelaws made pursuant to paragraphs (21), (22), (23), (24) and (25) of Schedule 2 to this Act;

Unless the act or omission complained of -

(i) was done or omitted to be done in bad faith; or

(ii) was that of an employee of the Society and occurred in the course of the employee carrying out routine or clerical duties, that is to say duties which do not involve the exercise of any discretion."

Section 14(6) provided that for the purposes of section 14 "the Society" means the Society itself and also any of its officers and employees and any person or persons in or to whom (whether individually or collectively) any powers or functions are vested or delegated by or pursuant to Lloyd's Acts 1871 to 1982.

2. The rules of attribution.

Who were the persons so centrally concerned with the relevant parts of Lloyd's operations (the Brochures and the Globals) that (for the purposes of the tort of deceit) their acts etc are to be deemed to be those of Lloyd's?

In Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500 at 506 Lord Hoffman having referred to the phrase "directing mind and will" said:-

"Any proposition about a company necessarily involves a reference to a set of rules. A company exists because there is a rule (usually in a statute) which says that a persona ficta shall be deemed to exist and to have certain of the powers, rights and duties of a natural person. But there would be little sense in deeming such a persona ficta to exist unless there were also rules to tell one what acts were to count as acts of the company. It is therefore a necessary part of corporate personality that there should be rules by which acts are attributed to the company. These may be called "the rules of attribution."

The company's primary rules of attribution will generally be found in its constitution, typically the articles of association... There are also primary rules of attribution which are not expressly stated in the articles but implied by company law...

These primary rules of attribution are obviously not enough to enable the company to go out into the world and do business. Not every act on behalf of a company could be expected to be the subject of a resolution of the board or a unanimous decision of the shareholders. The company therefore builds upon the primary rules of attribution by using general rules of attribution which are equally available to natural persons, namely, the principles of agency. It will appoint servants and agents whose acts, by a combination of the general principles of agency and the company's primary rules of attribution, count as the acts of the company. And having done so, it will also make itself subject to the general rules by which liability for the acts of others can be attributed to natural persons, such as estoppel or ostensible authority in contract and by vicarious liability in tort. ...

The company's primary rules of attribution together with the general principles of agency, vicarious liability and so forth are usually sufficient to enable one to determine its rights and obligations. In exceptional cases, however, they will not provide an answer. This will be the case when a rule of law, either expressly or by implication, excludes attribution on the basis of the general principles of agency or vicarious liability. For example, a rule may be stated in language primarily applicable to a natural person and require some act or state of mind on the part of that person "himself", as opposed to his servants or agents. This is generally true of rules of the criminal law, which ordinarily impose liability only for the actus reus and mens rea of the defendant himself. How is such a rule to be applied to a company?

One possibility is that the court may come to the conclusion that the rule was not intended to apply to companies at all... Another possibility is that the court might interpret the law as meaning that it could apply to a company only on the basis of its primary rules of attribution, i.e. if the act giving rise to liability was specifically authorised by resolution of the board or an unanimous agreement of the shareholders. But there will be many cases in which neither of these solutions is satisfactory; in which the court considers that the law was intended to apply to companies and that, although it excludes ordinary vicarious liability, insistence on the primary rules of attribution would in practice defeat that intention. In such a case, the court must fashion a special rule of attribution for the particular substantive rule. This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was for this purpose intended to count as the act etc of the company? One finds the answer to this question by applying the usual canons of interpretation, taking into account the language of the rule (if it is a statute) and its content and policy."

3. The general approach to the rules of attribution set out in 2 above applies to Lloyd's, when considering whether anything was "done or omitted to be done in bad faith".

4. The principles of agency. Liability for a tort committed by an agent.

A company is liable to be sued for a tort committed by its agent if an action in tort would lie against an individual and the agent is acting in the course of his employment or within the actual or ostensible scope of his authority, and the act complained of is one which the company might possibly be authorised by its constitution to commit. (Halsbury's Laws of England, 4th edition, volume 7(2), Companies, paragraph 1120 and the cases there cited. See further Bowstead & Reynolds on Agency, 16th edn. 8-177 and Armagas Ltd v Mundogas S.A. (The Ocean Frost) [1986] AC 717).

5. The Names' case is summarised in chapter 7 above. Lloyd's deny that the alleged representations are to be derived from the Brochures and from the Aggregate Results/Global Reports and Accounts as at 31.12.81 to 87. Further, Lloyd's deny that anything was done or omitted to be done in bad faith.

6. The Brochures up to and including the Brochure dated December 1981 were issued by the Committee. The Brochure dated December 1983 and subsequent Brochures were issued by the Council. The approval of the Brochures was a collective or collegiate act of the Committee/Council (although other persons and bodies contributed to the drafting).

7. If (contrary to my findings in this judgment) all other ingredients of the tort of deceit were made out, in the case of the Brochures whose act, knowledge and state of mind would count as the act etc of Lloyd's?

Lloyd's submits that the rule of attribution to be applied is the majority test accepted by the House of Lords in Jones v Swansea [1990] 3 All ER 737, i.e. the majority of the Committee/Council.

The Names submit that if any one member of the Committee/Council with expertise in the non-marine market had the requisite knowledge and intention, that would be sufficient. Further, the Names submit that any of the 33 persons who approved the particular Brochure would have had the necessary knowledge and intention.

8. The Aggregate Results for the year ended 31.12.81 and the Globals for the years ended 31.12.82 to 31.12.84 were approved by the Committee. The Globals for the years ended 31.12.85 to 31.12.87 were approved in draft by the Council, although approval of the final version was delegated to the Committee. Other persons and bodies contributed to the preparation of the Aggregate Results/Globals.

9. If (contrary to my findings in this judgment) all other ingredients of the tort of deceit were made out, in the case of the Aggregate Results/Globals whose act, knowledge and state of mind would count as the act etc of Lloyd's? If (contrary to my findings) the Chairman's statement contained a fraudulent misrepresentation to the knowledge of the Chairman, would Lloyd's be liable in respect thereof?

A distinction must be drawn between (i) the Chairman's statement (ii) the Chairman of LUNMA's statement and (iii) the figures/results.

Lloyd's submits that in relation to (i) it would be necessary to show that the relevant Chairman and a majority of the Committee to y/e 31.12.84/of the Council from y/e 31.12.85 lacked an honest belief in the truth of what was said (it would not be sufficient if the Chairman's statement contained a fraudulent misrepresentation to the knowledge of the Chairman, because what he said had to be approved by the Committee/Council); in relation to (ii) any dishonesty by any LUNMA Chairman would not be attributable to Lloyd's; in relation to (iii) it would be necessary to show that a majority of the Committee to y/e 31.12.84 and of the Council from y/e 31.12.85 lacked an honest belief in the truth of what was said.

The Names submit that in relation to (i) it would be sufficient to show that the relevant Chairman lacked an honest belief in the truth of what was said or (if the Chairman believed in the truth of what was said) that any one member of the Committee with the expertise in the non-marine market had the requisite knowledge (of falsity) and intention, and was in a position to cause the Chairman to correct his statement, and failed to do so; in relation to (ii) and (iii) if any one member of the Committee with expertise in the non-marine market had the requisite knowledge and intention, that would be sufficient. Further, the Names submit that any one of the 33 persons who approved the relevant Aggregate Results/Globals would have had the necessary knowledge and intention.

10. In the light of my findings in this judgment, the questions set out in paragraphs 7 and 9 above do not arise. If they had arisen in my opinion:-

(a) it would first be necessary to identify the false statement and where it was made;

(b) in the particular circumstances of this case identified in paragraphs 6 and 8 above, it would probably be necessary for the Names to establish the requisite knowledge and intention on the part of a majority of the members of the Committee/Council. Further in practical commercial terms it is most unlikely that the requisite knowledge and intention could be made out unless a majority of the members of the Committee/Council had such knowledge; and

(c) any dishonesty by any LUNMA Chairman in the Aggregate Results/Globals would not be attributable to Lloyd's.

10. THE ADMINISTRATIVE STRUCTURE AND GOVERNANCE OF THE LLOYD'S MARKET

The following account of the Administrative Structure and Governance of the Lloyd's market is drawn from a statement of agreed facts. Where I have decided a matter in dispute between the parties this is shown in square brackets.

A. INTRODUCTION

I set out below the governance and administrative structure of the Lloyd's market and identify the functions of particular committees, sub-committees, departments and personnel over the Relevant Period and of the various participants in the Lloyd's market.

B. THE OPERATION OF THE LLOYD'S MARKET GENERALLY

Structure of the Lloyd's Market

The Society and Corporation of Lloyd's regulates and provides services to an insurance market (the Lloyd's market) comprising individual underwriting members known as Names. All underwriting members appoint underwriting agents, registered and regulated by Lloyd's to conduct insurance business on their behalf. Names underwrite insurance through their agents on a several basis for their own profit or loss.

By the Lloyd's Act of 1982 the constitution of the Society was refashioned and a new Council was created, equipped with wide powers to regulate the conduct of the practitioners in the market and to provide protection for the policyholders whose risks are insured and for the Names who underwrite those risks.

[Prior to the Lloyd's Act 1982 more restricted functions were carried out by the Committee of Lloyd's as reflected in the Fisher Report.]

The Nature of the Lloyd's Market

Lloyd's is an insurance market in which underwriting members (the Names) provide insurance cover for policyholders (the assured). The Names operate through underwriting agents who have complete authority to act on their behalf in dealing with brokers, the agents of the assured. Underwriting members at Lloyd's can be categorised according to whether they are, or have been substantially involved in the market as agents or brokers or their employees (the working Names), or whether they have no professional involvement (the external

Names).

The way in which a Name puts his or her wealth at risk at Lloyd's in providing insurance cover is as follows. He/she has to demonstrate that he/she possesses sufficient capital appropriately invested. These investments and the returns on them constitute reserve capital which is called upon only if, as a result of the underwriting carried out on his/her behalf, the premiums received from the assured (and any amounts derived from the reinsurance of the risks underwritten) do not cover claims from policyholders. In the event that his/her capital is called, the Name's liability is unlimited; he/she is liable, if necessary, to sacrifice his/her entire personal fortune to pay valid claims, even if in total they go far beyond the amount originally declared. This is one of the two fundamental principles of membership of Lloyd's. The other is that Names underwrite on the basis of 'each… for his/her own part and not for another'… If a Name suffers a loss he/she cannot call on other members to share it, nor can they call on him/her to share theirs. Likewise he/she is not called upon to share his/her profits.

Although Names are sole traders, the effective operation of the market demands that they underwrite in groups, or syndicates, of varying sizes. Syndicates are grouped principally into four main markets (marine, non-marine, aviation and motor). Syndicates enable members to co-operate in underwriting risks, or proportions of risks, which would be too large for an individual to cover and they permit most of the participants to leave the actual business of underwriting to one or more working members acting on behalf of the whole syndicate. But syndicates themselves have no separate corporate status. Each member contracts directly or indirectly with his/her underwriting agent that he/she will be responsible for only a percentage of the syndicate's underwriting business, known as his/her 'line' which may vary from year to year.

There have evolved two distinct types of underwriting agent. The organiser and manager of one or more syndicates is known as a managing agent. The day to day management of each syndicate is carried out by a main (or 'active') underwriter who is an employee (and often a director or partner) of the agency. It is the active underwriter and his team who accept risks on behalf of syndicate members, receive premium income and settle claims.

The managing agent does not recruit syndicate members directly save in the case of a combined agency. That is the task of another type of agent, the members' agent, who introduces prospective Names to Lloyd's, advises them on syndicate membership and acts as an intermediary between Names and managing agents. The latter agree with members' agent that they will make available specified amounts of syndicate capacity which those members' agents can then allocate to individual Names.

The Society of Lloyd's was formed in 1811 and incorporated by an Act of Parliament as the Society and Corporation of Lloyd's. The objects of the Society are as follows:

(i) The carrying on by members of the Society of the business of insurance of every description including guarantee business;

(ii) The advancement and protection of the interests of members of the Society in connection with the business carried on by them as members of the Society and in respect of shipping and cargoes and freight and other insurable property or insurable interests or otherwise;

(iii) The collection, publication and diffusion of intelligence and information;

(iv) The doing of all things incidental or conducive to the fulfilment of the objects of the Society. (Section 4, Lloyd's Act 1911).

The Society does not itself underwrite insurance.

Active underwriters at Lloyd's must be members of the Society and, with certain limited exceptions, brokers must be approved by the Society in order to place business with Lloyd's underwriting agents on behalf of their clients.

Underwriting Members or Names

A Name is the 'insuring entity' that underwrites risk in the market through participation in syndicates and that earns the underwriting profit or sustains the loss. Each Name trades individually for his or her own account. In order to be eligible to underwrite insurance at Lloyd's, an individual must apply and be accepted as a member.

The amount of business a Name is permitted to underwrite is circumscribed by the level of resources placed at Lloyd's and is referred to as an Overall Premium Limit. (The premium limit is based on a multiple of the membership means requirement). This does not, however, apply to premiums received for reinsurance to close earlier years of a syndicate on which the Name is placed, where the placing and receiving syndicate are substantially similar.

During the Relevant Period:

(i) changes were made in relation to deposits and assets to be shown by Names; and

(ii) there were distinctions, in relation to means and deposit requirements, between working members and external members.

As a result of recommendations by the Bird Working Party in 1984, Names were required to "come into line" with any new deposit and means requirements introduced since they joined.

Syndicates

Names underwrite in groups called syndicates. A syndicate aggregates the underwriting capacities allocated to it by individual Names. It has no legal status or personality independent of the Names. Most Names allocate capacity to a number of different syndicates. Each Name underwrites risk though a managing agent aggregating the underwriting capacities of the various Names who appoint him/her, so that larger risks may be accepted. Names trade on the basis of several liability and so are not responsible for the liabilities of other Names within the syndicate.

Names underwrite through syndicates which write business allocated to a single calendar year (known as the year of account). Syndicates are reconstituted at the beginning of each year with a membership which may well differ, at least to some degree, from the previous year. The syndicates are therefore sometimes described as annual ventures. The outstanding liabilities of a particular year of account of a syndicate are reinsured at least 2 years after the end of the year of account, usually by the next succeeding year of account of the same syndicate. This reinsurance is known as reinsurance to close. Accordingly, the management of a syndicate's business is effectively an ongoing venture, carried out by a managing agent.

According to the practice at Lloyd's, every year of account of a syndicate is kept open for not less than three years from the beginning of that year of account. A year of account begins on 1 January of each year. At the end of three years, a year of account may (but need not) be closed into a later (usually the next oldest open) year of account, by means of a contract known as a Reinsurance to Close.

The management and underwriting of Names' insurance business is carried out on their behalf by the managing agents of the syndicates in which they participate. A managing agent employs underwriting and administrative staff (including the active underwriter) who run the syndicate's business from year to year. The services provided by the underwriter can include general management, accounting, business development, computer services and other shared services. The cost of the services so provided is charged to the members of the syndicate as part of the costs of underwriting. In addition, the managing agent charges a fee, based on the capacity allocated to the syndicate by each Name, and receives a profit commission on the syndicates' profits.

The following were among the principal features of a syndicate:

(i) Working members were entitled to be, and often were, Names on the syndicates for which they worked;

(ii) Clause 5 of the Standard Agency Agreement scheduled to the Agency Agreements Byelaw No 1 of 1985 provided that: "The Agent shall have the sole control and management of the underwriting business and the Name shall not in any way interfere with the exercise of such control or management." This provision reflected the contractual provision that prevailed prior to Byelaw No. 1 of 1985;

(iii) The active underwriter was a key figure in a syndicate.

Most managing agents are now limited companies (one or two are partnerships), which are privately owned or, in a few cases, publicly quoted. Prior to the divestment process required by Lloyd's Act 1982, some of the managing agencies were owned by Lloyd's brokers but, as result of the divestment requirements, the brokers were required to dispose of their interests in the managing agents (and vice versa). See further paragraphs 12.03 to 12.07 of the Fisher Report. A period of five years was allowed for the process of divestment.

Active underwriters were required by paragraph 21 of the Underwriting Agents Byelaw (No. 4 of 1984) to be directors of the managing agency.

There were three types of agent. Originally, the managing agent fulfilled the role of introducing new Names to the market and managing their affairs as underwriting members. Over the past 30 years, a second category of agent has evolved within the Lloyd's market: the members' agent, whose function was to introduce new Names and advise them on syndicate selection and other issues.

Some members' agents operate, so far as Lloyd's agency functions are concerned, exclusively as members' agents. Some of these agents are part of broking groups, who were able to retain ownership of members' agencies when they were required to sell off their managing agencies by the divestment provisions of Lloyd's Act 1982. Other members' agents are owned by, or are members of a group that includes, a managing agent in which case they and the managing agent are referred to as combined agents.

Divorce of managing and membership functions was voted on prior to the promotion of the Lloyd's Bill and was rejected by a very large majority.

Members' agents are remunerated on a similar basis to managing agents, receiving both a fee based on allocated capacity and a profit commission.

Categories of Business Conducted at Lloyd's

The business of Lloyd's was traditionally divided into four principal categories: marine, non-marine, aviation and motor. Managing agents often describe the syndicates they manage by reference to the main category in which they have traditionally operated. However, these descriptions are not comprehensive and do not define syndicates which frequently write a broader range of business than those titles might suggest.

Marine syndicates wrote, in some cases, an incidental non-marine account. Some of these incidental non-marine accounts carried an exposure to long-tail asbestos-related liabilities. Asbestos-related claims were made on some aviation syndicates.

Each syndicate writes a different mix of business, with each category of business carrying different risks. There is an important distinction between "short-tail" and "long-tail" risks. The term "short-tail" is applied to business on which claims generally arise and are settled relatively soon after the risk is accepted and the premium paid; "long-tail" denotes business for which the notification or the settlement of claims, or both, may take many years.

The US $ "All Other" class of business included both longer long-tail risks and shorter long-tail risks.

Lloyd's syndicates underwrite both "direct business" (where the policyholder has a direct interest in the underlying risk insured) and "reinsurance" (where the policyholder is an insurance company or another Lloyd's syndicate). Reinsurance can be of an individual risk (a facultative reinsurance) or a portfolio or specified part of risks previously written or yet to be written (treaty reinsurance).

Facultative-obligative (or fac/oblig) is one of a number of categories of reinsurance treaties. Some syndicates wrote retrocession as well as reinsurance business.

XL and LMX business are dealt with below.

The insurance industry is international and, in many areas, highly competitive. In many countries, insurance can only be provided by locally-based licensed insurers. However, Lloyd's underwriters have been authorised to provide insurance under local insurance legislation in a number of countries including Australia, Canada, New Zealand and South Africa. In many of the countries where Lloyd's underwriters are so authorised, they are required to fulfil a number of local requirements, which may include the appointment of a general representative, the maintenance of local deposits and the filing of statistical reports. In other countries, Lloyd's underwriters are able to accept business without having to be licensed insurers. For example, in the USA, although licensed to write direct insurance only in Illinois, Kentucky and the US Virgin Islands, Lloyd's underwriters are eligible (except in Kentucky and the US Virgin Islands) to accept excess or surplus lines business (i.e. business which locally licensed insurers are unable or unwilling to underwrite) in all states. Lloyd's underwriters are also able to write reinsurance of insurance companies, even in countries where they are unable to write on a direct basis.

The Production and Placement of Business

Business is brought to Lloyd's by the world-wide networks of the Lloyd's brokers. Managing agents and active underwriters depend primarily upon Lloyd's brokers bringing insureds and cedant insurers to them. Business is also underwritten on behalf of syndicates through binding authorities. Binding authorities are arrangements whereby third parties (often brokers) are authorised to accept risks on behalf of the members of the syndicate subject to certain conditions and limits.

A Lloyd's broker is a partnership or corporate body permitted by the Council to broke insurance business at Lloyd's on behalf of its clients. Most of the largest broking firms in the world own a Lloyd's broking subsidiary. Lloyd's brokers do not place all of their business through

the Lloyd's market. They also deal with UK insurance companies and overseas insurance markets.

The Lloyd's broker is the final link in a chain from the policyholder to the Lloyd's underwriters which may include a number of other intermediaries. The remuneration payable to the Lloyd's broker (usually expressed as a percentage of the premium payable by the insured) may be shared amongst all the intermediaries. The Lloyd's broker is normally responsible for preparing the documentation which is used for presenting the risk to underwriters (the "slip"). A typical risk will be placed with a number of syndicates, with one particular underwriter (the "leader") setting the premium rate, approving the policy wording and, frequently, underwriting the largest "line" - or percentage - of the risk. In most cases, once the risk has been placed, the broker issues a cover note setting out the basic terms and conditions of the insurance, and the proportion of the risk accepted by each insurer. There may be some participants in the cover from outside the Lloyd's market. However, there will only be one policy document for the participating Lloyd's syndicates. That document is usually prepared by the broker, and checked by the Lloyd's Policy Signing Office, which issues it on behalf of the subscribing underwriters.

Lioncover

As a result of large losses suffered by the Names on those syndicates managed by PCW Underwriting Agencies Limited (caused mainly by the fraud of its active underwriter), Lioncover was formed in 1987 by the Society (as a wholly-owned subsidiary under its control) as a vehicle to reinsure the liabilities of syndicates formerly managed by PCW (later Richard Beckett Underwriting Agencies Limited). It subsequently also reinsured WMD Underwriting Agencies Limited, an associated agency. 73 syndicates were managed by these agencies. They were broad-based marine, non-marine and aviation accounts, including a large exposure to non-marine long-tail casualty business.

All PCW syndicates and Names were reinsured to close into Syndicate 9001. This was a syndicate formed specifically to enable Names on PCW syndicates to obtain reinsurance to close, thereby ending their involvement in the PCW syndicates for regulatory and tax purposes and enabling them to be released from membership of Lloyd's. Syndicate 9001 conducts no other business. Lioncover (as retrocessionaire) entered into a whole account retrocession agreement with Syndicate 9001 (as retrocedant).

The Society gave indemnities to each of the members of Syndicate 9001 who were Mr. Murray Lawrence, Mr. Alan Parry and Sir Peter Miller.

Centrewrite

Centrewrite Limited, a wholly owned subsidiary of the Society, and under its control, was formed in 1991 to provide reinsurance, on an arms-length, unlimited basis, for syndicates in run-off and for individual members of such syndicates. From1993, it underwrote Lloyd's members' Estate Protection Plans.

XL and LMX Business

Under an excess of loss reinsurance contract, the reinsurer agrees to indemnify the reinsured in the event of the latter sustaining a loss in excess of a pre-determined figure, (the deductible). The reinsurer is liable for the amount of the loss in excess of the deductible up to an agreed amount, the deductible being the amount retained, (or retention), for the reinsured's own account. The purpose of excess of loss reinsurance is thus to limit the exposure of the reinsured on any loss, whether this arises from a large individual risk or through an aggregation of losses from a number of risks affected by a single event or loss occurrence.

XL protection may be obtained through whole account or general reinsurance, which provides cover for all or a proportion of losses, net of recoveries, on underlying policies. In practice, cover will normally be purchased in layers, rather than through one single policy. Specific XL treaties provide protection in respect of specific portfolios of business accepted by the reinsured (e.g. hull, cargo, oil rigs). The term XL can be used to describe all these types of excess of loss business.

In providing cover to primary insurers, accepting reinsurers may themselves accumulate exposures higher than they wish to retain. To meet their requirements for protection, the retrocession of excess of loss reinsurance developed as a mechanism that was intended to spread exposures more widely.

LMX is not a term which is uniformly used. It is excess of loss reinsurance written by London market entities. It is written by both corporate reinsurers and Lloyd's syndicates. The nature of LMX business is the same as that of other excess of loss treaty reinsurance. LMX business is distinguished from other excess of loss business in that it is, depending on usage, (i) reinsurance underwritten by underwriters operating in the London market of risks originating in this same market, as opposed to general excess of loss business that is reinsured on a worldwide basis, or (ii) is an excess of loss reinsurance written in London of an excess of loss contract. The "London"

distinction is thus almost entirely a geographical and cultural phenomenon, encouraged by certain brokers who specialised in this business and reflecting their knowledge of and trading relationships with the parties involved.

The Spiral

Writing high level XL on XL business on a catastrophe account is high risk. The working of the spiral which developed in the 1980s was complex, and it is convenient to describe it only in a simplified form. The phenomenon of what is described as the spiral was not new or peculiar to the operation of the market in the 1980s. Before Hurricane Betsy in 1965, a similar spiral had developed in the London market, and the losses that followed that catastrophe demonstrated the effect of the spiral. The lesson had been forgotten by the 1980s. Many syndicates which wrote XL cover took out XL cover themselves. Those who reinsured them were thus writing XL on XL. They, in their turn, frequently took out their own XL cover. There thus developed among the syndicates and companies which wrote XL business a smaller group that was responsible for creating, in relation to some risks, a complex intertwining network of mutual reinsurance, a spiral. When a catastrophe led to claims being made by primary insurers on their excess of loss covers, this started a process whereby syndicates passed on their liabilities, in excess of their own retentions, under their own excess of loss covers from one to the next, rather like a multiple game of "pass the parcel". Those left holding the liability parcels were those who first exhausted their layers of excess of loss reinsurance protection. Following Hurricane Alicia in 1983, the non-marine market introduced higher retentions, co-insurance and the exclusion of XL of XL business from whole account or general programmes written. The marine market did not take similar measures.

So far as the individual syndicates were concerned, the effect of the spiral was to magnify many times the number of claims flowing from a particular loss. This is because claims were repeatedly made in respect of the same loss as it circulated in the spiral. For example, claims in respect of the Piper Alpha loss exceeded by a multiple of about 10 the net loss that was covered on the London market.

This gearing effect did not result in an ultimate payment of a greater indemnity than the initial loss. As the loss passed through the spiral, however, it impacted repeatedly on successive layers of reinsurance cover (which it progressively absorbed), and once the total underlying retention was breached, ultimately concentrated on those reinsurers who found their cover exhausted.

The spiral effect of claims was, however, diminished or extinguished by individual retentions, whether before reinsurance protection commenced or after it had been exhausted, by co-insurance and by 'leakage' to reinsurers who did not reinsure with the same insurers. The effect of the spiral, however, significantly reduced the comfort that could properly be derived from being exposed only to what appeared to be a very high layer of loss.

Lloyd's Underwriting Claims and Recovery Office saw 43,000 claims on 11,500 excess of loss policies in respect of the Piper Alpha loss. In the case of Piper Alpha, gross claims transactions totalled about $15 billion for the whole of the London market, whereas the actual loss was $1.4 billion.

There was a claims turnover of ten times the actual loss in relation to the Exxon Valdez claim.

Growth of the LMX market during the 1980s

Certain underwriters identified commercial opportunities in writing substantial LMX business in the 1980s. It was perceived that there was an opportunity to write profitable LMX business in circumstances in which underwriting capacity was increasing rapidly and other underwriting business (eg marine) was sluggish or in decline. However, the business involved exposures and a need for judgments different from those with which many of these underwriters were familiar. In the event, a number of Lloyd's syndicates and others in the London market suffered very heavily from their decision to write such business. Further details of the nature of the XL spiral, and the reasons for the heavy losses suffered, are contained in the decisions of Phillips J in the Gooda Walker and Feltrim litigation. The parties have agreed the facts set out in those judgments relating to the manner in which the business was written on those syndicates, and the findings of Phillips J as to the negligence of the underwriters concerned.

There was also an increase in the number of companies in the so-called "fringe" market in London at this time. Many of the companies that then went into reinsurance were highly inexperienced in reinsurance and were used by the brokers to drive prices down or to get unacceptable clauses accepted. One reason that brought people into the market was the opportunity for so-called "cash flow" underwriting. The 1980s were a time when returns on investment were high. A high cash flow would produce high investment returns. This led to some reinsurers pricing reinsurance at rates that would in normal circumstances have been considered too low in terms of pure underwriting rates of return. The big continental reinsurance groups in many cases also made pure underwriting and overall losses on specific catastrophe accounts but were able to spread the losses across other segments of business. There were only a very few years when they lost large amounts overall. The worst hit were those who did not have a spread of business; this also applied to the worst hit syndicates in Lloyd's. Continental reinsurers generally had the benefit of equalisation and other reserves which enabled them to weather the bad years by

spreading their losses over more than 12 months.

Gross premiums for business written in the 1988 account showed a 61% increase by comparison with premiums for business written in the 1983 account, with a growth of 201% in premium income of the LMX syndicates over the same period. Gross premium income of the LMX syndicates as a proportion of Lloyd's total gross premium income rose from 13.1% for the 1983 account to 24.6% in 1988 and 26.4% in 1990. Premium rates for LMX business fell substantially in the 1980s.

In the period 1987 to 1990, insurance and reinsurance markets were impacted by an unprecedented number of major catastrophe losses, viz 1987, North European storms; 1988, Piper Alpha and Hurricane Gilbert; 1989, Hurricane Hugo, the San Francisco Earthquake, Exxon Valdez, and Phillips Petroleum; 1990, North European storms. The cumulative impact of these losses was severe on both companies and syndicates. For the 1987 North European storms, Piper Alpha, Hurricane Hugo and the 1990 North European storms, companies (including direct insurers and major reinsurers) carried 69%, 45%, 64% and 64% of the liability respectively, but still leaving substantial losses for Lloyd's syndicates. On the basis of the syndicates analysed in the Walker Report, losses were concentrated on a relatively small number of syndicates: although 87 syndicates were writing significant LMX business in 1988 or 1989 – in one case 93% of that syndicate's stamp capacity – 95% of the losses attributable to those syndicates for the 1988 account were encountered on 12 of those syndicates and 79% of the losses of the LMX syndicates for the 1989 account were attributable to 14 of them.

In the 1980s premium rates for LMX business fell substantially. In circumstances of apparently reasonable profit levels (in the years between 1965 and 1987, the worldwide reinsurance market was relatively undisturbed by major catastrophes, thus generally leaving reinsurers with a 22 year span of profitable results) and increasing capacity, premium rates in 1987 and 1988 had fallen to only 10% of those being charged ten years earlier and were reduced in higher layers as a consequence of the perceived diminution in exposure.

Catastrophe reinsurance rates have risen since 1989. The expectation of the world-wide reinsurance industry in April 1995 was that substantial withdrawals of capacity from the industry as a whole that had taken place would keep reinsurance rates hard over the medium term.

The Risks

The high risk nature of the spiral exposures accepted by the syndicates and the level of reinsurance accepted by the syndicates and the level of reinsurance purchased to protect them was not appreciated by many Names. Had the Names been better aware of the risks involved they might have ceased or reduced their participation.

C. GOVERNANCE AND ADMINISTRATIVE STRUCTURE

Prior to the 1982 Lloyd's Act, powers were conferred upon the Society of Lloyd's by four earlier Acts of Parliament: the Lloyd's Acts of 1871, 1911, 1925 and 1951. The Committee of Lloyd's was charged with the management and superintendence of the affairs of the Society, but was subject to control and regulation by general meeting of the members (Section 29 Lloyd's Act 1871).

In summary, the powers of the Society were:

(i) to make, revoke or amend byelaws (by general meeting, re-confirmed by a further general meeting within 28 days and subsequently approved by the Recorder of the City of London) in respect of a number of defined purposes (Section 24 Lloyd's Act 1871);

(ii) to suspend members for a period not exceeding 2 years for any "act or default discreditable to him ... in connection with the insurance business" (Section 12 Lloyd's Act 1911);

(iii) to expel a member for a breach of the rules of the Society or for committing a discreditable act following a determination of guilt by 2 arbitrators and on the vote of four fifths of the members attending at a general meeting convened for that purpose (on at least 6 days notice) (Section 20 Lloyd's Act 1871);

(iv) to investigate and punish any frauds or felonies which relate to the insurance business carried out by members (Section 11 Lloyd's Act 1911);

(v) to raise or borrow money (Section 3 Lloyd's Act 1951);

(vi) to guarantee payment of claims (Section 9 Lloyd's Act 1911); and

(vii) to act as trustee (Section 8 Lloyd's Act 1911).

The Committee was originally established under the 1871 Act and comprised 12 individuals appointed under that Act (Section 11 Lloyd's Act 1871). Prior to the start of the Relevant Period the number of Committee members was increased to 16 (See Byelaw 44 of the 1973 edition of Lloyd's Byelaws). One quarter of the Committee retired by rotation each year and new members were elected by a vote of all the members at general meeting. Individuals who had retired from the Committee were eligible for re-election one year after they had stood down. Newly elected Committee members would be invited to attend the Committee meeting at the end of the year.

The Council of Lloyd's

The Council of Lloyd's was established by the Lloyd's Act 1982 and was formed on 1 January 1983. The first meeting of the Council took place on 5 January 1983. Under the Act the Council became the body charged with the management and superintendence of the affairs of the Society and the power to regulate and direct the business of insurance at Lloyd's (Section 6(1) Lloyd's Act 1982). To that end, the Council was empowered (by special resolution of separate majorities of the working members and of the external and nominated members together) to:

(i) make such byelaws as from time to time seem requisite or expedient for the proper and better execution of Lloyd's Acts 1871 to 1982 and for the furtherance of the objects of the Society, including such byelaws as it thinks fit for any or all of the purposes specified in Schedule 2 of the Act; and

(ii) amend or revoke any byelaw made or deemed to have been made thereunder (Section 6(2) Lloyd's Act 1982).

Under Section 6(4) of the Lloyd's Act 1982, any byelaw passed by the Council may, within 60 days, be challenged at a general meeting by a majority of those voting, such majority being at least a third of the total membership, on the petition of not less than 500 Names.

The composition of the Council was established by the Lloyd's Act 1982 as comprising 16 working Names, 8 external Names and 3 Names nominated by the Council and confirmed by the Governor of the Bank of England (Section 3 Lloyd's Act 1982). In July 1987, following the Neill Report, the composition was altered to 12 working Names, 8 external and 8 nominated Names.

The composition of the Council was (after the Relevant Period) subsequently further altered and the number of working Names reduced to 6.

Working members of the Council are elected by the working members of the Society and external members of the Council are elected by external members of the Society (Section 3(2) Lloyd's Act 1982). The conduct of elections of members of the Council is regulated by byelaws passed by the Council. During most of the Relevant Period elections for both working and external Council members were held by postal ballot on the same day as the general meeting in November each year (Byelaw 13 of 1983, paragraph 2). Council members were elected for 4 years (save for nominated members of Council who served for 3 years at a time). Council members were required to take a sabbatical year after serving on the Council before standing for re-election. The date on which the elections were held was changed in 1987 (Byelaw 1 of 1987).

The Chairman and Deputy Chairmen of Lloyd's are elected on an annual basis by the Council (Section 4 Lloyd's Act 1982).

The Committee of Lloyd's

From January 1983 the Committee of Lloyd's was comprised of the 16 working members of the Council (Section 5(1) Lloyd's Act 1982). This was reduced to 12 in July 1987. By means of special resolution, the Council was able to delegate certain functions to the Committee, namely:

(i) the making of regulations regarding the business of insurance at Lloyd's; and

(ii) the carrying out or exercise of any duties, responsibilities, rights, powers or discretions imposed or conferred upon the Council by any enactment (other than an enactment in the Act) or regulation made in pursuance thereof or by any other instrument having the effect of law or by any other document or arrangement whatsoever, whether or not such enactment, regulation, instrument, document or arrangement was in force or in existence on the day when the Act came into force, insofar as such delegation was not prohibited by any enactment, regulation, instrument, document or arrangements (Section 6(6) Lloyd's Act 1982).

Other powers and functions under the 1982 Act and the power to make directions regarding the business of insurance at Lloyd's may be delegated to the Committee or to the Chairs of Lloyd's or to the Chairs of the Committee (Section 6(5) Lloyd's Act 1982).

The Chairs

The Chairman was the ambassador and principal spokesman of Lloyd's to the outside world, including external Names. [He was the team leader of a team that was the fountainhead of authority and policy. He liaised regularly with Market Association Chairmen. For the proper performance of his functions it was necessary for him to inform himself of important market activities and problems.]

[The two elected deputy Chairmen deputised for the Chairman when he was not available. Where appropriate, any member would be allowed direct access to the Chairs.]

Committee Structure

In turn, the Council and the Committee have delegated functions to certain committees. The roles of certain committees relevant to the present dispute (both before and after the 1982 Act) are set out below.

(a) Audit Committee

The Audit Committee was a policy and advisory committee reporting to the Committee of Lloyd's on matters affecting the solvency of members of Lloyd's and the security underlying Lloyd's policies. The Audit Department of the Corporation provided administrative support to the Audit Committee and was directly responsible to it.

The Audit Committee existed from 1960 until 1983 when it was replaced by the Members' Solvency and Security Committee. (The name was changed to Solvency and Security Committee in 1986.)

The MSSC was responsible for making recommendations to the Committee of Lloyd's on all aspects relating to the annual solvency test and the protection of Lloyd's policyholders. The MSSC liaised with the AASC (see below) in relation to accounting and audit considerations relevant to the conduct of the annual solvency test.

(b) Accounting and Auditing Standards Committee

The AASC was set up in 1983 (effectively taking over the work of two Fisher Task groups: 4 & 15) to define the accounting and related auditing requirements applicable to Lloyd's brokers, underwriting agents and syndicates, the reporting of information to Names and the introduction of manuals to reflect the Council's requirements as to accounting and audit.

(c) Membership Committee

The Membership Committee existed from January 1977 to December 1985. It was a policy and advisory committee which reported and made recommendations to the Committee of Lloyd's on matters relating to membership requirements.

The Membership Committee considered the terms of the rota brief, and consulted the LUAA and others, from time to time. In March 1982 the question whether the subject of latent disease should be "introduced" into Rota Committee was addressed by Mr. Murray Lawrence to the Membership Committee.

Functions and Structure of the Corporation of Lloyd's

The executive and administrative functions of Lloyd's are fulfilled by the Society's employees (known colloquially in the market as 'the Corporation').

Prior to the introduction of the 1982 Act, the Corporation staff were divided into a large number of departments which were grouped into the following areas:

(i) the Corporation services group including the catering, office services, personnel, premises, redevelopment, the superintendent of the Room's department and training departments;

(ii) the Management services group which was divided into data processing (called computer services in 1982), system development, technical and, also from 1982, planning;

(iii) the Publicity, Information and Press department whose responsibilities included the many Lloyd's publications including co-ordinating the production of the annual report and distribution of information to Names;

(iv) the Advisory, Brokers and Legal departments;

(v) the Finance group which encompassed the finance department, and accounts, investment, tax and internal audit departments;

(vi) LUCRO, the marine market claims office;

(vii) the Aviation department which included sections dealing with surveys (including accident investigation) and intelligence;

(viii) the Agency department which dealt with settlement of claims abroad, salvage arbitration, cargo certificates and also included an administration section dealing with more general matters;

(ix) LPSO which issued all policies written in the Lloyd's market on behalf of underwriters; and

(x) the Membership Services group incorporating the Membership, Underwriting Agents and Audit, and Deposit departments.

While the Secretary-General was responsible for the Corporation staff, the head of each department reported to the Chairman of Lloyd's. The Chairman was assisted in this task by the Deputy Chairs who acted as a point of contact for some of the departments.

Secretary-General

From 1975 the senior member of the Corporation staff was the Secretary-General. The Secretariat ensured that departmental papers and representatives were available at Committee discussions. Following the introduction of the office of Chief Executive in 1983, the Secretary-General's main role was as advisor to the Chairs and secretary to the Council. From 1984 the Secretary-General became known as the Secretary to the Council. When Mr. Ian Hay Davison became Chief Executive a subsidiary role was created for the incumbent Secretary-General and, upon his retirement, he was not replaced.

The Secretary-General was responsible for co-ordinating the work of the different departments including the supervision of the agenda for the weekly Committee meeting.

"O" Group

The "O" Group existed from the 1970s to the early 1990s. It had no terms of reference as such but was effectively a small informal group set up to co-ordinate the presentation of papers to Council and Committee. It included the Chairman and Deputy Chairmen, the Secretary-General, the Chief Executive and typically the group heads. Its role included the review of papers to be submitted at Council/Committee meetings and consideration of general policy issues. Given the informal nature, the precise role played by the 'O' Group was dependent on the Chairs and Chief Executive at the relevant time.

Chief Executive

The creation of this post was instigated by the Bank of England, who nominated Mr. Ian Hay Davison as a suitable candidate.

Terms of reference for the Chief Executive were laid down in 1983. The Chief Executive is also a Deputy Chairman of Lloyd's and a nominated member of the Council.

In May 1983 the Chief Executive put forward proposals for a new organisational structure comprising 6 group heads reporting directly to him. Departmental managers would in return report to the group heads. Mr Davison's organisational proposals were accepted and implemented by the Council.

The new structure comprised the following groups:

(i) Finance. This group was responsible for the Corporation's financial affairs including internal audit, treasury, financial information and market financial services. From 1984 the Finance group was combined with the Market Services group.

(ii) Market Services. This group was responsible for co-ordinating organisations which provided direct services to the market including LPSO, LUCRO and the Aviation department.

(iii) Regulatory. This group was responsible for the self-regulation of the Society. The departments falling within its control included membership, underwriting agents and audit, deposits, advisory and brokers.

(iv) Systems and Communications. This group provided computer and telecommunications services to the market and was responsible for developing systems to aid both the market and the Corporation in their work.

(v) External Relations. This group included departments dealing with information, legislation and taxation but by 1984 responsibility for taxation and legislation had been transferred to the Regulatory group and for information to the Finance and Market Services Group.

(vi) Corporation Services. This group was responsible for the catering, personnel, training and premises departments within the Corporation. Departments within this group became part of a new Administration group in 1988.

The Secretary-General initially retained control over the legal, secretarial, research and disciplinary functions but these subsequently fell under the umbrella of group heads.

Chief Executive's Group

The CEG was established in 1983 and consisted of the group heads together with the Secretary- General and the Chief Executive. The CEG was a management group which discussed co-ordination of the activities of the Corporation. Towards the end of the Relevant Period the group also adopted an administrative role in co-ordinating the production of papers for Council.

Role of the Department of Trade and Industry

The basic regulatory arrangements governing carrying on insurance business in the UK are now provided for by the Insurance Companies Act 1982. (Prior to the introduction of the ICA 1982, similar regulatory arrangements were provided for by the Insurance Companies Act 1974). Insurance may normally be carried on only by bodies authorised to do so by the Secretary of State. It is the Secretary of State for Trade and Industry who is responsible for this sector, and the powers of the ICA 1982 were generally exercised on his behalf by the DTI. The ICA 1982 provides that individuals may only underwrite insurance business in the United Kingdom if they are accepted as members of Lloyd's.

In view of the regulatory regime provided by the Lloyd's Acts, Lloyd's is exempted from some of the requirements of the ICA 1982. However, pursuant to the ICA 1982 and regulations made under it (i) the requirements to pay all premiums into Premiums Trust Funds were imposed; (ii) accounts of every underwriting member had to be prepared and audited annually and a certificate of solvency of each underwriting member delivered to the DTI; and (iii) the Council had to file an annual return summarising the extent and character of the insurance business done by the members of Lloyd's.

Under the terms of the ICA 1982 and the Insurance (Lloyd's) Regulations 1983, the members of Lloyd's taken together are required to maintain a minimum margin of solvency. A failure to comply with this requirement is one of the grounds on which the DTI is entitled to exercise extensive powers of intervention for the protection of policyholders.

The powers of the DTI if it intervenes include:

(i) the power to require maintenance of assets in the European Union or the United Kingdom of value equal to the whole or a specified proportion of Names' liabilities;

(ii) the power to stipulate who should hold the assets as trustee;

(iii) the power to obtain information; and

(iv) a residual power to require a Name to take such action as appears to the Secretary of State to be appropriate for the purposes of

protecting policyholders against the risk that the Name may be unable to meet his/her liabilities.

D. MARKET ASSOCIATIONS

In addition to the committee and departmental structure, there are a series of market associations which represent the interests of the various market constituencies but do not involve themselves in underwriting decisions. A separate association exists for each underwriting market. They are independent of the Society and Corporation of Lloyd's and do not act under its control. They are: the LUNMA (non-marine), the LUA (marine), the LMUA (motor) and the LAUA (aviation). Details of these and other market bodies are dealt with below.

LUNMA

In 1910 what is now Lloyd's Underwriters' Non-Marine Association Ltd was formed with the object of meeting periodically to consider matters relating to fire and non-marine business at Lloyd's. One of the chief functions of that association was then, and still is, to gather and circulate to its members information relating to non-marine business throughout the world. Within the purview of LUNMA was the wording and effect of standard policy forms for use by the non-marine market. LUNMA was incorporated as a company limited by guarantee on 3 January 1991.

Membership of the association comprises all the active underwriters at Lloyd's underwriting non-marine business and they elect a committee.

LUA

Lloyd's Underwriters' Association was formed in 1909 and represents the interests of the marine market at Lloyd's. The committee of the association meets regularly to discuss the underwriting and general administrative problems which affect marine insurance. It frequently makes recommendations to all members of the association with a view to improving the efficiency and profitability of marine insurance. Also, the association keeps its members supplied with pertinent information that is likely to have some bearing upon the underwriting of marine insurance at Lloyd's.

LMUA

The introduction of compulsory third party insurance in 1930 led directly to the formation of the Lloyd's Motor Underwriters' Association in June 1931.

LAUA

Lloyd's Aviation Underwriters' Association was formed in 1935 to represent the interests of the Lloyd's aviation market. Membership comprises active underwriters of any Lloyd's syndicate writing aviation business. The committee acts on behalf of the members as a whole, keeping them informed (particularly in relation to foreign legislation and international conventions governing the liability of air carriers) and sometimes making recommendations designed to improve the efficiency of the market.

Throughout the Relevant Period:

(i) the Chairs were ex officio members of the four market associations (LUNMA, LUA, LAUA and LMUA);

(ii) there were individuals who were members of both the Committee of Lloyd's and the market associations.

LUAA

Lloyd's Underwriting Agents' Association was formed in 1960 to look after the interests of underwriting agents and to examine and report on matters which might be referred to it by the Chairman or Council of Lloyd's. The association has no regulatory power. The association acts as a forum for its members and, when necessary, speaks collectively on their behalf. The association is represented on a number of standing and ad hoc committees at Lloyd's and it liaises with the various departments of the Corporation of Lloyd's on matters affecting agents and the Names for whom they are responsible.

Underwriting agents are a single category within Lloyd's regardless of whether managing, members' or combined.

BIBA

The British Insurance Brokers' Association was a single national body representing the interests of insurance brokers in the United Kingdom. The purpose was to ensure that, for the future, united action was taken on measures to protect and promote the interests of the British insurance broking industry and that a single representative body existed which was able to react to or express opinion on matters affecting the industry. BIBA is not a body within Lloyd's regulatory ambit.

LIBC

The Lloyd's Insurance Brokers' Committee was an autonomous committee of BIBA. It was the direct successor of Lloyd's Insurance Brokers' Association, which was formed in 1910 but merged into BIBA in 1978. While the LIBC was one of the regional committees of BIBA, in so far as matters affecting the interests of Lloyd's brokers were concerned, it was autonomous and the interests of Lloyd's brokers remained in the hands of a committee of 16, elected by Lloyd's brokers themselves. It therefore continued to represent Lloyd's brokers on, inter alia, all matters peculiar to their relationships in the Lloyd's community.

Asbestos Working Party

The AWP was formed on the initiative of leading non-marine underwriting agents in August 1980. Interested underwriters were advised of the AWP's formation.

The functions of the AWP, as set out in a letter from Elborne Mitchell to all interested underwriters dated 1 December 1981, included the following:

(i) to provide a forum for discussing problems relating to asbestosis claims and to seek market agreements to assist underwriters in their handling of claims;

(ii) to advise on coverage matters when requested to do so by the leading underwriters;

(iii) to consider facultative re-insurance as well as direct insurance;

(iv) to explore solutions to the asbestosis problem otherwise than by litigation or traditional claims handling; and

(v) to assist in the establishment and development of a database to provide claims information for reserve purposes.

The AWP did not undertake any executive function; it acted in an advisory capacity and to facilitate and co-ordinate the dissemination of information to the insurance market as a whole. It considered that it was not its place to usurp the functions of underwriters and others to whom it communicated in the market with regard to information that came to hand.

The AWP, which was not a Lloyd's initiative but rather a market initiative, had no agency or other legal relationship with Lloyd's, and Lloyd's is not, and never has been, responsible for the acts or omissions of the AWP.

The AWP was created after consultation between the signatories to the letter of 5 August 1980. Its work was intended to embrace a matter of importance to some Lloyd's syndicates and London companies. In December 1982, Mr EE Nelson was asked by Mr. Peter Green to give a brief summary regarding the position of asbestos-related claims when the MPRs for the US$ All Other Business category were discussed at the Committee meeting. Panel auditors during the Relevant Period were addressed by Mr. Murray Lawrence, Mr. Ted Nelson, Mr. Ralph Rokeby-Johnson and Mr. Robin Jackson on the question of (amongst other things) asbestos-related claims. The AWP sought authority from Lloyd's syndicates and companies in the London market for the handling of claims. Individuals (including Mr. R.A.G. Jackson) who were members of the AWP, or its claims committees, were amongst those involved in negotiating the Wellington Agreement and assisting in the establishment of the Asbestos Claims Facility. US attorneys reports were sent to the AWP and distributed to insurers at interest in the London market. The AWP was responsible for the decision to establish Toplis and Harding Asbestos Services Ltd. (later Toplis and Harding Market Services Ltd.) to which attorneys' reports were subsequently addressed. Toplis and Harding Inc. (a US company) was purchased by Lloyd's in 1984. Alexander Grant, a firm of US chartered accountants, was retained by the AWP in 1981 to establish a database containing claims information. Toplis and Harding Inc. assisted in inputting information into the database.

Other Working Parties

In addition to the AWP, a number of other working parties were formed by underwriting agents to study particular claims related issues of interest to the market, for example, the Computer Leasing Working Party and the Environmental Claims Group.

Mr. Murray Lawrence was chairman of the Computer Leasing Working Party.

Mr. Ian Posgate was a member of the working party. The Computer Leasing Working Party retained Elborne Mitchell as its solicitors. For a short period, computer leasing formed part of the brief to Rota Committee Chairmen.

Market Representation of Names

Names are represented through the external members of the Council elected by them. A number of associations have also been created to represent their interests including the Association of Lloyd's Members. Prior to the formation of the Council, external Names were entitled to vote alongside working Names for the Committee candidates. Upon formation of the Council, external Names were entitled to vote only for external members of the Council. The responsibilities of members of the Council, to have regard to the interests of Lloyd's as a whole, did not vary from Council member to Council member. Names' action groups have existed since at least 1979 (when the Sasse action was in existence).

E. DEVELOPMENT OF SELF-REGULATION AT LLOYD'S

Lloyd's was established as a society of underwriters in 1811 when a Deed of Association was executed by the members at that time. By 1871, the business of Lloyd's had increased in size to the extent that it was considered necessary to promote an Act of Parliament to establish the Society of Lloyd's in a more permanent fashion. The Lloyd's Act 1871 incorporated the then members and all persons subsequently admitted as members into the Society and Corporation of Lloyd's. That Act, with a few basic amendments, established the Committee of Lloyd's as responsible for managing the affairs of Lloyd's and set out the framework upon which Lloyd's affairs were conducted during the ensuing 110 years. It laid down (inter alia) and confirmed two fundamental rules for Names, that underwriting must be conducted only in the Underwriting Room and a Name shall be a party to a contract of insurance underwritten at Lloyd's only if it is underwritten with several liability, each underwriting member for his/her own part and not for another, and if the liability of each underwriting member is accepted solely for his/her own account.

During the late 19th and early 20th Century, the market saw the development of new forms of underwriting and the Lloyd's Act 1911 extended the objects of Lloyd's to include the carrying on by Names of insurance business of every description (previously it had been limited to marine business). The Act also introduced the power of the Society to suspend temporarily any Name if the Committee considered him/her to have been guilty of any act or default discreditable to him/her as an underwriter.

The Lloyd's Act 1925 gave enabling powers in respect of the making of byelaws by the Society and modified some of the rules governing the operation of the Committee. A further Lloyd's Act in 1951 was promoted to give the Society full powers to borrow money. Several parts of the Acts referred to above were repealed by the Lloyd's Act 1982, the purpose and provisions of which are considered further below.

The Cromer Report

In November 1968, Lord Cromer was asked to head a Working Party to investigate and recommend "what should be done to encourage and maintain an efficient and profitable Lloyd's underwriting market of independent competing syndicates, which would be of a size to command world attention". The Cromer Report was delivered to the Committee of Lloyd's at the end of December 1969. The Cromer Report was made available by Lloyd's to Names in 1986. The Cromer Report pointed out that in order to maintain its share of the world market in insurance, which was expanding at 7 to 10 per cent. per annum, Lloyd's would need an increasing amount of capital.

The Fisher Report

In 1979, the Committee of Lloyd's established a working party, chaired by Sir Henry Fisher, its terms of reference being:

"To enquire into self-regulation at Lloyd's and for the purpose of such enquiry to review:

(i) the constitution of Lloyd's (as provided for in Lloyd's Acts and Byelaws);

(ii) the powers of the Committee and the exercise thereof; and

(iii) such other matters which, in the opinion of the Working Party, are relevant to the enquiry.

Arising from the review, to make recommendations".

The principal recommendation of the Working Party in May 1980 was that:

"... the constitution is no longer appropriate and the Committee's powers are inadequate for self-regulation in modern conditions. We have, therefore, recommended that the Committee of Lloyd's should promote a new private Act of Parliament so that the constitution of Lloyd's can be brought up to date and the powers of self-regulation enlarged."

The report of the Working Party contained a draft bill to amend Lloyd's Acts 1871-1951. That draft was the basis of the bill approved by the Lloyd's membership at a meeting on 4 November 1980. On 27 November 1980, the Committee presented the draft bill to Parliament for passage as a private Act of Parliament. The Bill received Royal Assent on 23 July 1982.

The Neill Report

In January 1986 the Financial Services Bill was published and did not include Lloyd's within its scope. However, during the second reading of the Bill, the Secretary of State for Trade and Industry announced that the Sir Patrick Neill would head an inquiry into the administrative and disciplinary framework of Lloyd's and the operation of Lloyd's Act 1982. The terms of reference of the Neill Committee were:

"to consider whether the regulatory arrangements which are being established at Lloyd's under the 1982 Lloyd's Act provide protection for the interests of members of Lloyd's comparable to that proposed for investors under the Financial Services Bill".

The Neill Committee reviewed the byelaws and codes of conduct made since 1983.

The Neill Committee did not recommend that the regulation of membership of Lloyd's should be brought under the auspices of the Securities and Investments Board. Nor did it recommend any amendments to Lloyd's Act 1982; it stated that its recommendations could be effected by byelaws and resolutions of the Council.

The Committee expressed a number of views on the relationship between external and working members of Lloyd's and made a total of 70 recommendations. These related to the following areas:

(i) the constitution of the Council of Lloyd's: in particular, it recommended increasing by four the number of members nominated and approved by the Governor of the Bank of England and reducing by four the number elected from working Names;

(ii) admission to membership;

(iii) the relationship between Names, members' agents and managing agents: in particular, the structure and terms of the standard agency agreement;

(iv) syndicate accounting and disclosure;

(v) registration of underwriting agents, Lloyd's brokers and syndicate auditors;

(vi) conflicts of interest: especially in relation to common ownership of managing and members' agents;

(vii) enforcement of the system of regulation;

(viii) compensation of and complaints by Names.

Implementation

A chart listing all the byelaws passed by the Council of Lloyd's since the introduction of the 1982 Act and as a consequence of the development in self-regulation is at Appendix II to the statement of agreed facts.

Central Fund Byelaw (No 4 of 1986)

The Lloyd's Central Fund is held and administered by the Society of Lloyd's in accordance with the Central Fund Byelaw (No. 4 of 1986). Members contribute to the Fund each year based on a percentage of their gross allocated capacity.

As part of Lloyd's solvency procedure, certain assets of the Fund may be used to cover underwriting deficiencies of Names at the preceding 31 December, to enable them to pass the solvency test and meet the requirements of the DTI.

Evolution of the Central Fund Byelaw

The 1986 Central Fund Byelaw (No. 4 of 1986) replaced the Central Fund Agreement of 1927. This embodied the provisions of the guarantee scheme (the immediate predecessor of the 1927 Agreement). The Fund was set up to meet the liabilities of members who had been declared in default of their obligations, and was also available for the "advancement and protection of members", at the Council's discretion. It was funded through contributions from members based on premium income of the previous year. The catalysts that provoked the making of the 1927 Agreement were the Burnand (1903) and Harrison (c.1923) cases. Both involved deliberate fraud on the part of the underwriters and caused considerable losses for Names. As a direct result, the Chairman in the mid 1920s, Mr Arthur Sturge, suggested that £200,000 be subscribed by all underwriters in proportion to their premium incomes.

Clause 3 of the 1927 Agreement stated as follows:

"The Central Fund shall consist of (a) £49,988-8s-0d now in the hands of the Society and arising from earlier guarantee schemes which have now been discontinued (b) the contributions of the Subscribing Members hereinafter mentioned (c) the investments for the time being representing such fund and contributions and (d) any other monies which may be at any time added to the Central Fund".

The Central Fund was held and administered by the Committee of Lloyd's (and, following the recommendation of the Fisher Working Party, the Council), on behalf of all members in accordance with the 1927 Agreement and subsequent amendments.

The 1927 Deed was replaced by the Central Fund Byelaw (No. 4 of 1986) as a result of the findings of the Fisher Working Party in 1980. The Fisher Working Party recommended that the Council of Lloyd's should be given express power by an amendment to Lloyd's Acts to maintain the Central Fund, to decide (and to alter from time to time) the purposes to which money in the Fund may be applied, to require members of Lloyd's to contribute to it, and to fix the rate of contribution and to alter it from time to time. Whether or not this was done, they considered that the 1927 Agreement required consideration by the Council with a view to possible revision. In particular the Council should review:

"(a) the purpose for which money in the Fund may be used;

(b) the investment of the Fund in the light of the purposes for which the money in the Fund may be required;

(c) the provision that money in the Fund may not be applied in payment of claims on policies underwritten by a Member until he has been declared to be in default;

(d) the rates of contribution fixed by the 1927 Agreement, and the procedure for increasing contributions in case of need;

(e) the practice in relation to the formalities required for adhesion to the 1927 Agreement." (Fisher Report, para 24.16).

Fisher Task Group 19 was given the task of considering these recommendations. It recommended that:

(i) Names should be required as a condition of membership of Lloyd's to consent to variation of the Central Fund 1927 Agreement

(a) removing the maximum contribution limit of 0.45% of premium income and empowering the Committee by regulation to levy contributions at rates to be determined;

(b) removing the proviso against increasing the financial liability of Names;

(c) enabling future modifications or variations to the Central Fund 1927 Agreement to be effected by Byelaw rather than by Deed;

(ii) the 1927 Agreement should be amended to allow payment of claims without a declaration of default where Names subscribing a risk cannot be identified;

(iii) the default declaration proviso in Clause 10 ("no part of the Central Fund shall be applied in paying or making good or purchasing claims or returns on Policies...(a) unless and until he shall be been declared by a Resolution of the Committee to have made such default as aforesaid...") should not be immediately removed but by amendment to Clause 15 (to be agreed to by Names in a supplemental deed) the Council should be empowered subsequently to remove it by Byelaw;

(iv) a Byelaw should require all Names to subscribe to the Central Fund.

All the Task Group recommendations were agreed by the Committee with two modifications: first, they proposed a maximum rate of contribution of 2½% of premium income to the Central Fund, and secondly, they proposed that it remain necessary for a member to be declared in default before his claims could be met by the Central Fund.

The recommendations were considered by the Council on 21 March 1983. The Council approved the recommendations made by the Task Group save that it agreed with the Committee that the default declaration provisos should not be removed. The Council did not, however, agree to the suggested maximum rate of contribution, but deferred a decision until a final decision had been taken as to the future form of the Fund.

The Council also approved the Committee's proposal that, as from 1984, the basis for calculating the levy should be gross premium income (i.e. without deduction of reinsurance premiums paid) instead of net premium income. It was calculated that the change was equivalent to increasing the levy on net premium income from 0.45% to 0.60% and that this increase was an amount which was not less than the premium which Names would have been required to pay for the guarantee policies which ceased to be required in respect of years of account later than 1981 (and the premiums on which ceased to be paid in the 1984 year of account).

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F. LEGAL RELATIONSHIP BETWEEN NAMES AND THEIR AGENTS

Legal Relationships Between Names and Agents

There are three types of agents, a members agent, a managing agent and a combined agent, which performs both the roles of members' agent and of managing agent. From the early 1970's insurance in the Lloyd's market could only be effected through an agent if that agent was listed in the Register of Approved Lloyd's Underwriting Agents (Byelaw No. 87 (18 November 1970)). In 1984 the Register was divided to record separately those agents approved as managing and members' agents (Byelaw 4 of 1984). In deciding whether the agent was "fit and proper" to be registered, the Committee would take into account the suitability of its directors, partners or staff, the suitability of the active underwriter(s) (in the case of a managing agent) and its ability to supervise and service all of its activities and responsibilities (Byelaw 4 of 1984, paragraph 8). It was agents who decided whether they wished to be managing agents, members' agents or combined agents and to seek registration accordingly.

Until the introduction of the standard agency agreement, there was no mandatory standard form of agency agreement. On 11 March 1985 the Agency Agreements Byelaw No. 1 of 1985 was passed which stipulated that from 1 January 1987 insurance business could not be underwritten in the Lloyd's market unless the Name had entered into a Standard Agency Agreement. The Standard Agency Agreement governed the relationship between the Name and his/her members' agent (or a combined agent acting as members' agent). Where that members' agent or combined agent delegated some or all of the underwriting to a managing agent a Standard Sub-Agency Agreement contained the terms of that delegation.

There was no direct contractual relationship between a Name and his/her managing agent, unless the members' agent also acted as managing agent. (The position changed in 1990 with the implementation of the Agency Agreements Byelaw (No. 8 of 1988) which prescribed standard form agency agreements and introduced a direct contractual relationship between the Name and his/her managing agent). However, the House of Lords in Henderson v Merrett Syndicates Ltd [1994] 3 WLR 761, upheld the decision of the Court of Appeal that the delegation of the conduct of underwriting business did not remove the implicit promise by the members' agent that the work of the managing agent would be carried out with reasonable care and skill. In addition, the managing agents were under a similar, non-contractual duty to Names to exercise reasonable care and skill.

The Role and Duties of a Members' Agent

A members' agent is an agent to whom members delegate complete control of their Lloyd's affairs and who enter into sub-agency agreements with managing agents to place Names on their syndicates. A members' agent does not underwrite any risks. Although many Names remain with the same members' agent throughout their membership of Lloyd's, it is possible to transfer to another members' agency. The new members' agent may not be able to secure a Name's participation in syndicates on

which that Name had previously underwritten, and accordingly a transfer of members' agent may involve a change in the Name's syndicates.

The primary role of a members' agent is to manage a Name's Lloyd's affairs other than the actual management of the underwriting. The main duties of a members' agent were summarised by:

(i) Gatehouse J in Brown v KMR Services [1994] 4 All ER 385 at 390 as:

"to advise the Name which syndicates to join and in what amounts...to keep him informed at all times of material factors which may affect his underwriting...to provide him with a balanced portfolio and appropriate spread of risk; a balanced spread of business on syndicates throughout the main markets at Lloyd's...to monitor the syndicates on which it places the Name, and to make recommendations as to whether the Name should increase his share on a syndicate, join a new syndicate, reduce his share, or withdraw...to keep regularly in touch with the syndicates to which the Name belongs and...to advise and discuss with the Name the prospects and past results of syndicates on which he could be placed" and

(ii) Hobhouse LJ in Brown v KMR Services [1995] 4 All ER 598 at 633 to 634:

"to advise the Name which syndicates to join and in what amounts. This is a duty which has to be performed each year when the decisions have to be made for the following underwriting year. The advice therefore must cover both the selection of the syndicates and the amount of premium to be allocated to each. In selecting the syndicates regard must be had to the class of business in which the member wishes to become involved, to the quality of the individual syndicates, what business they write and to the sectors of the market to be covered...

"Further the agent must give the member such information as is necessary for the member to make a reasonably informed decision about the recommendations which the agent is making... But where a particular syndicate involves some additional risk it is incumbent upon the agent... to give an appropriate additional warning coupled with appropriate information."

(iii) Lord Goff in Henderson v Merrett Syndicates Ltd [1995] 2AC 145 at 170 as:

"[to] advise Names on their choice of syndicates, place Names on the syndicates chosen by them and give general advice to them."

Other duties fulfilled by members' agents are:

(i) explaining the structure of Lloyd's and the implications of membership;

(ii) advising Names on their suitability for membership and the requirements and regulations applicable to becoming a member;

(iii) advising and guiding Names through the election process;

(iv) dealing with any changes in a Name's OPL;

(v) dealing with the administration of the investment of a Name's personal and special reserve funds;

(vi) accounting to Names for the results of their underwriting, including payment of profit and collection of losses or interim cash calls.

In practice, policies vary between agents as to the minimum and maximum percentage of OPL which Names should have on syndicates. The final decision as to whether to join a recommended syndicate and for what line rests with the Name. During the Relevant Period, many existing Names increased the lines that they wrote.

The Role and Duties of a Managing Agent

The principal role of a managing agent is to determine the underwriting policy of and to make arrangements for the transaction of insurance business by the syndicates it manages. Managing agents must appoint and supervise one or more individuals to be the active underwriters for each of their syndicates, pricing and accepting risks on behalf of the syndicate members, and placing reinsurance. The underwriter is a key figure in a syndicate.

The role of a managing agent includes the approval and supervision of arrangements for:

(i) the acceptance and pricing by the active underwriters of the risks to be underwritten and the receipt of the premiums agreed with brokers;

(ii) the agreement and settlement of claims made against the syndicate;

(iii) the negotiation and management of the syndicate's reinsurances;

(iv) the management of the investments held in the premiums trust fund on behalf of the syndicate;

(v) the management and control of the syndicate's expenses;

(vi) monitoring and controlling the premium income earned by the syndicate and taking reasonable steps to ensure that members' syndicate premium limits are not exceeded;

(vii) the maintenance of accounting records and statistical data for the syndicate and the preparation and audit of the syndicate's accounts;

(viii) making, where necessary, cash calls on members to provide for underwriting losses;

(ix) compliance with relevant domestic and overseas taxation and legislative requirements;

(x) the approval of the premium for and effecting the reinsurance required to close each year of account; and

(xi) keeping members' agents informed of the progress of the underwriting account and providing further information as required. (Manual for Underwriting Agents 1971).

G. STRUCTURE OF NAMES' ASSETS AT LLOYD'S AND SOLVENCY REQUIREMENTS FOR UNDERWRITING

NAMES' ASSETS

Deposits

The Lloyd's deposit is held in trust by Lloyd's (governed by the Lloyd's Deposit Trust Deed or Lloyd's Security and Trust Deed). A separate deposit, known as the Lloyd's life deposit, is required if a Name underwrites life business.

Maintenance and Re-Confirmation of Deposits

The Corporation of Lloyd's carries out an annual check as at 31 December to see whether the value of a Name's Lloyd's deposit has been maintained. A Name will be required to make any shortfall good by the following 31 October. Names failing to comply are required to reduce their level of underwriting to an amount commensurate with the value of their deposit. Names must provide the requisite additional deposits if they wish to regain their former levels of underwriting.

Acceptable Assets for Deposit

A Name's deposit may be provided by means of certain specified assets including: bank guarantees or letters of credit, building society guarantees, cash, life assurance company guarantees and policies and certain other approved securities.

Special Deposits/Premium Limit Excess Deposit

Any Name exceeding his/her premium income limit in a particular year may be required to establish an additional Special Deposit in the form of a bank guarantee/letter of credit or cash. This will be held under an appropriate Deed but kept separate from the securities forming the Name's normal Lloyd's Deposit.

Personal Reserve Fund

This fund is a reserve of cash or certain specified investments, held under the terms of the Name's Premiums Trust Deed, which may be retained by a members' agent (at the agent's discretion) as a reserve against future liabilities and expenses from the Name's underwriting business carried on through the agent. This reserve may be built up by the members' agent retaining a proportion of the Name's profits.

The Special Reserve Fund

The SRF enabled Names, within limits, to accumulate reserves from their underwriting profits, which, when transferred into the SRF would then be taxed only at the basic rate (rather than the higher rates) of income tax. Such reserves were to be used to meet underwriting losses. Payments into the SRF had to be approved by the Inland Revenue. Payments out of the SRF were required to be made to cover losses certified by the Inland Revenue, although payments could, within limits, be made on a provisional basis in respect of estimated losses. The SRF was required to be held on trust, with one trustee being the Corporation of Lloyd's, and the other being the Name's members' agent. (The SRF arrangements were changed with effect from the 1992 underwriting year).

Premiums Trust Fund

Every member of Lloyd's is required to hold all premiums received by him/her or on his/her behalf in respect of any insurance business in a trust fund in accordance with the provisions of a trust deed approved by the Secretary of State for Trade and Industry. This requirement is imposed by section 83(2) of the ICA 1982.

Premiums trust fund monies can be used to pay any underwriting liabilities and any expenses incurred in connection with or arising out of underwriting. For these purposes liabilities include losses, claims, returns of premiums and reinsurance premiums, while expenses include any annual fee, commission and other remuneration of a member's underwriting agents, any tax liabilities arising in respect of the premiums trust fund or its income, and subscriptions and Central Fund contributions or levies imposed by the Council.

The premiums trust deed provided for separate treatment of overseas underwriting business, for which the Lloyd's American Trust Fund and Lloyd's Canadian Trust Funds have been established. Those trust funds received the premiums on US dollar or Canadian dollar denominated policies issued in any country by Lloyd's members and paid any losses, expenses, claims, returns of premiums, reinsurance premiums and other outgoings in connection with the member's American or Canadian dollar business respectively.

The way in which the assets described above are used as part of Lloyd's overall chain of security is

described below.

Lloyd's Chain Of Security

The purpose of security is to protect policyholders.

The First Link

The first link in the chain of security is the premiums trust funds. To protect the interest of policyholders all premiums are initially paid into premiums trust funds managed by the managing agent of the syndicate. Payments from these funds may be made to meet claims, reinsurance premiums or underwriting expenses: profit may not be distributed to Names unless and until the underwriting account for the year has closed, and therefore at or after the end of three years. In practice, the majority of claims are met from the premium trust funds.

The Second Link

The second link is Name's funds at Lloyd's which must be provided by the Name as security for his/her underwriting, as described above. Funds at Lloyd's comprise the three trust funds in which Name's assets may be held: the Lloyd's deposit, the Special Reserve Fund and the Personal Reserve Fund held under the terms of the premiums trust deed (see above).

The Third Link

The third link is the personal wealth of individual Names. Each individual Name is required to show a minimum level of personal wealth, but Names are further liable to the full extent of their wealth to meet any claims arising from their underwriting business.

The Fourth Link

The fourth link is the Central Fund of the Society. The Fund is available to the Council of Lloyd's to meet Names' liabilities in connection with their underwriting at Lloyd's in the event of their default. The Fund is not for the protection of the Name, who remains responsible for his/her liabilities to the full extent of his/her wealth.

Other Assets

The other assets of the Society of Lloyd's are also available to meet underwriting liabilities in the last resort.

11. THE REGULATORY BACKGROUND FOR THE AUDITING AND ACCOUNTING REGIME

AT LLOYD'S

The following account of the Regulatory Background for the Auditing and Accounting Regime at Lloyd's is drawn from a statement of agreed facts. Where I have decided a matter in dispute between the parties this is shown in square brackets.

A. INTRODUCTION

I set out below the regulatory background for the auditing and accounting regime at Lloyd's. I also describe the procedures culminating in the production by Lloyd's of the statutory statements of business and the Globals.

The sections below take as their starting point, where applicable, the regime for the preparation of syndicate accounts and solvency audit as at 31 December 1977, which encompasses the closure by reinsurance to close of the 1975 year of account into the 1976 year of account. The sections below conclude by describing the regime for the year ended 31 December 1987, which encompasses the closure of the 1985 year of account into the 1986 year of account. The description of the procedures for the production of the statutory statements of business and globals covers the same period.

B. BACKGROUND TO THE AUDIT/ACCOUNTING PROCESS

Lloyd's Three Year Accounting System

Lloyd's operated a three year accounting system, under which the results of underwriting by a syndicate in any one year were normally not determined until a further two years had elapsed. As a general rule, distribution to Names of their proportions of the syndicate's profit could only be made after the end of the third year and then generally only when the relevant year of account had been reinsured to close. The composition of each syndicate was likely to vary year by year, and each year's trading was a separate venture. The accounts of each syndicate were, as a result of the three-year accounting system operated at Lloyd's, necessarily left open for the first and second year. A syndicate specialising in Personal Stop Loss operated a four year accounting system.

Reinsurance to Close

The closure of a year of account was effected by the payment of a premium (the RITC premium) in respect of the members' underwriting liabilities allocated to that year to reinsure these liabilities into the following year of account. If a decision was taken not to close the relevant year of account, the account was described as having gone into "run-off" and no RITC premium was payable. The subsequent two years of account over the three year accounting period that were not being (or entitled to be) closed were known as "open years". Thus the first two years of the three-year accounting cycle were "open years." If a syndicate year was not closed by RITC, that year was "left open".

As reported in the Chairman's statement in the 1987 Globals, at the end of December 1987 there were 76 syndicates with a total of 120 years of account left open. Problems associated with asbestos and pollution risks, together with other US liability business, appear to account for the vast majority of the run-off years.

In the 1980s, there was a growing number of syndicates which did not close their accounts at the end of their third year.

Against the payment of a RITC premium, all syndicate members' undischarged liabilities in respect of risks allocated to the relevant year of account (including liabilities in respect of RITC of any preceding year of account) were reinsured without limit in time or amount into a succeeding year of account of the same syndicate; they could also, on occasion, be reinsured to close into a later year of account or by another syndicate. When RITC was underwritten by the same syndicate, the premium was set by the managing agent of both syndicates, in conjunction with the underwriter, acting for the Names on both years of account.

The amount charged by way of premium was required to be equitable between Names on the reinsured and reinsuring syndicates, having regard to the nature and amount of the liabilities being reinsured. RITC into a subsequent year of the same syndicate was not treated as premium income for the purposes of premium income monitoring. The Syndicate Premium Income Byelaw (No 6 of 1984) dealt with circumstances in which RITC by a different syndicate would form part of premium income for premium income monitoring purposes.

Syndicate Accounts

The managing agent of each syndicate was required to prepare syndicate financial statements as at 31 December each year for the closing year of account and for the two subsequent open years and to arrange for them to be audited. The managing agent was required to send the financial statements, together with certain other specified information, to the Names on his syndicate, either direct or through the Names' members' agents. The requirements for the preparation and publication of syndicate accounts changed over the period 1978 to 1988.

The Solvency Test

Each Name at Lloyd's was required, under the provisions of the ICA 1982, to meet an annual solvency test (the Name level test). (The requirements for the years ended 31 December 1981 (and prior years) were contained in ss73-74 of the ICA 1974). In addition, all members of Lloyd's taken together had to satisfy a global annual solvency test (the global test). The requirements for the solvency test were sent out in the annual Instructions for the Guidance of Lloyd's Auditors (Audit Instructions) and Covering Letter to the Instructions for the Guidance of Lloyd's Auditors (Solvency Letter) prepared by Lloyd's, which included the basis on which the Names' liabilities were calculated, as approved by the Secretary of State DTI (Board of Trade in earlier years) pursuant to Section

83(5)(b) of the ICA 1982.

The paragraph in the earlier brochures (e.g. the 1979 and 1980 brochures) headed "Lloyd's Audit", which referred to a "rigorous audit conducted by a member of a panel of chartered accountants approved by the Committee of Lloyd's", referred to the annual solvency test. The phraseology in the brochure was changed in 1983.

The Name Level Test

Under the provisions of Section 83 of the ICA 1982, each Name was required to provide annually to the Committee/Council of Lloyd's and to the DTI a certificate of solvency in a prescribed statutory form, signed by an approved auditor. (The forms of certificate are set out in:

(i) The Assurance Companies Rules 1950 (1950 No. 533), paragraph 16;

(ii) The Lloyd's (Audit Certificate) Regulations 1982 (1982 No. 136), for the year ended 31 December 1981;

(iii) The Insurance (Lloyd's) Regulations 1983 (1983 No. 224) for the year ended 31 December 1982 and thereafter).

The certificate stated (inter alia) whether the value of the assets available to meet the Name's known and estimated future underwriting liabilities in respect of his/her insurance business at the previous year end was correctly shown in the Name's accounts, both assets and liabilities being calculated in accordance with the Audit Instructions. The Name would generally not be personally involved in carrying out the procedures for the Name level test, but might be required to provide further assets in the event of a solvency shortfall.

The Global Test

The solvency requirements in relation to insurance companies are set out in Section 32 of the ICA 1982, which implemented article 16 of the First Council Directive on Non-Life Insurance. Thus, the section provides that insurance companies shall maintain a margin of solvency of such amount as may be prescribed in accordance with regulations made for the purposes of that section. Section 32 is applicable to the "members of Lloyd's taken together": see Section 84(1) of the ICA 1982. Accordingly, all members of Lloyd's taken together had to satisfy a "global test"; i.e. the solvency margin requirements under the ICA 1982. For this purpose, the assets and liabilities of all the members of Lloyd's were aggregated. Assets included each Name's funds at Lloyd's, the assets in his/her premium trust funds, and certain other assets. Account was also taken of the assets and liabilities of Lloyd's in addition to the assets and liabilities of the Names: see Regulation 3(2) of The Insurance (Lloyd's) Regulations 1983. Such assets included, for example, the Central Fund. Liabilities were, in aggregate, those for the most recent closed year of account, the two subsequent

open years and any run-off years of account.

The forms submitted annually to the DTI as part of the statutory statement of business included information as to the assets and liabilities of all members of Lloyd's taken together. In particular, from the SSOB for the year ended 31 December 1982, Form 9 required a consolidated statement of assets and liabilities of underwriting members of Lloyd's. Accordingly, in effect, the members of Lloyd's taken together had to pass a global annual solvency test. (Prior to 31 December 1982, Lloyd's was required under Section 74(1) of the ICA 1974 to deposit annually with the DTI a statement summarising the extent and character of the insurance business done by the members of Lloyd's. The form of statement was set out in The Assurance Companies Rules 1950 and required Lloyd's to confirm that it had received an audit certificate in respect of each Name).

For some years before the SSOB form required for the year ended 31 December 1982 became mandatory, Lloyd's had submitted voluntary returns to the DTI, in a form similar to the SSOB presented pursuant to The Insurance (Lloyd's) Regulations 1983, in addition to the statutory returns prescribed by The Assurance Companies Rules 1950.

The purpose of insurance company supervision, as enshrined in the ICA 1982, is (inter alia) to ensure that margins of solvency are complied with.

The Statutory Statement of Business

Lloyd's was required under Section 86(1) of the ICA 1982 (for the year ended 31 December 1981 and prior years, Section 74 ICA 1974) to lodge a statutory statement of business with the DTI every year, in the form prescribed by The Insurance (Lloyd's) Regulations 1983 (for the year ended 31 December 1981 and prior years, The Assurance Companies Rules 1950 (SI 1950/533)). The SSOB summarised the extent and character of the insurance business done by all members of Lloyd's in the twelve months to which the statement related. The SSOB certified solvency for the purposes of the global test described above and could not be filed unless unqualified audit certificates had been received in respect of each Name, taking account, if necessary, of any Central Fund earmarking which had occurred.

The information required in order to complete the SSOB was provided principally by syndicate auditors in certain specified returns.

The auditors made returns in the form in which Lloyd's from time to time required these to be made. In general the returns were a collation of the results shown in those syndicate accounts for which any particular firm of auditors was responsible.

The Global Accounts

Lloyd's reported annually to the market on the underwriting results for the third year of account.

Panel/Registered Auditors

Under Section 73(4) of the ICA 1974, and Section 83 of the ICA 1982, the accountants who audited the Names' results for the purposes of the annual solvency test had to be approved by the Committee/Council of Lloyd's. Lloyd's had accordingly established a panel of auditors from which managing agents and members' agents selected their auditors. In practice, the panel auditors were also those who audited the syndicate accounts.

[The role of a syndicate auditor was consistently regarded as requiring special skill and experience. In some cases syndicates engaged two firms as joint auditors. The responsibility for selecting an auditor from Lloyd's panel – subsequently the approved list – lay with the managing agent, not the members' agent. The practicability of syndicate Names appointing the auditors was considered by Lloyd's but not adopted. Following changes in the system, members' agents appointed the auditors to issue Members' Solvency Reports.]

On 10 December 1984, the Council passed The Syndicate Audit Arrangements Byelaw (No. 10 of 1984) which set out arrangements for a new list of registered auditors, containing all persons entitled to act as syndicate auditors. The byelaw replaced the panel auditor arrangements, and included the criteria for admission to and removal from the list. In a letter to underwriting agents, active underwriters, market associations and panel auditors dated 11 December 1984, Lloyd's stated that the Council had resolved that in future approval of auditors for the purpose of the annual solvency test would be determined by reference to the inclusion of a firm's name on the list of recognised auditors.

The panel or registered auditors had an annual meeting with Lloyd's. Further meetings occurred from time to time on an ad hoc basis (for example on 15 January 1982, 24 February 1983 and 8 February 1984). In addition, the panel auditors used to meet informally to discuss Lloyd's accounting rules and other issues arising out of the audit of syndicate accounts and solvency audit. Representatives of panel audit firms also sat on the Accounting and Auditing Standards Committee.

C. SUMMARY OF DEVELOPMENTS IN THE LLOYD'S REGULATORY ENVIRONMENT

Departmental Structure Prior to the Lloyd's Act 1982

Prior to the passage of the Lloyd's Act 1982, Lloyd's statutory duties in relation to the solvency audit and the preparation of the SSOB were exercised by the Committee of Lloyd's. The Underwriting Agents and Audit Department (or Audit Department) was the department within Lloyd's responsible for day-to-day matters affecting the solvency audit and the preparation by Lloyd's of the SSOB. It supported the Audit Committee which in turn reported to the Committee of Lloyd's.

The Committee was the governing body of Lloyd's until January 1983, after which it was subordinated to the Council.

Lloyd's also produced a Manual for Underwriting Agents, which set out the obligations of managing agents in relation to syndicate accounts and the solvency audit.

The Fisher Report and Lloyd's Act 1982

The regulatory structure within Lloyd's changed as a consequence of the Fisher Report, which was published in May 1980. The Fisher Report made certain recommendations as to the accounting regime and recognition of auditors as follows:

"71: Council to lay down rules as to minimum information to be disclosed in syndicate accounts and applicable accounting standards and principles.

72: Council to require audited syndicate accounts to be accompanied by a report by the Agent on matters of specific interest to Names.

73: Council to have the right to call for production of accounts and require a second audit to be carried out by accountants nominated by Council.

74: No Syndicate Auditor to be changed without Agent discussing proposed change with Committee.

75: Admission procedures for Panel Auditors."

The Fisher Report had appended to it a draft bill to amend the Lloyd's Acts 1871-1951. The draft bill, which received royal assent on 23 July 1982, provided for the establishment of a Council to manage and superintend the affairs of the Society, in place of the Committee, and proposed that the Council should have the power to make byelaws, including a byelaw:

"For requiring that annual accounts of underwriting syndicates be audited and that reports and audited accounts be furnished annually to members of the syndicate and for regulating the form and content of such reports and accounts."

The Lloyd's Bill was a much debated private measure and the enactment procedures took a considerable time. In November 1980 members, by a large majority, approved the promotion of a Bill. The Chairman wrote to members on several occasions thereafter reporting progress and soliciting continuing support.

As a consequence of the recommendations in the Fisher Report on the accounting regime and certain other comments made in the Fisher Report on the solvency audit, Lloyd's established two task groups, Task Group 4 and Task Group 15, in September 1980. Task Group 4's terms of reference were directed towards considering the provision of information to existing Names, with particular reference to syndicate accounts and accounting standards. Task Group 15's terms of reference

included the consideration of procedures in relation to syndicate accounts, Lloyd's solvency test and global results, and all aspects of the "licensing" of panel auditors. It was recognised that the work of the two Task Groups was closely interrelated insofar as Task Group 15 was concerned with the audit of syndicate accounts.

Lloyd's established 21 Task Groups to consider the Fisher recommendations and their implementation. Lloyd's gave an undertaking to Parliament through counsel relating to (inter alia) paragraph 23.22 of the Fisher Report.

[The work of Task Groups 4 and 15 set up in September 1980 became part of the review in respect of which Lloyd's gave an undertaking to Parliament through counsel relating to the Fisher Report.]

In November 1982, Lloyd's set up, with the approval of the Bank of England and the DTI, a working party under the chairmanship of Mr. Ian Hay Davison, the managing partner of Arthur Andersen and Chairman of the Institute of Chartered Accountants. The overall aim of the working party was to review the requirements of the Lloyd's solvency audit with particular attention to both the information which should be sought by auditors and to the information which underwriting agents and underwriters should provide to their syndicate auditors; and to consider disclosure of interests by underwriting agents. In addition, the working party was required to review the annual Audit Instructions for the solvency audit. It was intended that the working party should consider urgently what changes should be implemented for the solvency audit as at 31 December 1982. It was announced that the working party hoped to provide some input for the 1982 audit while expecting to complete its study during 1983. It was noted in the terms of reference that it was essential to demonstrate that self-regulation was effective.

Task Group 4 issued its consultative document "The Annual Financial Report for Underwriting Members of Lloyd's" in December 1982, and attached to it a draft accounting manual, including proposed Statements of Lloyd's Accounting Practice. A letter from Lloyd's dated 21 December 1982 requesting comments on the document and summarising the points of difference between Task Group 4 and the Committee of Lloyd's was also circulated.

Mr Ian Plaistowe, a senior partner of Arthur Andersen, replaced Mr Hay Davison as chairman of the working party (renamed the Plaistowe working party) in February 1983 on Mr Hay Davison's appointment as Deputy Chairman and Chief Executive of Lloyd's. The work of the Plaistowe working party was built upon by the AASC.

Task Group 15 issued its consultative document "Lloyd's Auditing Manual" in 1983. The Task Group had taken as its starting point the draft accounting manual produced by Task Group 4 and had incorporated that into an overall accounting and audit manual. It also made recommendations as to the "licensing" of panel auditors.

Changes in Lloyd's Departmental Structure

In late 1983 the departmental responsibilities within Lloyd's changed. The Audit Committee and Audit Department were respectively replaced by the Members' Solvency and Security Committee and Members' Solvency and Security Department, and a new department and committee were established in October 1983: the Accounting and Auditing Standards Committee and, supporting it, the Accounting and Auditing Review Department. The terms of reference of the MSSC and AASC are set out in the minutes of the meeting of the Council of Lloyd's on 3 October 1983.

This reorganisation was one of a number of administrative and department changes which took place during the Relevant Period.

Under its terms of reference, the MSSC was responsible for making recommendations to the Committee of Lloyd's on all aspects relating to the annual solvency test and the protection of Lloyd's policyholders.

The AASC reported to the Council of Lloyd's. It effectively took over the work of Fisher Task Groups 4 and 15. Under its terms of reference, it was, in general terms, required to define the accounting and related auditing requirements applicable to Lloyd's brokers, underwriting agents and syndicates, the reporting of information to Names and the introduction of manuals to reflect the Council's requirements as to accounting and audit. It was also required to establish criteria for the approval or otherwise of panel auditors.

Although the AASC's terms of reference included the production of the annual Audit Instructions and their agreement with the DTI, in practice this responsibility remained with the MSSC. The MSSC liaised with the AASC in relation to accounting and audit considerations relevant to the conduct of the annual solvency test.

Both the MSSC and the AASC met about once a month to discuss matters falling within their terms of reference.

On 2 December 1983, Lloyd's published a Provisional Accounting Manual. The Manual relied heavily on the Draft Accounting Manual produced in December 1982 by Fisher Task Group 4 and the work done by the Plaistowe working party in relation to the Manual.

The Plaistowe working party was wound up in January 1984 and handed over much of its outstanding work to the AASC or MSSC.

A series of byelaws were issued by the Council of Lloyd's during 1984 and 1985 which established the revised accounting and auditing regime for syndicates as follows:

(a) The 1983 Annual Reports of Syndicates Byelaw (No. 2 of 1984);

(b) The Disclosure of Interests Byelaw (No. 3 of 1984);

(c) The Syndicate Premium Income Byelaw (No. 6 of 1984);

(d) The Syndicate Accounting Byelaw (No. 7 of 1984) and explanatory notes dated 8 October 1984;

(e) The Syndicate Audit Arrangements Byelaw (No. 10 of 1984) and explanatory notes dated 10 December 1984;

(f) The Agency Agreements Byelaw (No. 1 of 1985);

(g) The Reinsurance to Close Byelaw (No. 6 of 1985); and

(h) Further explanatory notes to Byelaw No. 7 of 1984 relating to RITC, issued in December 1985.

1986 Audit Brief

While the new accounting byelaw regime was under discussion, Lloyd's approached the Auditing Practices Committee of the Consultative Committee of Accounting Bodies to propose that an audit brief be produced by the APC addressing the audit of Lloyd's syndicates. A working party of the APC was set up in 1984 to develop the audit brief, under the chairmanship of Mr Frank Attwood, a senior partner of Robson Rhodes, comprising members of the accounting profession and Mrs. Cathy Shorthouse, manager of the AARD in Lloyd's.

A draft brief was produced in about April 1985. Following discussions with the AASC, the draft audit brief was published in the autumn of 1985. The final audit brief was issued in April 1986. The Audit Brief stated that its purpose was to give "guidance on the special factors to be considered in the application of Auditing Standards to the audit of the financial statements of Lloyd's syndicates". Its status was as an informative publication, intended to assist auditors in the discharge of their duties. While it did not have the same authority as Auditing Standards or Auditing Guidelines, the Audit Brief was treated as the standard, in the absence of Auditing Standards or Guidelines dealing with any particular issue.

Statements of Lloyd's Accounting Practice featured in, for example, the 1983 Provisional Accounting Manual, but did not feature in the byelaw regime that was subsequently introduced.

The Neill Report

In January 1986, a committee was formed under the chairmanship of Sir Patrick Neill to consider whether the regulatory arrangements being established under the Lloyd's Act 1982 provided protection for the interests of Names comparable to that proposed for investors under the Financial Services Bill. The Neill Committee was a Committee of Inquiry set up by the Secretary of State for

Trade and Industry. The Neill Report "Regulatory Arrangements at Lloyd's" was published in December 1986.

[The Neill Report made certain recommendations relating to syndicate accounting. The AASC was primarily responsible for reviewing the recommendations. The majority of the recommendations were implemented by The Syndicate Accounting Byelaw (No. 11 of 1987) which became effective on 1 January 1988 and first applied to syndicate accounts prepared for the year ended 31 December 1987. Further recommendations were implemented for subsequent years of accounts.]

Involvement of Professionals in the Task Groups, Working Parties and the AASC and MSSC

Fisher Task Groups 4 and 15 each had two members representing the auditing profession. Mr NF Holland and, from October 1980, Mr JA Philpott of Ernst & Whinney were members of Task Group 4. Mr M Wildig of Arthur Anderson & Co and Mr AM Blake of Neville Russell & Co were members of Task Group 15. In addition, Mr JA Philpott and Mrs C Shorthouse of Ernst & Whinney produced initial drafts of the report for the Task Group's consideration. Mrs Shorthouse subsequently joined Lloyd's permanent staff, and became manager of the AARD.

(According to Lloyd's the CCAB was invited to nominate a representative to join Task Group 15. Mr TD Marks of Deloitte Haskins & Sells was nominated and attended two meetings, with Mr GC Wintle, the CCAB's under-secretary for Parliamentary and Law affairs. However, following the formation by the CCAB of a Lloyd's sub-committee, and to avoid possible duplication of effort, it was agreed that it was sensible for the CCAB representation on the Task Group to cease.)

The Hay Davison/Plaistowe working party was chaired initially by Mr Hay Davison, senior partner of Arthur Anderson & Co and subsequently by Mr I Plaistowe, also of Arthur Anderson & Co. In addition Mr C North Smith of Peat Marwick Mitchell & Co was a member of the working party.

The initial membership of the AASC included Mr C Brandon Gough of Coopers & Lybrand, as chairman, Mr I Plaistowe of Arthur Anderson & Co and Mr NF Holland of Ernst & Whinney. Mr Brandon Gough remained Chairman until 1986, when he was replaced by Mr A Hardcastle of Peat Marwick McLintock. Mr Plaistowe remained a member until 1986. Other members of the AASC included members of panel auditors. Mr Hardcastle became chairman of Lloyd's Regulatory Board when it was established.

The membership of the MSSC included two members drawn from the nominated or external members of the Council. From 1983 to 1985, Mr REM Elborne, of Elborne & Mitchell, solicitors, was one of these members.

D. THE ANNUAL AUDIT AND ACCOUNTING PROCESS

This section summarises the chronological process for the preparation of syndicate accounts, the

solvency audit, the SSOB and the Globals for any particular year. The process broadly followed the same pattern throughout the period 1978 to 1988, and commenced in the summer of the year to which the solvency test was to apply (e.g. the summer of 1980 for the audit of syndicate accounts and the solvency test for the year ended 31 December 1980).

May-July	Provision of settlement statistics to Lloyd's by managing agents.
August	Settlement statistics sent by the Audit Department/MSSD to the DTI (and by the DTI to the Government Actuaries Department), and market associations for consideration.
Autumn	Planning by syndicate auditors of the work required for the audit for the year concerned and preliminary audit of certain syndicate records and systems.
October/November	Comments on the settlement statistics received from the DTI and market associations.
	Recommendations made by the Audit Department/MSSD to the Audit Committee/MSSC as to changes in the prior year's scales of minimum percentage reserves and Audit Instructions, incorporating comments from the DTI and market associations.
	Recommendations considered by the Audit Committee/MSSC.
October/November	Meeting with panel auditors to advise them, inter alia, of material changes to the Audit Instructions. (For the 1984 solvency test and thereafter, this meeting moved to December/January).
November/December	Recommendations as to minimum percentage reserves and other changes to the Audit Instructions considered by the Committee. Completion of planning and preliminary work by syndicate auditors.
December	Scales of MPRs approved by the Committee and communicated to underwriting agents and panel auditors, subject to final approval by the DTI.
	Scales of MPRs sent to and discussed with the DTI/Government Actuaries Department.
December/January	Syndicate auditors commenced main audit to reach a conclusion on the syndicate accounts and Names' personal accounts.
January/February	Final approval of Audit Instructions by the DTI. Audit Instructions and Solvency Letter printed and circulated.
March/April	Review by syndicate auditors of RITC and completion of work required for solvency audit.

end April	Submission of syndicate results for solvency purposes to Lloyd's.
end May	Individual Names' solvency certificates completed and provided to Lloyd's and the DTI.
May/June	Approval and signature by managing agent of syndicate accounts. Subsequently, signature by syndicate auditors of audit report containing their opinion on the accounts.
early June	Filing of returns by syndicate auditors (managing agents for the 1987 year end) required by Lloyd's for the production of the SSOB and Globals.
mid June	Despatch by managing agents of syndicate accounts to direct Names and members' agents. (Prior to the accounts for the year ended 31 December 1983, which were required by Byelaw No. 2 of 1984 to be despatched by 15 June 1984, there was no specific date for despatch of syndicate accounts). Filing of syndicate accounts with Lloyd's (for the year ended 31 December 1983 onwards).
mid July	Despatch by members' agents of syndicate accounts to Names.
end August	Completion and filing of SSOB.
early September	Publication of Globals.

The following should be noted:

(i) the sub-division of "All Other" non-marine statistics into three currencies took place in 1981, and it was possible to obtain the historical figures within those currencies;

(ii) from time to time, the categories within which the figures were collected were changed by Lloyd's;

(iii) MPRs were regularly considered by the Audit Committee/MSSC and the Committee;

(iv) concerns were expressed from time to time at meetings of the Audit Committee/MSSC that if the percentages for the US$ "All Other" class of business were set too high, syndicates writing shorter-tail business within that class would be disadvantaged;

(v) Lloyd's made it clear to the DTI, and in the Audit Instructions, that the percentages were absolute minima (The Solvency Letter for the 1984 year end expressly states, at note (i)(a) to clause 6, that: "The scales of minimum percentage reserves represent the absolute minimum requirement for any syndicate."); and

(vi) the settlement statistics were compiled on the basis of net figures.

E. DUTIES OF THE AUDITOR AND THE AUDIT PROCESS

The Annual Audit Process

There were two separate (although related) aspects of the annual audit work carried out by the panel or registered auditors:

(i) the audit of syndicate accounts prepared by the managing agents. In this context the auditors' report was addressed to the members of the syndicates themselves; and

(ii) the annual solvency audit whereby auditors were obliged to report annually to Lloyd's and the DTI on the solvency of the Names.

(a) Audit of Syndicate Annual Accounts or Financial Statements

The first major function performed by syndicate auditors was the audit of the syndicate annual financial statements.

The Manual for Underwriting Agents, first published in 1971, required managing agents to send to Names underwriting accounts and a balance sheet and stipulated that syndicate auditors should be required to certify:

"(a) That in their opinion the books have been properly kept.

(b) That they have examined the Balance Sheet and Underwriting Accounts with the books and that they have been properly drawn up in accordance with the books.

(c) That they have verified the investments and cash balances.

(d) That they have received all the information and explanations they have required".

The Manual went on to say:

"The Agents and their Auditors may amplify, to any extent required, to cover such items as (a) the basis on which the Auditor has accepted the reinsurance to close, (b) the fact that the Audit Certificate has been sent to the Committee of Lloyd's and (c) the accounts are drawn up in accordance with the Agency Agreements."

The requirement to report in "true and fair" terms was introduced by The Syndicate Accounting

Byelaw (No.7 of 1984). This requirement applied to all accounts for the year ended 31 December 1985, although some auditors reported in "true and fair" terms on the accounts for the year ended 31 December 1984. The "true and fair view" report was required in respect of the profit or loss on the closed year of account. No such report was required in relation to the two open years of account, on which the auditors also reported, but in different terms.

The Syndicate Accounting Byelaw (No.11 of 1987) revised the Lloyd's syndicate accounting rules which governed syndicate accounting and reporting to Names. In accordance with this byelaw the managing agent was required to prepare adequate documentation supporting the basis on which the RITC had been determined. The auditors' duties in respect of this were as follows:

"the syndicate auditor shall in preparing any report under this paragraph carry out such investigations as will enable him to form an opinion as to the following matters:

(i) whether the managing agent has kept proper accounting records in respect of the syndicate;

(ii) whether the managing agent has in respect of the syndicate established and maintained such systems and procedures, including maintenance of adequate accounting and other records, as are necessary to enable it to comply with the requirements of paragraph 4 of Schedule 4 to this byelaw; and

(iii) whether the annual report or personal account to which his report relates is in agreement with the accounting records and such other records as are referred to in (ii) above;

and if the syndicate auditor is of the opinion that the managing agent has not kept proper accounting records in respect of the syndicate, or has not established and maintained such systems and procedures (including maintenance of adequate accounting and other records), ...or if the annual report or any personal account to which the syndicate auditor's report relates is not in agreement with the accounting records and such other records as are referred to in (ii) above, the syndicate auditor shall state that fact in his report."

(b) Solvency Reporting

The annual solvency audit of underwriting members of Lloyd's was a statutory requirement. This was, until 28 January 1983, provided for under Section 73(4) of the ICA 1974 which provided that:

"The accounts of every underwriter shall be audited annually by an accountant approved by the Committee of Lloyd's or the managing body of the association, as the case may be, and the auditor shall furnish a certificate in the prescribed form to the Committee or managing body and the Secretary of State."

This section was replaced by Section 83(4) of the ICA 1982 which was in substantially similar terms.

The content of the audit certificate was addressed by Section 73(5) of the ICA 1974 which provided:

"(5) The said certificate shall in particular state whether in the opinion of the auditor the value of the assets available to meet the underwriter's liabilities in respect of insurance business is correctly shown in the accounts, and whether or not that value is sufficient to meet the liabilities calculated:

(a) in a case of liabilities in respect of long term business, by an actuary; and

(b) in the case of other liabilities, by the auditor on a basis approved by the Secretary of State."

The mandatory form of wording of the certificate to be issued in respect of each underwriting member of Lloyd's was set out in The Lloyd's (Audit Certificate) Regulations 1982 (1982 No.136), (Prior to the 1981 solvency test, the Assurance Companies Rules 1950 (1950 No. 533)). This had been made by the Secretary of State in the exercise of his powers under Sections 73(4) and 85(1) of the ICA 1974. With effect from 22 March 1983 the 1982 Regulations were replaced by The Insurance (Lloyd's) Regulations 1983 (1983 No.224) which (so far as is material) were in substantially similar terms to the 1982 regulations. The wording of the certificate (the Members' Solvency Report) in the 1982 regulations was as follows:

"2. The certificate mentioned in section 73(4) of the Insurance Companies Act 1974 (which requires the accounts of every underwriter to be audited annually by an accountant approved by the Committee of Lloyd's) shall, in respect of the audit as at 31 December in the year 1981 and in each subsequent year, be in the following form:

UNDERWRITING ACCOUNTS

IN THE NAMES OF

Through the agency of

To the Committee of Lloyd's and to the Secretary of State

INSURANCE COMPANIES ACT 1974

We have examined the accounts relating to the insurance business carried on by the above-mentioned Underwriters through the above-named Agency during the year ended 31st December 19 .. .., in accordance with the current Instructions for the guidance of Lloyd's auditors drawn up by the Committee of Lloyd's and approved by the Secretary of State.

In connection with our examination, we have relied upon a report in respect of the underwriting accounts from accountants approved by the Committee of Lloyd's as auditors of each syndicate in

which each underwriter has participated during that year stating that in their opinion all assets have been valued and all liabilities have been calculated in accordance with the said Instructions (liabilities in respect of long term business having been calculated by an actuary) and that the profits or losses arising on the closed accounts and the surpluses or deficiencies arising on the open accounts have been allocated to each Underwriter in accordance with the arrangements for his participation in each such account.

In our opinion the value of the assets, valued in accordance with the said Instructions (in the case of each Underwriter's Lloyd's Deposit, as certified by the Committee of Lloyd's), available to meet each Underwriter's liabilities in respect of his insurance business is correctly shown in the accounts and is sufficient to meet his liabilities in respect of that business.

Date this .. .. day of .. .. 19.. ..

Accountants approved by the Committee of Lloyd's."

With effect from the 1981 solvency test, the solvency certificate was issued not by the syndicate auditors but by auditors appointed by the members' agents in respect of those Names underwriting through that members' agency. The members' agents' auditors were not required to audit further the affairs of all the syndicates on which the members' agents had placed Names. The wording of the audit report expressly permitted them to rely on certificates issued by the syndicate auditors. The certificate issued by the syndicate auditors for these purposes (the Syndicate Solvency Report) was in the following terms:

"Syndicate solvency report

This report is in respect of the Underwriting Members who participated in the ..... Account(s) of Syndicate

No: - .....

To the Committee of Lloyd's

We have examined the accounting records relating to the insurance business carried on by the above Underwriters during the year ended 31 December, 1981 in accordance with the current Instructions for the guidance of Lloyd's auditors drawn up by the Committee of Lloyd's and approved by the Secretary of State.

In our opinion:

(a) the profit or loss of the closed Underwriting account and the estimated surplus or deficiency of the open Underwriting accounts have been arrived at after valuing all assets and calculating all liabilities

in accordance with the current Instruction for the guidance of Lloyd's auditors drawn up by the Committee of Lloyd's and approved by the Secretary of State; and

(b) such profit or loss and surplus or deficiency have been allocated to each Underwriter in accordance with the arrangements for his participation in each Underwriting account and are as set out in the attached schedule.

Dated this day of 1982

Accountants approved by the Committee of Lloyd's"

With effect from the 1981 solvency test:

(i) the syndicate auditor reported on the solvency position at a syndicate level, Name by Name to Lloyd's and to the auditors appointed by the members' agents;

(ii) the members' agents' auditors completed the solvency test at individual Name level, relying on the Syndicate Solvency Reports prepared by the auditors of all the syndicates in which each of the members' agency Names participated. The reports of the members agents' auditors were addressed to and sent to the DTI and the Committee/Council of Lloyd's.

Professional Standards

Panel and registered auditors were subject to broader professional standards, being certain relevant auditing standards and guidelines that applied to the profession.

The following conclusions can be drawn from the Merrett Judgment as to the duties of the auditors in relation to syndicate accounting and the solvency audit:

(i) the auditors should obtain relevant and reliable audit evidence sufficient to enable them to draw reasonable conclusions therefrom;

(ii) as to the nature of audit evidence, the sources and amount of evidence needed to achieve the required level of assurance were questions for the auditors to determine by exercising their judgment in the light of the opinion called for under the terms of their engagement. They would be influenced by the materiality of the matter being examined, the relevance and reliability of evidence available from each source and the cost and time involved in obtaining it;

(iii) as to representations by management, in certain cases, such as where knowledge of the facts was confined to management or where the matter was principally one of judgment and opinion, the auditors might not be able to obtain independent corroborative evidence and could not reasonably

expect it to be available. In such cases, the auditors should ensure that there was no other evidence which conflicted with the representations by management and should obtain written confirmation of the representations;

(iv) from the year ended 31 December 1985, the audit report on the syndicate accounts should state whether a true and fair view was given on the results of the closed year (although some auditors also reported in true and fair terms on the 31 December 1984 accounts);

(v) the syndicate auditors should qualify their report if they were unable to obtain all the necessary information and explanations required. In the absence of a reference to these matters the syndicate auditors' confirmation thereof was implicit in an unqualified audit report;

(vi) in selecting materiality levels, the auditor should have regard to the impact of syndicate transactions on the personal account of each syndicate member; he should look behind the syndicate to its constitution, as well as to the syndicate as a whole, in making judgments relating to materiality;

(vii) the auditor would need to be satisfied that the premium for the reinsurance to close a year of account was equitable as between the Names on that account and those on the accepting year of account. The determination of the premium for the reinsurance to close involved the exercise of significant professional judgment and drew on the full experience of the underwriter;

(viii) since, from at least 31 December 1985, the audit report on syndicate financial statements was to be expressed in true and fair terms, the auditor would need to ensure that he had gathered evidence of sufficient quality to support such an opinion;

(ix) in relation to the reinsurance to close, the audit approach should recognise that the objective was to ensure that the reinsurance to close was within a zone of reasonableness rather than an arithmetically accurate figure;

(x) the auditor would need to consider such matters as the nature of the syndicate's business, the overall size of the syndicate, the impact of the reinsurance protection programme, and the accuracy of previous estimates as a part of his assessment of the appropriate range within which he would expect the premium for the reinsurance to close to fall;

(xi) the results derived from statistical techniques should be treated with a degree of caution, since historically derived data might not be an accurate guide as to uncertain future events. The auditor should, therefore, ascertain from the underwriter the underlying basis for his estimate of claims incurred but not reported, so that appropriate additional evidence could be collected to support the computation; and

(xii) other matters the auditor might consider as a part of the audit of the reinsurance to close included matters specific to the particular syndicate's business, for example, the syndicate might have

reinsured the run-off of other syndicates or companies and the auditor must satisfy himself that due account had been taken of the liabilities which were likely to arise under such contracts. This evidence would usually take a similar form to that relating to the syndicate's own business.

F. REGIME FOR SYNDICATE ACCOUNTS

Regime Prior to Lloyd's Act 1982

Prior to the passage of the Lloyd's Act 1982 and subsequent byelaws, the obligations of agents with regard to syndicate accounting were set out in the Manual for Underwriting Agents. The Manual was first published in 1971, and reprinted in 1980, incorporating all the amendments that were then current. Further amendments were made thereafter. Among the main duties of agents set out in the Manual in this respect were:

(i) to effect the Reinsurance to Close (with discretion to keep an account open) (A3, para 1 (i) (d));

(ii) to accept responsibility for the underwriting and the records (A3, para 1(i) (f));

(iii) to keep Names informed of the progress of the underwriting and to arrange to provide annual audited accounts to them (A3, para 1(ii) (d)).

The duties of the managing agent with regard to the syndicate accounts and, in particular, the basic accounting procedures to be followed were set out in Section A10 of the Manual (Section A9 of the 1971 Manual for Underwriting Agents).

The agent also had certain obligations as to syndicate accounts in the Underwriting Agency Agreement (Paragraph 9(A) and (B) of Underwriting Agency Agreement). The agent was obliged to keep "such usual and proper underwriting books accounts and memoranda as are kept by Underwriting Agents at Lloyd's" and to send to the Name a copy of the accounts as soon as practicable after the end of each calendar year.

There was no requirement in the Manual for underwriting agents to send copies of syndicate accounts to Lloyd's.

The managing agent selected the auditor appointed to audit the syndicate accounts from the panel of auditors. A syndicate auditor auditing the syndicate's accounts also undertook the audit required under the Audit Instructions for the purposes of the solvency audit.

The managing agent was also responsible for maintaining the syndicate's books and records. Occasionally, some managing agents appointed a firm of accountants to maintain their books. An accounting firm maintaining the books and records of a syndicate was not permitted to audit its accounts or conduct the solvency audit. This restriction was set out in the Solvency Letter circulated

with the annual Audit Instructions. Such an accountant was, however, permitted to act jointly with another firm, in which case both firms were required to sign the Audit Certificate or, for the 1981 solvency test and thereafter, the Syndicate Solvency Report required by the Audit Instructions.

Developments Following the Passage of the Lloyd's Act 1982

In December 1983, Lloyd's circulated the Provisional Accounting Manual to active underwriters, underwriting agents, market associations and panel auditors. In his covering letter dated 2 December 1983, Sir Peter Green stated that it had been decided not to make the Manual mandatory in respect of the accounts to 31 December 1983, in view of the short time available to the end of the year and the practical problems that might be faced in seeking to comply with the requirements for the first time. However, the provisions of the Manual were considered to be best practice. Mr. Peter Miller then wrote to panel auditors on 1 February 1984 enclosing a form of audit report and expressing the hope that auditors would encourage their clients to comply with the spirit of the Manual in preparing the 1983 syndicate reports. He also expressed the hope that auditors would at a minimum be able to report in the terms of the draft audit report. The notes to the syndicate annual report were to include a statement of the extent to which the annual report complied with the Provisional Accounting Manual.

The Provisional Accounting Manual required managing agents to prepare syndicate accounts comprising:

(i) separate underwriting accounts for the closing year of account and each open year;

(ii) a balance sheet;

(iii) notes to the accounts;

(iv) a personal account for each Name;

(v) a managing agent's report;

(vi) an underwriter's report;

(vii) a seven year summary of syndicate results; and

(viii) an audit report on the items in (i) to (iv) above.

On 13 February 1984, the Council passed The 1983 Annual Reports of Syndicates Byelaw (No. 2 of 1984). The byelaw imposed an obligation (enforceable by disciplinary measures) on managing agents to prepare audited syndicate accounts for the year ended 31 December 1983. The byelaw specified the contents of the accounts, which were the same as those required under the Provisional Accounting Manual, with the exception of the seven-year summary, and the timing for their completion and

circulation to Names (direct or through members' agents) and to Lloyd's. Lloyd's itself was required to maintain a central file of syndicate annual reports, which were to be available to public inspection. The byelaw was a transitional byelaw and, in light of the provisional nature of the Manual, did not prescribe a standard form for audit reports, nor specify matters to be dealt with therein. A letter introducing the byelaw was sent by the Chairman to active underwriters, underwriting agents, market associations and panel auditors on 14 February 1984. The Chairman expressed the view that the requirement of the byelaw for the preparation of descriptive reports commenting on business transacted, future prospects etc., merely codified existing "best practice".

In addition, on 9 April 1984, the Council passed The Disclosure of Interests Byelaw (No. 3 of 1984) which required managing agents to disclose in the annual report details of agents' interests in syndicate transactions. The audit report on the syndicate accounts was also required to cover the disclosure of interests statement. This byelaw was applicable to syndicate accounts for the year ended 31 December 1983 onwards.

On 8 October 1984, The Syndicate Accounting Byelaw (No. 7 of 1984) was passed by the Council. This byelaw set out the requirements for the preparation and audit of syndicate accounts for the year ended 31 December 1984 onwards and for the preparation and audit of individual Names' personal accounts. It contained full details as to the contents, timing, publication and circulation of syndicate accounts, and provisions relating to the accounting records to be maintained by syndicates, the accounting policies to be employed and the contents of managing agents' and underwriters' reports.

Byelaw No. 7 of 1984 introduced the requirement that syndicate auditors should report whether the syndicate accounts and members' personal accounts gave a true and fair view respectively of the profit and loss of any year of account closed at the relevant accounting date and the net result of the Name. The true and fair view requirement was only mandatory for the accounts prepared as from the year ended 31 December 1985, although some auditing firms did report in true and fair terms for the accounts for the 1982 year which closed as at the year ended 31 December 1984. This approach was encouraged by the Council of Lloyd's (See letter from Lloyd's dated 10 January 1985). Specific provisions relating to the audit of the accounts are set out in paragraph 11 of the byelaw.

The byelaw set out in schedule 3, paragraph 4, the requirement for equitable treatment as between syndicate members where items affected more than one year of account. Specifically, it made explicit the requirement that the RITC premium was to be equitable between reinsured and reinsuring Names on the same syndicate.

The byelaw provided for the Council to prescribe dates by which syndicate annual reports and accompanying documents were to be dispatched. As from the accounts for the year ended 31 December 1984, the dates prescribed were: 15 June for despatch by managing agents to members' agents, direct Names and Lloyd's; and 15 July for despatch by members' agents to Names. These were also the dates required by Byelaw No. 2 of 1984 in respect of the accounts for the year ended 31 December 1983.

Explanatory notes to Byelaw No. 7 of 1984 were issued with the byelaw and provided further details and explanation on the requirements of the byelaw. The explanatory notes commented on the true and fair view requirement and the requirement for equitable treatment between Names participating in more than one year of account, in paragraphs 11 and 51, respectively.

On 9 December 1985, Lloyd's published Further Explanatory Notes to Byelaw No. 7 of 1984. These notes were intended as a practical guide to managing agents and underwriters as to the procedures and documentary standards they should adopt in computing the RITC. They emphasised the factors to be addressed in determining the RITC but not the manner in which the underwriter should exercise his professional judgment in relation to his particular syndicate.

[The AARD instituted an annual review of the syndicate accounts submitted to Lloyd's commencing with the 31 December 1983 accounts to check that the formal requirements of Byelaws No. 2 of 1984 (for 1983) and No. 7 of 1984 (for 1984 and following) had been complied with and that key terms in the syndicate accounts reconciled with the equivalent items in the SSOB and Global accounts.]

Further changes to the regime were effected by The Syndicate Accounting Byelaw (No. 11 of 1987), which applied to syndicate accounts for the year ended 31 December 1987 and thereafter.

Determination of RITC

The Further Explanatory Notes stated in paragraph 5:

"In relation to a closed year of account the overriding requirement of the byelaw is that the annual report should give a true and fair view of the profit or loss, such profit or loss having been determined after charging the reinsurance to close the year of account in question. Determination and presentation of the reinsurance to close is therefore of significant importance in ensuring that a true and fair view is given."

When, as was typically the case, the RITC for any particular year of account was underwritten by the same syndicate, the premium was set by the managing agent of both syndicates, in conjunction with the underwriter, acting for the Names on both years of account. The overall responsibility for setting the RITC rested with the managing agent who derived his authority to do so from the terms of the Underwriting Agency Agreement and, from 1 January 1987, from the agency agreements made pursuant to The Agency Agreements Byelaw (No. 1 of 1985).

[The managing agent/underwriter were concerned to determine the premium for RITC by reference to the syndicate's total estimated outstanding liabilities (including reserves for IBNR) in respect of risks allocated to the closing year of account, including undischarged reserves from previous years which had been closed by RITC into that year of account. The underwriter exercised his professional judgment in setting the RITC, taking into account the particular circumstances of the individual syndicate and years of account.]

The amount charged by way of premium was required to be equitable between the Names on the reinsured and reinsuring syndicates, having regard to the nature and amount of the liabilities being reinsured. Although this requirement was first made explicit in Byelaw No. 7 of 1984, it was a requirement for RITC for prior years.

[The Further Explanatory Notes, to which I refer, set out procedures relevant to compliance with the provisions of the Lloyd's accounting rules relating to the reinsurance to close and, in particular, those dealing with accounting records. They also set out the factors relevant in determining the reinsurance to close, including known outstanding claims and IBNR. The Further Explanatory Notes emphasised the exercise of the underwriter's judgment in determining the IBNR element, identifying the nature of the business written by the syndicate as one of the main factors affecting the size and relative importance of the IBNR element, the syndicate's loss experience and its reinsurance protection as matters which might fall to be taken into account.]

The Further Explanatory Notes set out the records that should be kept by the syndicate in order that the RITC calculation was supported by records in sufficient detail to "show and explain" the nature of the RITC. Overall, the underwriter was to have regard to the particular circumstances of his syndicate in carrying out the exercise, while it was noted that the syndicate auditors would review the documentation of the RITC as part of their audit of the accounts.

The Inland Revenue also took an interest in the calculation of the RITC. It was emphasised in annual letters accompanying the scales of MPRs recommended by the Committee for the purposes of the solvency test, that the Inland Revenue might, as in the past, require to be satisfied for purposes of taxation that the RITC premium was not excessive. In a letter to underwriting agents dated 17 December 1984, Mr Frank Barber, as Deputy Chairman, stated the following:

"Calculation of the 'right' price at which reinsurance to close is to be effected is a complex exercise in which a great many factors including equity between Names, have to be taken into account. The 'price' must be neither excessive nor inadequate and getting it 'right' involves a considerable exercise of judgment. This has to be a commercial judgment and the exercise of that judgment should not be influenced by tax considerations.

It is, however, important for tax purposes that the judgment can be shown to be well-founded. This requires evidence. If there is no evidence to justify the figure arrived at, that figure will be no more persuasive for tax than one that is plucked from the air."

The letter continued by describing the types of evidence that should be kept.

Run-off Accounts

The agent also had power not to close the year of account by RITC at all, but to leave it in run-off

(Clause 9(F) of Underwriting Agency Agreement and The Agency Agreements Byelaw (No. 1 of 1985)). This would happen where the managing agent was unable to fix a premium which was equitable as between the reinsured and the reinsuring Names. In these circumstances, closure of the year of account might take a number of years. The managing agent had a duty to leave a syndicate year open where an equitable RITC could not be fixed.

G. REGIME FOR SOLVENCY AUDIT

The Manual for Underwriting Agents imposed an obligation on agents to comply with the Audit and other regulations (A3, para 1(i)(e)). The obligation was also set out in the typical Underwriting Agency Agreement at paragraph 9(A). The procedures to be followed by managing and members' agents for the audit of Names' accounts for the purpose of the solvency test were set out in Section F of the Manual and in the Audit Instructions and Solvency Letter. The Audit Instructions and Solvency Letter were updated every year and, following approval by the Committee of Lloyd's and the DTI, circulated to active underwriters, underwriting agents and panel or registered auditors.

Calculation of Audit Reserves

The Audit Instructions included rules relating to the calculation of the estimated cost of winding up the underwriting accounts for the year to which the solvency test applied and previous years (the audit reserves). These rules were approved annually by the DTI for the purposes of Section 83(5) of the ICA 1982 (previously s73(5) of the ICA 1974). Although Section 83(5) of the ICA 1982, and, previously, Section 73(5) of the ICA 1974, were expressed in terms which required the auditor to calculate the syndicate's liabilities, it was, essentially, the role of the managing agent, the role of the auditors being to review the calculation as part of their work on the solvency test. The Audit Instructions were clarified over the years to reflect this distinction in roles.

The tests for the audit reserves in relation to each category of business were set out in clause 6 of the Audit Instructions. For the year then in its third year of account at 36 months of development and any years of account in run-off, including, in each case, all years reinsured into it, the audit reserves were required (for most categories of business, including non-marine "All Other" business) to be the greater of the following:

(i) the application of a specified multiple to the net premium income for the respective year of account. The multipliers were known as the minimum percentage reserves. (For the oldest year of account specified in the Audit Instructions, which was expressed to include all previous years of account, there was an alternative test of outstanding liabilities, including IBNR);

(ii) the total of the outstanding liabilities on each year of account in question as at the year end for the solvency audit, including IBNR; or

(iii) the amount of the RITC for the closing year of account, including any previous years reinsured

into that account. (This test did not apply to years of account in run-off).

It is to be noted that:

(i) there was little practical distinction between tests (ii) and (iii);

(ii) the calculation of the reserve figure under test (ii) (or the amount of the RITC under test (iii)) required consideration of the ultimate cost of settling the syndicate's liabilities; and where a year was not being closed, because it was considered that an equitable RITC could not be set, audit (i.e. solvency) reserves nonetheless had to be calculated.

Although, for the two open years then at the 12 and 24 month stages of development, the test was based on the MPRs, managing agents, when certifying the adequacy of the audit reserves, were required to "examine the Audit Reserves in the light of past run-off statistics and other relevant facts available to them" (Manual for Underwriting Agents (Section F, 1.8(ii)). In addition, the fact that the MPR scales represented the minimum requirement was emphasised in the Audit Instructions for the 1984 solvency test. From November 1980 onwards, underwriters at interest had available to them the information of the AWP in the form of (inter alia) attorneys reports; market letters from the AWP; (from late 1981) computer print-outs produced from the database created in the United States; and other information contained at (initially) the offices of Elborne Mitchell, and subsequently the offices taken by the AWP and then Toplis and Harding (Asbestos Services) Ltd.

In order to establish the MPRs, which were prepared on the basis of market averages, the Audit Department/MSSD obtained from underwriters in the summer of the year for which the solvency audit was being done (e.g. the summer of 1980 for the year ended 31 December 1980) details of net premiums received, and net settlements paid, by each syndicate during the preceding calendar year on a year of account basis. The net premium income and settlement figures on each year of account excluded any RITC premium received by the account from a previous closed year and premiums and claims relating to any previous closed year that might have been reinsured therein. The data were combined into the "Annual Review of Audit Reserves - Settlement Statistics" which set out, by class of business a market wide statistical analysis (in percentage terms) of net settlements which had arisen in previous years against net premiums received. The Audit Department/MSSD used the statistical analysis for the purpose of its recommendations as to the appropriate levels of MPRs for the relevant year's solvency test across all years of account in respect of which the Names' liabilities were to be calculated. Subject to the DTI, the final decision was taken by the Committee after reviewing the Settlement Statistics Packages.

As to the MPRs for the years 1970 to 1987 for non-marine "All Other" US$ business, the non-marine "All Other" category of business contained the widest range of types of risk, and was defined by exclusion as being non-marine risks which did not fall within the classes of non-marine "short tail" business, a list of which was set out in the notes to Clause 6 of the Audit Instructions. Which of the tests set out above was applied for the calculation of audit reserves for the purposes of the solvency

test depended upon the circumstances of the individual syndicate and the categories of business it underwrote.

Approval Process

The Audit Department/MSSD provided copies of the Settlement Statistics to the DTI and the market associations for consideration. The DTI in turn provided copies to GAD which analysed the statistics on an actuarial basis against historical information and the statistics it had available from the insurance companies under the DTI's supervision.

The Audit Department/MSSD then put its recommendations to the Audit Committee/MSSC, with details of the comments received from the DTI and the market associations. After the Audit Committee/MSSC had approved the recommendations (with amendments if required) they were put to the Committee of Lloyd's for approval.

The Audit Department/MSSD also reviewed the rest of the Audit Instructions and Solvency Letter to determine whether any other changes should be recommended. These recommendations were also put to the Audit Committee/MSSC for consideration and then to the Committee for approval.

A meeting of the panel auditors was held towards the end of the process attended by representatives of the Audit Committee/MSSC and Audit Department/MSSD. This was a regular annual meeting at which the panel auditors were informed of any material changes to the Audit Instructions and any other material developments in the audit/accounting process. At the Panel Auditors meeting in November 1981, asbestosis was discussed under the heading "Any Other Business." It was agreed at that meeting to hold a further meeting in the new year in order to discuss the subject again, and the meeting took place on 15 January 1982.

Final approval by the Committee of the Audit Instructions took place thereafter on the basis of the recommendations put forward by the Audit Committee/MSSC. The Committee approved, inter alia, the dates for completion of the annual solvency test, changes to the Audit Instructions and Solvency Letter and the scales of MPRs.

The MPR scales approved by the Committee were then sent to the DTI, following which discussions between Lloyd's and the DTI/GAD as to the final levels could take several weeks. Once the Audit Instructions had been formally approved by the DTI they were printed and issued to active underwriters, underwriting agents and panel or recognised auditors.

It was usual practice to advise underwriting agents, active underwriters and panel auditors by letter of the year end requirements as soon as they had been approved by the Committee on the basis that they had not yet received the approval of the DTI, and were therefore subject to possible amendment.

Role of Auditors

(a) Division of Responsibilities Between Syndicate Auditors and Auditors Appointed by Members' Agents

Prior to the solvency test for the year ended 31 December 1981, the syndicate auditor was responsible for the production of the Audit Certificate for each Name required under s 73 of the ICA 1974. In some cases (where an individual members' agent managed its proportion of the syndicate premium trust fund) the Audit Certificate was produced by the auditor appointed by that agent, not by the syndicate auditor.

Prior to the introduction of a centralised computer system (the Central Solvency System) in 1981, Lloyd's itself had no direct involvement in the conduct of the annual solvency test of Names, other than in the case of funds held centrally by Lloyd's (i.e. Lloyd's Deposits and Central Fund) the availability of which for earmarking would be confirmed to the auditor by the Audit Department. The Audit Department did, however, supply all necessary forms and, before the solvency test for 1978, acted as a 'postbox' for the statements of estimated outstanding liabilities supplied by active underwriters for onward transmission to syndicate auditors.

Some syndicates comprise a very large number of Names, and many of those Names would participate in several syndicates audited by different firms of panel auditors making their own reports on solvency. There was, therefore, an exchange of information and correspondence between the firms of panel auditors, as auditors endeavoured to establish the existence and availability of audit surpluses, profits and other assets to cover Names' solvency deficiencies and losses.

In order to simplify the system, Lloyd's established the Central Solvency System to operate as a 'clearing house' for the information which was then passing between auditors, agents and Lloyd's, and which would meet the requirements for Names' solvency contained in the ICA 1982 and the relevant statutory instruments. The system commenced operation with effect from the solvency test as at 31st December, 1981.

The syndicate auditor's role in relation to the solvency audit changed from the practice for prior years, with effect from the year ended 31 December 1981. As from the 31 December 1981 audit, the syndicate auditor prepared a Syndicate Solvency Report on the solvency of the syndicate, and on the allocation of the syndicate's profit or loss and surplus or deficiency for the relevant years to individual Names on the syndicate, but did not report on the overall solvency of individual Names.

As from 31 December 1981, the Members' Solvency Reports were prepared by auditors appointed by the members' agent for the Names concerned. Under these regulations, the members' agents' auditor was entitled to rely on the Syndicate Solvency Reports furnished by the auditors for the various syndicates on which the Names underwrote. Each Member's Solvency Report produced by the members' agents' auditor reported on the solvency of the individual Name across all the syndicates on which he underwrote. The Reports were addressed to the Society of Lloyd's and to the DTI.

The Audit Instructions set out in detail the tasks required of the syndicate auditor and members' agents' auditor for the purposes of the solvency test.

(b) Role of the Syndicate Auditor in the Calculation of Audit Reserves

The form of Audit Certificate required for the purposes of the ICA 1974 required the syndicate auditor to report inter alia whether:

"The liabilities attaching to [the Names'] underwriting accounts have been calculated on the basis set out in the current instructions for the guidance of auditors..."

Similarly, the Syndicate Solvency Report obliged the syndicate auditor to report, having examined the syndicate's accounting records, that in his opinion:

"(a) the profit or loss of the closed Underwriting Account and the estimated surplus or deficiency of the open underwriting accounts have been arrived at after valuing all assets and calculating all liabilities in accordance with the [Audit Instructions] ..."

The syndicate auditor's duty required him to satisfy himself as to the adequacy of the RITC. Lloyd's did not know in the case of any particular syndicate, precisely what work the syndicate auditor had carried out as part of his audit.

The Chairman of Lloyd's could only sign the SSOB for the purposes of the annual global test once unqualified Audit Certificates/Members' Solvency Reports for all Names had been received.

If there were any factors which affected or might affect the adequacy of the reserves, the syndicate auditor was required, under Clause 3 of the Audit Instructions, to report to the Committee and obtain their instructions before issuing the Audit Certificate/Syndicate Solvency Report. The letter from Neville Russell dated 24 February 1982 was written pursuant to Clause 3.

(c) Principal Reports Produced by Auditors and Managing Agents

The syndicate auditor (and, for the 1981 solvency audit and thereafter, the members' agents' auditor) and the managing agent were required to produce a number of reports to Lloyd's arising out of the solvency audit. The forms used for the 1980 and prior solvency audits, originally called AU forms, were changed after the Central Solvency System to reflect the different information that was required. By 1986, the forms, with the exception of the AU38 form, had been replaced by CS forms. The system and the information provided did not change significantly over the intervening years.

Amongst the forms was Form AU38 (or AU38a) - "Matters to be reported by syndicate auditor". This form was completed by the auditors in relation to each syndicate audited by them. In particular it

required the auditors to report in accordance with Clause 3 of the Audit Instructions and the Solvency Letter on the following:

(i) whether the RITC for the year prior to the year being closed at the current audit or the reserves created on any accounts in run-off, appeared to be inadequate, and, if so, by how much. The auditor was also required to set out any explanation for the apparent inadequacy given by the managing agent and the auditor's observations thereon;

(ii) which of the tests had been adopted for the audit reserves, whether the RITC (or amount placed to reserve where the account was running off) was less than the MPR levels, which accounts were running off and which had been closed by reinsurance. No figures for RITC or reserves were required.

The form AU38 was changed for the 1984 solvency audit to refer to apparent inadequacies in reserves rather than RITC in order to maintain the distinction between the RITC and the solvency test (see MSSC minutes of February 1985). In the years prior to the 1983 year-end, the Global Revenue Accounts produced by syndicate auditors were consolidated returns for all the syndicates which they were responsible for auditing. They contained details of (inter alia) the RITC premiums received and paid, if any, including reserves on accounts running-off. Individual syndicate returns were first required and obtained in respect of the 1983 year end.

[The AU38 form identified the extent of any apparent inadequacies in the particular syndicate's reserves for the year of account that had closed (or was running off) at the previous year end (i.e. for the year prior to the year of account then being closed). An apparent inadequacy with respect to the prior year's reserves had no bearing on the adequacy of the syndicate's audit reserves for the year of account closing at the date of the solvency test. The underwriting agent and active underwriter were also required to provide a certificate to the syndicate auditor and the Committee of Lloyd's certifying to the best of their knowledge and belief, the adequacy of the audit reserves being created for the current year's solvency test, including those for the year then closing (See form AU17). Those audit reserves should therefore have included an amount in respect of any apparent inadequacy identified for the prior year. Furthermore, the syndicate auditor was under a duty not to sign the Audit Certificate/Syndicate Solvency Certificate for the current year's solvency test if he was not satisfied with the calculation of the audit reserves for that test. From the introduction of the AU38(a) form as at 31 December 1982 the auditors were required to give an explanation for the inadequacy of the prior year RITC. There was a change in reporting requirements as at 31 December 1984 to report inadequacy in reserves for prior years as opposed to RITC.]

The Audit Department/MSSD conducted a review of the AU38s for each year and reported the results to the Committee of Lloyd's or, later, the MSSC. As from the review of the AU38s for the year ended 31 December 1984, where a syndicate's reserves for the year prior to the year of account being closed were found to have an apparent inadequacy greater than 15% of the reserves, and where no satisfactory explanation had been given, Lloyd's requested the managing agent to explain the reasons

for the apparent inadequacy and the steps being taken to prevent a recurrence. Where the apparent inadequacy was greater than 30% of the reserve, the active underwriter and a director of the managing agent were called in for an interview with the MSSC Chairman or Deputy Chairman. Discussions in relation to apparent inadequacies are found in the following documents:

(i) minutes of special meeting of the Committee of Lloyd's on 5 December 1977;

(ii) minutes of special meeting of the Committee of Lloyd's on 8 December 1978;

(iii) minutes of special meeting of the Committee of Lloyd's on 14 December 1979;

(iv) review of audit requirements for the 1980 solvency test;

(v) minutes of special meeting of the Committee of Lloyd's on 11 December 1980;

(vi) paper for the Committee in respect of the 1981 solvency audit;

(vii) minutes of a special meeting of the Committee on 9 December 1982;

(viii) minutes of a special meeting of the Audit Committee on 26 September 1983;

(ix) minutes of special meeting of the MSSC on 17 October 1983;

(x) minutes of a meeting of the MSSC on 15 October 1984;

(xi) memorandum for MSSC meeting on 16 December 1985;

(xii) minutes of a meeting of the MSSC on 16 December 1985;

(xiii) minutes of a meeting of the SSC on 1 December 1986;

(xiv) memorandum for SSC meeting on 14 September 1987; and

(xv) minutes of SSC meeting on 17 September 1987.

Developments in the Regime for the Solvency Audit

The changes in the scales of MPRs referred to below are only those for non-marine "All Other" business, and, for the 1981 solvency test and thereafter, the non-marine "All Other" US$ business. The changes to the Audit Instructions and Solvency Letter are those that are relevant to the issues in these proceedings.

(a) 1977 Solvency Audit

As to MPRs - non-marine "All Other" business, increases were made in the percentages for years 2 to 8, and new reserves were applied to years 9 and 10 (with an alternative outstandings test for year 10).

As to Audit Instructions and Solvency Letter, this was the first year in respect of which syndicate results were required to be provided to Lloyd's by 30 April.

(b) 1978 Solvency Audit

No changes to MPRs - non-marine "All Other" business, were made.

There were no material changes to Audit Instructions and Solvency Letter.

(c) 1979 Solvency Audit

As to MPRs - non-marine "All Other" business, increases in the percentages were made for all years, and new reserves were introduced at the end of years 11 and 12 (with an alternative outstandings test for year 12). The Committee agreed that statistical information up to year 20 of each account should be requested, inter alia, in respect of non-marine "All Other" accounts. The Committee also agreed that certain matters should be considered during 1980, including the sub-division of the non-marine "All Other" account, the separate application of an alternative outstanding liabilities test for the third and subsequent years and the replacement of the existing system of relating reserves to premium income.

There were no material changes to Audit Instructions and Solvency Letter.

(d) 1980 Solvency Audit

As to MPRs - non-marine "All Other" business, the MPR percentages were increased for years 2-12, and a new reserve of 3% (or outstandings) required for year 13.

There were no material changes to the Audit Instructions or Solvency Letter. The letter of 2 February 1981 enclosing the Audit Instructions and Solvency Letter drew auditors' attention to the effect on reserves of very long-tail business such as products liability and excess casualty reinsurance business.

(e) 1981 Solvency Audit

The scales of MPRs-non-marine "All Other" business were split to provide a separate, higher, scale for US$ business and a separate, lower, scale for non-US$ business. This split was a consequence of continuing efforts on the part of Lloyd's to provide a separation, for the purposes of the MPRs, of the

diverse categories of business which were included within the non-marine "All Other" business category. Some of the categories within non-marine "All Other" business were shorter tail, and therefore warranted lower MPRs than other categories. Accordingly, efforts were directed, in consultation with the relevant market associations, and in particular LUNMA, towards refining the categories of business within that class with a view to refinement of the MPRs. Segregation was not, however, a straightforward matter, as revealed by the Committee minutes and other documents summarised below:

(i) in 1979 the Audit Committee requested the Audit Department to conduct a review of audit codes with a view to producing a system of common audit codes based on the length of tail. LUNMA, and other market associations, were contacted and asked to provide a list identifying every type of risk written by the non-marine market together with the relevant audit codes. But LUNMA declined to contemplate this task, stating that due to such a multiplicity of risks written by the non-marine market, it would be too great a task. The question of division was discussed by the Committee of Lloyd's on 14 December 1979;

(ii) in April 1980, the Audit Committee requested LUNMA to provide a list of those risks currently in the "All Other" scale which could be reclassified as "medium tail". By November 1980 the Audit Committee were contemplating the suggestion that there should be a division between US and non-US business, when Mr. Lawrence reported that he had asked LUNMA to reconsider their decision not to undertake a split of the non-marine "All Other" account;

(iii) segregation was further discussed:

(a) at the meeting of the Committee of Lloyd's on 11 December 1980, when Mr. Lawrence reported that LUNMA had supported a suggestion that percentage reserves should be considered in individual currencies rather than all currencies combined;

(b) in a paper placed before the Committee of Lloyd's in 1981;

(c) at the Audit Committee meeting held on 5 May 1981; and

(iv) at a further meeting of the Audit Committee (see the paper headed "Review of Audit Requirements"), the Audit Committee recommended that separate scales of reserves should be created for US$ and non-US$ business. This recommendation was approved by the Committee of Lloyd's on 7 December 1981, and was reflected in Mr. Randall's letter of 21 December 1981 and the Audit Instructions and Solvency Letter for that year end.

[Efforts to obtain a more refined segregation continued thereafter, and ultimately culminated in the introduction of new audit codes with effect from 1 January 1987.]

At the same time as efforts were made to obtain a more refined segregation for the purposes of the

MPRs, Lloyd's also investigated and explored the possibility of developing a formula for reserving which was not based on percentages of premium income. Preliminary work carried out within Lloyd's was discussed at the Audit Committee meeting held on 5 May 1981, and referred to at the panel auditors meeting on 10 November 1981. An actuary, Mr. Sidney Benjamin, a senior partner of Bacon & Woodrow, subsequently began working on this question, and his work is referred to and discussed in various documents and minutes. Comparative tests of the "Benjamin method" against the traditional audit reserve calculations were undertaken during the mid 1980's, and the information generated was made available to the market and to registered auditors. In April 1983, a working group was formed to undertake limited testing of the Benjamin method. Their report was published in December 1983. Development of the Benjamin method was delayed after 1985 until a means could be found of obtaining gross settlement statistics, which were felt to be necessary if the system was to be effective.

[As to other changes to Audit Instructions and Solvency Letter, clauses 1 and 2 of the Audit Instructions set out the form of Syndicate Solvency Certificate to be completed by syndicate auditors, which was required as a consequence of the introduction of the Central Solvency System. The Audit Instructions also set out the duties of the syndicate auditors with respect to the review of syndicate books and records.]

The Solvency Letter, in the notes on Clause 3, was amended to require underwriters and underwriting agents to draw to the attention of syndicate auditors any factors that affected or might affect the adequacy of the reserves as at 31 December 1981. The equivalent provision in previous Solvency Letters had required the auditors to ask this question of the underwriting agent and had drawn particular factors to the attention of the auditors. The Solvency Letter was in future to be addressed specifically to underwriting agents and active underwriters as well as to panel auditors to reflect the change in emphasis of this aspect of Clause 3. The non-exclusive list of factors in the notes to Clause 3 included "risks which included liability for latent diseases and product liability".

A letter was sent to Lloyd's by Neville Russell on 24 February 1982 pursuant to Clause 3 of the Audit Instructions in relation to reserves for asbestos-related liability. Lloyd's (by Mr. Randall) responded to panel auditors by letter dated 18 March 1982, enclosing a copy of the Murray Lawrence letter of the same date to underwriting agents and auditors (see chapter 19 below).

(f) 1982 Solvency Audit

Increases to MPRs - non-marine were made in the "All Other" US$ scale in each of years 1 to 11 and 14. In a letter dated 3 February 1983 Lloyd's advised managing agents and active underwriters that for the purpose of the statement of outstanding losses for the solvency test as at 31 December 1982, Lloyd's would require both gross and net outstanding losses for the 1980 and prior years of account to be shown.

As to amendments to Audit Instructions and Solvency Letter, clause 2 was amended to impose

additional requirements on the syndicate auditor to examine and satisfy himself as to the adequacy of the accounting systems and to undertake alternative procedures where the systems were inadequate. Further the auditor had to satisfy himself that all necessary information had been supplied. Clause 6 was amended to clarify that it was the responsibility of the managing agent to establish the audit reserves and the auditor's responsibility to audit that calculation. The syndicate auditor was required to ensure that the agent had discharged his responsibility in this regard in a reasonable manner consistent with available information on outstanding losses, statistics on underwriting performance, market experience and any relevant information and explanations.

(g) 1983 Solvency Audit

The scales of MPRs - non-marine "All Other" US$ business were unchanged from 1982.

The Audit Instructions were changed to require the syndicate auditor, where he believed the syndicate's accounting systems were not adequate, to make recommendations to the managing agent as to improvements for systems and controls and to require that certain reports be made on the systems. The syndicate auditor was also required to undertake "such other procedures as he considered necessary" to enable him to complete and sign the Syndicate Solvency Report.

(h) 1984 Solvency Audit

As to MPRs - non-marine "All Other" US$ business, the scales of reserves were increased from year 5 to year 13 and new reserves were added for years 15 and 16. In addition, years 10 to 15 were made subject to an alternative outstanding liabilities test (year 16 was in any case subject to an alternative liabilities test in accordance with usual practice).

As to Audit Instructions and Solvency Letter, consideration had been given in the discussions on the MPR scales to a higher scale than eventually agreed. The higher scale was rejected but Lloyd's took the opportunity in the Audit Instructions to re-emphasise that the syndicate auditor must have regard to the fact that the MPR scales represented the "absolute minimum requirement" for any syndicate and had been compiled on that basis. Where professional judgment and statistical evidence suggested, provision had to be made over and above the MPRs to take account of the particular circumstances of individual syndicates. This was also re-emphasised in a letter to managing agents, active underwriters and panel auditors dated 12 November 1984 advising them of the MPR scales for the 1984 solvency audit. The letter reminded the addressees that any syndicate reserving at or near minimum percentage levels would have to demonstrate to its auditors that this represented an adequate provision.

In previous years, if a syndicate had wanted to set an RITC premium at less than the audit reserves calculated by reference to the MPRs, it was required to obtain the Committee's approval. Under Byelaw No.7 of 1984, auditors were now required to report in true and fair terms on the results of closed years. Therefore it was considered no longer appropriate for the Committee to approve the setting of RITC by a syndicate at less than MPR levels. Reflecting this change, syndicate auditors

were now merely required to report to Lloyd's if the 1982 and previous years' accounts of each syndicate were closed by reinsurance at a lesser sum than the MPRs and if so to confirm that the audit reserve for the open year of account had been adjusted to reflect the difference between the RITC premium and the audit reserves calculated in accordance with the MPRs.

The Audit Instructions and Solvency Letter were accompanied by a letter from the MSSD dated 10 January 1985 alerting managing agents and registered auditors, inter alia, to:

(i) the requirement that no syndicate may have audit reserves less than those calculated in accordance with the MPRs; and

(ii) the true and fair requirement applicable to the 31 December 1985 accounts and the Council's encouragement that the accounts for 31 December 1984 should be drawn up on the same basis.

(i) 1985 Solvency Audit

As to MPRs - non-marine "All Other" US$ business, the scales remained the same, subject to the removal of the alternative outstanding liabilities test for years 10 to 15. The proposed scales of MPRs were circulated under cover of a letter dated 19 November 1985. A further letter was sent on 31 January 1986.

As to Audit Instructions and Solvency Letter, clause 6(i)(d) of the Solvency Letter, which required any syndicates reserving at or near the minimum percentage to demonstrate to its auditor that this represented an adequate provision, was removed, because all syndicates needed to demonstrate to their auditors that their reserves were adequate regardless of whether they were at or near the MPR levels. It was misleading to state that this was only necessary where syndicates reserved at or near MPRs. Clause 3 of the Solvency Letter was changed to require auditors to report inadequacies in reserves created at 31 December 1982 (the prior closed year), rather than RITC. The reason was to distinguish between the syndicate accounts (RITC) and the solvency test (closing reserves). Clause 3(iii) of the Solvency Letter (managing agents to bring to auditors' attention factors which affect or may affect the adequacy of the reserves) was amended, inter alia, so that "any factors" was in bold, the words "but in no way limited to" were added to the introduction and sub-paragraph (a) read "risks which include liability for latent diseases "and/or" products liability".

(j) 1986 Solvency Audit

As to MPRs - non-marine "All Other" US$ business, the scales of MPRs were reduced for years 1, 2 and 16, and increased for years 11 to 15. A new reserve was added for year 17.

As to Audit Instructions and Solvency Letter, the Audit Instructions and Solvency Letter were combined into one document. This change was of form rather than substance, as explained in a letter to managing agents, active underwriters and recognised auditors dated 19 December 1986. In

particular, the Audit Instructions now identified the principal responsibilities of the managing agent, syndicate auditor, members' agents and members' agents auditors in separate parts. The provisions as to the valuation of assets and the valuation of liabilities were in two further parts. It was stressed in Clause 6.1 (valuation of liabilities) of the Audit Instructions that the Instructions were applicable solely to the annual solvency test and were not determinative of the accounting standards applicable to the annual report prepared in respect of a syndicate.

(k) 1987 Solvency Audit

As to MPRs - non-marine "All Other" US$ business, the MPRs were decreased in respect of years 3 and 17 and increased in respect of years 5 to 16. A new reserve of 5% (or outstanding liabilities) was added in respect of year 18.

New audit codes had been introduced with effect from 1 January 1987 but separate minimum reserve levels could not be established immediately for these codes until sufficient data had been collected:

non-marine long-long-tail Code A1

non-marine medium long-tail Code A2

non-marine short-long-tail Code A3

bankers' business Code BB

The introduction of the new audit codes was a further consequence of the efforts made to refine the categories within the non-marine "All Other" business class following the division in 1981 between US$ and non-US$ business. The further discussions and efforts concerning segregation are revealed in the documents identified below:

(i) at the Audit Committee meeting on 1 March 1983, the Committee agreed that a further effort should be made to divide the non-marine "All Other" business account, and that LUNMA should be approached and requested to assist in extracting those classes of business which could form a "short all other" scale of reserves;

(ii) by the time of the Audit Committee meeting on 6 September 1983, a sub-committee had been set up to deal with the matter. By letter dated 26 October 1983, LUNMA reported that its Committee were of the view that there should be no new audit codes splitting the "All Other" category into statistical sub-divisions; a position reiterated at the meeting of the LUNMA Committee held on 13 September 1984;

(iii) at a meeting of the MSSC on 15 October 1984, it was considered that a further attempt should be made to sub-divide the "All Other" categories;

(iv) eventually, on 14 July 1986, the LUNMA Committee prepared a paper which recommended that there should be a further subdivision into bankers business, short long, medium long, and all other. They proposed that bankers' business should carry new minimum audit percentages immediately; that the other three categories would, for the time being, continue to be dealt with (for MPR purposes) as a single category. The proposal was discussed, and broadly accepted, by the MSSC on 22 October 1986; and their recommendations were put before the Committee of Lloyd's. The new audit codes (A1, A2, A3, and BB) were introduced with effect from 1 January 1987.

The new audit codes were referred to in a letter dated 4 December 1987, enclosing the Solvency Test Instructions for the year ended 31 December 1987. The letter stated:

"Non-Marine Reserves

With effect from 1 January 1987, new audit codes for non-marine business were introduced, namely codes Al; A2; A3 and BB. Until separate minimum percentage reserves can be established for non-marine short-long-tail, medium-long-tail and bankers business categories the existing non-marine all other (long-tail) solvency category will cover all these audit codes. However, as a result, the minimum percentage reserves for this category will not provide adequate levels of reserves even as a minimum for the longer tail classes [and], managing agents and recognised auditors are reminded that a thorough review is essential of outstanding claims and, in respect of liabilities unnoted and incurred but not reported (IBNR's)."

There were no material changes to Audit Instructions - now called Solvency Test Instructions.

H. REGIME FOR STATUTORY STATEMENT OF BUSINESS AND GLOBALS

Introduction

The process of collating material for the SSOB, Aggregate Results and Global Accounts was, in the relevant contemporaneous documents, called "the Global Process" and the end result "the Globals", notwithstanding the distinctions between the various documents.

To summarise the production of the SSOB and Globals:

Prior to the year ended 31 December 1982

(i) Lloyd's prepared the SSOB from consolidated returns made by syndicate auditors called "Global Statements". In addition syndicate auditors produced more detailed "Global Revenue Accounts" which were provided to the DTI although they were not strictly required by statute.

(ii) The Global Revenue Accounts were used by Lloyd's to prepare Aggregate Results, which used

slightly different business categories (similar to Lloyd's traditional business categories) to those used for the SSOB. Aggregate Results were released by Lloyd's at its annual press conference along with statements made by the Chairman of Lloyd's and Chairmen of the various Market Associations. A summary of Aggregate Results and statements of the Chairmen were circulated to underwriting agents by the Publicity and Information Department. A summary of the Aggregate Results and statements of the Chairmen were also published in the Lloyd's Log. The Aggregate Results were also included in the accounts of the Corporation of Lloyd's for the 1978 year end (which contained the Aggregate Results for the closure of the 1975 year of account as at 1977) until the 1981 year end (which contained the Aggregate Results for the closure of the 1978 year of account as at 1980).

For the year ended 31 December 1982 and subsequent years

(i) Following the enactment of the ICA 1982 the form of SSOB was changed, from the year ended 31 December 1982, to replicate substantially the information previously provided by the Global Revenue Accounts. In particular, the number of business categories was increased. The SSOB also contained a number of additional returns to the DTI.

(ii) With effect from the year end as at 31 December 1982, the Globals were published in the form of a brochure containing, inter alia, the Global Accounts and statements by the Chairman of Lloyd's and Market Association Chairmen. The Globals were distributed at a press conference. The Global Accounts provided in the Globals were expanded (by comparison to the information previously made available to the press and public) to cover the same business categories as in the new form of SSOB.

(iii) The forms, on which the information for the SSOB and Global Accounts was collated, were changed to forms with a GL prefix. Initially syndicate auditors provided consolidated returns aggregating the results of all syndicates which they audited (as had been the case prior to 1982). Lloyd's then aggregated these returns manually to produce the SSOB and Global Accounts.

(iv) By the time of the SSOB and Global Accounts as at 1983 syndicate auditors were required to furnish returns for each individual syndicate but the SSOB and Global Accounts continued to be calculated from aggregated returns by syndicate auditors (i.e. returns that did not distinguish between individual syndicates). By the time of the SSOB and Global Accounts as at 1986, individual syndicate returns were used to produce the SSOB and Global Accounts. The process became computerised so that individual syndicate returns were aggregated by Lloyd's by computer.

The administrative departments responsible for producing the SSOB, Aggregate Results and Global Accounts over the Relevant Period were as follows:

As at 1981 and prior years	the Audit Department.
As at 1982	the Members' Solvency and Security Department.

As at 1983 and intervening years	the Accounting and Auditing Review Department.
As at 1987	the Accounting and Auditing Standards Department

DEVELOPMENT OF THE STATUTORY REGIME

(a) SSOB as at 31 December 1981 and Prior Years

Lloyd's has been required to lodge statements on Lloyd's business with the Board of Trade (or the DTI) since 1948. For the year ended 31 December 1981 and prior years, this requirement was set out in Section 74 of the ICA 1974. The Assurance Companies Rules 1950 (SI 1950/533) set out the prescribed form of SSOB at Rule 19 (then called the "Annual Statement"). The SSOB were required to be signed by the Chairman of Lloyd's, the Chairman of the Audit Sub-Committee and the Clerk to the Audit Sub-Committee.

There were four categories of business in respect of which statements were required:

Form A: returns relating to life assurance business;

Form B: returns relating to motor vehicle insurance business within Great Britain and Northern Ireland (other than reinsurance business);

Form C: returns relating to marine, aviation and transit insurance business; and

Form D: returns relating to all other assurance business other than long term business (i.e. other than life assurance business).

Each form certified that all the liabilities attaching to such business had been calculated by an auditor (or an actuary in respect of life assurance business) and that an Audit Certificate had been furnished by each underwriter to the Board of Trade and to the Committee of Lloyd's. Each form also set out the income and expenditure for each open year and the closed year of account as at the year end to which the Annual Statement related.

(b) SSOB as at 31 December 1982 and Subsequent Years

Following the enactment of the ICA 1982, a new form of SSOB was required to be furnished to the Secretary of State for Trade and Industry. The SSOB was prescribed in Regulation 5 and Schedule 3 of the Insurance (Lloyd's) Regulations 1983, and applied to the audit as at 31 December 1982.

The SSOB was in the form of a general certificate to be furnished by Lloyd's and a number of supporting Forms. The general certificate stated that the SSOB had been completed in accordance

with the ICA 1982 and that an Audit Certificate had been provided in respect of every underwriting member. The general certificate was signed by the Chairman, Deputy Chairman and Secretary-General of Lloyd's. The supporting Forms to be completed pursuant to paragraph 5 of the Regulations and Schedule 3 covered revenue accounts, premium analysis returns, solvency margin calculations and a consolidated statement of assets and liabilities of Names.

Form 1 required "Three Year Revenue Accounts" for each of the open years and the closed year as at the year end to which the SSOB related. Regulation 5(2) and (3) specified that Form 1 returns were required for the following:

(i) for each of the following accounting classes of general business:

(A) accident and health;

(B) motor vehicle, damage and liability;

(C) aircraft damage and liability;

(D) ships, damage and liability;

(E) goods in transit;

(F) property damage;

(G) general liability; and

(H) pecuniary loss;

(ii) for long term business; and

(iii) for all insurance business.

Form 1 compared income and expenditure as in the earlier SSOB but in greater detail. One principal difference was that the reinsurance premiums received and paid, if any, were separately stated from the net premiums and net claims. These values included amounts placed to reserve in respect of estimated liabilities from previous accounts (i.e. reserves established on years of account in run-off).

The Production of the SSOB, Aggregate Results and the Global Accounts, the Development of Globals and the Process for the approval of SSOB and Globals are described in Appendix 4.

12. THE RULES AND PROCEDURES GOVERNING THE ADMISSION TO UNDERWRITING

MEMBERSHIP OF LLOYD'S AND RELATED MATTERS

The following account of the Rules and Procedures Governing the Admission to Underwriting Membership of Lloyd's and Related Matters is drawn from a statement of agreed facts. Where I have added to the statement this is shown in square brackets.

A. THE REGULATORY FRAMEWORK APPLICABLE TO ADMISSION TO UNDERWRITING MEMBERSHIP OF LLOYD'S AND RELATED MATTERS

Byelaw No. 87 (18 November 1970)

Under this byelaw, insurance business could be effected with Names through an underwriting agent only if that agent was at the time listed in the Register of Approved Lloyd's Underwriting Agents to be kept by the Committee of Lloyd's.

Manual for Underwriting Agents (1971 Version)

The procedure applicable to admission to underwriting membership of Lloyd's was set out in the Manual for Underwriting Agents which was first published in 1971. The Manual also set out the duties owed by underwriting agents (both members' and managing agents) to prospective and existing Names. These duties included (at Section A, paragraph 3.1(ii) of the Manual):

(i) advising and discussing with prospective Names the prospects and past results of the various syndicates on which the agent could place Names;

(ii) co-operating with the prospective Name's sponsor in submitting applications for membership;

(iii) agreeing with the Name the allocation of the Name's premium limits as between syndicates;

(iv) keeping Names informed of the progress of their underwriting;

(v) arranging to provide annual audited accounts to Names; and

(vi) passing on to the Name any relevant information or instructions contained in correspondence from the Committee of Lloyd's.

The Manual also set out the obligations on a managing agent to "keep the [members'] Agent fully advised of the progress of the underwriting account ... by periodical advice at least on a quarterly basis ... [and] by making available any such further information as may be requested ..." (at Section A, paragraph 9.2(iv) of the Manual).

The Manual was subsequently updated by means of replacement pages which were regularly issued in the form of sequentially numbered "Amendment Lists".

A brochure entitled "Notes for Applicants for Underwriting Membership" was prepared by the Membership Department of Lloyd's in 1971 and appended to the Manual. Various amendments were subsequently made to this brochure between 1971 and 1979 prior to its replacement by a separate brochure, the "Brochure for Applicants for Underwriting Membership" in 1979.

On 22 December 1977, the Committee of Lloyd's issued a letter to all underwriting agents setting out detailed requirements as to information to be provided by agents to US citizens and residents applying for membership of Lloyd's. The letter also gave instructions as to documentation to be used by agents in connection with such applications, including a separate brochure for US applicants (appended at Part A to Exhibit D to the letter) and a "verification form" which was to be signed by US applicants at or immediately following his or her Rota Committee interview as part of the procedure for admission to underwriting membership of Lloyd's.

On 23 January 1979, the Committee of Lloyd's issued a further letter to all underwriting agents recommending that the same information that was to be disclosed to US applicants should be disclosed to all new Names who became Names through their agency. The letter also recommended that disclosure should be made to an existing Name at the time of his/her increasing his/her line on a syndicate, joining a new syndicate or employing a new agent. Finally, the letter advised that if a brochure was prepared by an agent for the purpose of disclosing information to new Names, the agent should notify its existing Names of the existence and availability of that brochure.

Again in January 1979, the brochure for non-US applicants entitled "Notes for Applicants for Underwriting Membership" was replaced by the "Brochure for Applicants for Underwriting Membership".

On 5 March 1980, a letter was sent by the Manager of the Membership Department to agents indicating that all prospective Names or existing Names joining an agency or syndicate, irrespective of nationality, should be provided with the same information which was previously required to be disclosed specifically to US Names as set out at Section A, paragraph 16.5 of the then current version of the Manual. The letter also asked agents "to draw to the attention of new Names factors which may have affected past results or may affect future results, and to keep all Names informed of factors which might materially affect the results of the Syndicate".

Manual for Underwriting Agents (January 1980 Version and Amendments)

The Manual was reprinted in full in January 1980. Replacement pages continued to be produced throughout the Relevant Period up to and including 1988.

The amendments to the Manual made by Amendment List No. 49 on 2 May 1980 made reference to

the following:

(i) the requirement (which had previously been notified to agents in the 5 March 1980 letter) that "Agents should keep all Names informed of facts that might materially affect Syndicate results" (Section A, paragraph 15.1, headed "Disclosure to Existing Names", of the amended Manual);

(ii) the requirement (which had also previously been notified to agents in the 5 March 1980 letter) that agents should provide prospective Names with "comments on factors which have materially affected past results or might materially affect future results" (Section A, paragraph 17.1(iii)(c) of the amended Manual);

(iii) the requirement that agents should explain to prospective Names the concept of unlimited liability (Section A, paragraph 17.1(i)(f) of the amended Manual);

(iv) the requirement that agents should provide to prospective Names the "results of operations for each Syndicate for at least 7 years which have been certified by Panel Auditors and most recent percentage settlement figures in respect of open underwriting years, together with an indication as to whether they are likely to show a profit or loss" (Section A, paragraph 17.1(iii)(c) of the amended Manual).

The requirements set out in Amendment List No. 49 that agents should explain the concept of unlimited liability to prospective Names and should show them the results of at least the last seven closed underwriting years (where applicable) for each proposed syndicate, had both previously been set out in the relevant Rota briefs and verification forms for both 1979 and 1980 joiners.

The Report of the Fisher Working Party into Self-Regulation at Lloyd's - May 1980

The Fisher Report made a large number of recommendations, including that under the anticipated new Lloyd's Act (which subsequently received Royal Assent on 23 July 1982), the Council and Committee of Lloyd's should be given extensive powers:

(i) "to regulate the admission and registration of Members, Agents and Brokers" (paragraph 4 of the Fisher Report); and

(ii) in relation to "the provision of adequate information by Agents to prospective and established Members [and] the proper treatment of Members by Agents under the terms of a generally standard form of Agency Agreement" (paragraph 8 of the Fisher Report).

The Fisher Report gave rise to the establishment of a number of "Task Groups". These included the following:

(i) Fisher Task Group 2 which considered byelaws and regulations generally;

(ii) Fisher Task Group 3 (Rules for Members);

(iii) Fisher Task Group 4 (Information to Names); and

(iv) Fisher Task Group 5 (Agency Agreements).

The work of these Task Groups in turn led to the passing of a number of byelaws, as set out below.

1983 Annual Reports of Syndicates Byelaw (No. 2 of 1984)

This byelaw imposed an obligation (enforceable by disciplinary measures) on managing agents to prepare audited syndicate accounts for the year ended 31 December 1983. The byelaw specified the contents of the accounts and the timing for their completion and circulation to Names (direct or through members' agents) and to Lloyd's. The timing was as follows:

15 June	Despatch of accounts by managing agents to members' agents or directly to Names and to Lloyd's
15 July	Despatch of accounts by members' agents to Names

Disclosure of Interests Byelaw (No. 3 of 1984)

This byelaw required that members' and managing agents must disclose to Names, through annual statements and syndicate annual reports respectively, all transactions and arrangements concerning the Name in which the agent had a material interest.

Underwriting Agents Byelaw (No. 4 of 1984)

Through this byelaw, the Committee of Lloyd's established a register of all underwriting agents, divided into members' agents and managing agents (paragraph 3 of the byelaw). An agent was not permitted to operate in the Lloyd's market unless it was registered under this byelaw (or was already registered under Byelaw No. 87 in which case the need to register under the 1984 byelaw was postponed until 22 July 1987) (paragraph 4 of the byelaw). The factors which the Committee would take into account in deciding whether the agency was "fit and proper" to be registered included the suitability of its directors or partners and its staff; the suitability of the active underwriter(s) (in the case of a managing agent); and its ability to supervise and service all of its activities and responsibilities (paragraph 8 of the byelaw).

Syndicate Accounting Byelaw (No. 7 of 1984)

This byelaw set out the requirements for the preparation and audit of syndicate accounts for the year ended 31 December 1984 and onwards and for the preparation and audit of individual Names' personal accounts. It contained full details as to the contents, timing, publication and circulation of syndicate accounts, as well as provisions relating to the contents of managing agents' and underwriters' reports. The timetable for the circulation of syndicate accounts and accompanying documents was the same as that set out in the 1983 Annual Reports of Syndicates Byelaw.

Membership Byelaw (No. 9 of 1984)

This byelaw was supported by detailed secondary rules set out in the Manual for Members. The Manual for Members, which was prepared by the Membership Department, consolidated all of the existing rules relating to admission and was distributed to members' agents.

As well as dealing with the requirements for admission (paragraphs 4-8 of the byelaw), the byelaw gave the Council and Committee of Lloyd's the power to require Names to provide proof of means and required Names to notify the Committee in writing if their level of means fell below the qualifying level (paragraphs 3(b)(ii) and 14(c)-(d) of the byelaw).

Agency Agreements Byelaw (No. 1 of 1985)

As a result of this byelaw, insurance business could not be underwritten at Lloyd's after 31 December 1986 except in pursuance of a Standard Agency Agreement (set out in Schedule 1 to the byelaw) or a Standard Sub-Agency Agreement (set out in Schedule 2 to the byelaw).

1986 Brochures

In February 1986, both the US and non-US versions of the Brochure for Applicants for Underwriting Membership were replaced by the "Applicants' Guide for Underwriting Membership" which was introduced in respect of all applicants regardless of nationality. This in turn was replaced in December 1986 by a brochure entitled "Membership: The Issues", again in respect of all applicants.

The Report of the Committee of Inquiry Chaired by Sir Patrick Neill into Regulatory Arrangements at Lloyd's - January 1987

Among the conclusions of the Neill Report was the finding that "the formal [admission] process does contain many of the safeguards associated with modern investor protection legislation, for example, specific rules about the financial circumstances of the prospective Name and the information he/she is to be given, and a lengthy introductory procedure culminating in a Rota interview" (paragraph 4.8 of the Neill Report).

The Neill Report also noted that the members' agent "has a critical role to play in explaining in detail the financial requirements for Names laid down by Lloyd's, the financial consequences of

membership, the services which the agent himself provides and the syndicates he can make available. A competent agent will be at pains to advise the applicant whether membership of Lloyd's is appropriate to his circumstances. It is then for the agent to guide the Name through the admission process" (paragraph 4.5 of the Neill Report).

It further noted that members' agents had to understand that they were "responsible for giving Names comprehensive and objective advice on the consequences of membership in the light of a thorough understanding of the Names' individual circumstances" (paragraph 4.33 of the Neill Report).

The Neill Report in turn gave rise to further byelaws and codes of practice, as summarised below.

Syndicate Accounting Byelaw (No. 11 of 1987)

This byelaw set out revised requirements relating to the preparation and audit of syndicate accounts and to the preparation and audit of individual Names' personal accounts. Like the Syndicate Accounting Byelaw (No. 7 of 1984), it contained full details as to the contents, timing, publication and circulation of syndicate accounts, as well as provisions relating to the contents of managing agents' and underwriters' reports. As stated in a letter dated 11 December 1987 from the Council of Lloyd's to underwriting agents, market associations and recognised auditors, the revised timetable for the circulation of syndicate accounts and accompanying documents was as follows:

31 May	Despatch of annual reports and personal accounts by managing agents to members' agents and of annual reports to Lloyd's
30 June	Despatch by members' agents to Names or by managing agents directly to Names

The revised timetable applied in respect of syndicate accounts and accompanying documentation for the year ended 31 December 1988 and onwards.

Members' Agents (Information) Byelaw (No. 7 of 1988)

Under this byelaw, which came into force on 1 January 1989, all members' agents had to compile annually a members' agent's information report containing "such information as would materially assist a reasonable applicant to make an informed assessment of the members' agent (and its business)" (paragraph 2 of the byelaw). The MAIR had to include, among other matters (listed in Schedule 2 of the byelaw):

(i) a statement as to whether the agent was independent or was associated with a broker or managing agent;

(ii) the number of Names which the agent had acted for and the total number of syndicates to which Names were or had been allocated by the agent in each of the last seven years of account (going back

no further than the 1984 year of account);

(iii) for each such syndicate, numbers of Names and the aggregate capacity of those Names for each of the last seven years of account (going back no further than the 1984 year of account);

(iv) for the year of account commencing on the compilation date (i.e. 1 January of the calendar year in which the MAIR is compiled), a list of the directors or partners in the members' agent who were Names together with a list of the syndicates on which they underwrote business through that members' agent and their aggregate participation on each such syndicate;

(v) a statement of the average performance achieved by the members' agent (using the formula set out in Schedule 2, paragraph 5 of the byelaw) in each of the last seven years of account (going back no further than the 1985 year of account); and

(vi) a statement of policy concerning the special reserve fund and personal reserve arrangements; personal stop loss policies; the offering of capacity on syndicates managed by a managing agent associated with the members' agent as compared with other syndicates, and whether the same policy was applied to Names who were directors, partners or employees of the members' agent; and the payment of introductory commissions.

Members' agents were also required to compile annually a table of syndicate relationships (i.e. numbers of Names and the aggregate capacity of those Names for the past seven years of account, going back no further than the 1984 year of account) (paragraph 3 of the byelaw).

A members' agent could only issue a brochure if the brochure either (i) attached the current MAIR and any supplemental report prepared by the agent; or (ii) was a "qualifying brochure" (i.e. contained the information found in the MAIR and any supplemental report) (paragraph 4 of the byelaw).

Paragraph 5 of the byelaw provided that the Council of Lloyd's would set up and maintain a file of MAIRs and tables of syndicate relationships, containing a separate section in respect of each members' agent.

No members' agent could agree to act for an applicant without first giving that applicant either (i) a copy of the current MAIR; or (ii) a qualifying brochure; and in either case a copy of any supplemental report (paragraph 6 of the byelaw).

Agency Agreements Byelaw (No. 8 of 1988)

This byelaw provided that, in respect of the 1990 and subsequent years of account, no members' agent could act as members' agent of a Name, and no Name could appoint a members' agent or agree that the members' agent would continue to act in that capacity, otherwise than in pursuance of a written agreement in the form and terms of the standard members' agent's agreement set out in Schedule 1 of

the byelaw (paragraph 2 of the byelaw).

Clause 4(a) of the standard members' agent's agreement required that the members' agent should "advise the Name as to the syndicates in which he should participate and as to the amounts of his overall premium limit which should from time to time be allocated to each such syndicate".

Clause 6.2(m) of the standard members' agent's agreement required that the members' agent should "disclose to the Name in good time any information in its possession relating to any of the Contracted Syndicates, or to any syndicate which the Agent has advised the Name to join or which the Name and the Agent have agreed that the Name should join, which could reasonably be expected to influence the Name in deciding whether to become or remain a member of, or to increase or reduce his participation in, any such syndicate, and use its reasonable endeavours to obtain any such information".

Similarly, in respect of the 1990 and subsequent years of account, no managing agent could, and no Name could authorise or continue to authorise a managing agent to, underwrite insurance business on behalf of a Name or provide any other services as a managing agent to a Name, otherwise than in pursuance of an agreement in the terms of a standard managing agent's agreement set out in Schedule 3 of the byelaw and, except where the managing agent is acting as the Name's members' agent, the standard agent's agreement set out in Schedule 2 of the byelaw (paragraph 3 of the byelaw).

Neither agents nor Names could vary the terms of any of these standard agreements without the written consent of the Council of Lloyd's (subject to limited exceptions) (paragraph 5 of the byelaw).

Code of Practice: "Know Your Principal" Guidelines for Members' Agents at Lloyd's (7 September 1988)

This code of practice stated that members' agents should promote and maintain, on a continuing basis, a flow of information from their principals (i.e. their Names) regarding the latter's personal and financial circumstances (paragraph A of the code of practice).

Members' agents had to satisfy themselves that (as set out in paragraph B of the code of practice):

(i) membership of Lloyd's and the type of business to be underwritten were appropriate in the principal's particular circumstances;

(ii) the principal understood the nature of the risks of membership;

(iii) the principal understood the concept of unlimited liability and how this might affect his/her personal commitments and/or financial obligations and also understood the limited role of any stop-loss policy taken out by him/her;

(iv) the principal was aware that control of his/her underwriting affairs would be delegated to his/her underwriting agents;

(v) the principal understood that he/she or his/her estate would remain liable until all the syndicates on which he/she participated had been closed by reinsurance to close; and

(vi) the principal could realise sufficient resources in the event of a sizeable loss and could maintain sufficient assets over and above those required to be maintained as a condition of membership to continue to meet his/her living expenses.

Members' agents had to seek confirmation from each principal that the implications of membership were compatible with the principal's financial objectives (paragraph B(vii) of the code of practice).

Members' agents also had to keep up to date records of each principal. These records had to demonstrate the suitability of the advice given by the members' agent in connection with membership (paragraph C of the code of practice).

B. 1978 ADMISSION PROCEDURE FOR PROSPECTIVE NAME SEEKING TO COMMENCE UNDERWRITING ON 1 JANUARY 1979 (1979 JOINER)

Categories of Membership

The requirements for admission differed in a number of respects, as detailed below, depending on the classification of the particular applicant. The principal categories of Name at Lloyd's were as follows:

(i) Lloyd's vocational Names (known as "Lloyd's Names" and, later in the Relevant Period, as "Working Names"), who had to be resident in the UK; have 5 consecutive years' qualifying service, i.e. full time service employment with a Lloyd's underwriting agent or a Lloyd's broker immediately prior to their election; and whose application had to be supported in writing by the chairman, managing director or senior partner of their employer (unless they had been an annual subscriber to Lloyd's or a substitute of another broker for five years immediately prior to their election and had a salary of not less than £10,000). (N.B. The "five year" qualifying period was sometimes reduced to two years for an active underwriter of a syndicate.) A vocational Name could be elected on reduced or nominal (i.e. zero) means. In either case, he/she had to provide a vocational undertaking to continue working in the Lloyd's market. Alternatively, a person working in the market could choose to be elected in accordance with the normal means requirement, in which case no vocational undertaking would be required.

(ii) "Connected or Associated Names", who did not have to be resident in the UK but had to have 5 years' qualifying service with one or more organisations connected with the Lloyd's market immediately prior to their election; be employed in an organisation connected with the Lloyd's market; and whose application had to be supported in writing by the chairman, managing director or

senior partner of their employer, who had to verify that the candidate's work was substantially connected with the Lloyd's market. A Connected or Associated Name candidate could be elected on reduced (but not nominal) means. Unless he/she was elected in accordance with the normal means requirement, he/she would have to provide a Connected or Associated Names undertaking to continue working in an organisation connected with the Lloyd's market.

(iii) "Non-Lloyd's Names" (sometimes known as "External Names"), i.e. ones which did not fall into any other category.

Application Process

An application to become a Name and to commence underwriting on 1 January 1979 would be made during the course of 1978. Such an application could only be made through a registered members' agent, who would provide the prospective member with the necessary forms and would guide him/her through the application procedure. The members' agent's responsibilities would also include:

(i) explaining the structure of Lloyd's and the implications of membership;

(ii) advising prospective Names on their suitability for membership and the requirements and regulations applicable to becoming a member;

(iii) advising and guiding prospective Names through the admission procedure;

(iv) advising prospective (and existing) Names on syndicate selection;

(v) introducing them to the underwriters on their proposed syndicates (as recommended by the Committee of Lloyd's);

(vi) acting as an intermediary between the Name and the managing agent;

(vii) dealing with any changes in a Name's overall premium limit;

(viii) dealing with the administration of the investment of a Name's personal and special reserve funds;

(ix) accounting to Names for the results of their underwriting, including payment of profit and collection of losses or interim cash calls; and

(x) keeping Names informed at all times of material factors which may affect their underwriting.

The main duties of a members' agent were summarised in passages set out in chapter 10 above by:

(i) Gatehouse J in Brown v KMR Services [1994] 4 All ER 385 at 390;

(ii) Hobhouse LJ in Brown v KMR Services [1995] 4 All ER 598 at 633 to 634; and

(iii) Lord Goff in Henderson v Merrett Syndicates Ltd [1995] 2AC 145 at 170.

Having decided to apply for admission to underwriting membership, the prospective Name also had to obtain sponsorship by an existing Name, who would send a sponsor's letter to the Membership Department of Lloyd's. In addition, in the case of US applicants, a further sponsor form, known as a "US Sponsor Declaration", was required to confirm that the prospective Name had sufficient financial and business experience to be able to evaluate the risks of membership/was able to bear the economic risks of membership.

The closing date for receipt of the sponsor's letter was, in the case of prospective Lloyd's Names and prospective Connected and Associated Names, the end of May 1978, and, in the case of prospective non-Lloyd's Name applicants, the end of June 1978.

On receipt of a sponsor's letter (and, in the case of US applicants, a US Sponsor Declaration, a US Names Questionnaire and, if appropriate, an Adviser Questionnaire), the Membership Department would provide personal details of the prospective Name to the Committee of Lloyd's.

Eligibility

In order to be eligible to commence underwriting on 1 January 1979, a prospective Name had to be at least 21 years old and be of suitable character and financial standing.

Relevant considerations as to suitability of character included any involvement in litigious or criminal proceedings, any bankruptcy or insolvency, any conflicts of interests or any commitments or interests likely to prejudice the applicant's ability to meet his/her underwriting liabilities at Lloyd's.

The checks on age and financial standing were carried out by the Membership Department, by reference to the information submitted by applicants in the sponsor's letter. The Membership Department also co-ordinated the checks on character, which were carried out in two ways. Firstly, they circulated the information contained in the sponsor's letter to various departments within Lloyd's such as the Advisory Department and to overseas representatives where applicable. Secondly, a list of prospective applicants was posted on the board in the Underwriting Room. Any objections to the eligibility of a particular applicant and the reasons for these would be reported to the Membership Department which would then either reject the application, if it had not progressed past the Rota Committee interview stage or, if it had, notify the Committee of Lloyd's.

If, following these checks, the application was allowed to proceed, a folder, containing all the

necessary forms to be completed by the applicant (except for the deeds), would be sent by the Membership Department to the prospective Name's nominated members' agent. Special folders were issued to US applicants.

Forms and Deeds

Certain of these forms had to be completed immediately. The members' agent, having assisted the prospective Name in completing these initial forms, would then send these to the Membership Department. The deadline for receipt of these forms was the end of July 1978 for prospective Lloyd's Names and prospective Connected and Associated Names and the end of August 1978 for prospective non-Lloyd's Names. The forms included a Nomination Form, a Statement of Means form and the General Undertaking.

Once any queries relating to these forms and any supporting documentation had been resolved, the applicant's name and Nomination form were posted on a board in the Underwriting Room.

If no objection was made to the Membership Department within one week, the Membership Department would prepare a request for the Lloyd's deposit to be provided, together with the relevant deeds, and would forward them to the members' agent for signing by the prospective Name. The request and deeds would be sent out by the end of November 1978.

Means Requirements

The means requirements which an applicant was required to meet differed depending upon the nationality and place of residence and domicile of the particular applicant. In order to determine financial standing, a UK citizen applying in 1978 to join Lloyd's as a non-Lloyd's Name (i.e. a 1979 joiner) who was both a UK resident and domiciled in the UK would need to show a minimum level of means of £37,500 (permitting a maximum underwriting premium limit of £75,000 and requiring a minimum deposit of £20,000). A US national in 1978, wherever resident and domiciled, would need to show a minimum level of means of £100,000, permitting a maximum underwriting premium limit of £150,000 and requiring a minimum deposit of £35,000. Satisfaction of the means requirement had to be shown in the form of a Statement of Means signed by an independent professional.

Information Available to Applicants

The members' agent was required to provide certain information to the prospective Name, including, among other matters, figures for at least seven closed years of account for the syndicates which the Name was proposing to join, together with a copy of the Underwriting Agency Agreement and details of how expenses and commission were calculated and charged. In the case of US applicants, the members' agent also had to provide percentage settlement figures in respect of open underwriting years of account. This additional requirement was extended to all prospective Names from 1979, i.e. the time of 1980 joiners. At the Rota Committee interview, the Rota Committee chairman would

check that the prospective Name had indeed seen this information.

Rota Committee Interview

At the same time as sending out the request for the Lloyd's deposit, and the deeds for signature, the Membership Department would arrange for the applicant to attend a Rota Committee interview, to be held by the end of November 1978. The Manual stated that it was the Committee of Lloyd's wish that the applicant should have met the active underwriters on his/her proposed syndicates prior to attending this interview.

The interview would be held at Lloyd's offices in London. It would generally last between ten and fifteen minutes and would be led by a Rota Committee chairman who would be recruited by the Membership Department from among members and former members of the Committee of Lloyd's. In addition to the Rota chairman, the others present would be the applicant/group of applicants, a director of the members' agency, an interpreter if appropriate, a representative from the Membership Department and possibly a "trainee" Rota Committee chairman and "trainee" Membership Department representative.

Given the number of applicants, interviews would sometimes be conducted with groups of applicants rather than on an individual basis. However, this would only be done for UK applicants (i.e. not for overseas applicants) and only with their consent. The group would also only consist of applicants all put forward by the same members' agency.

The interview was conducted by the Rota chairman using a form known as a "Rota brief". The brief was designed to enable the Rota chairman to fulfil the purpose of the Rota Committee interview, which was to confirm that the specific matters set out in the Rota brief had been drawn to the attention of the applicant by his/her members' agent and had been understood by the applicant. The Membership Department representative would be responsible for ensuring that the chairman had covered all the points in the brief. That representative would also have a complete file on the applicant (up to date as at that point) to help brief the chairman.

The Membership Department would also, prior to the interview, prepare a draft Rota report. The Membership Department would include any conditions yet to be satisfied prior to election, e.g. that the deposit still had to be provided. The chairman would then sign the report which would be kept by the Membership Department with the other forms.

The Rota report, which now included a note of the date and time of the interview and the name of the Rota Committee chairman, was then submitted to the Committee of Lloyd's.

Verification Form

At or immediately after (i.e. on the same day as) the Rota Committee interview, UK and US

applicants were required to sign and return to the Membership Department a "verification form" confirming that the specific matters included in the form had been explained to him/her by his/her members' agent and that he/she understood those matters. Both the US and non-US verification forms also required the applicant to confirm that he/she had been shown the results of at least the last seven closed underwriting years (where applicable) in respect of each syndicate which he/she was proposing to join.

Entrance Fees

Entrance fees also had to be paid by the end of November 1978. These were:

Lloyd's Names: £500
Spouses (wishing to continue after the death of a member): £750
Connected or Associated Names: £1,000
UK residents with means of £50,000-£100,000: £1,500
UK residents with means of more than £100,000 and foreign nationals: £1,900

Election

Following receipt of all the remaining forms, the Membership Department would then include the applicant's name on a ballot list which it submitted to the Committee of Lloyd's seeking formal approval for the applications to proceed to final election by the Committee of Lloyd's.

The deadline for such election was the end of December 1978, in order to allow the newly elected Name to commence underwriting on 1 January 1979.

The applicant could withdraw his/her application at any time during the year in which the application was made. This would be done by giving notice to his/her members' agent who would then give written notice to the Membership Department, to include if possible reasons given by the applicant for withdrawal.

Immediately following election, the Membership Department sent out a membership certificate and membership card to the new Name.

C. SUMMARY OF CHANGES TO THE ADMISSION PROCEDURE AFTER 1978 UP TO AND INCLUDING 1988 (I.E. FOR 1980 JOINERS TO 1989 JOINERS)

Membership requirements and procedures were reviewed annually as a matter of course by the Membership Department. Changes might also arise out of queries and recommendations made to the Membership Department by existing Names or underwriting agents. Proposal papers were from time to time submitted to the Membership Committee which, having debated them, would make its own recommendations to the Committee of Lloyd's.

Means Requirements

In 1979 (i.e. in respect of 1980 joiners), the minimum means requirement for a UK citizen applying to join Lloyd's as a non-Lloyd's Name and who was also both a UK resident and domiciled in the UK was increased from £37,500 to £50,000. In 1983 (i.e. in respect of 1984 joiners), this requirement was increased again to £100,000. It remained at this level for the remainder of the Relevant Period.

The list of qualifying assets which could be used by an applicant to show that he/she satisfied the minimum means test requirements referred to above was amended in 1982 (i.e. in respect of 1983 and subsequent joiners). Prior to this time (i.e. for 1979 to 1982 joiners), it was necessary for an applicant to show that at least 60% of the assets being used to satisfy the means test were in a particular form. These included "Bank Guarantees or Letters of Credit on any of an applicant's assets other than their own home". There was also a separate requirement prior to 1982 that the value of an applicant's own home (which was to be calculated at certified market value less any outstanding mortgage or loan and less £25,000 - increased to £50,000 in respect of 1981 and 1982 joiners) could not exceed 40% of the assets being used for the means test. These requirements changed in 1982, from which time (and throughout the remainder of the Relevant Period) the applicant's own home was no longer excluded from the list of assets upon which a bank guarantee or letter of credit was acceptable to meet the 60% requirement referred to above. As a result of this, the use of an applicant's principal residence towards the 40% means test requirement referred to above was no longer permitted.

[In his witness statement Mr. Pollard explained that the Means/Deposits Working Party made various recommendations on means requirements and deposits (principally that the minimum means should be increased from £50,000 to £100,000) which were introduced in respect of 1984 and subsequent joiners. In respect of use of the applicant's home as part of the assets used to satisfy the means test, Mr. Pollard explained that in 1982 Lloyd's decided that applicants should no longer be allowed to use their home directly to satisfy the means requirement. Instead, an applicant could offer the home, if he/she wished to do so, as collateral against a bank guarantee.]

Application Process

An internal review of the admission procedure was conducted by the Membership Committee in 1984. This review resulted in a number of administrative changes to the procedure.

Forms and Deeds

In 1986 (i.e. for 1987 joiners onwards), the Standard Agency Agreement was introduced. This standardised the agreement which the Name signed with his/her members' agent in respect of all the syndicates on which he/she was writing business.

Also in 1986 (i.e. for 1987 joiners onwards), a new form of General Undertaking was introduced

under which a prospective Name agreed to comply with the provisions of the Lloyd's Acts, subordinate legislation and other requirements of the Council of Lloyd's and to have any dispute relating to his/her membership of or underwriting at Lloyd's resolved in the English courts and subject to English law.

Rota Committee Interview

From 1987 (i.e. from the time of 1988 joiners onwards), the Rota brief was amended to provide that members' agents should be asked to leave the interview room part way through the Rota Committee interview, after which applicants should be asked about the information they had received from their members' agents and be reminded of the very important financial step they were intending to take and of their right to withdraw their application at any time during that year. The requirement that members' agents be asked to leave the room was made in response to a recommendation in the Neill Report arising out of an "anxiety that a Name may be inhibited by the presence of his agent from raising queries or giving candid answers to questions" (see paragraphs 4.38 and 4.39 of the Neill Report). The Neill Report did not, however, require any alteration to the nature of the questions asked by the Rota Committee chairman.

Verification Form

With effect from 1979 (i.e. for 1980 joiners onwards), a revised verification form was introduced for all non-US applicants. The wording of the verification form which had been used for UK applicants in 1978 (i.e. for 1979 joiners) was supplemented in the revised form by the following additional wording:

(i) "I have received sufficient information to enable me to reach my decision to apply for Membership of Lloyd's. My Underwriting Agent(s) has/have given me the opportunity to ask questions concerning both Membership of Lloyd's and the syndicates I propose to join and to verify the information I have asked for and require" (paragraph 1 of the revised form);

(ii) "The Underwriting of insurance is a high risk business and profits are not guaranteed" (paragraph 2(a) of the revised form).

The above wording was already present in the verification form for US applicants in 1978 (i.e. for 1979 joiners) save that the wording referred to "risk business". The reference to "high risk business" was likewise introduced into the verification form for US applicants in 1979.

With effect from 1985 (i.e. for 1986 joiners), paragraph 2(a) of the verification forms for both US and non-US applicants was further amended to read: "The Underwriting of insurance is a high risk business and losses can be made as well as profits".

With effect from 1988 (i.e. for 1989 joiners), the following wording was added to paragraph 2 of the

verification forms for US and non-US applicants: "My own experience and knowledge and the guidance I have received have enabled me to appreciate the risks as well as the benefits of membership of Lloyd's".

13. RITC - SOME GENERAL PRINCIPLES - THE ROLE OF THE MANAGING AGENTS/UNDERWRITER

Reinsurance To Close

The closure of a year of account was effected by the payment of a premium (the RITC premium) in respect of the members' underwriting liabilities allocated to that year to reinsure these liabilities into the following year of account. If a decision was taken not to close the relevant year of account, the account was described as having gone into "run-off" and no RITC premium was payable. The subsequent two years of account over the three year accounting period that were not being (or entitled to be) closed were known as "open years". Thus the first two years of the three-year accounting cycle were "open years." If a syndicate year was not closed by RITC, that year was "left open".

As reported in the Chairman's statement in the 1987 Globals, at the end of December 1987 there were 76 syndicates with a total of 120 years of account left open. Problems associated with asbestos and pollution risks, together with other US liability business, appear to account for the vast majority of the run-off years.

In the 1980s, there was a growing number of syndicates which did not close their accounts at the end of their third year.

Against the payment of a RITC premium, all syndicate members' undischarged liabilities in respect of risks allocated to the relevant year of account (including liabilities in respect of RITC of any preceding year of account) were reinsured without limit in time or amount into a succeeding year of account of the same syndicate; they could also, on occasion, be reinsured to close into a later year of account or by another syndicate. When RITC was underwritten by the same syndicate, the premium was set by the managing agent of both syndicates, in conjunction with the underwriter, acting for the Names on both years of account.

The amount charged by way of premium was required to be equitable between Names on the reinsured and reinsuring syndicates, having regard to the nature and amount of the liabilities being reinsured. RITC into a subsequent year of the same syndicate was not treated as premium income for the purposes of premium income monitoring. The Syndicate Premium Income Byelaw (No 6 of 1984) dealt with circumstances in which RITC by a different syndicate would form part of premium income for premium income monitoring purposes.

In the Merrett Judgment [1997] LRLR 265 at 313, I set out Some General Principles as to RITC.

As to the role of the managing agents/underwriter I said:-

"I turn to consider some general principles in relation to RITC and the role of the managing agents/underwriter and of the auditors.

"Reinsurance to Close" means an agreement under which underwriting members who are members of a syndicate for a year of account agree with underwriting members who comprise that or another syndicate for a later year of account that the reinsuring members will indemnify the reinsured members against all known and unknown liabilities of the reinsured members arising out of the insurance business underwritten through that syndicate and allocated to the closed year, in consideration of a premium and the assignment to the reinsuring members of all the rights of the reinsured members arising out of or in connection with that insurance business.

In computing a reinsurance to close the premium arrived at will take account of two elements: known outstanding claims and claims incurred but not reported (IBNR).

If a year is closed into a succeeding year the RITC is final. There is no mechanism for correcting past inaccuracies or inequities.

The Role Of The Managing Agents/Underwriter

The following propositions are largely derived from the regulatory materials...

1. The amount charged by way of premium in respect of reinsurance to close should, where the reinsuring members and the reinsured members were members of the same syndicate for different years of account, be equitable as between them, having regard to the nature and amount of the liabilities reinsured. Compliance with "equity between Names" had to be demonstrated by the underwriter and managing agent in determining the reinsurance to close.

2. By... [1985] it was strongly recommended that whilst the decision whether to close a year of account of a syndicate was the responsibility of the managing agent in consultation with the underwriter, no year of account should be closed before the managing agent determined whether the syndicate auditor intended to give a qualified audit opinion in respect of that year of account.

3. The determination of the IBNR element required the exercise by the underwriter of judgment as to the level of IBNR which was appropriate, having regard to all relevant materials and after appropriate enquiries. The Further Explanatory Notes to Byelaw No.7 of 1984 published on 9.12.85 set out in paragraphs 18 to 24 a number of matters which might fall to be considered in computing the IBNR. These include the nature of the business written by the syndicate as one of the main factors affecting the size and relative importance of the IBNR element of the reinsurance to close. Different classes of business gave rise to different considerations. The Further Explanatory Notes also stated that the reinsurance to close must be supported by records setting out the manner and bases upon which the

final figure was determined in sufficient detail to "show and explain" the nature of the transaction. The Further Explanatory Notes also provided that it was important that the process of determining the IBNR, the more judgmental aspect of the reinsurance to close exercise, was documented to the same standard as was adopted in relation to outstanding claims. Documentation should include a record of the overall factors taken into account by the underwriter in arriving at his approach to the reinsurance to close. This should cover those factors which the underwriter considered had a significant impact on the year of account and might refer to those which did not and the reasons why such conclusions were drawn. Although the Further Explanatory Notes were published on 9.12.85, the matters referred to derived from the Notes probably reflected the approach that ought properly to have been followed in earlier years and in particular from [1985].

4. If the amount to be charged by way of premium in respect of the RITC could not be arrived at with a reasonable degree of accuracy having regard to the nature and amount of the liabilities reinsured, the account should be left open.

5. Where at its normal date of closure a year of account is left open an amount to meet known and unknown outstanding liabilities must nevertheless be included. The same considerations as apply to a reinsurance to close (with the exception of equity between names) will be relevant notwithstanding the fact that the objective is not to determine the final profit or loss for the year of account.

I wish to add one footnote which follows from the above propositions. If the amount to be charged by way of premium in respect of the RITC could not be arrived at with a reasonable degree of accuracy it would be fundamentally wrong, instead of leaving the account open, to close the account and seek to expand the syndicate in the hope that by doing so the (expanded) syndicate would be able to weather the difficulties."

14. RITC - THE ROLE OF THE AUDITORS

In the Merrett judgment [1997] LRLR 265 at 314, I set out the following propositions as to the role of the auditors in relation to RITC:-

"The Role Of The Auditors

The following propositions are derived from the regulatory materials...

1. The auditors should obtain relevant and reliable audit evidence sufficient to enable them to draw reasonable conclusions therefrom (Operational Standard (issued April 1980)).

2. As to the nature of audit evidence, the sources and amount of evidence needed to achieve the required level of assurance were questions for the auditors to determine by exercising their judgment in the light of the opinion called for under the terms of their engagement. They would be influenced by the materiality of the matter being examined, the relevance and reliability of evidence available

from each source and the cost and time involved in obtaining it (The Auditing Guideline - Audit Evidence (issued April 1980)).

3. As to representations by management, in certain cases, such as where knowledge of the facts was confined to management or where the matter was principally one of judgment and opinion, the auditors might not be able to obtain independent corroborative evidence and could not reasonably expect it to be available. In such cases, the auditors should ensure that there was no other evidence which conflicted with the representations by management and should obtain written confirmation of the representations. (The Auditing Guideline - Representations by Management (issued July 1983)).

4. For the purposes of the present case, from [1985] the report should state whether a true and fair view was given in the accounts.

5. As from [1985] the syndicate auditors should qualify their report if they were unable to obtain all the necessary information and explanations required. In the absence of a reference to these matters the syndicate auditors' confirmation thereof was implicit in an unqualified audit report.

(The following propositions are derived from the Audit Brief. Although the Brief is based on the Lloyd's Byelaws and the law as at 1.1.86 ...it reflected the approach that ought properly to have been followed from [1985]).

6. In selecting materiality levels, the auditor should have regard to the impact of syndicate transactions on the personal account of each syndicate member; he should look behind the syndicate to its constitution, as well as to the syndicate as a whole, in making judgments relating to materiality.

7. The auditor would need to be satisfied that the premium for the reinsurance to close a year of account was equitable as between the Names on that account and those on the accepting year of account. The determination of the premium for the reinsurance to close involved the exercise of significant professional judgment and drew on the full experience of the underwriter.

8. The Auditor's Operational Standard stated that "the auditor should obtain relevant and reliable audit evidence sufficient to enable him to draw reasonable conclusions therefrom". Since the audit report on syndicate financial statements was expressed in true and fair terms, the auditor would need to ensure that he had gathered evidence of sufficient quality to support such an opinion.

9. The reinsurance to close a year of account was normally the area of greatest audit difficulty, because it was derived with the benefit of a substantial degree of underwriting judgment. In common with all accounting estimates, it was one of a range of possible outcomes and the audit approach should recognise that the objective was to ensure that the reinsurance to close was within a zone of reasonableness rather than an arithmetically accurate figure. (See also paragraph 5 of Mr. Randall's letter of 18.3.82).

10. The auditor would need to consider such matters as the nature of the syndicate's business, the overall size of the syndicate, the impact of the reinsurance protection programme, and the accuracy of previous estimates as a part of his assessment of the appropriate range within which he would expect the premium for the reinsurance to close to fall.

11. The results derived from statistical techniques should be treated with a degree of caution, since historically derived data might not be an accurate guide as to uncertain future events. The auditor should, therefore, ascertain from the underwriter the underlying basis for his estimate of claims incurred but not reported, so that appropriate additional evidence could be collected to support the computation.

12. Other matters the auditor might consider as a part of the audit of the reinsurance to close included the following. The syndicate might have reinsured the run-off of other syndicates or companies and the auditor must satisfy himself that due account had been taken of the liabilities which were likely to arise under such contracts. This evidence would usually take a similar form to that relating to the syndicate's own business."

This passage from the Merrett judgment was accepted by the parties in the statement of agreed facts as to the Regulatory Background for the Auditing and Accounting Regime at Lloyd's (see chapter 11 above).

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15. THE WITNESSES

Witnesses Called By The Names

Mr. Christopher Stockwell

Mr. Stockwell became a Lloyd's Underwriter in 1979. He joined through the Outhwaite (Combined) Agency.

Mr. Stockwell was the first Name on the writ in Outhwaite I which was tried by Saville J. He was a member of the Outhwaite 1982 Names Association (but not of the Litigation Sub-Committee). A settlement was arrived at in about January 1992 whereby the Names recovered £116 million. Mr. Stockwell pointed out that this proved insufficient - "it went within 2 years".

In 1992 he became Chairman of the Lloyd's Names Association Working Party.

Mr. Stockwell chaired the Open Years Panel which reported in March 1993. In his witness statement Mr. Stockwell said that Mr. Robin Jackson and Mr. Merrett "were well aware of the fact that Lloyd's was grossly under-reserved for its liabilities in respect of asbestos and pollution and that it had been so under-reserved for over a decade at that time and that it had been a deliberate policy to only reserve enough to pay claims being settled, rather than to reserve for ultimate liability... I now have no doubt that we were told a fraction of what Jackson and Merrett knew and were being deliberately "steered" from making too dangerous a report for Lloyd's." The Report of the Open Years Panel is generally not consistent with the Names' case in this trial. I would have expected Mr. Stockwell to have learnt rather more about the asbestos problem in the course of the Outhwaite Litigation and his chairmanship of the Open Years Panel than he was prepared to accept in cross-examination.

Mr. Stockwell was adjudged bankrupt on 21.6.94 and discharged on 20.6.97. Over the course of 5 or 6 years (including this period) the action groups which were served by LNAWP paid about £600,000 on top of expenses in respect of Mr. Stockwell's services.

Mr. Stockwell was a member of the Kerr/Morse Panel.

Mr. Stockwell prepared detailed submissions on behalf of LNAWP to the Treasury and Civil Service Select Committee.

Mr. Stockwell's Trustee in Bankruptcy accepted the R&R Settlement Offer in the sum of about £5,000, but no payment was made.

Mr. Stockwell's public examination under oath took place in June 1997.

In his witness statement Mr. Stockwell said "Lloyd's ... grossly misrepresented the profitability of the market to the 20,000 Names who joined post 1980 or who increased their underwriting post 1980... If, at any time from 1978 onwards, Lloyd's syndicates had reserved in full for the known notified claims and had made proper reserves for their ultimate liability, Lloyd's would have declared huge losses and would have been obliged to leave the year of account open for a very substantial number of syndicates... New Names joining (if any) would not have taken on the inevitable losses... It is obviously possible that Lloyd's would not have survived the blow to its reputation that such losses would have meant; that fear clearly influenced the strategy of Committee Members who adopted a policy of letting tomorrow's income pay for tomorrow's claims. Their gamble did not work; it was in my view the oldest insurance fraud in the book - misrepresenting profitability by not reserving for known liabilities." When giving evidence Mr. Stockwell added that he came to the conclusion in 1997 that this was not simply a case of regulatory failure but a case of fraud.

When giving judgment on 20.12.1991 (on an appeal from a District Judge) in K.L. Construction Services Ltd v Charles Barr Furniture Ltd, His Honour Judge Rice described Mr. Stockwell as "a dishonest man, a man who is prepared to lie if he feels it will be of assistance to him...".

I have carefully considered Mr. Stockwell's evidence in this trial and formed my own opinion (independently of above comments). There are a number of aspects which cause me concern. In paragraph 17 of his witness statement Mr. Stockwell made serious allegations against the DTI by reference to a meeting which he did not attend. Mr. Stockwell failed to mention in his witness statement that he had himself attended other meetings with the DTI. In a further witness statement Mr. Stockwell described a meeting with Mr. Posgate on 30 October 1996 (where, he alleged, Mr. Posgate referred to a report prepared by the Bank of England on the "Armageddon" scenario of the current weight of asbestos claims). No mention of this part of the conversation with Mr. Posgate was made in paragraph 50 of his original statement, which described the same meeting with Mr. Posgate.

Mrs. Catherine Mackenzie-Smith

Mrs. Mackenzie-Smith (a member of the Bar) is one of the two co-chairmen of the United Names Organisation. She became a member of Lloyd's from 1.1.75.

It is evident that (as with so many other Names) Mrs. Mackenzie-Smith has suffered financially and in other ways as a result of her membership of Lloyd's, and I have every sympathy for her in this regard.

Mrs. Mackenzie-Smith's first witness statement contained an account of contact with and information received from Mr. John Osbrey-Taylor, a barrister who was found dead on 18 February 1999. Mr. Osbrey commenced proceedings in about 1991 against his members' agent, such proceedings falling within the Portfolio Selection category of the Lloyd's Litigation. Mr. Osbrey signed (i) a statement at the offices of ANNAN probably on 1 August 1995 and (ii) an affidavit in People of the State of California v Lloyd's, dated 15 February 1996. There are marked inconsistencies between (i) and (ii). In (i) Mr. Osbrey implied that he read a copy of the Murray Lawrence letter for the first time during 1994; in (ii) he stated that in or about 1989 he had been given a copy of the Murray Lawrence letter.

In (i) he said that he saw Mr. Murray Lawrence in May 1995; in (ii) he said that in 1992 he went to see Mr. Murray Lawrence.

The most reliable guide to Mr. Osbrey's exchanges with Lloyd's from time to time is found in bundle M5, which contains documents passing between Mr. Osbrey and Lloyd's and file notes etc. A file note dated 30 June 1995 shows that Mr. Osbrey told Mr. Norwell (Manager, Membership Department) that as a result of a recent conversation with Mr. Murray Lawrence regarding the Murray Lawrence letter, Mr. Osbrey wished Lloyd's to sue him so that he could issue a counter-claim alleging fraud against both Mr. Murray Lawrence and Sir Peter Miller.

A document dated December 1998 shows Mr. Osbrey as a committee member of the Restitution Initiative.

Regrettably it appears that Mr. Osbrey was in a parlous financial state in his latter years (in receipt of substantial support from the Barristers' Benevolent Association) and to a considerable extent disturbed.

In a document entitled "Narrative Which Could Be Adapted To Become A Draft Affidavit" Mrs. Mackenzie-Smith wrote - "In the summer of 1994, I first saw the now famous Murray Lawrence letter... The letter came as a shock to me as it seemed to demonstrate that Lloyd's were not after all fraudulent but had in fact disseminated the information concerning impending losses to "all underwriting agents". I immediately made enquiries in all directions and learnt that no agent could be found who admitted having received the letter and that there was a possibility that it had never been sent."

The document entitled "Narrative Which Could Be Adapted To Become A Draft Affidavit" was exhibited to Mrs. Mackenzie-Smith's witness statement. Another version of this document with manuscript comments/corrections by Mr.Osbrey was found in the box of Mr. Osbrey's papers produced by Mrs. Ridley-Day (see below). Mr. Osbrey's comments/corrections are highly material and show that Mr.Osbrey would not have been prepared to put his name to the matters attributed to him in the document without substantial amendments.

Mrs. Mackenzie-Smith's account of her conversation with Mr. Ian Posgate in paragraph 42 of her witness statement was incomplete. It is important to note the amendments that Mr. Posgate made to the draft statement prepared for him.

When giving evidence Mrs. Mackenzie-Smith found it difficult to distinguish between the role of a witness and the role of an advocate.

Mrs. Mackenzie-Smith gave evidence as to the results of three mail shots directed to managing agents, members' agents and combined agents in an attempt to ascertain to whom the Murray Lawrence letter was sent.

Mr. John Henderson

Mr. Henderson is a consultant working for UNO and also a member of the Committee of UNO. He has assisted Names in other proceedings in this jurisdiction and in the United States.

Mr. Henderson referred to a meeting with Mr. Ian Posgate in March 1999 at the offices of UNO in Whitechapel Road. It is important to note the amendments that Mr. Posgate made to the draft statement prepared for him.

Captain Donald Hindle FNI, FRIN

Captain Hindle had a distinguished maritime career. In 1976 Trinity House invited him to become a Young Brother. He commenced underwriting at Lloyd's with effect from 1 January 1979. His members' agent was C. Rowbotham & Sons (Underwriting Agency) Ltd.

I should emphasise that I am not concerned with the question whether Captain Hindle might have had a portfolio selection claim (or any other form of claim) against his members' agent, or any claim against any managing agents.

I am concerned with the issue whether Captain Hindle as one of the sample Names relied upon any of the alleged (fraudulent) misrepresentations during the period 1978 to 1988.

It was clear from Captain Hindle's evidence that he misunderstood certain essential features of the Lloyd's market. He thought that the Committee of Lloyd's appointed syndicate auditors. Further he thought that "the underwriter was controlled to some extent by the policy signing office, which was in turn appointed by the Committee of Lloyd's". Captain Hindle said he would not have joined Lloyd's if he had known that his liabilities and the risk could extend beyond a three year period.

Captain Hindle said that he relied on Lloyd's Calendar 1978 when he joined Lloyd's. Subsequently he talked to his members' agent (and his witness statement refers to a number of conversations with his members' agent). There was not a copy of the relevant Lloyd's Brochure in Captain Hindle's files. He said that the Lloyd's Calendar 1978 "was on the ship and I remember reading it and that was the reason I joined Lloyd's...after (speaking) to my agent and (obtaining) more information."

Captain Hindle sustained very serious losses in respect of each of the years 1988 to 1994 and I have every sympathy for him. I doubt whether he was ever an appropriate candidate for membership of Lloyd's.

I am not persuaded that Captain Hindle relied upon any of the alleged (fraudulent) misrepresentations during the period 1978 to 1988 (assuming such misrepresentations could be made out).

Sir William Jaffray Bt.

At the time of his application for underwriting membership Sir William Jaffray was a fine art dealer. Prior to that he had had brief experience as a loss adjuster. Sir William commenced underwriting at Lloyd's with effect from 1 January 1982. His first members' agent was Kingsley Underwriting Agencies Ltd.

I should emphasise that I am not concerned with the question whether Sir William might have had a portfolio selection claim (or any other form of claim) against his members' agent, or any claim against any managing agents.

I am concerned with the issue whether Sir William as one of the sample Names relied upon any of the alleged (fraudulent) misrepresentations during the Relevant Period.

Mr. Kingsley provided Sir William with a brochure prepared by Kingsley Underwriting Agencies Ltd.

Sir William did not see the 1980 and 1981 Aggregate Results published in Lloyd's Log. It is unclear whether he saw the 1982 and 1983 Global Accounts.

In his affidavit in the Society of Lloyd's v Fraser and Others, Sir William said:-

"Robin Kingsley enthusiastically told me that Lloyd's was a sound, blue chip institution in which I would be well advised to invest. I was told by him that there was no prospect of me being out of pocket, as in the event of a loss I could simply write it off against taxed income. ...I told him that I wanted a reasonable return at a low risk. I recall that Robin Kingsley assured me that he would arrange a portfolio of syndicates which would produce a return of approximately £4,000-£5,000 a year at a low risk. As I was required by Lloyd's to do and as I did at all times subsequently, I relied upon the expertise of my members' agent as to the appropriate syndicates required to achieve my objectives. ...I was constantly being encouraged to increase my premium income limit by Robin Kingsley... In 1987 I changed my members' agent because the losses I suffered on the 1984 year of syndicate 553 (£107,466) were of such a magnitude that I lost all confidence in Robin Kingsley's conduct of my Lloyd's affairs. I in fact gave serious consideration to resigning from Lloyd's because I was appalled by my members' agent's conduct and what I considered to be his betrayal of my trust and confidence in placing me on a high risk, long-tail syndicate such as syndicate 553... Before I had a chance to tender my resignation, I was introduced to Sir Richard Colthurst of K.C. Webb (Underwriting) Ltd who persuaded me not to proceed with my resignation and instead to use his company as my members' agent. ...He quite forcibly said I ought to trade through my losses from syndicate 553. He talked me out of my reservations and gave me recommendations as to various syndicates..."

A document typed by Sir William in about the summer of 1987 shows that he was taking portfolio selection advice from persons other than his members' agent.

I am not persuaded that Sir William relied upon any of the alleged (fraudulent) misrepresentations during the Relevant Period (assuming such misrepresentations could be made out). In my view the probability is that Sir William relied on his conversations with his first and second members' agents (and possibly, but to a more limited extent, his conversations with his cousin).

At the end of his evidence Sir William said what he thought Lloyd's should have done "if they had been operating properly and in an honest manner". "The Chairman should have called an extraordinary general meeting in 1980 or, if one wants to be fair to Lloyd's, say, by 1982. There should have been no recruitment of Names beyond that point, that should have been stopped... There should have been a public statement. Reconstruction and Renewal or a similar salvage operation, plus an Equitas type reinsurance, should have happened between 1980 and 1982...and not 16 years later in 1996 when the vast quantity of damage had been done. If that had been done we would not be in this Court now."

I refer to Sir William's underwriting results. These show that he suffered significant losses on Gooda Walker 387 (personal stop loss) in 1983 and 1984 and a substantial loss on the Warrilow (long-tail) syndicate 553 in 1984 (see above). He suffered a further significant loss on syndicate 387 in 1985 and substantial losses on Gooda Walker syndicates 290 and 298 in 1989. Although Sir William was on Secretan 367 (a long-tail syndicate) between 1982 and 1989, his losses in 1988 and 1989 on that syndicate were modest compared with his losses in 1988 and 1989 on LMX syndicates.

Mrs. Dona Evans

Mrs. Evans commenced underwriting at Lloyd's with effect from 1 January 1988. At that time she was still married, but has since divorced. She has four children. Her members' agent was R.W. Sturge & Co.

I should emphasise that I am not concerned with the question whether Mrs. Evans might have had a portfolio selection claim (or any other form of claim) against her members' agent (her witness statement refers to a number of conversations with her members' agent), or any claim against any managing agents.

I am concerned with the issue whether Mrs. Evans as one of the sample Names relied upon any of the alleged (fraudulent) misrepresentations during the Relevant Period.

For some years Mrs. Evans has been co-chairman of the Norwich Union Action Group at times unpaid, at times paid. She has been on the committee of UNO since UNO started, but has not been paid for her work with UNO.

Mrs. Evans said that she was induced to join Lloyd's by a combination of matters. "It was certainly the reputation of Lloyd's as a very honourable market...I read all the Brochures. They were presented to me as if this was a really...good thing...it was the best time to join. I checked this out with people that I

knew and then I went back to Mr. Coleridge and asked him. But the Brochures...were really the thing that did it...because they (were)...written...I would want something in writing as well, so the Brochures were very important to me...also...the Lloyd's building. It was totally spectacular, breathtaking, it was so futuristic. It spelt so much of the future. ...It seemed incomprehensible that they could...take...the kind of risks that they were taking with someone like me."

Mrs. Evans sustained very serious losses and I have every sympathy for her. I doubt whether she was ever an appropriate candidate for membership of Lloyd's.

I am not persuaded that Mrs. Evans relied upon any of the alleged (fraudulent) misrepresentations during the Relevant Period (assuming such misrepresentations could be made out). In my view the probability is that Mrs. Evans relied on her conversations with her members' agent.

Dr. Alexander Munn

Dr. Munn's witness statement was admitted in evidence (Lloyd's not having any cross-examination).

Dr. Munn is a registered medical practitioner. During 1985 he decided to become a member of Lloyd's. His wife became a member in 1987. In his witness statement Dr. Munn said:-

"I now know that at the time of my Rota interview there were massive impending liabilities arising from asbestos-related disease which were affecting the Lloyd's market. I have also come to know about...the Neville Russell letter and the Murray Lawrence letter...I was wholly unaware of these matters in 1985, and no mention was made in interview of the potential exposure to such liabilities."

Dr. Munn attached to his statement a letter from Lord Kimball an elected external member of the Council of Lloyd's and the Chairman of Dr. Munn's Rota Committee. The letter from Lord Kimball dated 17 February 1995 stated:-

"I cannot help you about "enormous losses from asbestos-related disease": I knew nothing about it, and I am confident that nothing had been said to other members of the Council".

Mr. Christopher Mackenzie-Smith

Mr. Mackenzie-Smith gave evidence about the availability of a book entitled "A View of the Room" by Ian Hay Davison. I do not accept that Lloyd's purchased copies of this work in order to destroy it.

Mr. David Blundell

Mr. Blundell's wife joined Lloyd's for the 1987 underwriting year with Bolton Ingham as her agents. Mr. Blundell gave evidence of a conversation with Mr. Skey in 1988/89/90. According to Mr. Blundell's witness statement Mr. Skey "told me on the basis (of) what he had discovered at Lloyd's, he

had told his sister to resign immediately. I presume he had told her in the 1970s or perhaps in the early 1980s."

This evidence did not assist me. First, Mr. Blundell did not ask what Mr. Skey "had discovered". Second, it seems that Mr. Skey's sister did not resign from Lloyd's until much later.

Mr. Roger Bradley

Mr. Bradley joined Janson Green in October 1967 as an underwriter. He wrote marine business into syndicates 932, 933, 934, 941 and 989. From about 1970 he also wrote some non-marine business into syndicate 989. Mr. Bradley stayed at Janson Green until the latter half of 1977 when he was invited by Mr. Bryan Barrie to be his equal partner and active joint underwriter in the Bryan P. Barrie Underwriting Agency. Syndicate 901 wrote marine and syndicate 921 non-marine business. In his witness statement Mr. Bradley said " We specifically wanted to avoid asbestos liabilities being aware of the potential problem." The Bryan P. Barrie Underwriting Agency received three copies of the Murray Lawrence letter (one for the managing agency, one for Bryan Barrie as active underwriter of syndicate 901 and one for Mr. Bradley as active underwriter of syndicate 921).

In about 1993 or 1994 Mr. Bradley began to work for the Names Defence Association.

From about 1988 when Mr. Bradley resigned from Bradley Gascoigne, through to the time when he was working for the Names Defence Association, Mr. and Mrs. Bradley were in hardship. Mr. Bradley has received payment to date from the Names Defence Association of about £10,000.

I set out below examples of the unsatisfactory nature of Mr. Bradley's evidence.

The Lloyd's Golf Club Autumn Meeting at Walton Heath

In his witness statement Mr. Bradley said:-

"On 4 October 1973, I played in the Lloyd's Golf Club Autumn Meeting at Walton Heath. One of my opponents was Ralph Rokeby-Johnson, a leading non-marine underwriter with the Sturge Agency. Ralph Rokeby-Johnson asked me during the course of the match the following question: "Has Green got all his reinsurance for asbestos in place and has he got enough of it? Has he got it placed off-shore?". ...Later on the same day... Rokeby-Johnson spoke to me in the terms, which I shall never forget, which were as follows: "What I can tell you, my friend, is that asbestos is going to change the wealth of nations. Lloyd's will probably be bankrupted in the final chapter, unless something happens to intervene, i.e. the Government via the Bank of England or legal duress on the Americans, but it will happen and we cannot stop it." He spoke of possible claims of US$66 billion by 1990 and US$120 billion by the year 2000... At drinks, after the golf match...I asked him: "How do you know your estimates are on target?". He appeared irritated by this question and responded: "I don't know; it is only a judgment. US$6 billion or US$66 billion, it all depends on asbestos in buildings and how many

time bombs there are". ... "Time bombs are victims walking, sleeping, talking, who are living but have lung cancer. When they die, as they will do up to the year AD2000, the lawyers are going to have a field day. We don't know how many are affected. They don't yet so pick a figure but it won't be far off the ones I have told you."

According to Mr. Bradley the next day he reported the conversation to Mr. Bill Maitland, a fellow underwriter at the Janson Green box. Mr. Maitland spoke to Mr. Peter Green who was very interested in what he (Mr. Bradley) had to say, but he was told not to gossip about the conversation with anyone in the market.

There were a number of unsatisfactory features of Mr. Bradley's evidence in relation to the alleged conversations at Walton Heath. They included the following: (i) When Mr. Bradley's various accounts of the alleged conversations with Mr. Rokeby-Johnson are compared, there are a number of material inconsistencies. (ii) In paragraph 3 of his draft affidavit for the Secretan Action Group dated February 1994 Mr. Bradley wrote "The next day I mentioned my conversation with Rokeby-Johnson to Bill Maitland in the box. Shortly after this he excused himself saying that he had something to do elsewhere. Obviously he then went to speak to Peter Green because the next day he told me that if I was asked about asbestosis I should refer the matter to Peter Green." On this account Mr. Bradley mentioned his conversation with Mr. Rokeby-Johnson to Mr. Maitland on Friday 4 October 1973 and Mr. Maitland spoke to Mr. Bradley again (having spoken to Mr. Green) "the next day" i.e. on the Saturday (not a working day at Lloyd's). (iii) In his draft affidavit for the Secretan Action Group Mr. Bradley wrote "My opponent was Ralph Rokeby-Johnson, the leading non-marine underwriter at Sturge". In fact Mr. Rokeby-Johnson was not the leading non-marine underwriter at Sturge at the time. When this was pointed out to Mr. Bradley in cross-examination, he said "We had better tear up this Secretan statement". (iv) In a statement dated 23 February 1995 Mr. Bradley wrote "Ralph Rokeby-Johnson spoke of possible claims of $66 billion by 1990 and $120 billion by the year 2000. These figures have now been confirmed as being the same figures as those in the Selikoff Report of 1964..." The alleged figures were not "the same figures as those in the Selikoff Report". When cross-examined as to this Mr. Bradley said "When I was making this, talking this over with the Names Defence Association, James Baird said to me...Those figures...are in...Selikoff". (v) In one of his manuscript accounts headed "Asbestosis at Walton Heath" Mr. Bradley wrote "It was either late 1969 or early 1970: the Lucifers match". This was subsequently corrected to read "It was 4th October 1973 (confirmed by Ian Jeffrey): Lloyd's GC Autumn Meeting". (vi) In his manuscript account headed "Asbestosis at Walton Heath" Mr. Bradley wrote "I was disturbed over the incident. I knew RJ was on the Asbestosis Committee and that they had not given the market much information." Mr. Bradley accepted that this was a "slip". The Asbestos Working Party was not set up until 1980. (vii) In the same manuscript account Mr. Bradley recorded Mr. Rokeby-Johnson as saying "See whether I am right or not - I shall be gone long before you". In fact Mr. Rokeby-Johnson is considerably younger than Mr. Bradley. (viii) In the same manuscript account Mr. Bradley wrote "Ralph, then on the back of his card, very quickly drew out a progression of known cases...". In cross-examination Mr. Bradley said "I don't think he did that; I think I did it". (ix) For the first time when giving evidence Mr. Bradley asserted that on 4 October 1973 Mr. Rokeby-Johnson specifically warned him off joining certain syndicates which were listed in a document, which Mr. Bradley produced when giving

evidence. (x) Further (although this is a point of less significance) Mr. Bradley's various accounts referred to the alleged conversation taking place on differing holes on Walton Heath golf course.

Visit to the United States in 1979

Mr. Bradley went with other representatives of Lloyd's to the United States in May 1979 on the Keith Brown Foundation Study Tour.

In his witness statement Mr. Bradley said :-

"I...went to the offices of Citibank where I met Tom Hitchcock. After meeting Tom Hitchcock in the offices of Citibank I had dinner with him. ...I remember discussing with him that the Lloyd's market probably took approximately 40% of the US asbestos business. I cannot remember exactly how I knew that figure; perhaps Ralph Rokeby-Johnson had told me. ...Hitchcock said to me that he was concerned that there simply would not be sufficient money in the Lloyd's American Trust Fund to meet all known liability... He then suggested that the only way out of the crisis for Lloyd's would be for Lloyd's to try to increase its capital base by recruiting more Names. ...We talked in terms of between 25,000 to even 250,000 Names... I...promised Tom Hitchcock that I would raise the issue back in London and when I got back, I telephoned Ralph Rokeby-Johnson and Murray Lawrence and asked them if I could meet with them over coffee one morning. I met with them and went through my conversation with Tom Hitchcock and his request to me that I tell the Committee of Lloyd's that it needed more members to deal with the pending problem. I explained that he had told me that he had said this to every visiting Committee member of Lloyd's. Ralph Rokeby-Johnson said that they were aware of this problem and of Citibank's concerns and he recommended that I keep the knowledge to myself. He said that I had discharged my duty in passing on the message from Tom Hitchcock. He said there was an unofficial committee in the background looking at this problem and, in particular into the question of reserving into the future for asbestos, and the matter was under control. He said that Peter Cameron-Webb and Peter Green were also on it, but I was to keep this information to myself. This was, I believe, the forerunner of the Asbestos Working Party which was formed the next year on 5 August 1980."

There were a number of unsatisfactory features of Mr. Bradley's evidence in this respect. They included the following. When Mr. Bradley's various accounts of the alleged conversation with Mr. Hitchcock are compared, there are a number of material inconsistencies. The following points should be noted by way of example. The visit took place in May 1979 and not in September 1979 as asserted in his witness statement. In his witness statement Mr. Bradley said that Mr. Alan Parry was then chairman of the Foundation (but in fact Sir Henry Mance was Chairman). In his witness statement Mr. Bradley said that he was a member of the Keith Brown Advisory Committee at the time (but he was not). In a document in Mr. Bradley's handwriting written in about 1992 (and in a LNAWP newsletter dated January 1993) reference is made to Tom "Hopkinson" and not Tom Hitchcock. Mr. Bradley's account is difficult to reconcile with the draft itinerary (dated 7.5.79) and the unofficial notes on the New York trip prepared by Mr. R. M. Pateman dated May 1979. In a manuscript account dated about 1992 Mr. Bradley wrote "He urged that Lloyd's should build up to a membership of say 200,000 to

250,000 members to pull in the required capital needed to run the asbestosis tidal wave. He has told Lloyd's this - he told me Lloyd's was on a membership drive..." In a signed statement dated 23 February 1995 Mr. Bradley said "We did not calculate precisely the number of Names that Lloyd's should seek to recruit...we talked in terms of 25,000, 50,000 or possible even a 100.000 as a goal. I jokingly added "What about even 250,000?". He laughed and replied "Yes, why not?"

When Mr. Bradley gave evidence he said that he attended a private dinner with Mr. Hitchcock on Friday 18 May 1979. He was recalled for further cross-examination when it emerged (as a result of further statements from Mr. and Mrs. Hitchcock) that Mr. Hitchcock travelled to Japan that Friday, as confirmed by his passport. Faced with this evidence Mr. Bradley said that "there is the possibility it could be another person". Mr. Bradley added that he did not recognise the photograph in Mr. Hitchcock's passport - "I don't remember him being bald".

Conversation with Mr. Paul Schooling in January/February 1982

In his witness statement Mr. Bradley said:-

"In January/February 1982, Paul Schooling, the Deputy Secretary...handed me a document headed "In the Supreme Court of the United States October Term 1981 Number 81-1012 Insurance Company of North America (Petitioner) v Keene Corporation (Respondent) Motion for Leave to File - December 30 1981 (attached to this statement)". He said "Ralph Rokeby-Johnson asked me to give you this - it's very explosive and has caused some anxiety to some members in the NMA and as you are one, you ought to see it and let us know your comments, especially in the light of your recent visit to New York". I remember quickly reading this document and feeling very numb when its implications welled up inside me. I asked "What are his comments". Paul was quiet and then having sat down, said, Ralph said, "Remember what he told you at Walton Heath - moving the wealth of nations - Lloyd's will be bankrupted unless outside financial aid is brought in to play and legal duress on America is applied. Apparently, it is all there in this document dated December 1981! - Now does he believe me?". I responded, "Paul, I have always believed Ralph - it's just that out of the blue - the stark reality of what he said at Walton Heath was hard to take in!". Paul left and I filed this document away in my asbestos drawer and took the attached copy with me home where I filed it away safely. In fact, it was filed so safely that I only unearthed it very recently in November when I had a massive trawl through my documents. Having re-read this document again in November 1999, I feel even more numbed than I was in 1982..."

There were a number of unsatisfactory features of Mr. Bradley's evidence in relation to this alleged conversation. They included the following. The "attached copy" was not a copy Mr. Bradley "unearthed...very recently in November...1999". Further Mr. Bradley mentioned the alleged conversation with Mr. Schooling for the first time in his witness statement. It was not mentioned in his earlier accounts (see his draft affidavit for the Secretan Action Group dated February 1994, his statement of 23.2.1995 and his manuscript notes).

Telephone conversation with Mr. Charles Gibb

In his witness statement Mr. Bradley said that at the hearing on 1 February 1995 before the Treasury and Civil Service Committee he informed the Committee of a telephone conversation he had had with Mr. Charles Gibb, a one time deputy chairman of Lloyd's. He said:-

"I believe that it was late 1992 or 1993 (corrected to about July 1992)...I... inquired whether there had been a conspiracy at Lloyd's over asbestos...I still vividly recall him saying "I will go as far as saying that we side tracked the issue. We did not really know what the actual figures were, there were some terrible figures floating around, nobody could put a finger on what you were actually due to pay and the Bill was coming up. The 1982 Bill, we did not want any scarecrows or any skeletons in the cupboard ... We did side track the issue."

Mr. Gibb died in early 1993.

Mr. Bradley produced a tape of a conversation with Mrs. Gibb dated 28 March 2000. Mrs. Gibb was recorded as saying that she had changed her mind about providing Mr. Bradley with a letter, whereupon Mr. Bradley responded that he was going to pull out (from giving evidence). In the event Mr. Bradley attended pursuant to a witness summons.

Other matters

On 29 October 1990 Mr. Bradley wrote to Mr. Murray Lawrence setting out his thoughts on the future of Lloyd's entitled "Towards Two Thousand". When it was pointed out to him in cross-examination that there was no suggestion in that document of any of the type of complaints made in these proceedings, Mr. Bradley replied "If by producing that...I've cut the ground from under the Names in this court, I...hereby apologise to them."

On 18 November 1991 Mr. Bradley wrote to Sir Patrick Neill Q.C. (as Chairman of the Feltrim Loss Review Committee) describing the transcript of his evidence to the Loss Review Committee as "no different from a Frankie Howard script, at its worst, being studied with almost no cohesion or coherence."

In reasons for an arbitration award dated 5 July 1995 Mr. Jeffrey Gruder Q.C. said :-

"Mr. Bradley [who gave expert evidence] sought to convince me that the Respondents knew that asbestosis was a serious problem by mid-1987. ...I do not accept the argument that the presence of these problems had the consequence that any members' agent who did not recommend resignation from Lloyd's was automatically in breach of duty. It is necessary to examine the individual circumstances of each particular case and the portfolio recommended by the agent."

In an interim final award dated 10 February 1997 Miss Elizabeth Birch said of Mr. Bradley's evidence as a purported expert:-

"Unfortunately, Mr. Bradley did not appear to be experienced in giving expert evidence... His evidence did not focus particularly well on the issues raised in the arbitration. Mr. Bradley made a number of very sweeping allegations concerning the Lloyd's market as a whole and the position in relation to asbestos and pollution. Mr. Bradley set out to establish, not that the syndicates were inadequately reserved and that the Respondent should have been aware of this, but that the asbestos and pollution liabilities in America were, by 1988, such that the impact would be felt in all syndicates at Lloyd's and that "Armageddon was nigh". In short Mr. Bradley expressed the view that those in the market, including the members' agents, knew that Lloyd's as a whole was so heavily involved in asbestos and pollution that the losses would pervade across all or most syndicates and ultimately would be catastrophic. Hence, Mr. Bradley considered that it was negligent of any members' agent at this time to advise a Name to increase the size of his portfolio. He considered that the Respondent should have advised Mr. Huskinson to cease underwriting...or, at least, he should have been encouraged to stay small and purchase substantial stop-loss cover. This case was not one that had been pursued by Mr. Huskinson either in his submissions or in his evidence... Mr. Bradley contended that he had considerable experience of the practice of members' agents because he liaised with the members' agents side of Bryan P. Barrie Underwriting Agencies Ltd, when he was the active joint underwriter there between 1977 and 1980."

When cross-examined in this case Mr. Bradley was asked how many Names did the members' agents side of Bryan P. Barrie Underwriting Agencies Ltd have? He replied, one. In July 1996 in connection with the same arbitration Mr. Bradley wrote to the Financial Times Library "The Arbitrator has now instructed me to write to you asking if you would kindly supply me with the exact copy of [a] report in the Financial Times 26 July 1984". On 31 July 1996 the Arbitrator wrote to Mr. Bradley "...you are well aware that at no time have I asked you to write this letter. ...It is wholly inappropriate for you to represent that it is a request from me, when it is not."

Mr. Colin Mackinnon

Mr. Mackinnon was the underwriter on 927/935. He was also the underwriter on two specialist stop loss syndicates, 134 and 184. Syndicates 134 and 184 were two entirely separate syndicates with different sets of Names. Mr. Mackinnon was an articulate witness.

Mr. Mackinnon explained that a feature of a stop loss syndicate is that it closes its accounts at the end of the fourth year. He said that if he had known at the time, what is now known about APH claims, he would never have written the stop loss policies.

As to syndicate 927/935, the 1981 account was left open at the end of the third year but closed at the end of the fourth year into the 1983 account. One reason for this was the development of latent disease claims on the run-off of syndicate 60, contained within syndicate 935. The 1984 year of account of 935 was left open. The 1984 account of 927 was closed in the usual way.

In his underwriter's report dated 21 May 1987 Mr. Mackinnon wrote:-

"Within the syndicate 60 run-off there are a number of elements where prediction of future development remains impossible to quantify with any degree of accuracy. Development on asbestosis, environmental pollution, American court awards and the availability of reinsurance recoveries are areas that immediately come to mind. It is because of this wide and unpredictable range of possibilities relating to the run-off of the incidental non-marine syndicate, particularly the syndicate 60 content thereof, that we have felt obliged to keep the 1984 account of syndicate 935 open as at 31.12.86. The marine syndicate 927 has been reinsured into 1985 account in the usual way."

A limited run-off had been bought in 1982 which was written as to 50% by Outhwaite 317 and 50% by the Kellett syndicate.

Mr. Mackinnon said that each year he sought to reserve fully with the benefit of the information coming through from attorneys and the AWP. He thought he had got his reserving right using a pessimistic basis for determining the level of IBNR. When he bought a limited run-off in 1982, he refused an offer that would have provided greater protection. He left the 1984 year of 935 open at the end of 1986 in part because of a problem of a declining stamp and largely because the syndicate 60 run-off into 935 was very large in relation to the size of syndicate 935. He established reserves for the account in run-off but unpredicted increases in claims thereafter caused him to have to make further substantial increases in the reserves. Mr. Mackinnon did not believe at the time that the market was under-reserved, otherwise he would not have continued to write stop loss which he did until 1988. It is ironical that the accounts as at 31 December 1987 record that:-

"When the computations based upon the 1984 syndicate accounts were submitted to the Inland Revenue in the Autumn of 1987, ...the Inspector of Taxes...challenged the quantity of the amount set aside to meet future liabilities in respect of the unclosed incidental non-marine section of the syndicate. After correspondence with the Revenue and discussion with the syndicate auditors, it was reluctantly agreed to accept an aggregate disallowance of £250,000 in respect of the reserve set up."

At one point in his evidence Mr. Mackinnon said of asbestos-related claims "We knew how much we would pay as a syndicate for each claim. The multiple of claims was the problem..."

In his witness statement Mr. Mackinnon said "I am not aware of ever having received" the Murray Lawrence letter. When giving evidence he said "I maintain I have no recollection of having seen it...it was sent to underwriting agents, according to the letter. On that basis I should have seen it. I have no recollection of having seen it, but...I probably got a thousand letters from the Committee of Lloyd's during my life as an underwriter".

In early 1992 a Loss Review Committee sat in respect of 134 and 184.

Mr. Edward Cowtan

Mr. Cowtan joined the Alders syndicate (122/311/118) in 1967. He remained with that syndicate until the end of 1983. He was the Senior Claims Manager for the general non-marine section. 311 had a significant exposure to asbestos; 118 was exposed to a slightly lesser extent. In his last 18 months/2 years Mr. Cowtan occasionally sat in at a meeting of the AWP on behalf of Mr. Nelson.

Mr. Cowtan started underwriting at Lloyd's on 1 January 1974 as an assisted Name. Mr. Cowtan said that he increased his line on the Alders syndicate before he became aware of the seriousness of asbestos. He remained a Name until the end of 1978. When asked "What caused your decision to stop underwriting?", Mr. Cowtan replied "I was warned that there was a very serious problem arising from asbestosis and also there were a number of quite serious product claims". Mr. Cowtan was shown a letter from Bellew & Raven (Underwriting Agents) Ltd to the Manager of the Membership Department at Lloyd's dated 19 June 1978 which stated "Mr. Cowtan is worried about the increasing competition in the insurance world and has decided to wind up his Lloyd's affairs before his retirement." Mr. Cowtan said he had not seen the letter before and was very disappointed at its content.

Mr. Cowtan explained that he had not provided a witness statement to the Names because "It was being written for me...A number of the comments that were being put in there...were simply incorrect". He said that he thought the witness statement was prepared by Mr. Stockwell, although he could not be 100% sure of that.

Mr. Robin Kingsley

Prior to 1988 Mr. Kingsley ran three members' agents. After about 1988 Kingsley Underwriting Agencies Ltd and Sudbrook Underwriting Agencies Ltd merged into Lime Street Underwriting Agencies Ltd. Mr. Kingsley was a director of Holmes Kingsley Carritt Underwriting Agencies Ltd a managing agency, which was renamed Holmes Hayday Underwriting Agencies Ltd (syndicate 694) before being acquired by Sturge Underwriting Management Ltd. He resigned as director of the managing agent of syndicate 694 on 1 November 1985 to comply with the divestment provisions of the Lloyd's Act 1982. Mr. Kingsley was also a director of Hardcastle Underwriting Agencies Ltd a managing agency, which was renamed Cutler Underwriting Agencies Ltd (syndicate 319/318). He was in addition a director of Scott Underwriting Agencies Ltd., a Lloyd's members' agency. Mr. Kingsley is now retired.

Under the R&R settlement Mr. Kingsley was disentitled to debt credits of over £1.3 million. This was because he was an executive director of Lime Street Underwriting Agencies Ltd, who at the time were members' agents to Names who suffered excessive losses above market average. A large percentage of these Names were placed on the Feltrim and/or Gooda Walker syndicates. In cross-examination Mr. Kingsley agreed that with the benefit of hindsight a spiral was created - one set of Lime Street Names wrote stop loss cover for the other set of Lime Street Names, both sets also writing excess of loss cover on Gooda Walker and/or Feltrim.

In his statement Mr. Kingsley said "We were one of the first members' agents to produce a

questionnaire which we completed together with each underwriter... whenever possible at his office. This was done with a view to establishing a pattern or proforma, for a dialogue with each underwriter, who we supported by placing our Names on their syndicates." Mr. Kingsley said that his agency started using questionnaires in about the late 1970s. They became more extensive in the light of experience. He produced an example dated 28.2.90 to which I refer. Unfortunately he was unable to produce examples directed to long-tail syndicates in the late 70s/early 80s.

Mr. Kingsley in cross-examination, was taken through the reports and accounts of syndicate 694. He agreed that this was a syndicate with a substantial long-tail element on its books written since 1977. The syndicate increased its reserves in most years, even though previous years' reserves were believed to be accurate.

Mr. Kingsley again in cross-examination, was taken through the reports and accounts of syndicate 319/318. The 1982 year of account of syndicate 319 was left open because (according to the Underwriter's Report) of "a worsening of settlements on the years 1978 to 1980 in respect of asbestosis, pollution and general US casualty claims. This unexpected increase in settled and outstanding claims has been caused by considerable deterioration in a syndicate run-off written in 1978 as well as a small number of London market casualty excess loss contracts. Because of the difficulty surrounding the estimating of reserves from these long-tail claims the 1982 year of account will be left open, with an audit deficiency of 139%". Mr. Kingsley said that the reserves proved reasonably adequate in 1985, 1986 and 1987, before a subsequent deterioration in 1988 and 1989.

In his witness statement Mr. Kingsley said " I was chairman or director of four separate Lloyd's agencies, yet I can categorically state that I never saw the Murray Lawrence letter at that time. I did not in fact ever see the letter until the early 1990s when I was very surprised to read its contents..."

In his witness statement Mr. Kingsley set out a schedule of certain run-off contracts entered into by Mr. Outhwaite in 1981 and 1982. He said "I have researched 32 run-off contracts placed partly or wholly with Outhwaite syndicate 317/661 between 1977 and 1983 and have noted that 28 of these related to Lloyd's syndicates. In the case of 27, I have noted some connection between the reinsured syndicate and one or more of the individuals identified in the pleadings being allegedly party to fraudulent representations by Lloyd's." Mr. Kingsley was cross-examined by reference to a rebuttal schedule prepared by Lloyd's.

When asked 'what went wrong?', Mr. Kingsley said that run-off contracts were placed with inside knowledge and that the 1979 year of account should have been left open by syndicates affected by asbestos-related claims.

Mr. Charles Cavenagh-Mainwaring

In about 1976 Mr. Cavenagh-Mainwaring joined R.H.M. Outhwaite (Underwriting Agencies) Ltd as an assistant agency manager. Whilst with the Outhwaite Agency Mr. Cavenagh-Mainwaring became

an underwriting member of Lloyd's. In 1978 Mr. Cavenagh-Mainwaring joined the Oakeley Vaughan members' agency. In 1982 he moved to C.T. Bowring (Underwriting Agencies) Ltd (a combined members' and managing agents) on the members' agency side. When Mr. Sedgwick Rough was brought in 1985 or 1986 Mr. Cavenagh-Mainwaring ceased to have any responsibility for dealing directly with prospective Names. In about early 1987 Mr. Cavenagh-Mainwaring left Bowrings and joined Hinton Hill. Thereafter he worked for a time for the Outhwaite Action Group.

A dispute between Mr. Cavenagh-Mainwaring and Murray Lawrence Members' Agency Ltd (formerly Bowring Members' Agency Ltd) was the subject of an arbitration. Mr. Cavenagh-Mainwaring claimed damages for breach of contract and/or duty by the Respondent Agent in relation to his participation on Gooda Walker syndicate 290 for the underwriting year of account 1989. In November 1995 Mr. Stephen Ruttle as sole arbitrator determined that Mr. Cavenagh-Mainwaring's claim failed. In Reasons for the Award the arbitrator said "I have no doubt that (Mr. Cavenagh-Mainwaring) took his own decisions about his portfolio and that he did not rely in anything other than a most general way on the views and judgments of others at the Agent".

A letter dated 3 June 1982 sent by C.T. Bowring (Underwriting Agencies) Ltd to Names for whom they acted as members' agents, made specific reference to asbestos-related risks. Mr. Cavenagh-Mainwaring said that he did not think he would have seen the letter at the time because the main administration was two floors above the floor on which he worked. Mr. Cavenagh-Mainwaring said that he did not see and was not aware of the Murray Lawrence letter of 18 March 1982.

When asked 'what went wrong or what was wrong'?, Mr. Cavenagh-Mainwaring said that in the late 70s/early 80s there should have been much more co-ordination of intelligence being passed down to the members' agents and new Names. Rota Committee Chairmen should have mentioned asbestos-related risks.

Mr. John Donner

The Names served a notice complying with section 2(1) Civil Evidence Act 1995 and CPR 33.2 in respect of Mr. Donner's evidence. Mr. Donner's bodily health was identified as the reason why he was unable to attend to give evidence in person. This was confirmed by medical evidence. Due to the medical evidence tendered, Lloyd's did not apply to cross-examine Mr. Donner on his statement under CPR 33.4(1) or to exclude his evidence. Lloyd's served a notice under CPR 33.5 indicating its intention to attack Mr. Donner's credibility.

Lloyd's attacked the credibility of Mr. Donner by reference to a number of documents. These included a letter dated 10 January 1996 to Mr. Richard Rosenblatt which included the following - "...The evidence appears to indicate that most of the US fraud allegations and litigation are based on Donner evidence without, as far as I am aware, my express permission. This may be a cheap way of proceeding so far but it was bound to incur difficulties in the end, because you simply do not have the totality of evidence in my possession to give any fraud action the best chance of success. In order, therefore, to ease your position, I would be prepared to accept 50% of my fee in advance i.e.

US$500,000 and, perhaps you would suggest the basis upon which an "exceedingly generous success fee" might be formulated."

Mr. Timothy Goodwin-Self

In the late 1970s Mr. Goodwin-Self joined PCW becoming a personal assistant to Mr. Peter Dixon. Mr. Goodwin-Self's job was to recruit direct Names for PCW. Mr. Goodwin-Self ran a sub-agency called Trewshire. He worked in PCW's fifth floor offices at 52 Lime Street.

Mr. Goodwin-Self said that in about May/June 1983 he saw documents being shredded. In his witness statement he said:-

"I found that the investment office was no longer functioning as such. Instead it had been filled up with crates and cardboard boxes and two or three of the girls who worked there were busy shredding paper from the boxes ...One of the girls...said "This has nothing to do with PCW. These are just Peter Green's personal documents." ...I discussed it with one or two people and eventually decided to leave PCW. I could think of no valid reason why papers belonging to the Chairman of Lloyd's should be brought to our PCW premises and our shredders should be used to have those papers destroyed. Dixon's secretary at the time was called Shirley Reynolds...She... said to me "They are just personal documents"."

When cross-examined Mr. Goodwin-Self confirmed that the investment department within the PCW offices was in the same room as that in which documents were shredded.

Mr. Alan Smallbone

Mr. Smallbone's witness statement was admitted in evidence (Lloyd's not having any cross-examination). Mr. Smallbone had considerable experience as an employee/director of Lloyd's brokers.

Mr. Michael Anstey

Mr. Anstey's witness statement was admitted in evidence (Lloyd's not having any cross-examination).

Mr. Anstey spent his business life in the London insurance market as an insurance broker. He said in his statement:-

"Until the emergence of the Lloyd's problems in the very late 1980s I was quite unaware of the problems surrounding the market in relation to its aggregate exposure to asbestosis, pollution and health risks, although I was aware of the existence of the Asbestos Working Party...I believe that there are many working Names in my position who only became aware of the problems when it was too late to take any corrective action."

Mr. Richard Hulse

Mr. Hulse's witness statement was admitted in evidence (Lloyd's not having any cross-examination).

Mr. Hulse spent most of his working life in the Lloyd's market. Between 1980 and 1984 he was Executive Director of Robert Barrow Ltd., Lloyd's brokers. Between 1985 and 1986 he was Chairman of H. Pitman & Co Ltd., Lloyd's brokers. Between 1986 and 1988 he was a Director of K.C. Webb & Co Ltd., a Lloyd's members' agency. In his witness statement Mr. Hulse said:-

"Neither as a Name, nor as a sub-agent, was I made aware of the existence of the Neville Russell letter, nor the Murray Lawrence letter, even though I had close contact with David Barham, David Gilmour Roy, Stephen Merrett and Ian Posgate, who were underwriters I used when placing aviation risks."

Mr. Paul Mason

In September 1954 Mr. Mason joined the marine claims department of the Lloyd's broker Sedgwick Collins & Co Ltd. He was with Sedgwick until the end of 1965. He left Sedgwick to join Pitman and Deane at the end of 1965 where he stayed for a short time before joining Clarkson. Mr. Mason joined Edward Bates in 1973 but returned to Clarkson in 1981. In 1987 the merger with Bain Dawes took place. Mr. Mason said that in 1979 he was asked to join Lloyd's. He spoke to Mr. Philip Froude the Claims Manager of Janson Green. Mr. Mason said to Mr. Froude "I am thinking of joining Lloyd's, but I know about asbestosis and I am concerned about the stories of mounting losses. Do you think I should join?" According to Mr. Mason, Mr Froude replied "I wouldn't join if I were you".

Mr. Mason said that it seemed to him in both 1979 and 1984 that there must be a mass of claims arising from hazards such as asbestosis that had not been notified to the market in general, which would be covered by the type of General Liability Contracts with which he was familiar from his time at Sedgwick.

Mr. Derek Steel

Mr. Steel was called at a very late stage in the trial. On 16.6.2000 he sent a fax to Mr. Freeman of Grower Freeman & Goldberg which read:-

"...I am prompted to write to tell you that in the summer of 1984 I heard Murray Lawrence say that "Lloyd's was virtually bankrupt." ...I was a marine reinsurance broker... and... founded Steel Burill Jones Ltd. In 1984 I was elected a member of the Lloyd's Brokers Committee. In the summer of 1984 I attended a dinner given by the Lloyd's Brokers Committee for the Chairs of Lloyd's viz. Sir Peter Miller, Michael Cockell and Murrary Lawrence, held at Trinity House. The Chairman of the LBC was Robert Kevill... who sat opposite Sir Peter. I was opposite Michael Cockell... and a former colleague, John Garner... a non-marine broker specialising in North American business, opposite Murray

Lawrence. I was startled suddenly to hear an angry Murray Lawrence saying "But you brokers don't seem to realise that Lloyd's is virtually bankrupt." There was sudden silence until Michael Cockell said "I can illustrate that. When I took up the pen, the carry-in from previous years... was £5 million. As we sit here tonight we have paid out £20 million and are running another £12 million outstanding." The dinner was a private occasion where by custom anything could be said in private and no notes were taken. It was the first intimation I had of the situation which subsequently brought Lloyd's to its knees. And in my view such knowledge is incompatible with the stance taken by Murray Lawrence and others that they shouldn't be held responsible for the way the losses for latent disease subsequently developed. The number of the reinsurances - and the relatively high cost of them - placed to lay-off the incremental growth in the run-off of the back years shows precisely that those underwriters seeking the reinsurances had to have good reason i.e. foreknowledge, of the development of latent disease claims. And in the case of Murray Lawrence he clearly had that apprehension in 1984."

The above fax was exhibited to a statement from Mr. Freeman dated 19 June which included the following in paragraph 7:-

"Mr. Steel told me that following the dinner given by the Lloyd's Brokers Committee... he was very concerned by what he had heard. He felt that something was very wrong and remembers that he decided to leave the Dick Hazell syndicate 190."

When called to give evidence, Mr. Steel said that the dinner was in November 1986 and not in the summer of 1984. He said he heard Mr. Lawrence say "You bloody brokers, Lloyd's is nearly bust." Mr. Steel was not elected a member of the LIBC until 1986. When he gave evidence Mr. Steel said that at the time of the dinner the Chairman of the LIBC was not Mr. Robert Kevill but Mr. Simon Arnold. Mr. Steel in the course of his evidence produced a copy of Mr. Freeman's statement with manuscript corrections/notes thereon. As to paragraph 7, Mr. Steel had added in manuscript "He was not on any other long-tail NM syndicates." Mr. Steel said in the course of his oral evidence that the second sentence of paragraph 7 ("He felt that something was very wrong and remembers that he decided to leave the Dick Hazell syndicate 190") was wrong. That sentence should have read "I had already left the Dick Hazell syndicate 190." Mr. Steel had resigned from syndicate 190 in 1984 (i.e. 1984 was his last year of underwriting). Mr. Steel increased his underwriting at Lloyd's in 1986 and again in 1988. Mr. Steel was put in touch with Mr. Freeman by Mr. Harvey White (see below).

When cross-examined Mr. Steel said that he did not know who Mr. Lawrence had been talking to prior to the outburst which he described.

Mr. Steel was on the committee of LIBC for the years 1986 to 1989 inclusive.

In view of the many changes in Mr. Steel's account it is difficult to place reliance on his evidence. The positioning at dinner which he describes suggests that if any such conversation took place, it occurred towards the end of Mr. Steel's time on the Committee. Such material as survives suggests that the senior members of LIBC sat near to the Chairs at such dinners. In 1986 Mr. Steel was a new member of the LIBC.

Mr. W.G. Brown

The statement of Mr. W.G. Brown was admitted in evidence as Mr. Brown lives in Australia.

Mr. Anthony Charles Sturge

Mr. Sturge left the employment of A.L. Sturge & Co in 1972. He formed Chatset in 1981 with Mr. John Rew to collate and publish comparative syndicate results. His full-time employment with Chatset started in 1989.

Mr. Sturge spoke at a conference in February 1985 entitled 'The Future of Lloyd's' on the subject 'Lloyd's - An Outside Member's View'. The conference papers were published in about March 1985.

Mr. Sturge was a member of the Open Years Panel.

Mr. Sturge struck me as a careful witness who provided a reasonably balanced account.

In the Chatset Lloyd's Syndicates Results 1978 (published in 1981) Mr. Sturge wrote "Asbestosis has been described as the largest ever insurance loss and will not only affect the non-marine market."

Mr. Sturge was cross-examined about his perception of the asbestos problem facing the market as at certain dates. He said that in late 1982 his perception was as follows. Asbestos-related claims were potentially a serious problem for some Lloyd's syndicates. Any members' agent who read the press, the reports and accounts and Chatset would be aware that the Lloyd's market was facing problems as result of exposure to asbestos payments. The impression he formed from the underwriters' reports was that it was a serious problem, but containable. It was not something that was going to hit Lloyd's as a whole in a major way and cause the kind of problems that were seen later on. He was, however, not privy to the detailed information that the AWP had.

Mr. Sturge said in his witness statement that it was not until 1992 that he felt there was enough data in the public domain which an external analyst or Name could properly use to assess the full damage and impact on the market of latent liability.

Mr. Sturge emphasised the importance of the Settlement Statistics which "came my way when we were compiling the 1994 run-offs". Table 2 shows "Non-Marine All Other US Business". This document "opened one's eyes to the way that the US liability account had built up over the years and how, if one projected those figures forward, even in the early 1980's it was clearly apparent that the US liability account was running at a serious loss."

As to Mr. Aaronson's Report, Mr. Sturge said that in his opinion it was wrong to compare the Lloyd's 1985 year with companies in 1987 - "it would seem to be entirely flawed because in the 85

underwriting year Lloyd's was driven by factors in calendar year 85."

As to "recruit to dilute" Mr. Sturge said that up to 1985 he did not believe there was any "recruit to dilute". He was less happy about what happened in 1986 and 1987. He felt the Council of Lloyd's should have put some check on the growth of capacity - "the wrong people were becoming members of Lloyd's, those who did not really have any real wealth".

When asked about charts prepared for the purposes of the Outhwaite trial, Mr. Sturge said what struck him was the steep rise between 1982 and 1983 - "if you had looked at them I think you would have scratched your head and wondered what was happening, particularly on those that had written an aggressive long-tail account."

Mr. Sturge said that having been a member of the Open Years Panel, it did not appear that Lloyd's had ever attempted to assess the Lloyd's market's share of asbestos-related claims. Mr. Sturge added that with appropriate data it would be perfectly possible to calculate the exposure that Lloyd's/the London market might have to a particular type of risk.

Mr. Sturge produced Charts of Asbestos Liabilities at 31.12.94, to which I refer.

Mr. Sturge estimated that the cost to the Lloyd's market to date (paid and outstanding) of asbestos-related claims at $3.5 to 4 billion.

Mr. Dennis Fredjohn

Mr. Fredjohn, a distinguished industrialist, was a member of the Council of Lloyd's for the years 1983 and 1984, as one of the first external Names on the Council. Between 1986 and 1994 Mr. Fredjohn was a non-executive director of London Wall Holdings Plc (a Lloyd's Agency). Mr. Fredjohn joined the 1992 Outhwaite Names Association.

Mr. Fredjohn struck me as witness whose account was balanced and generally reliable.

Mr. Fredjohn said that the most important decision that a person makes when he/she joins Lloyd's is who he/she selects as members' agent.

Mr. Fredjohn said that in his opinion it was not the Council's job to try and second guess the work carried out by managing agents and auditors. The Council set the regulatory framework in which others operated.

Mr. Fredjohn said he did not have any special knowledge of asbestos or long-tail problems by reason of being a member of the Council of Lloyd's. He was unaware of the existence of the AWP during his time on the Council. He was also unaware of the state of knowledge of the size of claims lodged in the United States and of the rate at which claims were coming through. He did not remember any report

being made as to the numbers or average cost of asbestos claims, while he was a member of Council or of any Lloyd's Committee. In his statement he said he did not know why the Council was not given the information in 1983 that was available to the Committee in 1982. He added that if he had known that information he would not have increased his underwriting as he did and would have avoided long-tail liabilities.

Mr. Fredjohn acted as a Chairman of Rota Committees for members joining Lloyd's when a member of the Council, and for about two years thereafter. He said he had a limited knowledge of long-tail liabilities affecting the market but, along with Sir Eddie Kulukundis, felt it important to emphasise to joining Names that syndicates and Names inherited liabilities for old years. He thought it was very (and increasingly) appropriate to mention long-tail liabilities such as latent diseases, but doubted whether working Names (who took most of the Rotas) were as conscientious. At some stage Mr. Merrett approached him to suggest that at the Rota Meetings he over emphasised the liabilities inherited from the past through RITC - Mr. Merrett "felt I was stressing too much the impact of the long term liabilities, and I said... to me it was one of the most important things... he accepted it."

Mr. Fredjohn was complimentary about certain persons against whom allegations of fraud are made in this case.

Mr. Fredjohn referred to the struggle between regulation and the retention of an entrepreneurial environment that was vital to the success of Lloyd's.

Sir Eddie Kulukindis

Sir Eddie Kulukindis served as an external (elected) Name on the Council of Lloyd's between 1983 and 1989. He was an impressive witness.

He said that he first saw the Neville Russell letter the day he gave evidence. He believed that he had not seen the Murray Lawrence letter before, but could not be sure. He was a member of the Second Outhwaite Action Group. He had not seen the minutes of the Lloyd's Committee Meeting of 9.12.1982 before the day he gave evidence.

Sir Eddie did not recollect any discussion in Council of asbestosis, in the sense of the number of cases and the cost of those cases.

Sir Eddie said that with 100% hindsight Names should have been advised at Rota not to join the Outhwaite or Merrett syndicates.

Sir Eddie was a member of the Bird Working Party which in October 1984 produced 'The Report of the Long Term Review Working Party on Membership Requirements'. As to this Sir Eddie said (1) there was no question of making it easier for people to become a member of Lloyd's; (2) in a number of respects the recommendations tightened matters, in particular the proposal that members should be

brought into line; (3) the proposal that premium income should be looked at on a gross rather than a net basis represented a further tightening of security; (4) there was no hint from anyone on the Committee that it was necessary to recruit new Names in order to meet the losses of the past; (5) the recommendations of the Committee were not aimed at making it easier for people to join Lloyd's.

Sir Eddie was also a member of the Membership Committee. He said that he was satisfied that any Brochure with which he was concerned was accurate and that considerable care was taken in this connection.

Sir Eddie said that asbestosis was not generally regarded in the 1980s as a problem that was going to destroy the Lloyd's market.

Sir Eddie said that if he had been aware in late 1984 of what Mr. Kellett was saying to the Inland Revenue on behalf of Lloyd's, this would have affected his own personal underwriting.

Mrs. Sally Ridley-Day OBE

Mrs. Ridley-Day is married to Mr. John Ridley-Day (see below). Mrs. Ridley-Day was not a member of Lloyd's. Her husband was a Name who accepted the R&R Settlement.

Mrs. Ridley-Day produced typed up notes of numerous telephone conversations that she had with Mr. Osbrey.

Mrs. Ridley-Day was recalled to give evidence. Profoundly unsatisfactory matters emerged as a result of further cross-examination on day 27. When Mrs. Ridley-Day first gave evidence she did not mention that on about 16 February 2000 she collected a box of Mr. Osbrey's papers from Dr. Harvey White. According to Mrs. Ridley-Day, Mr. Freeman of Grower Freeman and Goldberg asked her to look through the documents to see "If there was anything useful". None of this material was disclosed to Lloyd's until day 27. In fact the box contained a number of documents highly material to the account that Mrs. Mackenzie-Smith and Mrs. Ridley-Day and other witnesses gave of conversations with Mr. Osbrey.

Further, Mrs. Ridley-Day said that in about the latter part of 1999 a tape, purporting to be a tape of recordings on Mr. Osbrey's answerphone, arrived by post in a brown envelope addressed to her. She said that she came across the tape in the early part of this year before she received the documents from Dr. Harvey White. Freshfields were notified of the existence of the tape by letter dated 10 February 2000.

Mr. Julian Lloyd

Mr. Lloyd's witness statement was admitted in evidence (Lloyd's not having any cross-examination). Mr. Lloyd's statement contained an account of conversations with Mr. Osbrey.

Earl Alexander of Tunis

The witness statement of Earl Alexander of Tunis was admitted in evidence (Lloyd's not having any cross-examination). This statement also contained an account of conversations with Mr. Osbrey.

Mr. John Ridley-Day

Mr. Ridley-Day's witness statement was admitted in evidence (Lloyd's not having any cross-examination). Mr. Ridley-Day's statement contained an account of conversations with and other matters relating to Mr. Osbrey.

Mr. Charles Purle Q.C.

Mr. Purle's witness statement dealt with his knowledge of Mr. John Osbrey. Before Mr. Osbrey's death, Mr. Purle was acting for Mr. Osbrey in connection with litigation against Mr. Osbrey's Lloyd's members' agents.

Mr. Harvey White

Mr. Harvey White is a surgeon specialising in general surgery and oncology. Mr. Harvey White and Mr. Osbrey became friends when they attended school together and remained friends throughout school and university and their adult life. In addition Mr. Harvey White treated Mr. Osbrey in a professional capacity over the years until his death.

Mr. Harvey White gave evidence of the circumstances in which he came into possession of some of Mr. Osbrey's papers.

Mr. Harvey White was never a member of Lloyd's. He gave his account of conversations from time to time with Mr. Osbrey on the subject of Lloyd's.

It should be recorded that Mr. Harvey White showed great friendship to Mr. Osbrey throughout his life and paid for his funeral.

Mr. K. V. Louw

Mr. Louw has had experience within the reinsurance market both in underwriting (Mercantile & General Reinsurance Co Ltd between October 1965 and September 1972) and as a broker. He is a Fellow of the Chartered Insurance Institute. He has edited the most recent editions of "The Law and Practice of Reinsurance" by C.E. Golding. Mr. Louw is the managing director of Reinsurance Evaluations Ltd, a reinsurance consultancy specialising in inspections and audits of records, management of discontinued operations, litigation support and executive advice to the reinsurance

market. He was called not as an expert witness but as a "technical" witness.

Before this case Mr. Louw had not seen the market reports and attorneys' reports in respect of US asbestos losses.

Mr. Louw was cross-examined by reference to the accounts of Mercantile & General Reinsurance Co Ltd. He agreed that the reserves in the 1980s were inadequate to meet the weight of asbestos-related claims and that it was not until the 1982 report published in 1983 that there was any specific mention of asbestos. He accepted that the Mercantile added to its reserves year by year in order to meet asbestos claims, but those reserves proved inadequate. The size of the reserves for asbestos and pollution claims in 1995 was greater than the entire reserves for the whole of the non-proportional account in some of the 1980s.

Mr. Louw prepared an Appendix which sets out a chronology of various reports, addresses the issue of what was known from the attorneys' reports and AWP meetings, calculates the asbestos liabilities indicated by the reports and shows how these were or were not reflected in the RITC figures in the Lloyd's Global Accounts. Mr. Louw concluded his report as follows:-

"The documents that I have seen do show that the market was creating asbestos reserves and reporting to Lloyd's. However, the increase in reserves bears no comparison with the size of the known liabilities projected over a period five to ten years by Mr. Nelson. From the beginning of 1983 onwards the loss projection for asbestos bodily injury losses was close to the $10 billion figure. For most years the Lloyd's market's share of the known and projected cost of asbestos bodily injury losses exceeded the total RITC for US Dollar General Liability business".

Mr. Louw based his calculations upon certain "conservative assumptions" as follows:-

(A) That the London market's share of liability for US asbestos losses on an exposure basis was 40%.

(B) That Lloyd's share of the London market's liability for US asbestos losses was some two thirds of 40% (say 25% overall).

(C) That although the Lloyd's liabilities should be shown as being net of reinsurance protections, no diminution in the figures was made for two reasons:

(i) "It is doubtful that the percentage (of reinsurance) placed in the London market outside of Lloyd's was very great."

(ii) The calculations were based upon the Lloyd's share of direct US business. They took no account of reinsurance and retrocessions from US carriers which formed a significant part of the Lloyd's exposure to asbestos losses.

In cross-examination Mr. Louw accepted that the RITC figures in the Lloyd's Global Accounts used in his calculations:-

(1) included reserves for inwards claims on direct policies and reserves for claims on reinsurance policies;

(2) were net of reinsurance in the sense that they were net of credits taken in respect of reinsurance recoveries;

(3) were net of credits taken in respect of time and distance policies;

(4) were net of discounting (if any) in RITC calculations;

(5) were net of credit (if any) taken in respect of rollovers (if any).

Lloyd's produced a schedule of Mr. Louw's calculations. In cross-examination Mr. Louw accepted that revisions should be made to his figures for the number of claims in 1985 and 1987.

Mr. Louw's percentage approach was challenged in cross-examination. It did not take account of the widening number of defendants in asbestos-related claims. Nor did it take account of the Johns Manville settlement.

Despite certain criticisms that can be made of Mr. Louw's approach and calculations, in fairness to him I should record that in my opinion he was doing his best to assist the court drawing on the limited information available to him.

Witnesses Called by Lloyd's

Each of the witnesses called by Lloyd's from among the 33 persons listed in chapter 7, emphatically denied the allegations of fraud/fraudulent misrepresentation made by the Names.

Sir Peter Miller

Sir Peter Miller joined Thos R. Miller & Sons full time from 1954. T.R.M. & S was a Lloyd's broking firm concerned mainly with marine business. In the 1960s with others Sir Peter founded a members' underwriting agency business (Thos R. Miller & Sons Underwriting Agents). He was never particularly concerned with the day to day work of this members' agent. Thus Sir Peter's background was as a marine broker.

Sir Peter was Chairman of the Committee of Lloyd's Insurance Brokers Association for 1976/1977. He was first elected as a member of the Committee of Lloyd's in 1977 and, with the exception of 1981, remained on the Committee until 1989. He was a member of the Council of Lloyd's from 1983

until 1989, during which time he served as Chairman of Lloyd's between 1984 and 1987.

Sir Peter was an articulate witness.

In his main witness statement Sir Peter addressed the following topics:-

(a) a description of relevant Lloyd's bodies and Lloyd's market bodies; (b) the key issues during his Chairmanship of Lloyd's; (c) the principal regulatory developments during the Relevant Period; (d) his personal knowledge of the asbestos issue during the Relevant Period; (e) Lloyd's Annual Results; (f) the Lloyd's Brochures; (g) Rota interviews; (h) capital expansion and the increase in membership; (i) Lloyd's dealings with the Inland Revenue; (j) Toplis & Harding Inc.; (k) his personal participation as a Name.

As to the role of the Council, Sir Peter said that it was not the role of the Council, nor the role of the Committee before it, to get involved in the business decisions of the syndicates and the market, whether in terms of the underwriting of risks or the settlement of claims.

As to the asbestos issue during the Relevant Period, Sir Peter's background was in marine insurance. Although he sat on the board of T.R.M. & S' non-marine broking subsidiary, it was not involved in the processing of asbestos-related claims on behalf of assureds or reassureds. T.R.M. & S did not own or have any interest in a Lloyd's managing agency and Sir Peter had little involvement in the day to day work of the Lloyd's members' agency. He had no recollection of ever seeing any attorneys' reports dealing with asbestos-related claims at any time relevant to this action. Sir Peter referred to his various statements in the Global Reports and Accounts and said that his concern was about losses across the non-marine general liability account as a whole.

Sir Peter said that his knowledge of asbestos has never been detailed, and it is not so even today. (Surprisingly) he said that he was not aware of the fact that serious conditions, on the whole, do not arise until 20 years or more after initial exposure.

Sir Peter accepted that from the time when syndicates received and acted upon the Murray Lawrence letter, they could have been asked what reserves had been identified for asbestos-related liabilities in closed and open years.

Sir Peter said that during the parliamentary procedures in 1982 there was no reason to mention asbestosis or latent disease to the House of Commons.

Sir Peter was asked "Did you during your first year as Chairman ask for figures about asbestosis claims?" He replied "...I observed what was said about them, which was in increasingly significant tones, but I was not aware of any figures being available to me of market participation in asbestos claims. It was too early for that to have emerged."

In the course of his evidence Sir Peter drew a distinction between problems which were considered to be superable and those which were considered to be insuperable.

Sir Peter said that three factors in combination led Lloyd's to the very difficult economic position in which it found itself in the 1990s:- (i) the general liability account; (ii) losses arising from catastrophes; and (iii) intense competition driving down the rates in the marine field to unrealistic levels.

At the conclusion of his cross-examination Sir Peter said "We turned our backs on nothing; we did our best. We may have made mistakes; no doubt we did, everybody does, but the regulatory failures were not what led to the asbestos problem. The asbestos problem, by itself, did not threaten the solvency of Lloyd's. ...It was the combination of that and other things that led to the economic difficulties of the 90s."

Mr. Murray Lawrence

Mr. Lawrence took over as active underwriter on composite syndicate 360 on 1 January 1970. Mr. Lawrence's day to day work with syndicate 854 consisted of contract property reinsurance, excess of loss and pro rata insurance of insurance companies worldwide (the greater part being US insurance companies).

On 1 January 1980, syndicate 360 was split into four individual syndicates. The non-marine syndicates, 360 and 854 joined together to form syndicate 362. Mr. Lawrence was the active underwriter of syndicate 362. After he became Chairman of the Computer Leasing Working Party and joined the Committee of Lloyd's in 1979 his involvement in the day-to-day affairs of syndicate 362 diminished and he gradually ceded control of operations to his deputy, Mr. Richard Keeling.

C. T. Bowring divested itself of the managing agency C.T. Bowring Underwriting Agencies Ltd on 1 January 1985. Mr. Lawrence set up Murray Lawrence and Partners which took over the managing agency functions (i.e. the underwriting) of C.T. Bowring Agencies. He was senior partner of Murray Lawrence and Partners, head of the agency and Chairman of the Board having given up his role as active underwriter on about 1 July 1984. Murray Lawrence and Partners was incorporated in 1989 to become Murray Lawrence and Partners Ltd. At the same time, two other companies were formed: a holding company, Murray Lawrence Holdings Ltd, and Murray Lawrence Members' Agency Ltd which purchased the members' agency from C.T. Bowring in 1988 or 1989. Mr. Lawrence was Chairman of all three Boards.

Mr. Lawrence was Chairman of LUNMA in 1978.

Mr. Lawrence became a member of the Committee of Lloyd's in 1979 and except for 1983 served on the Committee until 1991. He became a member of the Council of Lloyd's on 1 January 1984 and remained a member of the Council until 1991. He was Deputy Chairman of Lloyd's in 1982 and from

1984 to 1987. In 1988 he became Chairman of Lloyd's, retiring on 31 December 1990.

Mr. Lawrence joined Lloyd's as an underwriting member for the 1974 year of account. He remained a Name until 31 December 1998.

I am satisfied that Mr. Lawrence's evidence as to the distribution of the Murray Lawrence letter is accurate. I find that he did not take any steps to restrict circulation of the letter.

In his main witness statement Mr. Lawrence addressed the following topics:-

(a) the market associations in the Lloyd's market; (b) the Society of Lloyd's bodies; (c) the Computer Leasing Working Party; (d) the Asbestos Working Party; (e) the Lloyd's Brochure; (f) Lloyd's annual underwriting results; (g) the reinsurance to close process; (h) to (p) the periods up to the closure of the 1977 to 1985 years of account; (q) the recruitment of Names into the Lloyd's market; (r) the purchase by syndicate 362 of a run-off policy; (s) his personal underwriting.

Mr. Lawrence dealt with the meeting with the panel auditors on 10 November 1981, the Audit Committee, the Special Meeting of the Committee of Lloyd's on 7 December 1981, the meeting of panel auditors on 15 January 1982, the note from Mr. Ken Randall dated 22 February 1982, the Neville Russell letter dated 24 February 1982, the Audit Committee meeting on 2 March 1982, the panel auditors' meeting on 9 March 1982, the memorandum by Mr. Nelson on 12 March 1982, the memorandum to O Group dated 15 March 1982, the letter from Mr. Colin Murray dated 15 March 1982 (the Bannockburn letter), the meeting of the Committee on 17 March 1982 and the two market letters dated 18 March 1982. "The first letter was sent out in my name on behalf of the Committee to all underwriting agents (which meant all managing agents, members' agents and combined agents), active underwriters and panel auditors. The second letter was sent by Mr. Randall to all panel auditors."

Syndicate 362 took out a rollover policy in about 1970 or 1971.

At the end of 1968 Mr. Lawrence was appointed underwriter designate of syndicate 360. He was horrified to learn that the syndicate was under-reserved and would have to increase its reserves considerably (which the syndicate did at 31 December 1968). As a consequence he decided to take the syndicate totally out of casualty business. "We wrote no more long-tail business (direct or reinsurance) during the 1970s and early 1980s (with the exception of certain types of US long-tail business which was not exposed to asbestos, such as medical malpractice and contingency clash business)".

In 1982, syndicate 362 placed an unlimited liability run-off policy. Two thirds of the policy were placed with Mr. Outhwaite's syndicate and one third was placed with Mr. Meacock's syndicate. Syndicate 362 paid a premium of US$2 million for the policy with an excess of US$55 million. The policy was in respect of losses arising from 1 January 1982 on the 1978 and all prior years of account.

On 15 April 1982 the syndicate purchased a further policy from Munich Re which provided US$10 million cover in excess of US$31.6 million for 1978 and prior years of account, at a premium of US$4 million. In 1984 reinsurance was purchased by Mr. Keeling to cover the gap of some US$13.4 million between the syndicate's reserves and the Munich Re reinsurance and the Outhwaite/Meacock run-off. This further cover cost US$4 million for US$13.4 million of cover. At around this time, the cover for the layer between US$31.6 and US$42 million was renegotiated and novated to NERCO.

Mr. Lawrence said that the Council, as with the Committee, did not seek to interfere in the day to day decisions taken by the entities operating in the Lloyd's market.

Mr. Lawrence favoured the division of the non-marine "All Other" category to try to reflect the different settlement patterns (i.e. the different lengths of "tail") of the business within it to produce more consistent statistics. He set out in his witness statement the steps taken to achieve this goal. Mr. Lawrence said that he knew Mr. Bradley but had no recollection of any conversation in 1979 (when Mr. Bradley allegedly reported to Mr. Murray Lawrence a conversation he had had with Mr. Tom Hitchcock of Citibank).

Mr. Lawrence explained the history of the "white papers".

Mr. Lawrence disputed Mr. Osbrey's allegations.

As to reserving for asbestos-related claims Mr. Lawrence said that with the benefit of hindsight "We can look back and say that reserves that we set up at any moment in time proved generally insufficient, but...at the time the reserves...were set up... conscientiously with every effort to see that they were fair, and reinsurance to close...only took place if the underwriter, the agent and the auditor were happy (that the reserves were fair)". Mr. Lawrence added "Just as (we) thought we had a hold on it some new wave of problems came up, and proved all the previous ways in which we looked at it insufficient...we got overtaken by events in future years, in ways which we couldn't have foreseen".

Mr. Lawrence said that asbestos on its own was never a threat to the solvency of Lloyd's. Late in the 1980s and at the beginning of the 1990s the coming together of (i) the asbestos problems (ii) the other long-tail problems including pollution (iii) the effects of the appalling number and severity of the catastrophe losses, cumulatively threatened the solvency of Lloyd's.

Mr. Lawrence did not believe that the Committee was in a position to comment on how the market was reserved unless a mini R&R had been taken on by the Committee, and that was totally impractical.

Sir David Rowland

Sir David Rowland was Chairman of Lloyd's from 1993 to 1997, and a member of the Council of Lloyd's from 1987 to 1990 and 1993 to 1997.

Sir David was first employed in 1956 by a firm of insurance brokers, Matthews Wrightson. Within this broking company, Sir David undertook training as a marine broker between 1956 and 1958, followed by three years experience in UK non-marine insurance, and then another three years specialising in credit and bond insurance. At the end of 1964, he was appointed to the Board of Matthews Wrightson. After joining the Board, he led the UK non-marine department in London. Increasingly he concentrated on the management of the company, its expansion, the acquisition of other businesses and, in particular, upon developing overseas business opportunities. A large part of his time concerned business outside the Lloyd's market. He was made Managing Director of the company around the end of the 1960s.

At about the end of the 1960s Sir David was appointed to the Board of the parent company of Matthews Wrightson. There then followed a corporate re-structuring of the Matthews Wrightson Group, following the acquisition of Bray Gibb (a firm of brokers) in 1970, the flotation of Matthews Wrightson on the Stock Exchange, and the subsequent merger with Stewart Smith & Co (another broking firm with a subsidiary underwriting agency) in 1972. This resulted in the Group being renamed Stewart Wrightson, with a parent holding company called Stewart Wrightson Holdings Plc. From about the time of this re-structuring, Sir David became the (joint) Chief Executive of Stewart Wrightson, joining the Board of the parent company. Subsequently he also joined the Board of the newly created intermediate parent company, which was called Matthews Wrightson Underwriting Ltd. Sir David emphasised that non-executive directors were introduced onto the Board of the intermediate parent company (including Sir Bernard Cohen who Sir David described as a representative of the Names). Below Matthews Wrightson Underwriting Ltd there were a number of companies dealing with the affairs of Lloyd's members and syndicate management. The principal companies were: (a) Pulbrook Underwriting Management Ltd, the managing agency for Pulbrook syndicates (including non-marine syndicate 90 and marine syndicate 334, as well as a motor and an aviation syndicate); and (b) Matthews Wrightson Pulbrook Ltd, the members' agency (which later changed its name to Stewart Wrightson Members' Agency in April 1985). The managing agency and the members' agency had been separated in about 1979 (at the same time that Matthews Wrightson Underwriting Ltd was created). Sir David was not on the Board of either of these subsidiary companies, except for a year or so in about 1978/1979, when he was on the Board of Matthews Wrightson Pulbrook Ltd. Syndicate 90's 1982 year was left open; syndicate 334's 1985 year was left open.

In 1980 Sir David was appointed Chairman of the overall parent company Stewart Wrightson Holdings Plc. He continued in that position until its acquisition by Willis Faber in 1987. When that acquisition took place, he joined the Board of Willis Faber, as a Deputy Chairman. In March 1988, he left Willis Faber to become Chief Executive of the Sedgwick Group Plc. He became the Chairman of Sedgwicks in 1989. He held this position until December 1992, when he became Chairman of Lloyd's.

The underwriting business within the Stewart Wrightson Group was only a small part of the Group's overall business activities. To comply with the divestment requirements imposed by Lloyd's, the managing agency, Pulbrook, was sold and transferred in January 1985 to Creechurch Syndicate Managers Ltd, a wholly owned subsidiary of Merrett Holdings Plc.

Sir David was asked to lead the Task Force investigating the future capital structure of Lloyd's, which was set-up at the end of 1990, and which produced a report entitled "Lloyd's: A Route Forward" in January 1992.

Sir David was a highly articulate witness.

In his first witness statement Sir David addressed the following:-

(a) personal background; (b) response to the allegations; (c) specific allegations against Lloyd's; (d) allegations against Pulbrook syndicate 90; and (e) personal underwriting.

As to (d), syndicate 90 obtained cover of $13.5m (excess of $17.5m), for its 1974 and prior years, in December 1980 with the New English Reinsurance Company; the syndicate then obtained 70% unlimited cover (excess of $26.9m) with Outhwaite/Meacock in February 1982 for its 1974 and prior years. Thereafter the syndicate obtained slices of top-up cover for the 30% gap on the 1974 and prior years. Syndicate 334 obtained cover with First State Insurance Company in May 1981 in respect of its 1975 and prior years, covering US$8m excess of US$4m. The syndicate then obtained unlimited cover with Merrett 418/417 (excess of $12m) for its 1975 and prior years in September 1981. The outcome of the Outhwaite/Meacock run-off contracts is shown in Table 3 below. The Merrett run-off contract was avoided.

In his third witness statement Sir David addressed three further topics:- (f) E&O cover at Lloyd's; (g) training for underwriters and underwriting agents; and (h) developments in relation to the capital structure.

As to asbestos-related claims, Sir David said that there were widely differing views about the eventual outcome and that this was demonstrated by the fact there was an active market in writing run-off policies (Outhwaite, Merrett and Meacock).

When asked about his views in the early 1980s about the availability of the market in run-off contracts, Sir David said "Outhwaite (and Merrett)...were substantial market figures. They had very considerable followings and they took views which were not necessarily typical of the rest of the market and they had considerable charismatic impact on the market. ...I was delighted and much relieved (that these protections were available and) pleased that people were taking different views about the development of asbestos. ...There were large numbers of contrary views, and that people of that influence were prepared to put their money where their feelings lay seemed to me very significant."

In the Task Force Report, January 1992 reference was made to uncertainty as to pollution claims ("The greatest uncertainties surround the third area of latent liability claims, environmental pollution... in testimony to the US Congress Sub-Committee on Policy Research and Insurance, Amy S. Bouska of Tillinghast estimated the range of possible outcomes to lie between $40 billion and $1,000 billion.

Clearly costs of this magnitude are far beyond the resources of the insurance industry... Assessing the range of Lloyd's possible exposure to pollution claims is subject to huge uncertainties. Should court decisions go against the industry as a whole, Lloyd's needs to have only a modest share of the problem for it to face very serious losses..."). Sir David cited pollution as an example where "the forebodings about the worst case scenario have not been borne out."

As to E&O cover, Sir David said that this covered 12 months at a time and was on a "claims made basis". It was possible that external Names were underwriting the E&O insurance of their own agent. "One of the very big problems (was) the recycling of the risk around the very people (the Names) who were involved in seeking to recover (in the Lloyd's litigation) from their agents." Thus E&O cover was provided within the very market it was intended to protect. The same was true for personal stop-loss. "It was this whole element of recycling and double counting which caused a great deal of (the) problems."

Sir David accepted that competence in areas of the Lloyd's market was seriously lacking in the 1980s. "The level of ability at Lloyd's (was not, during the Relevant Period) at the level I would wish, looking backwards." Sir David added that there was a great deal of variability in the quality of members' agents.

When asked "Does it cause you anxiety that it was not until sometime in or after 1987 that reference to the possibility of being stuck on an open year was introduced into the Rota verification procedures?" Sir David replied "There is much in that period which, looking backwards, I would like to (have seen) happen earlier."

Mr. Alan Lord

Between 1 March 1986 and 30 June 1992 Mr. Lord was Chief Executive of Lloyd's and the nominated Deputy Chairman. Prior to March 1986 Mr. Lord had a distinguished career with the Inland Revenue, the Treasury, the Department of Trade and Industry, Dunlop Holdings Plc and as a member of the Court of the Bank of England.

No allegation of fraud is made against Mr. Lord.

Mr. Lord was an impressive witness.

In his witness statement Mr. Lord addressed the following topics:-

(a) the duties and functions of the Chief Executive, Chairman and Deputy Chairmen; (b) the Council of Lloyd's and the Committee of Lloyd's; (c) principal issues facing Lloyd's; (d) knowledge of asbestos; (e) the Donner Inquiry; (f) Global Reports & Accounts; (g) recruitment and expansion; (h) Rota Committee meetings; (i) Toplis & Harding Inc; (j) fraud allegations.

Mr. Lord said that during his term as Chief Executive, his areas of responsibility fell into five groups, the second of which was responsibility for overseeing the establishment and maintenance of the self-regulatory regime at Lloyd's. "In this respect, I was particularly concerned with the interests of non-working Names so far as these were consistent with the successful operation of the Lloyd's insurance market."

As to Council or Committee debate, Mr. Lord said that he could not recall any Council or Committee member seeking to stifle or suppress discussion of any issue either prior to, or at, a Council or Committee meeting.

Mr. Lord referred to the many and varied issues being dealt with by the Chairs, the Council and the Committee. He did not recall asbestos being a significant topic during the period 1 March 1986 to 31 December 1988. It was merely one of a number of long-tail liabilities like pollution, and problems like US tort law reform, which were of concern to the market.

As to the fraud allegations, Mr. Lord said that at no time was he aware of, nor did he have any reason to believe that there was, any dishonest activity on the part of any of his Council and Committee colleagues. He believed his fellow Council and Committee members acted honestly and approached their responsibilities in the same way as he did. If he had been aware of any dishonest activities he would certainly have done something about them.

Mr. Lord defined a catastrophe as something with a cost of at least $1 billion. He said that half the insurance catastrophes in the twentieth century occurred in the years 1987 to 1990 - windstorms in north Europe, Piper Alpha, Exxon Valdez, various hurricanes etc.

As to recruitment, Mr. Lord said that he was not conscious of a recruitment drive. On average there were over three thousand applications for membership each year. There was a queue and the limiting factor was the availability of places on syndicates.

Mr. Lord accepted that there was a tension between addressing liabilities with a very long-tail and the structure of a 12 month venture under which it was hoped to draw a final line at the end of three years. "The one thing that you can guarantee about reinsurance to close is that it will not be right, but it must be right to the best of the underwriter's ability. When you start to find that you have liabilities which are 30 years old, which may... have been imposed on you by a foreign legal system which extends cover beyond the point which it was intended to cover...then it is very difficult to accommodate that kind of business within an annual venture."

Mr. Lord said that one sees now with hindsight that sections of the market were seriously under-reserved, but there was no sense of that at the time. As to reserving for asbestos-related claims, Mr Lord said that in the Lloyd's context the question is, are the syndicates with exposure to asbestosis aware of the situation and are they taking steps to deal with it properly? He added that in a Lloyd's context one would say to individual underwriters and auditors "Are you sure in the light of the

available evidence that you are properly reserved, because its your business not mine." In his view that was what Mr. Murray Lawrence did.

Mr. Lord said that there is no doubt that information could have been assembled in an aggregate form. "One would then have had...the ability to say to the underwriters, 'Are you aware of this? Are you clear that in your reserving you have taken full account of the situation which this reflects?'. My problem is this: that if the underwriter had said, 'Yes I am, and I have done my triangulations with this in mind, and to the best of my ability my reinsurance to close reflects all this and my auditors have taken no exception to anything that I have done', then I think that in the Lloyd's system at that point one comes to an end." Mr. Lord added that the General Review Department would not have had the technical insurance expertise to re-work an underwriter's reinsurance to close. "One could only have done that by putting in a team of competing underwriters...to go through the numbers. That actually is what qualified Lloyd's auditors are supposed to do."

Mr. Lord pointed out that with about four hundred syndicates, to some extent in competition with each other, commercial information was particularly sensitive.

As to PCW, Mr. Lord said " For eight months we dealt with this matter with the greatest possible care" (with the assistance of Mr. Nigel Holland and Mr. Charles Skey) "and two years later it became quite clear that we got it wrong."

When asked "The one thing that we are looking at is whether people in senior positions with knowledge of the market knew (what you didn't)... that the market was under-reserved for asbestosis. Its as simple as that, isn't it?", Mr. Lord replied "Yes it is. It comes down to a question of whether the Globals...were written in good faith. Its my belief that they were".

Mr. Colin Murray

Mr. Murray was appointed active underwriter of non-marine syndicate 510/511 in 1974 and remained underwriter until 1985. He succeeded Mr. Kiln as Chairman of R.J. Kiln & Co Ltd in 1985 and remained Chairman until 1995. He was a member of the Committee and Council of Lloyd's from 1983 to 1986 and from 1989 to 1992. He was Deputy Chairman of Lloyd's from 1989 to 1990. Mr. Murray was elected to the Committee of LUNMA in about 1979 and resigned in 1984.

A general description of the book of business written by syndicate 510/511 is set out in the Merrett judgment.

Mr. Murray was a highly professional and skilful underwriter and I was assisted by his evidence.

In his witness statement Mr. Murray addressed the following topics:-

(a) background to R.J. Kiln & Co Ltd and the Kiln syndicates; (b) the Lloyd's market - general

observations; (c) market bodies; (d) the asbestos problem; (e) reserving and reinsurance to close; (f) closure of the 1979 year of account/Murray Lawrence letter; (g) run-off reinsurance; (h) the Council and Committee of Lloyd's; (i) the Members' Solvency and Security Committee; (j) recruitment/capacity; (k) the Donner inquiry; (l) his personal underwriting.

As to run-off insurance, Mr. Murray said that in the early 1980s Mr. Winchester approached him and asked him if he wanted to purchase a run-off policy from Mr. Outhwaite in respect of syndicate 510/511. He received a quotation from Mr. Outhwaite for unlimited cover excess of US$7.5 million at a net premium of US$850,000. The policy was to be effective from 1 January 1982. The offer was not accepted.

Mr. Murray said that if he had felt that the situation would ultimately be as serious as it turned out to be, he would have behaved differently in relation to the purchase of reinsurance. He added that the insurance industry was as slow or slower than Lloyd's in coming to terms with the ultimate cost of asbestos-related claims. "We were part of the industry, the industry was slow, we were slower than we should have been, and unfortunately our slowness contributed to losses made by many Names."

In his Chairman's Report dated 3 May 1995 Mr. Murray wrote:-

"Syndicate 510 is certainly one of the few if not the only syndicate that wrote a general Non-Marine account in the 1960s and that does not owe its survival to a reinsurance policy purchased from the Outhwaite syndicate or from one of the very few markets that offered this cover. Our survival is due to the fact that we have always attempted to keep our acceptance of liability business in the United States to a low percentage of our overall account and because our total group capacity has grown from approximately £1 million in 1963 to approximately £500 million today."

Mr. Murray accepted that with the benefit of hindsight he under-reserved in 1981 and 1982, but said that 510/511 was over-reserved at the time of R&R. Mr. Murray said that Mr. Kiln in his booklet about the first 20 years at R.J. Kiln stated that "I did not get asbestos right, I did not realise how damaging it would be".

As to information to Names, Mr. Murray said he was keen to ensure that Names on the Kiln syndicate were kept informed of the opportunities and problems of the business, including the developing asbestos problem. He did this in two main ways. The first was in his reports (as underwriter) which accompanied the syndicate's annual accounts. The second way in which Names were kept informed was through annual meetings of the Names.

Mr. Murray wrote the "Bannockburn letter" (see chapter 19 below).

Mr. Murray said that he considered that the Conning Report of September 1982 (see Appendix 3) was particularly influential. I attach particular importance to this evidence.

Mr. Murray wrote to Mr. Outhwaite in June 1985. "I informed him that I thought that the acceptance of such aggregate liabilities was a matter of "great materiality" and that his managing agent should have advised Names and members' agents before adopting such an unconventional and hazardous underwriting policy. I said that "the effect of writing a run-off stop loss is that the burdens of the many are carried by the few." I gave notice of the cancellation of our sub-agency agreement and the withdrawal of all our Names from the syndicate with effect from 31 December 1985."

As to asbestos, Mr. Murray said that he gradually became aware that there was "a tiger in the undergrowth". Mr. Murray accepted that there must have been a time or period when asbestosis began to contribute to the threat to the solvency of Lloyd's. He added that if it was suggested to the ruling body, or if the ruling body of its own recognised, that there was a threat to the solvency of Lloyd's, then the ruling body would have taken an interest. Mr. Murray said that between 1988 and 1992 it may have been appreciated that asbestos might affect Lloyd's solvency.

Mr. Murray said the "asbestos and pollution experience...has...communicated to me that the annual venture with the reinsurance to close is almost impossible to apply to long-tail business...this is why I really believe the future of the market is for corporate capital."

When giving evidence Mr. Murray said "My contemporary view...was that although one did one's best at the time to fix the figure (to reinsure to close) which without discounting would pay all claims, the assuming Names did have the cushion of the investment income and the capital gain. Therefore, if one had got it wrong and one needed to increase the figure at the end of the following year, then the Names would (probably) not be financially damaged by having assumed (the) reinsurance to close...by not discounting there was an extra cushion."

As to reinsurance to close, Mr. Murray said that the culture at Lloyd's at the end of the 1970s and the beginning of the 1980s was to close a year by reinsuring it into the next year of account wherever possible, however expensive that might be for Names on a closing year. By the late 1980s, the incidence of open years had increased so much that the concept of leaving a syndicate open was regarded by some underwriters as preferable to closure. In some cases it allowed very severe losses to be collected from the Names over a longer period of time.

As to the Lloyd's market, Mr. Murray said that in his opinion it was no part of Lloyd's function to usurp the role of the agents, working in conjunction with their auditors, in relation to the closure of syndicates' years of account, nor did the Committee/Council of Lloyd's have the information, time or resources to interfere in this area of the agents' businesses. Mr. Murray said that if he had been told that when he joined the Council of Lloyd's he was expected to make an assessment about Lloyd's exposure to asbestosis or pollution or anything else, under no circumstances would he have stood for the Council because he would have known that that was an impossible brief.

Mr. Bryan Kellett

In 1973 Mr. Kellett set up his own non-marine syndicate 993/994. B. P. D. Kellett & Co became sole managing agents in about 1981 or 1982. In early 1987 the functions of members' and managing agencies were divided and Kellett (Holdings) Ltd was formed. Mr. Kellett wrote most classes of non-marine business, including leading property facultative and excess of loss treaty business, as well as some LMX. He did not however write US casualty business except to a limited extent. Mr. Kellett resigned as underwriter at the end of 1989.

Mr. Kellett was Chairman of LUNMA in 1987.

Mr. Kellett was a member of the Council and the Committee of Lloyd's between 1990 and 1992.

In his witness statement Mr. Kellett addressed the following topics:-

(a) the business of syndicate 993/994; (b) LUNMA; (c) other issues; (d) his personal underwriting.

Mr. Kellett was a member of the Equitas Reserving Group for the 1992 and prior years. He worked on problems on syndicates in the short-tail catastrophe market.

Mr. Kellett bought a rollover policy for the 1974 account. Premiums were paid out of each of the years of account from 1974 until about 1982. It was used to assist with the computer leasing problem.

In 1974 Mr. Kellett wrote a small number of run-off policies for syndicates whose accounts had included a fairly general US casualty account. The syndicates in question were H. G. Poland syndicates 105, 106 and 109; C. P. Attenborough syndicates 531, 905 and 223; and F. R. Bussell syndicate 870. In June 1977 he obtained reinsurance cover for these run-off policies from Outhwaite syndicate 661. In 1980 Mr. Kellett re-entered the run-off market. He wrote a policy which protected the Bishopsgate Insurance Co. He took about a third, with Mr. Outhwaite and Mr. Drysdale writing the majority of the remaining two thirds between them. The policy protected the Bishopsgate's 1966-7 years in relation to their Drivers casualty account and their 1972-1977 years in relation to Weavers. Additionally in 1981 the Bracey non-marine syndicate 917, which had gone into run-off, was looking for cover to enable it to close-off its account. Mr. Kellett agreed to take a 33% share of an unlimited run-off reinsurance which protected its 1968-1974 underwriting years of account. In April 1982, an opportunity arose to reinsure with Mr. Outhwaite, and Mr. Kellett ceded the risks to Mr. Outhwaite's syndicate, retaining the first £500,000.

Mr. Kellett retroceded his syndicate's computer leasing risks to Mr. Posgate. As to this Mr. Kellett said:-

"I refer to it as a sort of over due which is a policy which has been used in the marine market for hundreds of years. When a ship was missing it would be quite normal for those who had an involvement in the insurance of the ship to go to the over due market, who made a book of writing this specific type of business. It was less common in the non-marine market. ...We knew there had been

losses on computer leasing. Mr. Posgate was taking a view on how much those losses would be, and was offering to reinsure if they should be in excess of a specified amount."

In 1987 the 1984 year of account of syndicate 993/994 was left open, because of the syndicate's involvement in policies which ran off the liabilities of deceased Names; these policies were picking up losses on the Outhwaite 1982 open year.

In November 1984 Mr. Kellett in company with Mr. Barber, Mr. Merrett, Mr. Holland and Mr. Parkington, made a presentation to the Inland Revenue. In the course of his presentation Mr. Kellett said in response to the Inland Revenue's contention that Lloyd's was over-reserved "...We are under-reserved. What concerns us is, how the industry can survive its under-reserving. ...The reinsurance to close, (will) in most cases continue to be placed with the following year of account... at what the underwriter believes to be its true worth, and what history will more probably show to be too little." These remarks by Mr. Kellett must be seen in the context in which they were made. He said there was a certain amount of hyperbole.

As to LUNMA, Mr. Kellett said that LUNMA was not part of the investigations branch or the regulator. It was a market association concerned to assist the market in doing what they wished to do in the market and facilitating the transaction of business around the world.

Mr. Richard Keeling

In 1970 Mr. Keeling commenced underwriting on syndicate 360 as deputy underwriter. Mr. Murray Lawrence was the active underwriter. Over time he assumed more responsibility for the syndicate's underwriting. Mr. Lawrence became Chairman of the Computer Leasing Working Party at the beginning of 1979; from 1979 he was also a member of the Committee of Lloyd's. These commitments took up a lot of his time and he therefore delegated much of the day to day underwriting responsibility to Mr. Keeling. In 1982 Mr. Lawrence effectively handed over the role of underwriter for syndicate 362 (as syndicate 360 had become) to Mr. Keeling. Mr. Keeling was appointed active underwriter of syndicate 362 in 1984. He continued as the active underwriter of the syndicate until the end of 1996.

Mr. Keeling was Deputy Chairman of Lloyd's in 1993 and 1994. He was Chairman of the Reserve Group established by Lloyd's for the purpose of the Equitas reserving exercise. At the conclusion of R&R he was awarded the Lloyd's Silver Medal.

Mr. Keeling struck me as a particularly astute underwriter.

Mr. Keeling addressed the following topics in his witness statement:-

(a) a description of syndicate 362; (b) the asbestos problem; (c) run-off reinsurance; (d) additional reinsurance protection; (e) disclosure to Names; (f) RITC process; (g) disputes with Outhwaite and

Meacock; (h) recruitment; (i) his personal underwriting; (j) allegations made against Mr. Murray Lawrence.

I refer above to the run-off policy and other protections purchased by syndicate 362 (under the heading Mr. Lawrence).

As to his syndicate's asbestos reserves, Mr. Keeling said that total reserves for asbestos (including outstandings and IBNR) at 31 December 1981 were approximately US$7 million. This figure had risen to US$44 million by 31 December 1987.

As to certain reports relied on by the Names as to the possible impact of asbestos-related claims, Mr. Keeling said:-

"Six months ago we had some very learned Government experts saying Y2K was going to cost between $600 billion and $1.5 trillion...it actually came out at very little, if anything. ... As an underwriter, you see an awful lot of Governmental and scientific reports and you've got to value them."

Mr. Paul Archard

Mr. Archard was a partner in Murray Lawrence and Partners and later Managing Director of both Murray Lawrence and Partners Ltd and the holding company, Murray Lawrence Holdings Ltd. Mr. Archard has always been on the accountancy/management side. Mr. Archard was Chairman of the LUAA Committee in 1992 and held that post until he was appointed to the Lloyd's Regulatory Board in 1993. Between 1996 and 1998 Mr. Archard was a member of the Council of Lloyd's. He was re-elected to the Council in 1999 and is currently a Deputy Chairman of Lloyd's.

Mr. Archard struck me as a careful witness.

In his witness statement Mr. Archard addressed the following topics:-

(a) C.T. Bowring/M.L.P.; (b) the LUAA; (c) recruitment/rota; (d) asbestos knowledge; (e) the RITC process; (f) run-off reinsurance.

Mr. Archard referred to the run-off policy purchased by syndicate 362 (2/3rds from the Outhwaite syndicate and 1/3rd from the Meacock syndicate) as a "sleep at night policy". He pointed out that in April 1982 the syndicate purchased a stop loss policy from Munich Re and that in 1984 the syndicate purchased a further stop loss reinsurance policy. These arrangements are described in more detail under the heading Mr. Murray Lawrence.

As to rota Mr. Archard said that rota was not the forum for raising specific claims issues or risks, although the general point about inheriting risks from the past was always made.

Mr. Robin Jackson

In October 1960 Mr. Jackson joined the largest professional reinsurer in the United States, the General Reinsurance Corporation as a trainee casualty facultative underwriter. He worked for General Re for 11 years until June 1971 in their New York office. He underwrote casualty reinsurance (or, liability business as it is known in the UK). In 1971 following a move back to England he started Unionamerica Insurance Co. Ltd for a Los Angeles based financial institution. Mr. Jackson was the Managing Director and was in charge of all underwriting. Unionamerica underwrote most classes of non-marine insurance and reinsurance.

Mr. Jackson joined the Merrett agency in September 1976 to take over from Mr. Leslie Dew as the active underwriter of the non-marine syndicate from 1 January 1977. When Mr. Jackson joined the syndicate in late 1976 it was called syndicate 772. The number was changed to 799 about one year later. Mr. Jackson ceased underwriting on syndicate 799 at the end of the 1988 account, but stayed on at the managing agency for a further two years full time to assist his successors. The 1990 year of syndicate 799 was left open.

Mr. Jackson was Chairman of LUNMA in 1986. He was also a member of the AWP from its inception in 1980 until 1996. From 1984 until 1996 he served as Chairman of the AWP. He was also a Director (and Chairman) of Toplis & Harding (Asbestos Services) Ltd, the service company established by the AWP in 1984 through which the AWP ultimately carried out its administrative functions. The name was later changed to Toplis & Harding (Market Services) Ltd. Mr. Jackson was a Director and Chairman of LMCS from 1990 until October 1998.

From 1994 to 1996 Mr. Jackson worked on the Equitas Project as one of a handful of people making up the Core Group of the Reserving Project. Between 1992 and 1994 Mr. Jackson was the Chairman and Chief Executive of Centrewrite, the first Lloyd's owned operation designed to underwrite (and therefore determine) members' obligations on syndicates in run-off. He was Chairman of and set up the Specialist Claims Unit, established by Lloyd's to handle asbestos, pollution and health hazard claims. This body became the basis for the Equitas Claims Department.

In short, Mr. Jackson has spent nearly forty years handling US liability business in some form or other. Mr. Jackson said that among the underwriting community only Mr. Ayliffe and Mr. Rayment knew as much as he did about asbestos-related claims, adding that they probably knew a bit more.

Mr. Jackson addressed the following topics in his witness statement:-

(a) his career in the insurance industry; (b) his experience of US liability business; (c) asbestos claims and the London Market; (d) the AWP; (e) the Johns Manville settlement; (f) the Wellington Agreement and the Asbestos Claims Facility; (g) DES and other claims; (h) the development of asbestos claims; (i) reinsurance; (j) the Global Accounts; (k) reinsurance to close; (l) expansion of capacity by syndicate 799; (m) disclosure of asbestos by syndicate 799; and (n) his personal

underwriting details.

As to asbestos-related claims, Mr. Jackson said that the unique and unprecedented features of the way in which such claims unfolded, was that they did not simply increase in number, peak, then subside, as with nearly all other claims. Instead, the claims reached a steady plateau between about 1982/83 and 1985, then just seemed to increase and increase in waves, facilitated by various inter-related factors. He added "I cannot emphasise enough how the Plaintiff Bar's extraordinary action in connection with asbestos was so fundamental to the development of these claims. ...Everyone recognised the contingency fee, ambulance chasing rationale which drove the Plaintiff Bar; but no one in the industry could have conceived that it would have the profound and grave effect it did."

In his witness statement Mr. Jackson said:-

"During the period 1979-1993 I cannot...remember anyone producing any hard statistical information on what share of asbestos claims was borne by the London market, let alone trying to work out what the relative exposure of the London market, as opposed to the US market, was to asbestos bodily injury claims. In July 1993...I gave a talk to the Association of Lloyd's Members in Boston. For the purposes of the speech I asked Peterson Consulting LP to try to obtain some statistical information as to the amounts paid by insurers and policy holders for asbestos bodily injury indemnity... On the figures which I presented to the meeting in 1993, Lloyd's share was approximately US$2.1 billion of a total of US$7 billion i.e. 30%. These figures made no allowance for outwards reinsurance placed by Lloyd's syndicates. They were not figures which would have been available during the period 1978-1988."

Mr. Jackson concluded his witness statement as follows:-

"It is difficult in a matter of pages to explain just how much time and effort I gave to the problem of asbestos... To be involved in this action after these efforts is insulting. ...Like others in the insurance industry, we at Lloyd's, in good faith, under-estimated the ultimate cost of asbestos losses... What I...strongly deny is any wrong doing in any of my dealings in asbestos matters."

Mr. Jackson pointed out that it doesn't follow that policy holders against whom asbestos-related claims were made had adequate insurance policy limits available to pay them. Mr. Jackson said that it was impossible to work out what the net exposure of Lloyd's would be to any particular risk.

As to his testimony given to Senator Nickles and others on 19 March 1985, Mr. Jackson said "I was perhaps over-egging a situation to try and get their attention."

Mr. Keith Rayment

Mr. Rayment was employed at R.W. Sturge from 1969 to May 1990 in their Claims Department. He was involved in the non-marine syndicates at Sturge, primarily syndicate 210. He became Claims

Director of syndicate 210 in 1979. (Mr. Rokeby-Johnson was the underwriter of syndicate 210 from about 1974 to about the end of 1987). From 1983 Mr. Rayment was a member of the Asbestos Working Party. He was a member of the Claims Sub-Committee of the AWP from about 1981 onwards. He also sat on the Reinsurance Claims Sub-Committee of the AWP from 1983. In 1984 the AWP set up a service company called Toplis & Harding (Asbestos Services) Ltd. He was a director of this company from the outset. When the company's name was changed to Toplis & Harding (Market Services) Ltd he remained a director. Mr. Rayment was one of the two London Market representatives (the other being Mr. Ayliffe) asked to negotiate with the asbestos producers and their insurers to reach what ultimately became known as the Wellington Agreement. Mr. Rayment assisted with the setting up of the Asbestos Claims Facility which came about as a result of the Wellington Agreement. In October 1988 the ACF ceased operation and the Center for Claims Resolution was formed by certain asbestos producers to provide similar services. Since then Mr. Rayment has been a non-voting member of the Board of the CCR.

Mr. Rayment first wrote business as a Name in 1980. Syndicate 210 left its 1990 year open. This was the last year that Mr. Rayment was a member of the syndicate.

Mr. Rayment, Mr. Jackson and Mr. Ayliffe were probably the three most knowledgeable people in the Lloyd's market as to asbestos-related claims.

Mr. Rayment struck me as a highly conscientious Claims Man who worked tirelessly to assist the market in relation to the handling of asbestos-related and other long-tail claims. I was greatly assisted by his evidence.

In his main witness statement Mr. Rayment addressed the following topics:-

(a) syndicate 210: asbestos-related risks; (b) syndicate 210: the determination of the reinsurance to close premium; (c) an overview of the nature of asbestos-related claims; (d) the work of the AWP; (e) reserving and attorneys' reports; (f) market knowledge of asbestos; (g) reserving by the Lloyd's market generally; (h) the development of asbestos claims; (i) the Wellington Agreement; (j) asbestos property damage; (k) asbestos bodily injury claims compared with asbestos property damage claims, DES and Agent Orange; (l) impact on other insurers.

In his witness statement Mr. Rayment said:-

"It is true that the Lloyd's Market has learnt, to its detriment, that asbestos has proven to be a unique claim in terms of the volume of underlying claims and the extent of the impact on the Lloyd's Market. But the plain truth is that, notwithstanding the wealth of experience and expertise that the Lloyd's Market had, and the enormous resources and effort which the Market threw into dealing with the problem, asbestos claims developed in a way which was not expected or anticipated by even the most experienced professionals in the Lloyd's Market. The true scale and cost of the asbestos problem is still difficult to quantify and indeed claims are still coming in at a very high rate. No one in the early

1980's anticipated that; not the Lloyd's Market, nor the Company Market; not even the US insurance and reinsurance companies. Asbestos has defied the entire world-wide insurance industry. The whole purpose of the AWP was to get information to the Market, not to withhold or conceal it."

Syndicate 210 purchased a run-off policy from Kemper Re and Fireman's Fund in 1974. The run-off protected the syndicate's 1969 and prior years of account.

As to Mr. Roger Bradley's alleged conversations with Mr. Rokeby-Johnson in 1973, Mr. Rayment said that Mr. Rokeby-Johnson never expressed any such views to him.

Mr. Rayment said that one thing the AWP did not do was to make any IBNR recommendations. Decisions in respect of IBNR were matters for the individual syndicate or company concerned. Mr. Rayment pointed out that the AWP did not try to calculate a figure representing the total reserve requirement of Lloyd's as a whole in relation to asbestos-related claims, let alone to do so by the method adopted by the Names. "I firmly believe that the only way in which a reserve requirement could, and indeed should, have been worked out, was by each syndicate looking at its own inwards book of business, looking at its own reinsurance protections, working out its own outstanding figures, and forming its own view in the light of all the information available to it, as to what its IBNR estimate should be, and hence arriving at its own decision as to what its reinsurance to close should be."

Mr. Rayment said that the market had coped with Allied Crude, Hurricane Betsy, S.M.O.N. (a problem arising from Japanese people taking too many enteroviaform tablets), Computer Leasing and many other claims. During the 1980s the asbestos problem behaved in a way which was quite unprecedented and became much worse than people in the market had anticipated.

Mr. Rayment provided a helpful chart of the development of asbestos claims (see chapter 16, Table 2 below). He said that:-

"Between the Borel decision in 1973 and the beginning of 1981, there were probably something in the region of 8,000 to 10,000 claims in that 8 year period. In the period between 1981 and the Wellington Agreement, the filing pattern was... "remarkably steady at 500 new claims per month." The "opening inventory" of the ACF in mid-1985 was about 25,000 claims. In the 18 month period after the Wellington Agreement the rate of claims rose initially to 700 per month and then to around 1,000 per month. In 1987 the claims rose to 2,000 per month (a fourfold increase in the level of claims pre the Wellington Agreement), and then went up to 3,000 per month, before settling at 1,500 per month for a while. By 1990, this had risen again, so that in the early 1990's the rate was about 24,000 a year; an annual total which was broadly comparable to the entirety of claims in the 10 year period after Borel (1973 to 1983). To bring the picture up to date: the current rate of claims is around 60,000 a year. The current total volume of claims (including those that have been settled) is approximately 450,000."

Mr. Rayment set out in his witness statement some of the interlinked reasons why things looked so

different at the end of the 1980s/early 1990s to the way in which they had looked in the early 1980s. He referred to a number of false dawns in connection with asbestos-related claims.

Mr. Rayment cited Johns Manville Corporation as an example of estimates of potential claims proving to be incorrect. In August 1986 the United States Bankruptcy Court for the Southern District of New York signed an order pursuant to which Johns-Manville undertook an extensive campaign designed to provide the maximum amount of publicity, with respect to the confirmation process of the Plan before the court. The campaign provided for national television and radio advertisements, newspaper advertisements in the six leading US and Canadian newspapers and in the largest circulation daily newspaper in each State, the District of Columbia and each Canadian Province. This publicity campaign was designed to inform as many future asbestos claimants as possible of the impact of the Manville reorganisation, upon whatever rights they might have against Manville as Debtor. I refer to the decision of Judge Lifland dated 18 December 1986 and the subsequent appeals. In his judgment dated 19 January 1995 Senior District Judge Weinstein of the United States District Court E and SD New York said:-

"When the distribution plan was confirmed in 1986, it was established that the Trust would receive approximately 83,000 to 100,000 claims over the course of its life into the middle of the next century. To date, the Trust has received approximately 240,000 claims and it is expected to receive hundreds of thousands more."

Mrs. Catherine Stynes

Mrs. Stynes qualified as a Chartered Accountant in 1979. After working for Baker Sutton & Co and Ernst & Whinney Mrs. Stynes joined the Corporation of Lloyd's in February 1984 in the AARD. The AARD was the Secretariat to the AASC and provided administrative support to AASC. Mrs. Stynes was appointed Manager of the AARD towards the end of 1984 and became Secretary to AASC. In October 1987 she moved to the Underwriting Agents Department as Manager. In 1989 she became Manager of the Policy Development and Review Department. Mrs. Stynes left Lloyd's in November 1991. While at Lloyd's she was known by her previous married name, Mrs. Cathy Shorthouse.

In her first witness statement Mrs. Stynes addressed the following matters:- (a) the role and responsibilities of the AASC and the AARD; (b) the Global Reports and Accounts; (c) accounting and audit issues.

Mr. Alan Pollard

Mr. Pollard is the Run-Off Operations Director of Equitas Ltd. Before joining Equitas in 1996, Mr. Pollard worked for the Corporation of Lloyd's for over 40 years. He was the Senior Manager of the Membership Group of Lloyd's between 1977 and 1983. In 1983 Mr. Pollard moved to the Lloyd's Policy Signing Office. In October 1988 Mr. Pollard was appointed Director of Administration of AUA 4 Ltd, a specialist company formed by Lloyd's to administer the run-off of certain syndicates. In 1989

the company changed its name to Syndicate Underwriting Management Ltd and in 1990 Mr. Pollard was appointed its Managing Director. SUM was responsible for the run-off of Lioncover which in 1987 had reinsured the PCW syndicates.

In his witness statement Mr. Pollard addressed the following topics:-

(a) information to applicants; (b) Rota Committee interviews; (c) Brochures; (d) regulation of admission procedure; and (e) growth in membership.

Mr. Simon Tovey

Mr. Tovey worked for the Corporation of Lloyd's between 1984 and 1989, latterly as the Manager of the MSSD.

Mr. Tovey joined Lloyd's in April 1984 as an Assistant Manager in the MSSD. He remained as Assistant Manager to Mr. Tony Parkington until August 1985. He was then seconded to work for Mr. David McWilliam, who was head of the Regulatory Services Group, as successor to Mr. Randall. Mr. Tovey stayed there for no more than a year, and then went back to the MSSD as Manager, succeeding Mr. Parkington. He stayed there until March 1989 when he was offered a job by the Sturge Group.

Mr. Tovey addressed the following topics in his witness statement:-

(a) the organisation of the MSSD; (b) alleged concealment of asbestos problems; (c) the Annual Solvency Test; (d) the work of the MSSC; (e) MPRs; and (f) the Statement of Facts on the Regulatory Background.

Mr. Ian Simister

In 1982 Mr. Simister was working as Project Manager of the Management Service Group at Lloyd's. He gave evidence of the postal distribution system within Lloyd's in 1982.

Mr. John Garner

Mr. Garner was called to respond to the evidence of Mr. Steel (see above).

Mr. Garner joined the LIBC in 1986. He remained on the LIBC until the end of 1990. He was Deputy Chairman in 1988 and 1989 and Chairman in 1990.

Mr. Garner referred to the comments which Mr. Steel alleged were made by Mr. Lawrence and Mr. Cockell during a LIBC dinner. Mr. Garner did not recall any such remarks being made by Mr. Lawrence or by Mr. Cockell at a dinner at which he was present, or on any other occasion.

Mr. Alastair Clark

Mr. Clark is the Executive Director, Financial Stability, at the Bank of England. He has line responsibility for the Bank's relationship with Lloyd's. He had some involvement in matters relating to Lloyd's in previous posts in the Bank, but not before 1987.

Mr. Clark referred to references in Names' witnesses statements to a letter from the Bank of England to major banks, purporting to have warned banks of risks and losses associated with underwriting at Lloyd's. Further the Bank of England has had a number of enquiries in the last two years from various individuals alluding to the existence of a report (sometimes referred to as the Armageddon Report), or in one or two instances a letter. In response to these approaches Mr. Clark commissioned a number of reviews of the Bank's records in those areas of the Bank where he would have expected any such report or letter to have been prepared. Nothing found gives any indication that such a report was prepared or that such a letter was written. In addition, Mr. Clark has spoken to a number of those who were at the time Directors or senior staff of the Bank and who would have expected to see, or have been involved in the preparation of, a report or letter on this subject. None of them recalls any such report or letter. In addition the issue has been discussed with Lord Richardson, who has no recollection of a report or letter on this subject.

Statements admitted under CPR Part 33.2

Statements were admitted under CPR Part 33.2 from Mr. Patrick Bird, Mrs. Mary Hitchcock, Mr. Thomas Hitchcock, the Treasury Solicitor, Lord Kingsdown, Mr. Paul Morris, Sir Jeremy Morse, Mr. Ralph Rokeby-Johnson, Mr. Joseph Hodges and Mr. Robert Keville.

Mr. Robin Aaronson

Mr. Aaronson is Director of the London office of LECG, which is the economics and policy practice of Navigant Consulting, an international consultancy firm. Mr. Aaronson has been a consulting economist for about 14 years. Prior to joining LECG, he was a partner in the firm of PricewaterhouseCoopers. Before that he was a member of the Government Economic Service, first at H.M. Treasury, and then at the Monopolies & Mergers Commission.

Mr. Aaronson was instructed as an expert to analyse whether there was any economic evidence that the changes in Lloyd's capacity during the Relevant Period, resulted from exposure to asbestos losses, which did not affect the London market as a whole. In his report he said:-

"I have discovered no evidence that the changes in Lloyd's capacity resulted from exposure to asbestos losses, whether they affected the rest of the London market or not. It might fairly be argued that there is no economic evidence which, even in principle, could prove or disprove the hypothesis. If the hypothesis were true, however, I would have expected to find some pointers to it in the data, for example in Lloyd's capacity expansion during the Relevant Period being particularly concentrated in

certain markets, or being unrelated to capacity increases elsewhere. The economic evidence I do have points to alternative explanations for the changes in Lloyd's capacity, and does not support the proposition as stated above. In my view, the changes in capacity experienced at Lloyd's can be adequately explained in terms of external economic and commercial forces."

Mr. Aaronson accepted and emphasised the limited contribution he could make to the issues that I have to decide, as reflected in the passage quoted above.

Witnesses not Called by Lloyd's

Lloyd's did not call a number of witnesses whose witness statements were exchanged. In reaching the conclusions set out in this judgment I have had regard to the fact that Lloyd's did not call these witnesses and I have considered whether any adverse inferences should be drawn.

16. AN OVERVIEW OF THE NATURE AND DEVELOPMENT OF ASBESTOS-RELATED CLAIMS

Appendix 3 contains a Chronology of certain information relevant to asbestos-related claims for the Relevant Period. The keys (SI = syndicates at interest or interested insurers; SS = syndicate specific; PA = Panel Auditors; AWP = Asbestos Working Party) represent an attempt to identify recipients of a document, but do not constitute a finding that any particular individual or syndicate received or was aware of the document or its content. Although Appendix 3 contains extracts from documents, I have of course had regard to the whole of each of the documents referred to (and all other material before the court). Appendix 2 contains a list of US cases concerning coverage etc for asbestos losses for the Relevant Period.

Introduction

Although there have been a variety of mass toxic tort claims in the United States, none have had or continue to have the profound and lasting impact on the global insurance industry that asbestos-related claims have had.

The first problems perceived in relation to asbestos were in respect of asbestos-related bodily injury claims. The first wave of workers bringing asbestos bodily injury claims tended to be those exposed to asbestos in the 1940's and 1950's, often in the shipbuilding industry. The claims which workers brought against policyholders were then presented to the London market under third party general liability policies extending to cover products liability. The products liability sections of such policies were usually written in the aggregate. When Lloyd's issued these policies it was not anticipated that occupational injury claims, let alone asbestos bodily injury claims, would be covered by these policies. In fact, until asbestos claims, these were policies which had rarely been claimed upon. They had previously been profitable policies to write.

The main diseases alleged by claimants to have been caused by exposure to asbestos were (in order of severity of injury) mesothelioma, lung and other cancers, asbestosis and pleural plaques. A typical asbestos claimant would inhale the airborne asbestos particles usually in his workplace. The majority of asbestos claimants over the years have alleged either asbestosis or pleural diseases both of which are dose-related i.e. dependent upon exposure over a significant period of time. Mesothelioma, and certain other cancers, on the other hand, may be contracted after much shorter doses, perhaps even a single short exposure to asbestos.

In 1964 Dr. Selikoff published the first epidemiological study of insulation workers and asbestos diseases; and since then, studies have appeared in medical journals documenting the relationships between asbestos exposure and disease. According to Mr. Rayment, to the extent that insurers would have had asbestos in mind as a potential claim, that would only have been in respect of occupational disease and employer liability policies.

In 1980 the London market's US attorneys, referred to Dr. Selikoff's prediction of 20,000 asbestos-related deaths per year. There are now something like 60,000 claims a year being made, but it was not until towards the end of the 1980's that the insurance industry began to receive anything approaching 20,000 claims a year in total. The majority of the claims over the years have been in respect of asbestosis and pleural diseases. On the whole (apart from the most severe asbestosis claims), these illnesses have not caused deaths. The claims which are more likely to be linked to deaths are those which are cancer-related. But the claims arising from the severe mesothelioma (which is a cancer claim) have remained fairly constant at around 4%, and cancers overall have accounted for around 10-20% of the claims. In the early 1980's the volume of claims was much lower: around 6,000 a year in the period up to the Wellington Agreement. The number of cancer claims was again only a small percentage of that figure: in the hundreds, not the thousands. The insurance industry has never in fact seen anything like 20,000 cancer-related claims a year.

In the case of asbestos-related claims the exposure which the individual has suffered is not as a purchaser of goods on the open market for his own private use, but rather exposure to the product within, usually, the occupational workplace. The majority of these claims involve people who have been exposed to asbestos fibres in their environment, usually their working environment.

Asbestos-related bodily injury claims arising out of workplace exposures started to develop at a time when the products liability laws in the United States were undergoing change. Originally, these types of claim, to the extent that they were even advised to Lloyd's, came through as workers' compensation claims.

Claimants had to undergo medical examinations before the compensation boards prior to having a claim accepted. Even assuming that a claimant could produce the necessary medical and factual evidence required to qualify for workers compensation, the benefit received by an individual was normally expressed as a percentage of their basic income. In most cases, the top benefit would be two-thirds of their average weekly income. In practice, given that the type of worker who might bring a claim in respect of injury caused by asbestos exposure could usually be classified as a low income

earner, even the highest compensation available was, in real terms, modest to a person who was totally disabled or whose life expectancy was severely shortened.

Prior to 1965, if a claimant wanted compensation outside the workers compensation laws, he would have to bring a legal action for bodily injury caused by exposure to asbestos based on theories of negligence or breach of warranty. Until 1965, only the actual purchaser of a product could bring a products liability claim against the producer.

In 1965, the American Law Institute issued the second edition of Restatement of the Law of Torts, which significantly enlarged the categories of persons potentially eligible to bring a products liability claim. The new rule ("Rule 402A") eliminated the "privity of contract" requirement for a products liability claim. Thus, not only the direct purchaser, but also any individual who might foreseeably be injured by a product, could bring products liability claims.

One of the first products liability lawsuits which successfully used "Rule 402A" and involved an asbestos bodily injury claim was Borel vs. Fibreboard et al. The case was filed in 1971 in US District Court, Eastern District of Texas. Clarence Borel's asbestos-related injury was due to workplace exposures to asbestos products. These products were supplied to his employer company by a number of asbestos suppliers or producers, of which one was Fibreboard. The case, having reached the appellate courts in 1973, was the first major US case where the courts found liability on the part of the manufacturers on the basis of products liability.

Following Borel, asbestos claims against producers, in time, became more common. A typical case would involve a group of claimants alleging injury against a number of asbestos products manufacturers. A typical claimant was often a transient worker. These workers would have various skills and would be based at a local union hall. Employers who required people for particular projects would go to the union hall to employ the workers needed. These workers would then be employed for the particular project. On completion of the project, they would return to the union hall and await their next employment. Therefore, a typical claimant, who would work for a number of different employers during the course of his working life, would have been exposed to many different asbestos products at different work-sites or projects. Thus, by naming as many of the asbestos producers as possible, the claimant would increase his likelihood of success at trial. In turn, the producers who were being sued might issue a cross-complaint against other producers so as to reduce their potential liability. Workers' compensation had brought only modest compensation. The Borel ruling meant that there was now a way of obtaining compensation which did not require workers to establish negligence, to avoid the worker's compensation route. However, during the 1970's asbestos-related claims remained relatively few, compared with what was to happen later. Prior to 1980 there were only about 950 asbestos cases filed in the US Federal courts.

The number of filings has continually increased since then, with the most significant increase from the late 1980's and through the 1990's. To date there have been about 450,000 individual claims filed. At the end of 1988, (the end of the Relevant Period), there had only been about 100,000 claims filed. The claims are filed in State and Federal courts in virtually every jurisdiction in the United States.

Manifestation Versus Exposure Debate

Whilst the decision in Borel meant that claimants could bring products liability suits against producers, it did not necessarily follow that the producers' products liability insurance policies provided coverage for these claims. Initially, insurers raised a number of defences against the claims made under these policies.

These defences were:

(1) "Expected/Intended". Most modern policy definitions of the term "occurrence" include an exception if the injury or damage was "expected or intended" by the policyholder. However it was not often possible to prove this.

(2) "Non-disclosure/Misrepresentation". However, as many policies were placed in the 1940's through to the 1970's, policyholders could argue that asbestos claims were minimal at the time and would not have impacted insurance policies.

(3) "Known Loss/Known Risk". Courts had generally held that it is not possible to insure against a loss in progress or a known loss. These defences were unsuccessful, due in no small part to the fact that courts which were considering asbestos cases were under significant social pressure to find in favour of coverage.

Prior to asbestos-related claims, it was rare for the London market to become involved in substantial litigation with their policyholders. However, one of the major issues as between the policyholder and its insurers (and indeed amongst the insurers themselves) was the basis on which coverage for asbestos-related claims would be provided; namely, which policies and which insurers would respond to a claim, or what was the "trigger" for coverage.

By the late 1970's, the London market insurers had to consider the basis upon which policies would respond to the 'date of loss' issue. For example, the loss could have occurred at any point during the whole period in which the claimant was exposed to asbestos (the 'exposure' theory); or it could be argued that the loss occurred when the disease resulting from the claimant's asbestos exposure manifested itself or was diagnosed (the 'manifestation' theory).

Bell Asbestos, a Canadian mining company and its primary insurers eventually came to an agreement in 1977 as to the basis on which insurers would respond to the current and future claims. The London market was asked to support the agreement (which adopted an exposure basis) even though, at this stage, the London market had no financial involvement with the claims. This request caused some concern to the market in general. A number of underwriters did not consider the exposure theory allocation to be valid under the terms of the policy. Nevertheless, as a result of the negotiations that took place between Bell and the London market, the London insurers decided to accept the agreement,

albeit on a without prejudice basis. (The London market did not pay any losses under policies in respect of Bell until the early 1990's).

Notwithstanding the Bell agreement, it was not until the Eagle Picher and, more importantly the GAF declaratory actions which were filed in 1978 and 1979 respectively, that a large part of the London market became familiar with the manifestation versus exposure debate. Accordingly, it was not until around 1979 that the London market really had to address and take a position in that debate.

Proponents of the exposure theory, which in 1979 included most policyholders and some members of the insurance industry, argued that each injurious inhalation of asbestos fibre causes injury. Accordingly, it was argued, each insurer who provided coverage during the period of time that the claimant was exposed to asbestos fibres should pay a proportion of the damages. Supporters of this theory were able to point to the Borel case, as well as to expert medical testimony that confirmed the progressive nature of asbestos-related diseases.

Those who, on the other hand, supported the manifestation theory, argued that bodily injury did not occur until the continuous and progressive injury process had overcome the body's natural defences and the individual evidenced some symptoms of an asbestos-related disease or some form of dysfunction. Therefore, the date when the claimant became aware of an asbestos-related disease, or the date when the disease was diagnosed (whichever occurred first), was the controlling date for determining which insurance policy should respond.

By the end of 1979, six declaratory actions had been filed. This coverage litigation caused much concern in the insurance markets in both the US and London, not least because of the legal costs involved.

The London market and, in particular, claims men were troubled about the market split in respect of coverage which was apparent in the responses to the increased number of declaratory actions. The fact that the market was split in terms of coverage meant that there was not a co-ordinated response from those involved; on the contrary, the uncertainty over the application of insurance policies lent itself to an inconsistent and impractical approach to the handling of asbestos-related claims within the London market.

The Work of the AWP

I have already referred briefly to the AWP in chapter 10. The AWP's principal aim was to gather information and get it to the market as soon as possible. There was no question of the AWP concealing information nor of downplaying its importance or significance.

There were a number of factors which combined to provide the impetus for the formation of a market body, the AWP, to provide co-ordination and consistency in the handling of asbestos claims by the London market. One of the factors was the manifestation versus exposure argument.

The AWP was established in August 1980. Initially its membership comprised five leading underwriters and four claims personnel from the Lloyd's and Company markets, whose organisations all had interests in US casualty business. Mr. Robin Jackson, Mr. Rokeby-Johnson, Mr. Charles Skey, Mr. Don Tayler and Mr. Ted Nelson (the first chairman) sat on the AWP. The claims sub-committee of the AWP was initially made up of Mr. Philip Froude, Mr. Leslie Kemp, Mr. John Heath and Mr. Jim Ayliffe. Mr. John Heath was the claims manager for H.S.Weavers and represented the Company market from the outset. This claims committee was the driving force behind AWP activities.

For the first two years of operation, the AWP's claims committee, dealt primarily with direct insurance matters only. Later, the AWP created a reinsurance claims committee to deal with the increasing number of reinsurance claims being advised (the original claims committee then became known as the direct claims committee). Mr. Rayment was a member of both. The members of both AWP claims committees were drawn from the senior claims managers of leading Lloyd's and Company market insurers; they were very often leaders of policies written in the London market. These leaders had day-to-day involvement in handling asbestos claims for the accounts which they led. In addition to the claims committees of the AWP, when notifications were received in respect of claims presented against policyholders, specific working claims committees were set up to deal with the policies at issue in respect of each policyholder. As these 'working' or 'ad hoc' claims committees were established for the purpose of claims processing, negotiating and if needs be, providing support in asbestos claims litigation, the leading underwriters on the policies would be invited to serve on the committees on an ad hoc basis, for the purpose of dealing with the claims in question, irrespective of whether they were on the AWP or one of its formal committees. This meant that claims were handled in accordance with the usual market practice (that is by the leaders of the policies in conjunction with their attorneys), with the added assistance provided by members of the appropriate (i.e. direct or reinsurance) AWP claims committee.

The AWP claims committees met on a much more frequent basis than the full AWP in order to discuss individual claims, evaluate the overall claim trends in the United States and consider general issues. Claims committee members were aware of the developments in the United States law relating to both coverage issues and claims handling issues. This knowledge was acquired not only through membership of the AWP claims committees but as a result of hands on experience of day-to-day syndicate matters.

Participation in the AWP was sought from all sectors of the London market and the working party grew. There were representatives from marine and non-marine syndicates; from the Company market including a representative from the Institute of London Underwriters and from the Reinsurers' Offices Association. Although these representatives did not have authority to represent the other members of their organisations, their involvement was sought to bring as wide a perspective as possible from the various sectors of the London market when considering the problems arising from asbestos claims.

The AWP was formed, primarily, with the objective of co-ordinating activity in the area of asbestos-related claims. The AWP liaised with the various entities involved regarding the collation and

circulation of information to the London market. The distribution of information to the market was probably the AWP's principal preoccupation. However, the AWP had other functions, one of which was to provide a forum for discussing the problems relating to asbestos claims. It was also the aim of the AWP to explore solutions which might be available to resolve some of the issues raised by asbestos-related claims.

The AWP had no involvement in the resolution of the manifestation versus exposure debate.

The AWP did not make any IBNR recommendations. The AWP considered that decisions in respect of IBNR were matters for the individual syndicate or company concerned. I find that the decision of the AWP not to make IBNR recommendations was an honest decision taken for understandable commercial reasons.

Prior to the establishment of the AWP, attorneys were retained usually by the leaders on the slips to advise on the liability claims presented either by policyholders ("servicing attorneys") or in respect of coverage litigation commenced by policyholders against insurers ("litigation attorneys").

Both the servicing and litigation attorneys reported to the London market. The servicing reports dealt with reserve recommendations in respect of insured claims. The litigation reports contained no reserving information but reported on the progress of litigation from either a manifestation or exposure standpoint. Servicing reports provided underwriters with information to assist both syndicates and companies in setting their reserves. That information was in respect of known claims, such as the number and nature of claims; the average settlement costs of the claims; how the indemnity and expense costs could be allocated over the policies and years on risk; and what the recommended reserve figure would be. The attorneys writing the servicing reports (at the AWP's request) began to try to estimate the likely numbers of claims per insured to the end of each accounting year.

Attorneys began sending the servicing reports in draft and these would be discussed by the claims committee.

As the number of both claims and insureds increased significantly over the years, the number of reports that each syndicate or company in the market would receive per year grew enormously. The servicing reports would go to those syndicates and companies which were on the policies at risk for a particular insured. In order to give an overview to every syndicate and company in the market, the AWP decided to ask attorneys to provide an annual overview report in respect of asbestos claims generally. The insured-specific year-end servicing reports focused on information such as reserve recommendations and increases in claims against that particular insured.

In addition to the attorneys' reports, Mr. Jim Ayliffe or the chairman of the AWP sent

out a market circular in respect of major developments or particular asbestos claims issues.

The AWP recognised that the traditional method by which attorneys' reports were obtained and distributed within the market was not appropriate for the handling of asbestos claims.

The London market's standard practice for adjusting claims made under their policies was as follows. The first stamp or participant of the slip is known as the leading underwriter (sometimes there is more than one leader) and it is this company or syndicate which makes the main decisions and recommendations to the other participants on the slip (the "following market"). Invariably, the leader on a slip had negotiated the premium for the policy and would generally be considered expert in the type of business written. The lead syndicates or companies would handle asbestos claims, as they would all potentially serious liability claims, in conjunction with experienced lawyers. The leader would appoint an attorney to advise on the claim. When a claim was made under a particular policy, the claim would be notified to the broker who originally placed the policy and the broker would prepare a claims file. This file would contain all the claims documentation and a copy of the relevant slips. The file would be shown to the leading underwriter for his review and comments. Then, the file would be presented to the following market for review. Each participant would 'scratch' the file to indicate sight of the documents. Comments might also be made on the file, for instance, syndicates or companies might comment as to whether they agreed with the leader's actions or not. All following syndicates and companies do have the right not to agree to a particular course of action or settlement proposed by the leader. However, in the great majority of situations, the following market tended to adopt the position taken by the leader. This was the standard market practice. Attorneys' reports advising on the claims were traditionally addressed to "Underwriters at Interest" and were sent care of the London broker. The attorneys' report would be placed in the claims file prepared by the broker and circulated around the market. This had been done for many years; albeit, there were exceptions to this system if warranted in individual circumstances or, if due to matters of privacy or concern over litigation and discovery, it was thought that the London broker should not be involved.

There were a number of problems with adopting the usual claims handling procedure for asbestos-related claims. First, the leaders on slips for asbestos-related claims might have espoused 'manifestation', whilst participants further down the slip might have been 'exposure' proponents.

As regards the actual coverage litigation between policyholders and their insurers, two sets of litigation attorneys would have to be appointed because of the market split. One attorney would be retained to advise on the course of the litigation from a manifestation perspective, another attorney would advise on the litigation from an exposure viewpoint. Each 'litigation report' would be privileged as between the attorneys and their respective clients; syndicates who supported manifestation as the basis of coverage could not see exposure litigation reports and vice versa.

There was also another privilege issue. The London market insurers recognised that brokers were the agents of the policyholders. This caused the market some concern. Insurers would not wish brokers to reveal details contained in the attorneys' reports, but, as agents of the policyholders, brokers were obliged to pass on information which might be of interest to the policyholders. This meant that circulation of the attorneys' reports by the brokers was not practical.

Further, as both the number of claims against policyholders and actions for declaratory relief by those policyholders increased, so did the volume of attorneys' reports coming into the market. The pressure on the brokers in respect of the distribution of the reports around the market was very great. There was concern that there might be a delay in some participants on the slip being advised of the asbestos claims. The brokers might not always be able to circulate the claim files to the smaller participants at the end of the slips efficiently due to the sheer volume of claims coming in to the market. An asbestos claim might spread over a 20 year span of insurance coverage (in later years it became evident that there might be 30 or 40 years of insurance coverage targeted). In addition, coverage was usually purchased in layers. Each layer might have 50 Lloyd's syndicates and companies subscribing. Often a syndicate or company would write the policy for a number of years. Therefore, an asbestos producer with a claim could have 200 syndicates and 100 companies insuring it. The attorneys' reports (and claims files) would have to be seen by all those participants. Those near the end of the slips might not see the report for months. This was considered to be a serious problem and it soon became apparent to the AWP that a different method of circulation was required.

Initially, the AWP retained Elborne Mitchell, a firm of solicitors, to hold any reports of a confidential nature. The market was asked to visit Elborne Mitchell's office in order to review documents retained there.

By the end of 1981, when the AWP had been in operation for a full year, it was decided that office space ought to be retained by the AWP. This was the start of the more stream-lined distribution process undertaken by the Toplis & Harding service companies and, ultimately, LMCS. Space was obtained from LUNCO and an AWP office established. Ms Ann Seavers was employed to run the office and to carry out and oversee the distribution of information to the market.

One of the first things Ms Seavers did was carry on the process (originally undertaken by the AWP claims committee members) of locating all slips with asbestos exposure. This was part of building up the coverage picture of every insured. She contacted the brokers and obtained slips from which she could ascertain the identity of every participant on every slip for every year in issue.

The fact that asbestos-related claims potentially affected policies written many decades earlier gave rise to problems in identifying the policies which had been written. The starting point for a claim is when the policyholder puts the underwriter on notice. But this notification process had happened in the past in different ways, for example, a notification through a broker or perhaps a claim on US attorneys. In some cases, more than one broker would be involved, and this might result in notification to two different sets of underwriters and the appointment of two sets of attorneys.

These notifications might themselves not identify all the potential coverage that was available. In some cases, insureds had destroyed or mislaid their documentation, or the documentation pointed to one broker's involvement whereas another broker had been used on different years.

These problems were addressed by sharing information, obtaining the more detailed information

required (for example, on the coverage which had been written) and appointing one attorney for each insured so as to avoid duplication.

The AWP (and eventually the Toplis & Harding service companies) spent considerable time unearthing the other policies to which London may have subscribed in order to complete the 'jigsaw' of coverage for each insured. Once details of the policies were found, this was provided to attorneys in order for them to build the coverage profile. As more coverage was identified for each insured, a more precise reserve evaluation could be recommended. Ms Seavers would also then contact the underwriters subscribing to those additional policies to put them on notice of the potential asbestos claims. Often, when the AWP claims committee reviewed the policies, the committee discovered there were coverage issues with the original policyholder; generally these were over the cost clauses or the period and limits of the policy if the policy was not an annual policy.

The building up of the complete coverage profiles for each insured was a complex process. The signing of the Wellington Agreement and the setting up of the ACF enabled the claims committee to resolve virtually all of the coverage disputes regarding the policy wordings for the policyholders subscribing to the ACF. Potential signatories to the Wellington Agreement, as a pre-requisite, had to agree a document known as a 'Schedule D' which recorded all known applicable coverages for each policyholder.

In order to facilitate the distribution of information, the AWP claims committee, or appropriate members of the committee, would pass to Ms Seavers copies of any attorneys' reports which they had received. She would be asked to copy and distribute the report to all the participants on all the slips for all years at issue (in respect of claims presented to insurers), or to either the manifestation or exposure participants who had insured particular insureds (in the case of litigation reports).

Thus each participant received a copy of the attorneys' report and, importantly, received it as soon as was practicable after receipt of the report by the leaders/claims committee.

As time went on and the number of reports to be disseminated to the London market increased, the AWP realised that it needed to establish a company through which it could manage administrative matters. The AWP borrowed the Toplis & Harding name to set up Toplis & Harding (Asbestos Services) Limited in 1984. Toplis & Harding (Asbestos Services) Limited in due course became Toplis & Harding (Market Services) Limited to reflect the fact that the AWP's operations had by 1986 expanded to deal with pollution and other health hazards.

In 1981, following the formation of the AWP, the AWP claims committee, on behalf of the London market, retained Alexander Grant & Company to develop and implement the Claims Information System. The heart of the system was its database. The primary purpose of this database was to provide timely and relevant information to the servicing attorneys.

The numerous complaints being filed in the US against policyholders were reviewed and analysed.

The information from that review was fed into the database, which captured over 40 categories of information for each claim, including:

· claimant name and related parties

· jurisdiction(s)

· all defendants named

· local plaintiff law firm(s)

· employer(s)

· the dates of exposure

· diagnosis/manifestation and death

· smoker data

· settlements, etc.

There were a number of key facts that the AWP claims committee together with the servicing attorneys wanted to capture for each claimant, whether the claim was still pending or settled: for example, the dates on which the claimant was first exposed to asbestos; the manifestation date; the various producers filed against; the type of disease alleged; and the amounts paid both for indemnity and defence.

From the database, a number of reports could be obtained:-

Closed Case Bordereau A separate report for each insured that listed key claimants' data in all cases that had been closed.
Open Case Bordereau A separate report for each insured that listed key claimants' data in all open cases.
Master Claimants' Bordereau A master list of every claimant on the database. Key data was printed for each claimant together with data about the defendants whom the claimant filed against.

Closed Case Summary A separate report for each insured that contained the total and average indemnity loss during sequential half-year periods.
Indemnity Loss Allocation A separate report for each insured that allocated loss reserves and indemnity losses to policy periods by both exposure and manifestation theories.
Defendants Named by Claimant A report that listed, for each defendant, the number of times that defendant had been named by claimants.
Percent. of All Years Exposure A separate report for each insured that calculated, for each calendar year, the percentage of claimants which alleged loss during that year, under both exposure and manifestation theories.
Average Settlement Loss A separate report for each insured that calculated the average indemnity loss by year and by state.
Average Loss/Claimant by Disposition A separate report for each insured that calculated the average indemnity loss by year and disposition.
Average Loss/Claimant by Disease A separate report for each insured that calculated the average indemnity loss by year and by type of disease.

The reports generated were used by the attorneys for the purposes of their year-end reporting including reserve recommendations. The print-outs from the database were sent directly to the AWP office where they were retained for review.

Reserving and Attorneys' Reports

In his witness statement Mr. Rayment explained the basis on which the reserve figures contained in attorneys' reports were compiled and the way in which a claims manager would use those figures in order to enter a reserve figure for outstanding claims in his syndicate's books.

Johns Manville

Johns Manville was one of the major defendants in the US.

Settlement negotiations involving the London market, Travelers, and the Home Insurance Company took place. In a letter from Manville's lawyer, Mr. Curtis Caton of Heller Ehrman White & McAuliffe in August 1982, Manville suggested that:

"projections suggest that, over time, J-M will suffer 40,000 [asbestos] claims and expend an average of US$30,000 to defend and dispose of each claim. The projected cost totals US$1.2 billion."

The letter went on to suggest that 18% of the day to day costs of Manville's asbestos litigation was attributable to "Old London's years of coverage", and that the cost to London on an exposure basis would be US$200 million.

The settlement which was ultimately reached in July 1984 involved the payment to Manville of a total of US$315 million, of which the London market paid US$94 million. Mr. Rayment said in his witness statement "The settlement has proved to be a good deal, such was the explosion in claims in the latter part of the 1980's".

It is to be noted that:

(1) Mr. Caton's letter indicated that London's share of Manville's loss was put at around 18%, and Manville's loss was itself only a proportion of the total asbestos loss.

(2) Manville's projection of 40,000 claims against it was, as events were to show, a very significant underestimation of the extent of the problem. But this was not foreseen at the time.

Mr. Rayment cited Johns Manville Corporation as an example of estimates of potential claims proving to be incorrect. In August 1986 the United States Bankruptcy Court for the Southern District of New York signed an order pursuant to which Johns-Manville undertook an extensive campaign designed to provide the maximum amount of publicity, with respect to the confirmation process of the Plan before the court. The campaign provided for national television and radio advertisements, newspaper advertisements in the six leading US and Canadian newspapers and in the largest circulation daily newspaper in each State, the District of Columbia and each Canadian Province. This publicity campaign was designed to inform as many future asbestos claimants as possible of the impact of the Manville reorganisation, upon whatever rights they might have against Manville as Debtor. I refer to the decision of Judge Lifland dated 18 December 1986 and the subsequent appeals. In his judgment dated 19 January 1995 Senior District Judge Weinstein of the United States District Court E and SD New York said:-

"When the distribution plan was confirmed in 1986, it was established that the Trust would receive approximately 83,000 to 100,000 claims over the course of its life into the middle of the next century.

To date, the Trust has received approximately 240,000 claims and it is expected to receive hundreds of thousands more."

Manville has continued to receive claims which are now paid from the Manville Personal Injury Settlement Trust. This trust was set up as a result of the Manville bankruptcy proceedings. The number of claims against Manville, including claims administered by the trust, now exceeds 400,000.

Market Knowledge of Asbestos

Although the AWP was a focus of activity and a source of knowledge it was not the only means by which syndicates or companies could make themselves aware of developments in respect of asbestos claims. If syndicates or companies had wanted to ask further questions of the US attorneys, there was no difficulty in doing so. Information could also be obtained from other contacts, for example brokers or reinsureds. In addition, there was a considerable flow of information about asbestos in both the general and specialised insurance press. Periodicals, such as Business Insurance, as well as Lloyd's List which is published daily, were widely read in the market.

As a result of the AWP's efforts and the information that was publicly available, there was nothing that was hidden from the market. Information was freely available to those who had written risks which were subject to asbestos claims; and this information was available, and provided to syndicates, whether they were a major non-marine syndicate which had written a large line on a slip, or a small marine syndicate which had taken a tiny line as part of its incidental non-marine account. The market, whether it took its own steps to find out information or simply waited for information provided by the AWP, was well aware of the developing problem of asbestos during the 1980's.

Reserving by the Lloyd's Market Generally

As the 1980's progressed, the techniques used by the attorneys in providing reserve estimates for known asbestos claims became more sophisticated, not least because of the information that was gathered in the database. This database was ahead of anything else that was available, and was eventually used by the ACF together with data supplied by the policyholders.

Throughout the Relevant Period the AWP continued to believe that the right approach was to gather together the best available information about the claims made against London market insureds, and establish specific reserves for those claims, based on that information. For most syndicates (and, I assume, London market companies), this claims data was the starting point for their IBNR assessments.

The Lloyd's market was a very competitive market place: each syndicate would keep its own business to itself. The only people in a position to decide whether or not a year should be closed are the syndicate underwriters and their auditors. There were so many variables - for example, what had the syndicate written; at what levels; what were the policy limits; what was its reinsurance protection; had

it bought run-off; had it got rollovers or time and distance policies; did it have surplus in its short-tail or other reserves; the underwriter's philosophy and the business plan of the active underwriter etc. - that it is quite impossible for any outsider to form a view.

The market had coped with Allied Crude, Hurricane Betsy, SMON (a problem arising from Japanese taking too many enteroviaform tablets), Computer Leasing and many other claims. But these and many other problems costing hundreds of millions of pounds had been dealt with and the Lloyd's market had a good profits record over many years. But during the 1980's, the asbestos problem behaved in a way which was quite unprecedented and became much worse than people in the market had anticipated.

The Development of Asbestos-Related Claims

Whilst certain events can now be seen to be key moments (for example the Keene decision), it is easier in retrospect to identify an event as a key development. Mr. Rayment in his witness statement identified the principal reasons why things looked so different at the end of the 1980s and in the early 1990s from the way in which they had looked in the early 1980s, when the problem had been appreciated as significant, but nothing like as serious as it eventually became. The reasons are of course interlinked and there may be others which should be identified.

The starting point is the sheer volume of claims which eventually came to be made. Table 2 illustrates the growth of the problem.

TABLE 2

THE GROWTH IN THE NUMBER OF ASBESTOS-RELATED PERSONAL INJURY CLAIMS

YEAR	CUMULATIVE CLAIMS NOTIFIED	SOURCE	CLAIMS PER MONTH/YEAR	SOURCE
Pre 1980	950 cases in total filed in Federal Courts (no figures available for State Courts)	AR 15.12.94		
1980	"8,000 or more cases filed to date"	AR 1.10.80	100 per month 1,000-1,2000 pa for next 6-8 years	AR 3.10.80 AR 24.12.80 AR 24.12.80

1981	14,526 at year-end	Mr. Nelson's statement at panel auditors' meeting		
1982	"well over 20,000" at year-end	AR 20.1.83	500 per month	AR 28.6.82 AR 20.1.83
1983	27,548	AR 14.6.83 C.I.S. figure as at 22 May 1983		

YEAR	CUMULATIVE CLAIMS NOTIFIED	SOURCE	CLAIMS PER MONTH/YEAR	SOURCE
1984	30,000	AR 1.3.85	5,000 per year projected increase	AR 1.3.85
1985 (pre the Wellington Agreement)	25,000 is "opening inventory of ACF"	AR 1.8.88		
1985 (post Wellington Agreement)			"noticeable increase" to 8,500 per year (i.e. 700 per month)	AR 22.8.85
1986	54,000 as total projected asbestos universe at year-end (includes settled claims)	AR 24.8.87	1,000 per month in the latter part of 1986	AR 24.8.87
1987	80,003 as total projected asbestos universe at year-end (includes settled claims)	AR 24.8.87	2,000 per month; 3,000 claims filed in August 1987	AR 24.8.87 AR 1.8.88

1988	98,222 as total projected asbestos universe at year-end (includes settled claims)	AR 1.8.88	1,500 per month over the past 10 months	AR 1.8.88

YEAR	CUMULATIVE CLAIMS NOTIFIED	SOURCE	CLAIMS PER MONTH/YEAR	SOURCE
1989	102,978 (CCR projected universe at year end)	AR 28.8.89		
1990	139,131 (CCR projected universe at year end)	AR 1.8.90	3,300 per month in June 1990; projection of 2,200 per month. 13,000 filing in Federal Courts alone	AR 1.8.90 AR 24.12.94
1991	-	-	-	-
1992			2,003 per month for year to 31 May 1992	AR 24.8.93
1993	218,361	AR 24.8.93	2,500 per month for year to 31 May 1993	AR 24.8.93
1994	250,000 in past 10 years	AR 15.12.94	24,000 per year for past few years	AR 24.12.94
2000	450,000	Mr. Rayment	60,000 per year	Mr. Rayment (estimate)

Thus between the Borel decision in 1973 and the beginning of 1981, there were probably something in the region of 8,000 to 10,000 claims in an eight year period. In the period between 1981 and the Wellington Agreement, the filing pattern was (according to an AR dated 1 August 1988) "remarkably steady at 500 new claims per month." The "opening inventory" of the ACF in mid-1985 was about 25,000 claims. In the 18 month period after the Wellington Agreement the rate of claims rose initially to 700 per month and then to around 1000 per month.

In 1987, the claims rose to 2,000 per month (a fourfold increase in the level of claims pre the

Wellington Agreement), and then went up to 3,000 per month, before settling at 1,500 per month for a while. By 1990, this had risen again, so that in the early 1990's the rate was about 24,000 a year; an annual total which was broadly comparable to the entirety of claims in the 10 year period after Borel (1973 to 1983).

The current rate of claims is around 60,000 a year. The current total volume of claims (including those that have been settled) is approximately 450,000.

These figures show that despite Borel and despite what is on any view a considerable volume of claims over the lengthy period between Borel and the Wellington Agreement, it was only after the Wellington Agreement that the filings of claims increased dramatically. The fact that the ACF dissolved within just three years after the Wellington Agreement, demonstrates that asbestos-related claims did not proceed in the way that producers and insurers thought they would proceed.

The sheer volume of claims defied expectations and has made the problem much more serious and expensive than was anticipated. It was not, for example, an increase in the cost of settling individual claims which caused the problems; the recommended reserving for known claims has in fact stood up very well. Mr. Rayment said in his witness statement - "What caught us, and the rest of the insurance industry, out, was quite simply the unforeseen increases in the number of claims".

I now turn to consider some of the interlinked reasons why things looked so different at the end of the 1980s and in the early 1990s, from the way in which they had looked in the early 1980s.

At the beginning of the 1980's, there were those who thought that claims brought by asbestos claimants could, to some extent, be successfully defended. The defences thought to be available included:

(1) that a particular claimant had not suffered a "compensable" injury. This would not, of course, be available where the claimant was suffering from mesothelioma or asbestosis, but was a possible defence where the symptoms were much less serious, such as pleural plaquing and pleural thickening;

(2) that the products produced by various producers were not unsafe. For example, a producer might produce a product which was sealed, such as floor tiles. The argument would be that such products were not inherently dangerous, since they did not release asbestos fibres into the air. Similarly, there were arguments that any problem with the product resulted from the purchaser's failure to use or maintain the product properly;

(3) that the claimant's injury was substantially caused by smoking. The claimants were, in the main, blue collar workers who would in many cases be heavy smokers. Whilst such a defence was clearly not available if the worker did not smoke, or if his condition was unrelated to smoking, it was thought that compensation would be substantially reduced in many cases where smoking could be shown to be a contributing factor.

Later in the 1980's, however, any sense of optimism changed. The attitude of the courts had been shown to be very favourable to plaintiffs. Pleural plaquing and pleural thickening had been recognised in many states as "compensable" injuries. The courts had generally rejected the attempts by producers to dismiss claims, through summary judgment applications, on the basis that insufficient injury had been caused. Similarly, the defences of "safe product" had generally failed to impress juries, particularly when it was shown that a "safe product" had been subject to a process of cutting or alteration which might have released fibres. Reliance upon smoking did have a degree of success in terms of reduction of damages for contributory negligence, but this was counterbalanced by the risks of taking a case through a jury trial.

A further significant difficulty in relation to the availability of defences was presented by the sheer volume of claims that were eventually made. Whereas in the early period it was possible to consider and evaluate each case separately, and resources were devoted by producers and their lawyers to this process, this became increasingly difficult as the volume of claims increased. In the early days, the producers generally had a different attitude to the claims being made against them. They would spend time looking at the merits, and did not want to be seen as a soft touch. They were much more defence oriented. By the end of the decade, however, things had changed. It was simply not possible to examine each claim in depth, particularly since, as time went on, multi-filings on behalf of many claimants became common. Some basic evidence would be required before a settlement offer would be made. But it was not possible or cost-effective to probe the evidence presented by each claimant in great detail, or to seek to prepare evidence to counter the case advanced. It was better to settle; and the purpose of the ACF was to settle meritorious claims without the need for the claimant to resort to litigation.

The result of these developments was that producers became generally less confident that they would achieve defence verdicts. As time went on, some producers who were named as defendants took the view that they could not risk fighting any case, for fear that any defeat would result in them becoming a more popular target: their name would find its way into the plaintiff attorneys' word processors, and they would become an automatic defendant in future cases. Other defendants had already suffered this fate. For example, Keene Corporation had fought and lost cases in the early days. Keene became a major target, and was eventually forced into bankruptcy, even though (according to their senior management) they had only sold about US$700,000 worth of asbestos products in the whole of their corporate existence.

Those manufacturers who did decide to fight cases found that this strategy was unsuccessful. For example, one manufacturer spent something like US$11 million in defence costs before making any indemnity payment. The ATLA (American Trial Lawyers Association) targeted that company in particular, and succeeded in bringing it to its knees.

At the same time as producers were finding it increasingly difficult to win cases against claimants, the insurance industry was finding it increasingly difficult to obtain any success in the insurance coverage litigation. I refer to Appendix 2 (List of US Cases concerning coverage for Asbestos Losses for the

period 1978 - 1988). The debate prior to Keene was whether policies would respond on an exposure or manifestation basis. According to Mr. Rayment for some considerable time afterwards, the Keene decision was regarded as an aberration. The decisions of the US courts became more and more pro-insured. It is said that there was a considerable amount of social engineering, so as to ensure that claimants were left with solvent defendants. The producers had, by the end of the 1980s, far more certainty that their insurance policies would respond, and how they would respond, than they did at the beginning of the decade. The availability of insurance cover, as determined by the courts, meant that the motivation to fight cases became less strong.

The successes achieved by claimants in the asbestos litigation, the difficulty which the producers had in dealing with the volume of claims and the perception that the courts would strive to ensure the availability of insurance coverage so that producers could meet the claims against them, served to encourage the plaintiff bar and fuel further claims. The plaintiff bar knew the jurisdictions which were most likely to prove favourable. There was forum-shopping, with New York and the southern states being regarded as particularly favourable.

Asbestos-related litigation became a lucrative area for American lawyers. For the first time ever lawyers set up mobile x-ray units at workplaces in order to identify new claimants. The workers would go into the unit and have an x-ray. If this showed any irregularity, such as a shadow, they would be signed up as claimants then and there. This resulted in a large number of individuals, who might otherwise have never brought claims, becoming claimants. As part of this process, the plaintiff bar targeted traditional industries (for example shipyards) in new locations, and also other industries (for example, motor and allied trades and the steel industry and, to a lesser extent, talc manufacturers, tyre manufacturers etc.) which had not initially been targeted. The number of claims per month which the lawyers were ultimately able to generate is reflected in Table 2.

The number and variety of defendants increased. In early 1982 the London market was concerned with about 14 defendant producers of asbestos products. Further not all of the producers who were defendants in the US had placed, or were understood at that time to have placed, their insurance in the London market. Eventually, 14 companies became something in excess of 250 companies, which were either directly insured or reinsured by the London market.

As bankruptcy overtook some of the original producer defendants, or as their insurance coverage became depleted or exhausted, the plaintiff bar turned its attention to other defendants, for example installers, building owners and others who might have manufactured, handled or distributed products containing asbestos. In some instances, new defendants only came to light when litigation had commenced, usually through the discovery process. The result was a very significant number of defendants who would never have been thought of as potential defendants in the early 1980's.

An associated problem which arose from this growth in the number of defendants was that hundreds of millions of dollars' worth of untapped coverage became exposed. As these defendants were very peripheral, no policy exclusions were generally included in their coverage until very late in the day, if at all. This development was the complete opposite of the way in which, for example, DES had

developed. With DES, reserves in the early days had been set up in respect of around 30 manufacturers, but in the end it all boiled down to three major defendants.

A related adverse development involved so-called "premises claims" against building owners. Premises claims arise from plants or other working environments where asbestos products were in the fabric of a building providing lagging for pipes etc.. There were two sorts of employees who would typically bring these claims: the first category being permanent employees and the second category being independent workers hired for particular projects. The latter category of workers (premises claimants) was more significant in relation to premises claims. A typical premises claimant would therefore file suit against a number of building owners alleging injury whilst working at a number of sites. Most premises claims reported to date involve either the utility or petrochemical industries, both of whom (i) employed large numbers of workers over many years; (ii) relied upon asbestos insulation within their high-temperature production operations; and (iii) are high profile, "deep-pocket" defendants due to their net worth and extensive insurance coverages, which again probably only had asbestos exclusions in later years, if at all.

Towards the end of the 1980's (post 1988) Owens Corning, a major producer, adopted a particularly unhelpful strategy which further expanded the class of defendants - their "outreach" programme. They prepared a three volume book containing labels of numerous asbestos products produced by other companies. Owens Corning would ask a claimant whether he recognised any of the labels from his working life. If he did, the companies which manufactured the products recognised would be joined as additional defendants thereby spreading the liability of Owens Corning. An additional 50 or more defendants were added as a result of the actions of Owens Corning, each of which would then look to its own insurance protections. Every time a new insured presented a claim to the London market, it was necessary to track down coverage in respect of that new insured.

The initial focus of the London market was on the low level excess policies. But the volume of claims was eventually such that it pierced those, and went through to higher layer excess policies. Amongst the policies which were eventually impacted were policies written in the late 1970's and early 1980's for insureds (for example, GAF, Johns Manville and Owens Corning) with known asbestos exposure, and other insureds whose asbestos exposure might not have been known when the policies had been written. In addition, it impacted upon reinsurances and retrocessions. The overall impact on reinsurance was not foreseen in the early period.

Asbestos property damage claims also became significant through the 1980's. In the event these claims have not proved to be anything like as significant as seemed possible at one stage, but they were not apparent as a significant problem in the early period. I deal with this factor below.

There was an expectation that as years passed, the dates of claimants' first exposure to asbestos would become later and therefore no longer impact the early years of insurance coverage. The anticipated effect was that not all the coverage in the early years would be exhausted. But this situation has yet to occur. Allied to this point is the fact that the anticipated decrease in the seriousness of illnesses giving rise to claims has not occurred, notwithstanding indications from time to time that such a decline was

beginning to occur.

The Wellington Agreement

When the Wellington Agreement in respect of asbestos bodily injury claims was signed in June 1985 those who had negotiated the Wellington Agreement believed that asbestos bodily injury claims would be run-off in an orderly manner. Greater certainty with respect to the coverage issue had been achieved and it was hoped that costs would be significantly reduced. Mr. Rayment said in his witness statement "Although we believed that this would take some years, the end was now in sight, and the way in which we would reach the end had been put in place. ... No-one foresaw the way in which asbestos claims would take off, as they did, in the years following the Wellington Agreement."

The Wellington Agreement was the product of intensive negotiations between insured asbestos producers and their insurers over the preceding two and a half years. Mr. Robin Jackson, with appropriate authority, signed on behalf of Lloyd's syndicates, with the London market companies signing individually on their own behalf. The objectives for all interests was to develop a more cost effective way in which to handle the underlying tort cases and to resolve the many pending declaratory judgment actions throughout the United States. The negotiations for the Wellington Agreement related in particular to the application of coverage and the numerous attendant policy issues. These were complex in nature and at the time that the Wellington Agreement was signed, there was every indication that a 'triple trigger' would continue to be adopted if pending cases were to proceed. In that environment, insurers had no alternative but to recognise the triple trigger philosophy in their negotiations but at the same time, try to evolve in an orderly manner how loss allocations could be made.

The Wellington Agreement resulted in the formation of the Asbestos Claims Facility which was a claims handling facility. Each subscribing producer and each subscribing insurer designated the ACF as its sole agent to administer and arrange on its behalf for the evaluation, settlement, payment or defence of all asbestos bodily injury claims against subscribers. Any claim made by a claimant against a subscribing producer was therefore automatically dealt with by the ACF, rather than by the producer concerned.

It is important to note the distinction between the Wellington Agreement and the ACF. The Wellington Agreement regulated the rights and obligations between the subscribing producers and subscribing insurers. Membership of the ACF was capable of termination, whereas other rights and obligations of producers and insurers under the Wellington Agreement continue in perpetuity. One of the significant achievements of the Wellington Agreement was the settlement of the many declaratory judgment actions and coverage disputes between producers and insurers. The producers would not have agreed to settle and dismiss these actions unless they were sure that the settled issues could not be re-opened at some later date. It was therefore important that the Wellington Agreement (as opposed to the ACF) bound the parties forever. Thus, if the ACF was to be dissolved (as in fact occurred), the agreements reached between producers and insurers concerning the settlement of disputes between them and the resolution of various coverage issues which were in dispute, would stand.

The ACF decided whether the claim should be defended or settled and acted accordingly. In the event that it was necessary to disburse any sums, whether by way of settlement, paying compensation as the result of an unfavourable court decision, or in legal costs, the ACF did so and allocated a percentage of such sums to each subscribing producer. The percentage that each subscribing producer had to bear was determined in accordance with the formula set out in appendix A-1 to the Wellington Agreement.

Once each subscribing producer's share had been calculated (its "generic share"), each of that producer's insurers bore a proportion of the liability thus incurred. All subscribing producers contributed to every claim dealt with by the ACF according to their generic share, whether or not they were initially named in the claim or lawsuit commenced by the claimant. The generic share assigned to each producer was based on the historic asbestos claims statistics prior to the establishment of the ACF. Accordingly, no legal costs were wasted on inter-producer, producer/insurer or inter-insurer disputes, because agreement had already been reached as to how coverage would be applied.

The setting up of the ACF gained the approval of the US judiciary, significantly reducing, as it did, expenditure on legal costs. Prior to the ACF, approximately 1,100 law firms in the United States had been involved in defending asbestos litigation. The ACF immediately reduced this number to around 60, and by 1988 was employing only 55 firms for its legal defence work. Furthermore, the number of cases actually litigated after the Wellington Agreement had been signed was a very small proportion of the total number of claims.

In addition, prior to the ACF, verdicts in favour of the producers against their claimants were obtained in only 28% of all claims that went to trial. The average court award was US$600,000. As a result of the more professional approach adopted by the ACF, by 1988 verdicts in favour of the defence were achieved in 65% of all cases which went to trial and the level of average awards had reduced to US$330,000.

The ACF, in conjunction with the courts, was also responsible for introducing innovative settlement techniques, namely the pleural registry and green card procedure. These were methods by which the Statute of Limitations was suspended for a claimant so that if the claimant developed a "compensable" injury at a later date, he could re-file his complaint.

It should be noted that the mere fact that a producer was not originally named by a claimant was not conclusive of its ultimate liability. If the Wellington Agreement had not been in place, asbestos producers would have continued to name other asbestos producers, not named in the original complaint, in cross complaints. This was a major achievement of the Wellington Agreement, which caused an immediate and dramatic drop in the amount, and costs of litigation.

Mr. Jim Ayliffe was appointed as London's representative on the Asbestos Claims Facility board of directors. Mr. Rayment was nominated as an ex officio non-voting director. Various members of the AWP, including Mr. Robin Jackson, Mr. Ayliffe and Mr. Rayment, undertook a series of "roadshows" to explain the reasons for signing the Wellington Agreement and creating the ACF. These speeches

were made to various sections of the insurance and reinsurance markets. The purpose of these talks was to gain the support of insurers and reinsurers. The support of reinsurers was important because they would be called upon to pay reinsurance claims arising from payments made under the Wellington Agreement.

There are some within the market who feel that the Wellington Agreement and the ACF attracted claims which might otherwise not have been made. There are others who think that it had the effect of merely accelerating claims which would in due course have been made in any event. The one-stop service provided by the ACF proved attractive to the plaintiff lawyers, who were keen to see how efficiently it worked. A similar point might be made in relation to the Center for Claims Resolution, whose figures for future settlements have attracted a degree of publicity.

Asbestos Property Damage

The year to 31.12.81

In October 1980, the AWP was advised of the possibility of claims by property owners, claiming that the value of their buildings was diminished by virtue of the inclusion of asbestos, and that such claims had a potential value which could be very substantial. They suggested that property damage claims should be monitored separately. In April 1981 insurers at interest were advised of potential property damage claims by schools districts based upon the necessity for retrofitting non-asbestos products in order to make school buildings once again "safe". There were no recommendations of any specific reserves, whether precautionary or otherwise. The claims which were being brought at that stage, were the bodily injury claims, and this was very much the focus of the attorneys' reports that were received. Property damage was an area which might develop in the future, but which had not yet given rise to any claims activity of note.

The year to 31.12.82

An order was made by the US Environmental Protection Agency in May 1982 which required all schools and similar public buildings constructed prior to January 1979 to be tested within 12 months to determine the presence of friable asbestos. There may have been isolated instances of property damage claims before this order, but this was the origin of the bulk of the subsequent property damage claims, especially those relating to schools.

Whilst this order alerted insurers to the potential for an increase in underlying claims against asbestos building product manufacturers, the London market's initial response was to question whether liability would be established at all. Insurers, both in the US and the London market, did not accept that there was liability under their policies of insurance. There was a question as to whether the claims were really in the nature of "property damage" at all, and whether there had been an "accident" or "occurrence". In addition, even if liability was established, the London market considered, for the purposes of coverage, that only a single date of loss would apply, being either the spread date the

product was installed or the date that damage was discovered. Therefore, the market rejected a Keene type spread impacting all policies from installation to discovery.

As a result of the E.P.A. order, two class actions in May 1982 were filed in the Court of Common Pleas in Philadelphia, Pennsylvania on behalf of schools and other public buildings in Pennsylvania.

In the 1982 year-end general market report produced by US attorneys in January 1983 (addressed to the Chairman of the AWP and subsequently circulated to the market), the market was advised that it was likely that considerable activity would develop with regard to damage existing in buildings which incorporated asbestos and that substantial questions arose as to the extent to which any coverage was afforded by the policy wordings and the occurrence date of any coverage that was found to exist. The AWP was to continue to monitor these claims, but the attorneys did not think it appropriate to recommend any specific reserves for property damage claims.

The year to 31.12.83

During 1983 the London market was made aware of additional property damage filings. US attorneys reported in June 1983 the filing of two actions against Dana Corporation. One action was brought on behalf of all schools in Pennsylvania. A second national complaint relating to over 110,000 public and private schools was filed. The complaint was against 50 defendants. The attorneys' recommendation, in relation to Dana, was that underwriters maintain the file without reserve for loss, and that US$2,500 be reserved for their fees and expenses.

In the main, cases were filed against five defendant manufacturers. By the end of 1983, over 35 actions had been filed by various schools districts in various jurisdictions.

In their year-end reports, London market counsel recommended precautionary ground up reserves for some manufacturers. US$100,000 per year of account was the recommendation in respect of one assured. US$500,000 was recommended in respect of a specific property damage claim against another assured. All property damage precautionary reserves were allocated in addition to reserves for bodily injury, after the bodily injury reserves had been applied.

Two assureds filed coverage litigation actions against the London market in late 1983, in Cook County, Illinois and in Los Angeles, California respectively. In a general market letter (in January 1984) for the 1983 year, US attorneys emphasised the importance of achieving a uniform approach within the London market relating to the coverage issues for the attachment of building claims. Advice was obtained from lawyers representing the manifestation and the exposure underwriters in the California Co-ordinated proceedings as to the appropriate trigger for any coverage. Copies of their letters of advice were circulated with the general market letter. Both firms recommended that the appropriate date, for which the market should argue, was the date of discovery of the "damage." As a consequence the market was able to (and in due course did) present a united front on this issue.

In the meantime, the manufacturers were defending the underlying cases vigorously. The typical allegations were: (i) negligence; (ii) strict products liability; (iii) fraud and conspiracy; (iv) unjust enrichment and restitution; and (v) trespass/nuisance. The typical defences were:

(i) product identification, i.e. the manufacturer would contend that his product had not been installed in the building;

(ii) economic loss, i.e. that there was no physical damage to the property and hence no tortious liability;

(iii) no risk/no hazard, i.e. that the asbestos product had been, or remained, safe;

(iv) statutes of limitations; and

(v) statutes of repose.

The year to 31.12.84

During 1984 there was a continuing increase in the number of property damage filings against producers.

London market attorneys increased precautionary reserves to US$1million per year of account on three assureds and to US$200,000 on certain other accounts.

The year to 31.12.85

In August 1985, US attorneys reported that a manufacturer had successfully defended a schools district case in Tennessee, although they cautioned against drawing "unwarranted conclusions". They also reported the outcome of Lac D'Amiante du Quebec vs. American Home in the District Court of New Jersey. The judgment adopted a triple trigger theory of coverage. The coverage was spread from installation until discovery or removal of the asbestos-containing product. The case involved both bodily injury and property damage. The judgment was appealed.

London market attorneys continued to monitor the increasing underlying claims. They recommended that the precautionary reserves be increased to US$1,250,000 ground up per policy year for the three major defendants.

The year to 31.12.86

The Asbestos Hazard Emergency Response Act was passed in 1986. As a result of this legislation, the E.P.A. undertook a substantial review of schools and other public institutions in the US.

US attorneys reported in September 1986, a degree of success on the part of one assured in dismissing property damage claims.

No further coverage decisions were made in 1986 and the Lac D'Amiante du Quebec vs. American Home decision was still under appeal. London market attorneys continued to monitor underlying claims. The number of filings was increasing and the attorneys recommended reserves of US$5million per year of account for the three major defendants where policy limits deemed it appropriate. These reserves were no longer precautionary, but were recommended reserves. The attorneys also recommended increases in reserves, albeit to a lesser degree, in respect of some other defendants. For example, instead of their previous precautionary reserve of US$200,000, they recommended a US$200,000 reserve per year in relation to one assured, where the policies were not otherwise exhausted by bodily injury claims.

The year to 31.12.87

US attorneys' August 1987 report contained a detailed discussion of the developments relating to asbestos property damage. Producers had had a degree of success in resisting claims, but some adverse verdicts had been sustained by four manufacturers. By August 1987 there were 150 pending property damage lawsuits against producers and between 50 and 100 additional notices of demand. Judgment had been given in favour of insurers in a further coverage action, USF&G vs. Wilkin. The court had held that the claims against the producer were not in respect of property damage, but economic loss, and that installation of asbestos in a building was not an "accident". This decision was, however, subject to appeal.

In view of the increasing activity in relation to property damage claims, and the availability of more information about these claims, the annual reserving meeting held between the AWP's representatives and two firms of US attorneys resulted in a different and more detailed approach to reserving for the known claims. Gross removal costs of US$9,242,822,000 were calculated, but it was felt appropriate to discount this overall figure to reflect the uncertainties; for example, as to whether liability would be established against the producers and by the producers against insurers. This resulted in reserves being calculated on the basis of ground up losses totalling US$2.5 billion.

It is important to emphasise that these were ground up loss figures, that is, the loss to the insured from the ground up. It did not follow that Lloyd's, or the London market, would need to reserve for the full amount of US$2.5 billion in respect of these producers. The amount to be reserved for any particular producer depended upon various factors, including, for example, the deductibles and limits of the policies written and whether or not any particular policy had already been reserved fully for bodily injury claims. In addition, of course, the market had settled the claims with Johns Manville in 1984 on its 1950's and 1960's coverage.

The recommended reserves were spread over the policy years involved in each account and thus allowed for a decision, adverse to the London market's position, on the issue of whether the loss attached at the date of discovery.

These reserves represented a very substantial increase over what had been recommended in previous years.

The year to 31.12.88

In 1988, it was decided that the servicing attorneys should issue separate general market overview reports in respect of property damage and bodily injury, instead of the combined report previously issued. A detailed 20 page report dealing with property damage claims was issued in July 1988, and this was circulated to the London market in the usual way. The market was advised that there were at least 209 separate actions pending against major insureds of the London market. These actions included 8 class actions (2 certified, 6 pending). Three further insurance coverage decisions were rendered in 1988 subject to appeal or final adjudication. These were Pittsburgh Corning vs. Travelers - Eastern District of Pennsylvania; W.R. Grace vs. Continental Casualty - Eastern District of Texas; and Carey Canada vs. Celotex vs. Aetna - District of Columbia.

The trial court in Pittsburgh Corning vs. Travelers held that the presence of asbestos in buildings did constitute property damage, as the asbestos became part of a finished product and resulted in the diminution in the value of the building. The decision on trigger of coverage was that the property damage occurred only when the presence of the asbestos material had been discovered and the market value of the property declined. In contrast, the decision in W.R. Grace vs. Continental Casualty adopted a trigger from installation to removal and it appeared that Carey Canada was likely to be decided in the same way.

Further studies had been conducted following the 1986 AHERA statute. The results of these studies were issued in 1988. The statistics showed that 733,000 public and commercial buildings (defined as all buildings other than state and municipal buildings and school buildings or residential buildings with fewer than 10 units) contained friable asbestos. The EPA estimated that it would cost some US$51billion to take remedial action in respect of all such buildings.

In light of the above, at year-end 1988 the London market's attorneys provided

insurers with a more comprehensive reserve methodology. This resulted in the reserves increasing substantially - particularly for the three major target defendants.

As each property damage defendant had identifiable products, separate percentage allocations of reserves were used for school buildings and public and commercial buildings. A combined total of US$4billion was recommended - US$2billion for schools and US$2billion for non-schools.

Reserves were recommended on a modified continuous trigger approach, as a recognition of the mixed coverage trigger decisions. Reserves were allocated to years of coverage commencing with the first effective date of coverage or involvement with a product containing asbestos and ending no later than

1983. 1983 was the cut-off date as discovery should have taken place by that date. On analysing the underlying claims' installation to discovery dates, it was recognised that a higher percentage of claims would fall to the later years.

According to Mr. Rayment the reserves set at the end of the 1988 year-end have held up very well. "Looking back from today's perspective, I can say with some confidence that the ultimate ground up property damage losses to the various insureds will be within the figures which were used for reserving purposes at the 1988 year-end."

Asbestos Bodily Injury Claims Compared With Asbestos Property Damage Claims, DES and Agent Orange

It is useful to compare the way in which asbestos bodily injury claims have developed, with the way in which some other long-tail claims have developed. Asbestos property damage claims, DES and, to a lesser extent, Agent Orange, are examples of claims which had a very serious loss potential, but which ultimately proved containable in a way that asbestos bodily injury claims have not.

Asbestos Property Damage

Asbestos property damage claims had a very serious potential due to the sheer number of buildings with a potential asbestos problem. In the event, although the market has had to pay significant sums in respect of these claims, the problem did not take off in the way that bodily injury claims did and indeed has now diminished. One of the reasons for this is that the EPA eventually decided that building materials containing asbestos already in place, if undisturbed, should usually remain in place in schools and other public buildings. Removal of asbestos was therefore not required if it was in good repair, since non-friable asbestos, or enclosed asbestos, was not considered a significant health risk. The EPA initially required the removal of asbestos from buildings. After lobbying by a group of producers, the EPA changed its position.

There have been limited additional property damage filings in the last few years, and according to Mr. Rayment it is very unlikely that there will be any significant new filings in the future, not least because of time-bar problems (although time-bars do not apply to government claims). Mr. Rayment believes that the overall reserve figure of US$4 billion in 1988 will hold good.

DES

Diethylstilbestrol was a drug prescribed by doctors for the treatment of certain pregnancy disorders, primarily the prevention of miscarriage. The drug was prescribed to approximately 2,000,000 women from the early 1950's. The drug continued to be prescribed until the US Food and Drug Administration banned it in 1971. When DES claims were first made, the London market was advised that approximately 300 companies might have manufactured the drug. The principal manufacturer of the drug was Eli Lilly and Co., whose market share was substantial. Other principal manufacturers

included the Upjohn company and E.R. Squibb and Sons Inc..

The DES claimants filed actions throughout the United States. In every case, the claimant alleged symptoms first manifesting many years after the initial exposure to, or use of, DES. DES claims were often grouped by "generation". The claims brought by the women who ingested DES were known as "first generation claims". "Second generation claims" were those made by the off-spring of the first generation mothers. "Third generation claims" were the claims of the grandchildren of the first generation mothers. The injuries alleged were often serious and ranged from various cancers to birth defects.

The claims gave rise to two theories of attachment: "ingestion" and "manifestation". There was, as with asbestos, a conflict within the insurance industry, which led the major DES manufacturers to instigate declaratory judgment actions against their insurers. In 1982, Eli Lilly commenced declaratory judgment actions against their domestic and foreign insurers covering the years 1942 to 1976, seeking a continuous trigger of coverage based on Keene. The District Court for the District of Columbia found in favour of Eli Lilly and applied modified multiple-trigger allocation. Despite a number of appeals, the judgment was always upheld.

Following the various rulings, a settlement agreement was reached with Eli Lilly. The agreement was signed in November 1987, and was the result of more than two years' complex negotiations between the London market, domestic insurers and Eli Lilly.

The DES problem cost a substantial amount of money, but there proved to be a limited number of defendants, far fewer than the 300 originally identified, and indeed than the 30 for whom reserves were established. In the end it centred on three major manufacturers. In addition, despite the very wide pool of potential plaintiffs, involving three generations, the plaintiff bar generally did not focus on DES as much as it did on asbestos (although there were some specialist firms which did deal with DES claims). Unlike the asbestos claimants, the DES claimants did not have well-organised unions to organise them and fight their corner.

Agent Orange

Agent Orange was a phenoxy herbicide developed in the early to mid 1960's. Its primary purpose was to destroy broad leaf flora. Agent Orange was developed for and sold exclusively to the United States army. It was first deployed in the Vietnam War in approximately 1962. Its usage was stopped in 1971. The army commissioned a number of chemical companies, which included Dow Chemical, Monsanto, Hercules, Diamond Shamrock and Uniroyal, to produce Agent Orange. In 1970, with environmental concerns growing, questions arose regarding the safety of the dioxin produced as a by-product of Agent Orange. As a result, thousands of veterans instituted claims against manufacturers of Agent Orange and the US government, alleging bodily injury. Litigation began with the filing of approximately 900 separate bodily injury lawsuits in various Federal and State jurisdictions throughout the United States. The claims were consolidated in a class action heard by federal judge Jack Weinstein, who took an active role and encouraged the settlement of these claims. Thus, the bulk

of the Agent Orange claims were resolved and Agent Orange manufacturers do not appear to face substantial future liability. The settlement involved the payment of US$180 million on behalf of the various manufacturers.

As with DES, there were only a limited number of defendants. In addition, the claimant universe for Agent Orange claims was much smaller than for asbestos. This again resulted in the plaintiff bar not focusing on these claims to the same extent as asbestos.

Impact on other Insurers

Companies in London and the United States were also severely affected by asbestos-related claims. There were a number of company representatives who participated, over the years, in the AWP: Mr. John Heath from Weavers, Mr. Alan Taylor from Turegum, Mr. Tony King from Orion and Mr. Jack Webb from Andrew Weir. None of these companies remains in business; they, together with a large number of other companies have gone into run-off, administration or liquidation as a result of a combination of problems, asbestos being a significant contributory factor. A brochure produced by PricewaterhouseCoopers ("Business Recovery Services Insurance Solutions Report 1999") illustrates the adverse impact of asbestos (usually in combination with pollution) on companies such as Andrew Weir Insurance Co. Ltd., Black Sea and Baltic General Insurance Company, Bryanston Insurance Co. Ltd., Fremont Insurance Company (UK) Ltd., the KWELM companies, North Atlantic Insurance Co. Ltd., Orion, Trinity Insurance Co. Ltd., and United Standard Insurance Company Ltd.

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17. DIFFERING VIEWS AS TO THE LIKELY OUTCOME OF ASBESTOS-RELATED CLAIMS. THE WRITING OF RUN-OFF CONTRACTS

Differing views as to the likely outcome of asbestos-related claims were held in the Lloyd's market (and elsewhere) in the late 1970s and early 1980s. One illustration of this is found in the fact that Outhwaite, Merrett, Meacock and other syndicates wrote a number of run-off contracts. A run-off contract is a policy of reinsurance by which a syndicate or insurance company is reinsured, subject to the terms of the policy, against outstanding and potential future liabilities, claims and expenses in respect of business written into past underwriting years or into such past years of account as are specified in the policy. Such an excess of loss reinsurance contract may provide the reassured with protection which is unlimited both in aggregate amount and in time and which covers the reassured's whole account or a defined part of it.

The first known run-off policy is believed to have been written in 1963, when the Committee of Lloyd's sponsored what was in effect a salvage operation to protect a failed syndicate, the Roylance syndicate. More commonly, but still rarely, in later years, run-off policies were placed in respect of syndicates which continued, but where the underwriter had retired or died. Run-off policies were also sometimes purchased for occasional housekeeping and general management reasons (see the Freshields' Report of June 1988). According to a Winchester Bowring note dated November 1979, Winchester Bowring placed about 25 run-off reinsurances during the mid-1970's.

I refer to Mr. Kellett's evidence about (i) the reinsurance he purchased from Mr. Posgate in respect of computer leasing risks and (ii) the overdue market.

The run-off contracts written by the Outhwaite syndicates 317/661 are set out in Table 3 below. According to the Freshfields' Report, of some 1600 Names on the Outhwaite 1982 year, about 345 were working Names.

TABLE 3

OUTHWAITE RUN-OFFS (1974-1982 YEAR OF ACCOUNT)

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information
Norman (917)	1974	Outhwaite: 12.5%	US$0m (unlimited)		1967 + prior	1/1/74	Oct 1974						
Attenborough (531)	1975	Outhwaite: 19.16%	US$0m (unlimited)		1966 + prior	1/1/74	Dec 1974						
Bussell (870)	1975	Outhwaite: 9.13%	US$0m (unlimited)		1968 + prior	1/1/74	Oct 1974						
Sampson (783)	1975	Outhwaite: 100%	US$0m (unlimited)		1966 + prior	1/1/74	Dec 1974						
Wishart (165/151)	1975	Outhwaite: 90%	US$0m (unlimited)		1968 + prior	1/1/75	Jun 1975						

Lane (479)	1976	Outhwaite: 100%	US$0m (unlimited)		1961 + prior	1/1/76	May 1976						
Hutton (720/555)	1977	Outhwaite: 100%	US$0m (unlimited)		1970 + prior	1/1/75	Oct 1975						

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information
Blackmore (677)	1977	Outhwaite: 50%	US$0m (unlimited)		1968 + prior	1/1/77	Jan 1977						
Goldring XL	1977	Outhwaite: 100%	US$0m (unlimited)		1962-1967	1/7/77	Jul 1977						
Kellett	1977	Outhwaite: 100%	US$0.272m (unlimited)			1/1/77	Jun 1977	A.W. Knott Ltd			No		
Provincial Ins.	1978	Outhwaite: 50% Merrett: 50%	US$0m (unlimited)		1968 + prior	24/5/78	May 1978						
Price (164)	1979	Outhwaite: 32.79%	US$0.25m (US$0.25m limit)		1968-1975	1/12/78	Jun 1979						
Universal	1980	Outhwaite: 50% Merrett: 50%	US$0m (unlimited)		1968 + prior	1/1/80	Jun 1980						
Price (164)	1980	Outhwaite: 25%	US$0.5m (US$0.5m limit)		1968-1975	1/12/78	Sept 1980						

Ryan (295)	1981	Outhwaite: 25%	US$0.9899m (US% 0.5879m limit)		1978 + prior	31/12/80	May 1981						
Desert Ins	1981	Outhwaite: 9.9%	US$0.5145m (US$0.32m limit)		1971-1981	31/12/81	Aug 1981						

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information
Hobbs (737)	1982	Outhwaite: 64.52% Cassidy Syn.No.582: 19.35% Hardcastle Syn. No.704: 16:13%	£100,000 (unlimited)	£85,000 + US$185,000 +CAN$5,000	1958 + prior	1/1/77	Jun 78	Winchester Bowring	Non-Marine	No: 33.98% of Syn.964's 1958 apr years of account reinsured by the cedant	No	No	
Bishopsgate	1982	Outhwaite 32% Kellett Syn.No.994: 32% Vernon Syn.No.947: 4.8% Miles Syn.No.391: 2.4% Drysdale Syn.No.43:	£1,129,200 (unlimited)	£875,000	(i) 1972-1977 (H.S. Weavers) (ii) 1966-1975 (C.R. Drivers)	1/1/80	Feb 80	Fielding & Partners/Bain Dawes	Mainly Non-Marine	No: the cedant was reinsured i.r.o. their share of (i) Weaver Agencies 1972-1977. (ii) C.R.Driver 1966-1975	No	Yes	Kellett reinsured his line with Outhwaite in April 1982, retaining £500,000 exposure

		28.8%											
Cockell (347)	1982	Outhwaite: 100%	US$12m (unlimited)	US$1.35m	1970 + prior	1/1/81	Aug 81	Winchester Bowring	Non-Marine	Yes	Yes: held for cedant	No	Award of Lord Wilberforce as Umpire and MT Evennett and MS Freeman as party-appointed arbitrators
Birrell (27)	1982	Outhwaite: 100%	US$330,000 (unlimited)	US$55,000	1970 + prior	1/1/81	Aug 81	Winchester Bowring	Incidental Non-Marine	Yes	Arbitration commenced	Yes	
Thomson (484)	1982	Outhwaite: 100%	US$9.25m (unlimited)	US$1.1m	1975 + prior	1/1/81	Sept 81	Winchester Bowring	Non-Marine	Yes	Arbitration commenced	Renegotiated	

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information
Whittall (620)	1982	Outhwaite: 100%	US$16m (unlimited)	US$550,000	1978 + prior	1/1/81	Oct 81	Winchester Bowring	Incidental Non-Marine	Yes	No	Yes	
Hampton (179)	1982	Outhwaite: 100%	£1.25m (unlimited)	£250,000	1959-1968	1/1/81	Nov 81	Butcher Robinson & Staples Ltd.	Non-Marine	Yes	Yes: held for cedant	No	Award of Simon Tuckey QC. For subsequent litigation see Lark v Outhwaite [1991] 2 Lloyd's Rep 132

English & American	1982	Outhwaite: 100%	US$8m (unlimited)	US$1.25m	1975 + prior	1/7/81	Nov 81	Winchester Bowring	Primarily Non-Marine	No: the reinsurance was to indemnify the cedant for losses on a number of specified accounts	No	Renegotiated	

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information
Fireman's Fund	1982	Outhwaite: 50% Merrett Syn.No.417/421: 50%	US$35m (unlimited)	US$6,359,552	1969 + prior	1/1/74	Nov 81	C.T.Bowring & Co.	Non-Marine	No: reinsurance i.r.o. cedant's share of complete portfolio run-off for the Sturge syndicate for the 1969 and prior years (cedant's share being 50% i.r.o. 1966 apr and i.r.o. 1967, 1968 and 1969 50% of total paid amount of $27m and 80% of settlements over that amount)	Arbitration commenced	Renegotiated	

Smith (660)	1982	Outhwaite: 100%	US$4m (unlimited)	US$300,000	1978 + prior	1/1/81	Dec 81	Winchester Bowring	Non-Marine	Yes	No	Renegotiated	
Stewart (15)	1982	Outhwaite: 100%	US$6.45m (unlimited)	US$550,000	1976 + prior	1/1/81	Dec 81	Winchester Bowring	Non-Marine	Yes	Arbitration commenced	Renegotiated	
Cowdy (763)	1982	Outhwaite: 50% Posgate Syn.No.126: 30% Posgate Syn.No.701: 20%	US$800,000 (unlimited) (US$5m limit)	US$420,000	1979 + prior	12/1/82	Jan 82	Hoveringham Howard/T. Clowes (Insurance Brokers) Ltd.	Incidental Non-Marine	No: "asbestosis only"	Litigation commenced	Renegotiated	
Wrightson (90)	1982	Outhwaite: 50% S.A. Meacock: 20% Retained: 30%	US$26,969,321 (unlimited)	US$1.54m	1974 + prior	1/1/81	Jan 82	Winchester Bowring	Non-Marine	Yes	Arbitration commenced	Renegotiated	Arbitration in respect of Meacock's 20% held in favour of cedant

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information
Stewart (16)	1982	Outhwaite: 100%	US$1.5m (unlimited)	US$575,000	1978 + prior	1/1/82	Feb 82	Winchester Bowring	Incidental Non-Marine	Yes	Arbitration commenced	Renegotiated	

Lawrence (362)	1982	Outhwaite: 66.67% Meacock Syn.No.727: 33.33%	US$55m (unlimited)	US$2m	1978 + prior	1/1/82	Mar 82	Winchester Bowring	Non-Marine	Yes	No	Yes: commuted	Dispute with Outhwaite settled in December 1989 for 66.67% of US$62.8m payable in 3 instalments. Dispute with Meacock settled subsequently – terms confidential.
Price (164)	1982	Outhwaite: 20% Kellett Syn.No.994: 25%	US$1m (US$1m limit)	US$335,000	1977 + prior	1/12/78	Mar 82	Alwen Hough & Johnson Ltd.	Non-Marine	No re: liability business classified under a particular risk code	No	No	

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information
Harris (947)	1982	Outhwaite: 50% Posgate Syn.No.126: 30% Posgate Syn.No.701: 20%	US$20m (unlimited)	US$2.25m	1976 + prior	01/1/82	Apr 82	Morgan Read & Coleman Ltd.	Non-Marine	Yes	No	No	

MacKinnon (60)	1982	Outhwaite: 50% Kellett Syn.No.994: 50%	US$1,870,662 (US$625,000 limit)	US$150,000	1976 + prior	1/1/82	Apr 82	Wigham Poland Reinsurance Brokers	Incidental Non-Marine	Yes	No	No	
Kellett (iro Bracey) (993)	1982	Outhwaite: 100%	£500,000 (unlimited) (combined)	£110,000 (combined)	1968 to 1976	1/1/81	Apr 82	Morgan Read & Coleman Ltd.	Non-Marine	No: the Cedant was reinsured i.r.o. their 33.33% share in a run-off of the 1968-1976 years of account of Bracey Syndicate 917	No	No	
Harris (947)	1982	Outhwaite: 33.33% Posgate Syn.No.126: 40% Posgate Syn.No.701: 26.67%	US$2m (i.r.o items processed in 1982, 1983 & 1984) (unlimited)	US$750,000	1976 + prior	1/1/82	Apr 82	Morgan Read & Coleman Ltd.	Non-Marine	Yes	No	No	

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information

Kellett (iro Bishopsgate) (993)	1982	Outhwaite: 100%	£500,000 (unlimited) (combined)	£110,000 (combined)	(i) 1972 to 1977 (H.S. Weavers) (ii) 1966 to 1975 (C.R. Drivers)	1/1/82	Apr 82	Morgan Read & Coleman Ltd.	Primarily Non-Marine	No: the Cedant was reinsured i.r.o. their 32% share in a run-off covering the involvement of Bishopsgate Ins. Co. in (i) Weavers Agencies 1972-77 and (ii) C.R. Driver 1966-75	No	Yes	
Davies (554) (Dolling-Baker)	1982	Outhwaite: 50% Merrett Syn.No.417: 40% Merrett Syn.No.421: 10%	US$9,138,222 (unlimited)	US$975,000	1978 + prior	1/1/82	May 82	Winchester Bowring	Non-Marine	Yes	No	Renegotiated	

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information

Sells (10)	1982	Outhwaite: 100%	£500,000 (unlimited)	£525,000	(i) 1966 + prior (Tardiff) (ii) 1968 + prior (Bussell) (iii) 1967 + prior (Norman)	1/1/82	Jul 82	Morgan Read & Coleman Ltd.	Non-Marine	No: the Cedant was reinsured i.r.o. (i) their 100% share in a run-off of the Tardiff syndicate (ii) their 5.48% share in a run-off of the Bussell syndicate (iii) their 15% share in a run-off of the Norman syndicate	No	No	
Penn (634)	1982	Outhwaite: 50% Meacock: 30%	US$500,000 (US$1m limit) US$650,000 (US$1m limit)	US$250,000 US$232,500	1969 + prior	1/1/82	Jul 82 Dec 82	Ropner Insurance Services Ltd.	Incidental Non-Marine	Yes	No	No	

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information

Skey (219) (R.A. Edwards)	1982	Outhwaite: 50% Balance retained	US$2.865m (unlimited)	US$800,000	1967 + prior	1/1/82	Aug 82	Winchester Bowring	Non-Marine	Yes	No	Renegotiated	Small additional premium paid and payments restructured but policy remained unlimited
Weir	1982	Outhwaite: 25%	US$1m (US$1m limit)	US$450,000	1965 + prior	1/1/82	Sept 82	Ropner Insurance Services	Non-Marine	Yes	No	No	
Weir	1982	Outhwaite: 25%	US$5m (US$5m limit)	US$1.25m	1972 + prior	1/1/82	Sept 82	Ropner Insurance Services Ltd.	Incidental Non-Marine	Yes	No	No	
Towers (679)	1982	Outhwaite: 33.33% Meacock: 25% N.T.U.	US$12m US$12m (unlimited) or US$15m (unlimited)	US$1m US$1.5m US$1.1m	1974 + prior	1/1/82	Oct 82	Winchester Bowring	Incidential Non-Marine	Yes	No	Yes	

Reinsured (Syndicate/ Insurance Company	Signing Year	Percentage reinsured by Outhwaite & Ors	Excess and Limits	Premium	Years of Account Reinsured	Inception Date	Date Accepted	Broker	Marine/Non-Marine/ Incidental Non-Marine Account Being Ceded	Whether or not Whole Account	Whether or Not Arbitrated	Whether or Not Commuted	Other Information

Simmons (469)	1982	Outhwaite: 50% Meacock: 25% N.T.U. Continental: 50%	US$3m (unlimited) US$3.5m (unlimited) or US$4m (unlimited) US$3m (US$2m limit)	US$650,000 US$700,000 or US$550,000	1978 + prior	1/7/82	Oct 82 Nov 82	Winchester Bowring	Non-Marine	Yes	No	No	
Price (164)	1982	Outhwaite: 33.33%	US$2m (unlimited)	US$2m	1977 + prior	1/7/82	Oct 82	Carter Wilkes & Fane Ltd./Golding Collins	Non-Marine	No: asbestosis losses only	Yes	No	
Allied Publications Mutual	1982	Outhwaite: 43.48%	£2m (unlimited)	£75,000	1982 + prior	1/1/82	Nov 82	Winchester Bowring	Non-Marine	No	No	No	

Between June 1978 and June 1982 eleven run-off contracts were written in whole or in part by Merrett syndicate 418/417 (and in some cases in part by Merrett syndicate 421). Particulars of the eleven run-off contracts are set out in table 2 at page 416 of the Merrett judgment, to which I refer.

Table 3 above includes references to run-off contracts written in part by the Meacock syndicate and other syndicates.

There was litigation/arbitration relating to a number of the run-off contracts referred to above. The column headed final outcome in Table 3 above (and the column headed final outcome in table 2 in the Merrett judgment) show the result of such litigation/arbitration and also the result of settlements arrived at between the parties.

It is to be noted that a significant number of the 33 individuals accused of fraud and their families were Names on the open years of the Outhwaite and/or Merrett syndicates.

The fact that Outhwaite, Merrett and Meacock (and others) wrote run-off contracts which were exposed to asbestos-related risks shows that differing views as to the likely outcome of asbestos-related claims were held in a Lloyd's market in the late 1970s and early 1980s. The Merrett syndicates had access to the extensive knowledge of Mr. Jackson and Mr. Ayliffe.

18. OPEN YEARS

As reported in the Chairman's statement in the 1987 Globals, at the end of December 1987 there were 76 syndicates with a total of 120 years of account left open. Problems associated with asbestos and pollution risks, together with other US liability business, appear to account for the vast majority of the run-off years.

According to the Report of the Rowland Task Force 'Lloyd's: a route forward' January 1992:-

"In 1980 there were 32 syndicate years which had not been able to close at the end of the normal three-year accounting period. By the end of 1990, 97 syndicate years had been left 'open' in this way. These 97 years relate to 53 syndicates, some having up to 5 years of account in run-off. Approximately 17,500 Names have at least one open year of account; amongst these 17,500 Names, the average Name has three to four open years of account."

Exhibit 16 to the Rowland Task Force Report (Trends in Run-Off Accounts (Open Years)) contains a table showing the number of syndicates and of years in run-off for the even years from

1974-1990 inclusive.

Exhibit 1 to the Open Years Panel Report shows the numbers of years in run-off for all the years from 1970-1991 inclusive. It does not show the number of syndicates in run-off. Exhibit 6 to the Open Years Panel Report gives a breakdown by principal cause of the years of account in run-off as at December 1991. According to Exhibit 6 the stamp capacity of run-off years by principal cause at December 1991 was:-

Asbestos/Pollution 60%
LMX Spiral 19%
PSL/EPP 7%
Catastrophe 5%
Professional Indemnity 4%
No Stamp Capacity 3%
Other 2%.

"Your Committee is concerned that two recent catastrophe losses, the October storm and Piper Alpha seem to have been off-loaded onto the reinsurance market and then to be disappearing. As we are dealing with the largest non-marine and marine physical damage losses the insurance world has ever seen, we would expect Lloyd's underwriters to be paying rather more than what appears to be a few fairly modest retentions. Your Committee feels that we need to go beyond the rather comforting letters which managing agents have sent out on Piper Alpha. The attached questionnaire is designed, after considerable market consultation, to find out where these two losses, and Alicia, are finally going to rest so that our members' agents get information which they need for themselves and their Names. Please therefore complete the questionnaire for each of your managed syndicates, adding explanatory notes where necessary, and send it as soon as possible...to your members' agents. ..."

Extensive work was carried out in reserving for the reinsurance by Equitas, which involved a large number of the leading external actuaries and accountants. The results of this work were considered by, amongst others, the DTI advised by the Government Actuary's Department. The Council of Lloyd's was advised by Lazard Brothers & Co Ltd and by Tillinghast-Towers Perrin. The board of Equitas was separately advised by N.M. Rothschild. Approval of the New York Insurance Department was also required, given the assets held in trust in the US in relation to the market's US dollar denominated business.

19. THE YEARS IN QUESTION 1978 TO 1988

In this chapter I refer to some of the key events before and during the Relevant Period.

Pre 1978

According to Lloyd's the period between 1952 and 1978 was profitable, apart from the years 1966-1968 which were affected by Hurricane Betsy.

In 1968, a Working Party under Lord Cromer was appointed "to recommend what should be done to encourage and maintain an efficient and profitable Lloyd's underwriters' market of independent competing syndicates, which would be of a size to command world attention". The Cromer Report was dated 23 December 1969.

In March 1977 the Chairman of Lloyd's Sir Havelock Hudson wrote to Mr. P. G. Bird (Chairman LUAA) as to concerns expressed at the large number of applications for underwriting membership. Some people had suggested that the Committee of Lloyd's should either limit the number of new Names which might be accepted by any one agency in a particular year, or restrict the premium limits of new Names. Sir Havelock Hudson said that "The Committee of Lloyd's do not consider it to be their proper function to interfere with the conduct of underwriting agency business. It is felt that...decisions as to whether to accept new Names, ...should be left to the discretion of underwriting agents in consultation with those Names".

The Calendar Year 1978

In 1978 Mr. I.H.F. Findlay was Chairman of the Committee of Lloyd's; Mr. A.B.Gray was senior Deputy Chairman and Mr. C.O. Gibb junior Deputy Chairman.

On 22 March 1978 the Committee of Lloyd's decided that a Committee of Inquiry should be set up to investigate the Lloyd's market aspects of the "Savonita" matter.

On 26 April 1978 the Committee of Lloyd's considered whether temporary assistance might be given to Names on the Sasse non-marine syndicate 762.

On 9 August 1978 the Committee of Lloyd's was advised that concern had been expressed regarding the possible magnitude of Computer Leasing claims and the fact that they might affect a number of years of account. It was agreed that auditors should be given an appropriate warning regarding Computer Leasing claims in the Audit Regulations to be issued at the end of January 1979.

The Calendar Year 1979

In 1979 Mr. I.H.F. Findlay was Chairman of the Committee of Lloyd's; Mr. C.O. Gibb was senior Deputy Chairman and Mr. Peter Green junior Deputy Chairman.

The Fisher Working Party (established by the Committee of Lloyd's) held its first meeting on 5 February 1979. The terms of reference were:-

"To enquire into self-regulation at Lloyd's and for the purpose of such enquiry to review:-

(i) the constitution of Lloyd's (as provided for in Lloyd's Acts and Bye-laws);

(ii) the powers of the Committee and the exercise thereof and;

(iii) such other matters which, in the opinion of the Working Party, are relevant to the enquiry.

Arising from the review, to make recommendations".

On 14 February 1979 the Committee of Lloyd's approved certain recommendations of the Audit Committee concerning the treatment of Computer Leasing business for the purpose of the Audit as at 31 December 1978.

On 28 February 1979 the Committee of Lloyd's agreed that no action should be taken to restrict the numbers or premium limit of new Names who would commence underwriting from 1 January 1980.

On 19 March 1979 the Committee of Lloyd's considered the form of the letter which was to be sent to the market on the subject of Computer Leasing. A letter was sent to all underwriting agents, active underwriters and panel auditors dated 23 March 1979 setting out the Committee's advice as to the treatment of possible losses on Computer Leasing insurances.

On 30 May 1979 the Committee of Lloyd's decided that Rota Committees should enquire whether prospective Names had been advised by their underwriting agents whether the syndicates in which they were to participate were on the Computer Leasing risks and, if so, the basis upon which any loss or losses would be treated.

On 15 October 1979 the Membership Committee decided that no recommendation should be made to the Committee of Lloyd's to place any restrictions upon capacity during 1980, for 1981.

At a Special Meeting of the Committee of Lloyd's on 14 December 1979 (in the course of consideration of audit percentage reserves) Mr. Murray Lawrence suggested that consideration should be given to breaking down the "All Other" account in order to extract the very long-tail business, and that premium income was not the appropriate yardstick upon which to base the reserves for the older accounts. The Committee agreed that the sub-division of the non-marine "All Other" business account should be considered during 1980. Mr. Lawrence's suggestion was a responsible one and it is regrettable that it was several years before this important issue was addressed.

The Calendar Year 1980

In 1980 Mr. Peter Green was Chairman of the Committee of Lloyd's; Mr. C.O. Gibb was senior Deputy Chairman and Mr. A.W. Higgins junior Deputy Chairman.

On 5 March 1980 Mr. M. Langton (Chairman of the LUAA) wrote to Mr. Pollard of the Membership Department stating that the LUAA Committee hoped that questions about Computer Leasing or any other specific claims would be avoided at Rota.

On 29 April 1980 at a meeting of the Audit Committee (in the course of discussion of Stop Loss reinsurance) Mr. Lawrence said there was a danger to the security of the market in that liability was being funnelled into a few syndicates. This was a responsible comment.

The Report of the Fisher Working Party was dated May 1980. In an accompanying letter of 23 May the Working Party referred to its conclusions that the constitution of Lloyd's was no longer appropriate and that the Committee's powers were inadequate for self-regulation in modern conditions. The Working Party recommended that the Committee of Lloyd's should promote a new private Act of Parliament "so that the constitution of Lloyd's can be brought up to date and the powers of self-regulation enlarged".

The Fisher report said that it had always been strongly believed at Lloyd's that there should be a limit to the extent to which the Committee should seek to influence or control the business conducted in the market and that for the most part commercial decisions and, in particular, decisions about the risks to be underwritten, about the terms of the underwriting and about payment or refusal of claims, should be left to individuals in the market. On the other hand exceptions had from time to time been made to this principle though not on a very consistent basis. (Paragraph 1.18).

The Fisher report did not quarrel with the general principle, nor with the policy of making exceptions to it when they were considered to be clearly necessary. The report identified the grounds on which, and the purposes for which, the Council and Committee of Lloyd's would be justified in interfering in the free working of the market, The grounds and purposes were stated as follows:-

(a) In the interest of the security of the Lloyd's Policy;

(b) To prevent conduct or situations which are harmful to Lloyd's as a market;

(c) To prevent conduct or situations which may bring Lloyd's as an institution into discredit;

(d) To ensure the continuance of Lloyd's as a market where conditions of free competition obtain;

(e) To give sections within the Lloyd's Community protection which they can justifiably expect but are not in practice able to obtain for themselves. (paragraph 1.19).

In an internal document dated 30 September 1980 relating to syndicate 219, Mr. C. Skey wrote "If the 'exposure' theory is upheld in asbestosis cases we fear it will be impossible ever to close our books with any certainty".

A meeting of the Panel of Auditors was held on 28 October 1980 with Mr. A. Chester in the chair and Mr. Murray Lawrence representing the Audit Committee. As to MPRs, the main area which concerned the auditors was the non-marine "All Other" account where they considered that the scale should be divided between medium and very long-tail business. They were informed that the Audit Committee was already looking at the division of the non-marine "All Other" scale of reserves.

On 4 November 1980 an Extraordinary General Meeting of Members of Lloyd's was held for the purpose of promoting a new Act of Parliament.

At a Special Meeting of the Committee of Lloyd's held on 11 December 1980 non-marine "All Other" business was discussed. Mr. Lawrence considered that the statistics on older years were misleading as they were based on premiums written at the time, which bore little relation to the current settlement pattern. As to the separation of long-tail business from the "All Other" account, Mr. Lawrence said that LUNMA had not been able to provide such a split. Mr. Nelson informed the Committee that asbestosis was likely to give rise to very heavy claims which might go back 25 years. The Committee agreed that auditors' attention should be drawn to the effect on reserves of very long-tail business such as products liability and excess casualty reinsurance business, and that the Audit Committee should bear this in mind when considering the reserves to be created at the 31 December 1981 audit, together with the method by which the reserves on older year accounts were calculated.

The Calendar Year 1981

In 1981 Mr. Peter Green was Chairman of the Committee of Lloyd's; Mr. A.W. Higgins was senior Deputy Chairman and Mr. B.J. Brennan junior Deputy Chairman.

On 2 February 1981 Mr. Randall (Manager UAAD) wrote to all panel auditors. As to very long-tail business the letter stated:-

"Where a syndicate underwrites very long-tail business such as product liability and excess casualty reinsurance business, auditors are asked to pay particular attention to the effect that such business will have on the reserves to be created bearing in mind the greatly increased cost of claims on older years of account due to inflation etc."

In September 1981 the first Asbestos White Paper entitled 'Discussion Document on Loss Occurrence Definitions in respect of Reinsurance Contracts covering Casualty Business' was issued.

In about the autumn of 1981 Chatset's Lloyd's League Tables were published for the first time. In its first publication Chatset said:-

"It would appear likely that additional reserves will have to be made in the 1979 and 1980 accounts against further asbestosis and DES claims. Asbestosis has been described as the largest ever insurance loss and will not only affect the non-marine market."

The Meeting with Panel Auditors on 10 November 1981

A meeting of the Advisory Panel of Auditors was held on 10 November 1981. Mr. R. J. Kiln was in the chair. Mr. Murray Lawrence represented the Committee of Lloyd's.

I have seen five notes of this meeting (minutes prepared by Lloyd's Corporation staff; minutes prepared by Mr. Nigel Holland of Ernst & Whinney; manuscript notes on the agenda by Mr. Blake of Neville Russell and the typed notes of Mr. Blake; and notes prepared by Mr. Stevens of Littlejohn and Co).

The minutes prepared by Lloyd's Corporation staff record under the heading, Any Other Business:-

"ASBESTOSIS

Mr. Kiln reported that claims were being made on notices as far back as 1947 where underwriters had been involved in direct insurances or reinsurances of companies covering liabilities of companies subject to asbestosis claims.

Mr. Lawrence reported that a databank was being produced which would contain details in respect of the 10 or 12 major assureds with all years of cover. The loss adjusters would then be able to make some estimate of underwriters' lines on such risks. Projections of claims for three or five years hence would be made, and also loss expenses for two or three years ahead; both such items would be in respect of direct business only. From the databank it would be possible to obtain a list of major companies and look at their reinsurers, to give a rough estimate as to the exposure in respect of reinsurance business.

Mr. Kiln pointed out that he did not wish to see mention of these specific claims in the Audit Instructions.

Mr. Holland requested that an indication should be given to auditors as to how the databank report was fragmented, so that they may know what to look for. Mr. Lawrence replied by stating that a Market Meeting would be held soon enabling all to be apprised of the situation. It was agreed that there would be a further meeting of the Panel early next year to consider asbestosis..."

As to Mr. Kiln's statement, for a number of years panel auditors had commented that it was inappropriate to draw their attention to specific market problems, thereby encouraging auditors to rely upon these advices rather than their own auditing enquiries with their clients. Thus in the "White Regulations" specific mention was made of the current problems with regard to "latent diseases" (but no specific mention was made of asbestosis) and "products liability".

On 4 December 1981 the second Asbestos White Paper entitled 'Occurrence Coverage on Excess of Loss Contracts covering Casualty Business' was issued.

On 7 December 1981 a Special Meeting of the Committee of Lloyd's was held. It was agreed that the "White Regulations" should in future be specifically addressed to all underwriting agents and active underwriters, as well as to panel auditors.

The Calendar Year 1982

In 1982 Mr. Peter Green (from June Sir Peter Green) was Chairman of the Committee of Lloyd's; Mr. B.J. Brennan was senior Deputy Chairman and Mr. Murray Lawrence junior Deputy

Chairman.

The Meeting with Panel Auditors on 15 January 1982

A meeting of the Advisory Panel of Auditors was held on 15 January 1982. Mr. R.J. Kiln was in the chair and Mr. E.E. Nelson also attended. The main purpose of the meeting was to inform auditors of the latest position with regard to the large number of outstanding claims due to various latent diseases. Mr. Nelson mentioned Agent Orange, Love Canal, DES and asbestosis, adding that the first three were not significant compared with the problems of asbestosis. A department had been set up within the LUNCO premises. The details of the slips and losses etc had been fed into a computer and auditors were advised that they should seek their clients' permission to access the information on this computer. The computer programme would give a claims payout breakdown.

In addition to the notes of the meeting prepared by Corporation staff I have seen a note of Mr. P.B. Milne of Littlejohn and Co and a note of Mr. Blake of Neville Russell. According to Mr. Milne's note:-

"Ted Nelson advised on asbestosis. ...It is difficult to guess what the final number of claims will amount to, but it was suggested that by the mid to end 1980s we should expect some 25,000 in total. (An aside by someone stated that the Prudential were guessing at a figure of 2,000,000 claims. Nelson said he considered this figure to be well wide of the mark)... On an exposure basis 40% is with London companies and Lloyd's, whereas on a manifestation basis it is 10%.

Loss reserves do not take into account syndicates own protection arrangements...

As far as the IBNR factor is concerned, it is suggested that a view should be taken as to what can come forward within the next five/six years..."

According to Mr. Blake's note:-

"Ted Nelson said that claims were increasing by 400 per month at present with the peak likely during the late 1980s. He also stated that 25,000 extra claims were expected by the end of the decade. ..."

I accept Lloyd's submission that there is nothing in the minutes which supports the suggestion that Mr. Kiln and Mr. Nelson were seeking to side-track the auditors or to encourage under-reserving. The notes of the meeting indicate that some of the principal issues in relation to asbestos-related claims were advised to the auditors.

A number of firms of Panel Auditors (Ernst & Whinney, Arthur Young, Littlejohn and Co and Neville Russell) agreed to send a standard questionnaire to each of their syndicate clients in order to try and ascertain the extent to which they were involved with asbestosis claims (see a Neville Russell memorandum of 3 February 1982).

A memorandum from Mr. Randall (manager UAAD) to Mr. Murray Lawrence dated 22 February 1982 stated that Mr. Randall had arranged for the question of reserves for asbestosis and other latent diseases to be put on the agenda of both the Membership Committee and the Audit Committee "when further consideration will be given to the basis of reserving and whether new Names should be warned that specific syndicates are carrying a liability for such risks".

The Neville Russell Letter of 24 February 1982

On 24 February Neville Russell wrote a letter to the Manager, Audit Department on behalf of themselves and five other firms of panel auditors in the following terms:-

"A substantial proportion of our Syndicate clients have losses, or potential losses, arising from asbestosis and related diseases.

It appears that although, in respect of direct insurance of the main carriers and reinsurance of American insurers, Syndicates have received some notification of outstanding claims, they are unable to quantify their final liability with a reasonable degree of accuracy for the following reasons:

(i) You have informed us that there have been approximately 15,000 individual claimants. Total exposure to the problem appears to be considerably in excess of this figure.

(ii) The Courts have not yet finally decided on whether the exposure or manifestation basis is applicable.

(iii) The losses are being apportioned over carriers on an "industry" basis. If one of the carriers has losses in excess of its insurance cover (as seems likely) then it could go bankrupt. It appears that its share of the industry loss could be apportioned over the remaining companies.

(iv) Most Syndicates are not very certain of their reinsurance recoveries.

(v) Most Syndicates will incur losses on their own writings of reinsurance business. Very little of this has been advised so far.

The Audit Instructions (Clause 3) require that if there are any factors which may affect the adequacy of the reserves, then the auditor must report to the Committee and obtain their instructions before issuing his Syndicate Solvency Report.

We consider that the impossibility of determining the liability in respect of asbestosis falls into this category and we accordingly ask for your instructions in this respect."

The Neville Russell letter thus sought instructions under clause 3 of the Instructions for the Guidance of Lloyd's Auditors.

The Neville Russell letter was considered at a meeting of the Audit Committee on 2 March 1982. Mr. Chester (in the chair) said that he had spoken to Mr. Nelson about the letter. Mr. Nelson had put forward a number of suggestions. With regard to the question of whether claims should be reserved on an exposure or manifestation basis it was considered that whichever basis produced the worst result should be adopted. Having discussed Mr. Nelson's views, the Audit Committee considered that it would not be possible or desirable for them to give a definite answer as to the amount or basis of reserves a syndicate should carry. It was for the underwriter of each syndicate to determine his potential liability and agree this with his auditor. It was, however, necessary for a full discussion to take place with panel auditors so that where possible general guidance could be given and it was agreed that a meeting should be arranged at the earliest opportunity. Mr. Chester raised the question of the reinsurance of underwriters' asbestosis liability in the Lloyd's market (i.e. effectively amounting to reinsurance of the asbestosis "tail") and expressed concern that such liabilities could fall on comparatively few syndicates.

The Panel Auditors Meeting on 9 March 1982

A meeting was held on 9 March to discuss with panel auditors the content of the Neville Russell letter. Mr. Chester was in the chair and Mr. Nelson and Mr. Randall were present. The main worry raised by the auditors was the widely differing views taken by syndicates. The real purpose of their letter was an attempt to seek some uniformity in the Lloyd's market for dealing with this matter. They considered that it would be grossly unfair for syndicates on the same risk to treat their reserves on an entirely different basis. The auditors were concerned not only about under-reserving, but also about over-reserving. Part of the auditors' job was to ensure that there was equity between the account accepting the reinsurance and the closing account. Mr. Chester asked the auditors for their opinion on leaving the 1979 account open. Auditors thought that although this would solve the problem of equity between years of account it would still leave the problem of quantification, in that Names could still be asked to put up substantial sums of money. Mr. Nelson said that in his view a figure of 50,000 new claims over the next 10 years would seem to be realistic and that the reports of up to 2 million new claims could well be an exaggeration. Mr. Randall said that perhaps Lloyd's could consider issuing guidelines on the basis of the 50,000 figure and that where asbestosis formed a material part of a syndicate's accounts (say 10%) then consideration should be given to leaving the account open. The auditors said that they would be reassured with guidance of this sort. Mr. Chester agreed to take up the question of guidelines with the Deputy Chairman and to report back to the auditors in due course. As to the writing by certain Lloyd's syndicates of the reinsurance of other syndicates' asbestosis liability, Mr. Chester said that this could lead to the funnelling of a large amount of liability into a small number of Names. He added that consideration was being given to asking the market to stop writing such reinsurances in the open years.

Mr. Nelson's Memorandum of 12 March 1982

Mr. Nelson set out his personal appraisal and opinion regarding the asbestosis problem in a memorandum dated 12 March which was reviewed by Mr. Randall and Mr. Lawrence, who added manuscript comments. As to points which the auditors had raised with Mr. Randall on 11 March, Mr. Nelson agreed (i) that between 30% and 40% of Lloyd's syndicates were substantially affected; (ii) that there should be a requirement that all Names be given a detailed résumé of a syndicate's involvement as part of the underwriters' report; and (iii) that where a syndicate had assumed a run-off of another Lloyd's syndicate, this should be reported separately and the basis of reserving agreed with the auditor. In addition Mr. Nelson set out his own views on a number of matters and his opinion as to the action the Committee should take. In particular Mr. Nelson considered that managing and members' agents should advise their Names at year end "of their asbestosis position overall and the manner in which the claim has been handled by them". Mr. Randall added a number of manuscript comments to Mr. Nelson's memorandum including - "?Position of new Names".

A memorandum for consideration by 'O' Group dated 15 March 1982 from Mr. Murray Lawrence enclosed Mr. Nelson's memorandum. (To help 'O' Group, Mr. Randall and Mr. Lawrence had made some brief comments on Mr. Nelson's paper).

On 15 March Mr. C.K. Murray wrote to Mr. Murray Lawrence a letter which has become known as 'the Bannockburn letter'. Mr. Murray had heard that the panel auditors had approached the Audit Committee for guidance with regard to the figures which should be allocated to asbestosis claims. The letter stated:-

"Underwriters, managing agents and panel auditors must obviously work with integrity and diligence so that the final figure agreed appears likely to have adequate margins... Ultimately the underwriter is surely the best judge through his knowledge and experience, but regardless of this all of us should surely acknowledge that even our best endeavours may be found to be far too much or far too little at some later date... I hope also that panel auditors will enjoy a restoration of courage. Let them if need be look for this to their forebears and think of Bannockburn, Crecy or the parting of the Red Sea (dependent upon ancestry)".

The Meeting of the Membership Committee on 16 March 1982

At a meeting of the Membership Committee on 16 March chaired by Mr. Bird a decision was taken not to refer specifically to asbestosis risks in the Rota Brief.

I find that this was an honest decision. Special considerations had applied to Computer Leasing. As Mr. Colin Murray pointed out in his witness statement it was the duty of the members' agent to mention specific risks relevant to the syndicates which a Name was joining, and to ensure he could give informed advice based on information as to the degree of exposure, reinsurance protections, its general history of adequacy of reserving, profitability and so forth. It was not feasible to discuss in Rota every issue which might be relevant to a Name's portfolio. As Mr. Murray pointed out "If we had mentioned some issues and not others this might have been misleading and the subject of criticism". It is important to emphasise that this issue must be judged wearing the spectacles of March 1982, not the spectacles of the year 2000.

The Meeting of the Committee of Lloyd's on 17 March 1982

At a meeting of the Committee of Lloyd's on 17 March (with Mr. Peter Green in the chair) the Neville Russell letter was considered. The main area of concern centred around the need for syndicates to make searching enquiries regarding their potential exposure, both direct and by way of reinsurance written, to enable them to make adequate provision in their accounts at 31 December 1981. There appeared to be substantial differences in approach both as to the amount of research carried out and the intended IBNR loadings as at 31 December. Without guidelines from the Committee, the auditors believed that there was a real danger that managing agents and auditors would not be able to agree the closing reserves and that some syndicate results might be qualified by auditors. In addition there could be wide discrepancies as to the approach adopted by individual syndicates.

A draft letter (in response to the Neville Russell letter) had been prepared for the Committee's agreement. The draft had already been discussed with three of the auditors concerned. Two firms considered that it was vitally important that the Committee should stipulate a minimum percentage for IBNR loading. The Committee felt (understandably) that it was in no position to stipulate a minimum percentage for IBNR loading. This would depend on the cover written and the particular syndicate's own reinsurance programme. Mr. Nelson said that in respect of at least one large manufacturer, syndicates had already reserved up to the policy limits and that no further IBNR would be necessary.

Some members of the Committee were unhappy that the Committee was instructing agents that they must tell their Names of their syndicate's involvement in asbestosis. It was decided that the wording in the draft letter should be amended, so that agents would be "strongly advised" to inform their Names of their involvement in asbestosis.

The Committee was informed that certain syndicates had indicated an intention to discount the reserve for asbestosis to reflect possible future investment earnings and that the auditors had requested a statement in any letter from the Committee specifically banning this practice. The Committee, whilst agreeing that such practice should not be allowed in the case of asbestosis, decided that to refer to one particular part of the reserve might lead underwriters to take the view that such a practice of discounting was being encouraged or condoned by the Committee.

The Committee decided that the draft letter (amended to reflect the points mentioned above) should be forwarded as soon as possible to the market, but that a separate letter from Mr. Randall (Manager of UAAD) should be sent to auditors in reply to the Neville Russell letter.

It is interesting to note that the memorandum for consideration by the Committee on 17 March stated that it was believed that the draft response would assist auditors in agreeing the reserves to be created at 31 December 1981 "although it is still possible that a few individual syndicates may feel it necessary to approach the Committee for further instructions. It is also likely that a number of syndicate accounts will be left open at the discretion of the managing agent concerned".

The Murray Lawrence and Randall Letters of 18 March 1982

On 18 March Mr. Murray Lawrence (as Deputy Chairman) wrote a letter in the following terms to be sent to all underwriting agents and active underwriters, with copies for information to all panel auditors:-

" Asbestosis - Lloyd's Audit at 31st December 1981

Potential claims arising in connection with Asbestosis represent a major problem for insurers and reinsurers. It is therefore all the more important that the reserves created in the Lloyd's Audit at the 31st December 1981, fairly reflect the current and foreseeable liabilities of all syndicates.

I should stress that the responsibility for the creation of adequate reserves rests with Managing Agents who will need to liaise closely with their Auditors. Clearly, individual circumstances will vary, but it is felt that the following broad guidelines may be helpful to Underwriters, Managing Agents and Auditors in agreeing equitable reserves as at 31st December 1981, and ensuring, so far as possible, a reasonably consistent approach to this problem.

1. Reserves for Asbestosis liabilities should be separately identified and disclosed to Auditors. This applies for both the closing and open years.

2. Substantial information has been built up in the LUNCO Office regarding direct business and all Underwriters should check the information available to ensure that their own records are as complete as possible. This information should also be made available to the syndicate auditors.

3. It is in the area of reinsurance writings that the information available may be least complete. Nevertheless, the Committee believes that some information is now available within the Market and Underwriters and Managing Agents should discuss with their Auditors the steps they have taken to quantify and reserve for losses which may arise on an Excess of Loss or Pro Rata basis as a reinsurance of American or other insurers. In this connection, Underwriters should attempt to identify reinsureds on whom Asbestosis claims are likely to fall and to seek their opinion as to the basis on which they intend to submit claims on their reinsurance contracts together with the reserves which they are carrying at the present time and an estimate of possible future liabilities.

4. The Committee is aware of the legal argument whether liability arises on the basis of "exposure" or "manifestation". It is not, however, for the Committee to express an opinion as to which is correct. For the purpose of reserves at 31st December 1981 Managing Agents are strongly advised to carry a reserve which is the higher of the alternatives.

5. An IBNR "loading" should be carried for those claims not specifically advised but which could come to light in the years ahead. The decision regarding the appropriate IBNR percentage is a matter for the Agent and his Auditor to resolve dependent upon the circumstances of each case. It would be inappropriate for the Committee to lay down a minimum loading but, it appears that this loading should be substantial to reflect unreported cases on the direct account and incomplete information on the reinsurance account. Credit may, of course, be taken in respect of reinsurance recoveries, but Agents should verify, so far as possible, that reinsurers have been identified and have agreed to accept claims on the basis submitted. In the event that there are any disagreements with reinsurers these should be discussed with Auditors. (The normal guidelines regarding the admissibility of reinsurance recoveries obviously will apply).

6. A syndicate which has written a run-off or stop loss in respect of an Asbestosis account which has been signed into an open year, should advise the details to its Auditors and where appropriate, the open year reserves should be increased.

7. A syndicate underwriting London Market Excess of Loss business should make particular and comprehensive efforts to ascertain the extent of its possible liability going beyond those claims which have been advised at 31st December 1981, and these should be fully disclosed to and discussed with Syndicate Auditors. The same requirement should apply to specialist Personal Stop Loss syndicates.

8. Where the reserve for Asbestosis represents a material proportion of the total reserves of the syndicate, Agents should consider whether or not to leave the account open. It is the Agent's responsibility to ensure that the reserves provided for Asbestosis are sufficient to meet the Syndicate's liabilities regardless of whether the account is closed or left open.

9. Managing and Members Agents are strongly advised to inform their Names of their involvement with Asbestosis claims and the manner in which their syndicates' current and potential liabilities have been covered.

I would urge you to discuss the contents of this letter with your Auditor before deciding what further action, if any, is necessary for you to take.

This letter has been sent to all Underwriting Agents and Active Underwriters, with copies for information to all Panel Auditors."

In addition on 18 March Mr. Randall (as Manager of UAAD) wrote to all panel auditors as follows:-

"Asbestosis - Lloyd's Audit at 31st December 1981.

Several Panel Auditors have approached the Committee for instructions under Clause 3 of the Instructions for the Guidance of Lloyd's Auditors regarding the basis on which syndicates should provide for Asbestosis liabilities in their accounts at 31st December, 1981.

I attach a copy of a letter which is being circulated to all Active Underwriters and Underwriting Agents setting out broad guidelines which should be followed in this regard.

The Committee has decided that it is inappropriate to specify a minimum IBNR loading to apply across the Market; the IBNR loading is regarded as a matter for Managing Agents to resolve depending upon the particular circumstances of each syndicate. Nevertheless the Committee wishes me to stress that, unless there are sound reasons to the contrary regarding any specific case, the loading should be very substantial to reflect unreported cases on the direct account and, possibly, incomplete information on the reinsurance account. The Committee also believes that the reserve (including the IBNR loading) should be maintained in full and not discounted to reflect possible future investment earnings.

One of the main reasons why the Committee does not feel it is appropriate to lay down a specific IBNR loading factor is that in a number of cases syndicates will have reserved up to the maximum of policy limits and a substantial IBNR loading, in addition to this figure, might be regarded as excessive.

Auditors will no doubt give special attention to the question of whether or not the Agent has decided to leave an account open in cases where the reserve for Asbestosis represents a material proportion of the total reserves of the syndicate or where there is a wide margin for error in the basis of calculation of the closing reserves due to a lack of current information..

Where it is decided that an account should be left open, your attention is particularly drawn to Clause 6 Note 1 of the Instructions for the Guidance of Lloyd's Auditors regarding the reserves which are being created for the purposes of assessing Members' solvency.

This letter is being sent to all Panel Auditors."

The Names' pleaded case is that the Murray Lawrence letter and the Randall letter "were recklessly and/or deliberately concealed by Lloyd's from the members' agents and thereby the Names, in that they were not sent to or received by the vast majority of members' agents who were the only means by which the contents could have been transmitted to the Names. The [Names] will rely, inter alia, in support of this allegation on an admission made in or about 1992 by Mr. Lawrence to John Osbrey that the letter "had only been sent to a few people" ". Both sides spent a great deal of time and effort investigating this issue. I find that the Murray Lawrence letter was sent to all underwriting agents (including members' agents) and all active underwriters, as stated in the final paragraph of the letter. I make the following points in relation to this conclusion:-

(1) I have carefully reviewed all the evidence in this connection including those instances where it has been clearly established (albeit at this remove in time) that the letter was received by a members' agent.

(2) Some of the evidence on this subject was plainly partisan.

(3) Mr. McKinnon said when giving evidence "I have no recollection of having seen it, but we did get hundreds, I probably got a thousand letters from the Committee of Lloyd's during my lifetime as an underwriter". The Murray Lawrence letter has achieved a significance in recent years which it did not have in March 1982.

(4) According to Lloyd's the total number of underwriting agencies in the Lloyd's market in 1981 was 301, of which 165 were combined agencies, 30 were pure managing agencies and 106 were pure members' agencies. Despite the passage of more than 18 years there is some direct evidence of receipt of the Murray Lawrence letter by pure members' agents and there is other material from which it can reasonably be inferred that the letter was received by pure members' agents.

(5) I refer to Bundle P 1 which contains the respective contentions of the parties as to distribution of the Murray Lawrence letter and reflects the extent to which it is common ground that the letter was received.

The LUNMA Committee Meeting on 18 March 1982

Mr. Ballantyne (Chairman) informed the LUNMA Committee at its meeting on 18 March that the Chairmen of the Market Associations had been called to a meeting by Mr. Murray Lawrence to discuss a letter on the subject of asbestosis claims which was being circulated to all underwriters. Concern had been expressed by auditors that certain syndicates were not making proper provision with regard to reserves for asbestosis claims and the letter was designed to ensure that the importance of the matter was appreciated throughout the market.

The Names' Case As To The Content Of The Murray Lawrence Letter

Mr. Goldblatt submitted that there was an element of dishonesty in both paragraphs 6 and 8 of the Murray Lawrence letter. As to paragraph 8, Mr. Goldblatt submitted that it was consistent with the policy, which the Names say was adopted, of taking the matter gently. Further Mr. Goldblatt submitted that paragraph 9 (which included the words "strongly advised") contained the effect of the Committee decision not to direct that Names should be told, and was therefore dishonest.

I reject these submissions. It is important to emphasise that the Murray Lawrence letter must be judged wearing the spectacles of March 1982. I find that the Murray Lawrence letter and the Randall letter were an honest response to the issues raised by the Neville Russell letter.

Events Post The Murray Lawrence Letter

At a meeting of the Audit Committee on 6 April 1982 Mr. Randall reported that there had been little or no reaction from the market following the circulation of the Murray Lawrence letter.

A document prepared by Mr. D.W. Ellis (a member of the Corporation staff) dated 14 June 1982 listed 'Some Major Exposures or Losses'. The figure of $38 billion in respect of asbestosis was drawn from the McAvoy Report of January 1982 'The Economic Consequences of Asbestos-Related Disease'.

On 21 July 1982 the Committee of Lloyd's considered a memorandum on how best to ensure that the eight elected external members of the Council of Lloyd's not only had an opportunity to learn about Lloyd's, how the market worked and who was responsible for what, but also identified themselves as integrated members of the Council of 27 working towards the same long term objectives.

The Lloyd's Act 1982 received Royal Assent on 23 July 1982.

Lloyd's Log of October 1982 contained a report from Sir Peter Green (Chairman of Lloyd's) entitled 'Lloyd's Announce Profit of £172.9m on 1979 account'.

An accompanying report from Mr. Richard Ballantyne (Chairman LUNMA) included the following:-

"Asbestosis

Probably no report of this nature would be complete without some reference to the serious problems which have arisen and which are likely to persist arising from asbestosis.

Many commentators have tried to put a figure on how much this will actually cost but in my opinion it is totally impossible to quantify. Policy wordings have been construed in many different ways, most

of them to the detriment of insurers. Many of the syndicates in

Lloyd's started underwriting after the asbestosis losses had become apparent and so should be unaffected, whilst others may well have seen the danger coming and have taken steps to minimise the total impact.

One thing is certain and that is the fee bills will be enormous; for instance, in respect of one of the assureds, for every $1.5m being paid in indemnity, $2.4m is being paid in fees. There is some indication, however, of a slowdown in advice of new claims, so we are hoping that the peak has passed."

At a meeting of the Committee of Lloyd's on 9 December 1982 Mr. Nelson gave a brief summary of the latest position with regard to asbestosis. Mr. Nelson advised the Committee that there was now a sophisticated and meaningful computer system for all asbestosis business written on a direct basis. This information was available to both underwriters and auditors. As to the number of cases being advised, this had risen from the original estimate of 15,000 to approximately 25,000 but the average cost, whilst being eroded due to inflation was still within the original estimate of $125,000 plus $10,000 expenses. The controversy as to whether claims would be settled on an exposure or manifestation basis had still not been resolved. As to reinsurance business, due to time constraints, there was little information available from the computer but it was hoped that more meaningful figures would be produced the following year.

The Calendar Year 1983

In 1983 Sir Peter Green was Chairman of the Council of Lloyd's; Mr. B.J. Brennan was senior Deputy Chairman and Mr. F. Barber junior Deputy Chairman; Mr. Ian Hay Davison was Deputy Chairman and Chief Executive from February 1983.

The Council of Lloyd's met for the first time on 5 January 1983. The new Council comprised three constituent groups, 16 working Names, 8 external Names (including Mr. Fredjohn and Mr. Kulukundis) and 3 individuals nominated by the Council and confirmed by the Governor of the Bank of England. The nominated members of the new Council were Mr, Brandon Gough of Coopers and Lybrand, Mr. Edward Walker-Arnott of Herbert Smith, and Sir Kenneth Berrill, former Chief Economic Adviser to the Treasury and Head of the Central Policy Review Staff of the Cabinet Office, who became Chairman of the Securities and Investment Board in 1985.

At a meeting of panel auditors on 30 November 1982, the auditors had been asked if they would like a follow-up meeting on asbestosis. A follow-up meeting was (it appears) held early in the new year.

On 8 April 1983 Sir Peter Green (as Chairman) wrote to all managing agents, members' agents (for information) and approved accountants on the subject of Disclosure of Reinsurance Arrangements. The letter stated that the Committee of Lloyd's was seeking information as to certain reinsurance arrangements in order to obtain a better understanding of reinsurance practices within the market. By paragraph 3.1 managing agents were required to disclose details of all reinsurance contracts or arrangements in force at 31 December 1982 which by their terms or by separate agreement enabled a syndicate to build up reserves against general underwriting losses or for any other reasons. This requirement was intended to identify arrangements under which characteristically, funds were accumulated and could be returned to the syndicate, effectively at the discretion of the agent or underwriter. By paragraph 3.2 managing agents were required to disclose details of all related party reinsurance arrangements which had been in force at any time since 31 December 1979.

In his statement as Chairman of Lloyd's in Lloyd's Global Accounts 1982 Sir Peter Green said:-

"I am pleased to say that this year we are presenting Lloyd's Global figures in a much improved and more comprehensive form...

Another important innovation is the inclusion in the underwriting accounts of separate figures for the reinsurance provision made to close the 1980 and previous accounts. At £2113 million, this is the underwriting agents' best assessment of the outstanding liabilities of the syndicates under their management. ...

The figures show that for the 1980 year of account Lloyd's made a profit of £264 million...

It will be noted...that the known assets of Lloyd's at present exceed the statutory requirement by more than five times. ...

One aspect of the Lloyd's figures which is indicative of confidence in Lloyd's is the ratio of membership to premium income. In 1970, 6,000 members earned premiums worth just over £786 million. Ten years later, although the membership has tripled, Lloyd's premium income had gone up by nearly five times. ..."

An accompanying report by Mr. Michael Cockell (Chairman LUNMA) included the following:-

"...I look at 1980 as the worst non-marine underwriting result since the mid-1960s, brought about by the gradual decline since those days in commercial sanity bolstered by the insidious buffer of historically high interest rates. ...

It may prove in time that 1980 was the year when many syndicates were able to reserve for their asbestos and trauma-related potential. It would be appropriate if I explained how difficult it is to comment on the asbestos situation in a way that would be useful. It must be understood that extremely onerous and sensitive discussions and negotiations are continually taking place. There is

always the potential danger of punitive damages, so I cannot helpfully comment in detail on these subjects.

It takes a brave man, or a foolish one, to forecast the outcome of the open years. For what it is worth I would personally expect the bottom line on each to show a deterioration on the preceding one. ..."

The Audit Committee had requested that for those syndicates which had reported inadequate audit reserves of 15% or over, the inadequacy should be looked at in relation to the capacity and premium income of the syndicate concerned. On consideration of the figures, the Audit Committee felt that although in some cases the figures appeared to be extremely high, the circumstances and reasons for the figures had to be taken into account. One of the main reasons for the high apparent inadequacies was the asbestosis problem; another was roll-over funds causing an increase on closing reinsurance.

On 21 October 1983 Mr. B. J. Brennan (Deputy Chairman) wrote to advise underwriting agents of the procedure being followed at Rota interviews where prospective members were intending to underwrite through an agency which was the subject of an investigation or which managed a syndicate which was the subject of an investigation. The inquiries concerned were (i) PCW/Alexander Howden Underwriting Ltd/Posgate & Denby (Agencies) Ltd and (ii) syndicates underwritten by T.R. Brooks & Others/Fidentia Marine Insurance Co Ltd.

On 26 October 1983 the Secretary of LUNMA wrote to Mr. A.H. Chester (Chairman Audit Committee) on the subject of audit regulations - "All Other" category. The LUNMA Committee had considered the situation with the benefit of the views of Mr. E.E. Nelson (who was also a member of the Audit Committee). The LUNMA Committee had agreed that any conclusions which would result in percentages in excess of 100% were fraught with danger and unacceptable. The LUNMA Committee was therefore unable to recommend to the Audit Committee any positive split in the "All Other" category. The Committee were also of the view that there should be no new Audit Codes splitting the "All Other" category into statistical sub-divisions.

By December 1983 the loss forecast in respect of Computer Leasing had been reduced to US$370 million and virtually all claims had been settled (see a memorandum from the publicity and information department dated 16 December 1983).

On 22 December 1983 the DTI wrote to the MSSD in relation to Instructions for the Guidance of Lloyd's Auditors. As to non-marine "All Other" US dollar the letter stated that the reserves for this exceptionally long-tailed account looked very weak, particularly at the end of years 1 to 4 but also throughout the tail. There was prima facie evidence that the minimum reserves had not been shown to be adequate, and the full picture was yet to emerge, as the estimated ultimate cost as at years 7, 8,9 etc based on the minimum audit reserves would probably be shown to be optimistic. The Government Actuary's Department believed that strengthening was needed in the tail, and also in the first four years. Objections to minimum reserves of more than 100% of premiums received would need to be resisted. To the extent that there was implied discounting for future income, the DTI thought it better to face this openly and declare the underlying assumptions.

The Calendar Year 1984

In 1984 Mr. Peter Miller was Chairman of the Council of Lloyd's; Mr. F. Barber was senior Deputy Chairman and Mr. Murray Lawrence junior Deputy Chairman; Mr. Ian Hay Davison was Deputy Chairman and Chief Executive.

In a memorandum dated 19 January 1984 on the subject of the Inland Revenue and rollovers and time and distance policies, Mr. Frank Barber (senior Deputy Chairman) mentioned asbestosis liabilities - "These losses are coming in at a frightening rate and for many syndicates a full reserve would bring massive losses to Names in 1981/1982 Accounts. This type of loss may settle very slowly if every case is contested through the courts or it may settle very quickly as underwriters attempt to reach a compromise with their assureds or re-assureds. In the former case, the reinsurer will make profits, in the latter, there exists the probability of severe losses."

On 20 January 1984 Mr. Simon Tuckey Q.C. and Mr. N.F. Holland FCA wrote to the Head of External Relations at Lloyd's in relation to a number of issues which had come to their attention as a consequence of their enquiry into the affairs of PCW Underwriting Agencies Ltd and WMD Underwriting Agencies Ltd, which they wished to refer to the Council of Lloyd's. The letter stated:-

"Whilst we do not attribute the misdeeds described in our report to the inadequacy of the regulations prescribed by the Committee of Lloyd's, we consider that there have been a number of instances where the self-regulatory framework of the market has been inadequate and that there is a need to introduce further controls to inhibit the opportunity for such transgressions in the future. We appreciate that action has been, or is being taken in respect of certain of these issues.

The areas of concern can be summarised into three categories.

(A) An apparent lack of knowledge in the Lloyd's market of the basic legal framework in which it operates;

(B) A lack of definition and understanding by those trading within the market of their respective responsibilities and;

(C) Deficiencies in the supervisory and administrative procedures."

These categories were amplified and explained in an attached Appendix.

As to the law of agency it was pointed out that managing agents and their staff including the underwriters are governed by the general principles of the law of agency and that the law of agency, among other things requires that an agent:

(a) acts at all times in the best interests of his principal;

(b) does not make secret profits at the expense of his principal; and

(c) makes a full disclosure of all matters affecting his relationship with his principal including his remuneration and any interest which he may have in the business which he transacts for his principal.

Appendix A continued -

"In the course of our enquiries it was apparent to us that many members of the Lloyd's community in senior positions were not even vaguely aware of the existence of such obligations. Indeed Mr. Wallrock told us that he only became aware, after the commencement of our enquiries, of "the actual law of agency". We consider that these basic principles should be widely promulgated and that they should be understood by any person holding a senior position in the Lloyd's market."

On 8 February 1984 Mr. Robin Jackson (Chairman of the AWP) made a formal presentation to the panel auditors on the latest situation with regard to asbestosis. A preliminary meeting was arranged between Mr. Murray Lawrence and Mr. Jackson to run through what Mr. Jackson intended to say at the meeting.

In a memorandum dated 9 February 1984 Mr. Ian Hay Davison wrote to Mr. P.A.R. Brown:-

"As to syndicate accounting, I believe in all honesty it can be said that we have made great progress in arranging for the publication of syndicate accounts and by incorporating by byelaw certain basic essentials which will go to Council on 13 February...disclosure is the name of the game and disclosure is what we are achieving. There is an inevitability about the work of accountants in this field which even the high Tories on the Committee know they cannot reverse."

The meeting of the Membership Committee on 10 April 1984 provides an example of an external Name (Mr. E. Kulukundis) being present when questions to be asked at Rota Committees were considered, and changes discussed.

An Asbestos Working Party Market Meeting was held on 11 April 1984.

The Underwriting Agents Byelaw (No.4 of 1984) provided that the members of each syndicate for the time being managed by a managing agent should include: (a) at least two directors for the time being of that managing agent; and (b) the active underwriter of each such syndicate, unless the Committee otherwise agreed (Part C, paragraph 23).

On 25 May 1984 the Chairman (Mr. Peter Miller) wrote to Names to make clear Lloyd's position in relation to losses on the PCW syndicates, and also on other syndicates, under different managing agents, whose members felt disquiet. The letter said that the Council had a general duty to the membership at large to manage the Society and a specific duty to maintain an orderly market.

On 11 June 1984 the Council of Lloyd'resolved that a review procedure for syndicate annual accounts be established covering: (a) the completeness of annual reports; (b) the nature of the audit opinion; (c) the effect of qualified audit reports; and (d) overall compliance with the applicable accounting requirements. When introducing this subject to the Council Mr. Davison explained

that the proposed review of the annual reports of syndicates was considered to be the minimum which should be done and was intended to ensure that:

(a) an annual report was received in respect of any syndicate in the market;

(b) each annual report received had been audited and that the nature of any qualification contained in an audit report was clearly understood and noted for follow up if appropriate;

(c) overall each annual report was complete and complied with the accounting requirements currently in force.

It was not, however, the intention to duplicate the work of the auditors nor to carry out financial analysis work nor to prepare league tables. The overall results of the reviews would enable Lloyd's to draw conclusions as to the effectiveness of the accounting rules and would be taken into account when considering further development of those rules.

The Johns Manville settlement was reached in July 1984. It involved the payment to Manville of a total of US$315 million, of which the London market paid US$94 million. Mr. Rayment said in his witness statement - "The settlement has proved to be a good deal, such was the explosion in claims in the latter part of the 1980s."

In his statement as Chairman of Lloyd's in Lloyd's Global Accounts 1983 Mr. Peter Miller said:

"I am pleased to report Lloyd's Global results for 1981...

it is pleasing to be able to record a substantial profitable result for 1981 of almost £152 million. ...

the reinsurance to close increased from £2.1 billion to £2.7 billion. ...

It is easy to be pessimistic in today's insurance world. I remain an unrepentant optimist...

I believe that while we still have to go through the troughs of 1982 and 1983, Lloyd's will emerge having avoided the worst of the losses now being reported by so many of its competitors, particularly in the US market. I predict a future in which Lloyd's will maintain and improve its position in the insurance industry."

An accompanying report from Mr. Ralph Rokeby-Johnson (Chairman LUNMA) included the following:-

"We who underwrite at Lloyd's have certain advantages over our competitors - for instance our business is truly international and we have the ability to change the content of our account swiftly. Nevertheless, it is impossible for most of us to perform entirely differently from others in our market place with the exception of small specialists. It is well known that non-marine underwriting has been very difficult and over-competitive in the early 1980s and our results demonstrate this. I will be surprised if my successors have better results to show for the underwriting years 1982 and 1983 when they are closed. ...

It is rapidly becoming apparent that the potential claims arising from asbestos will dwarf any claim in the history of our industry. It is very sad that in the United States to date under half of the money paid by our industry has ended in the hands the injured party, the balance is in the capacious coffers of the more rapacious lawyers: for this reason we support, and I very much hope all our industry will support, the concept of a claims handling facility set up by the insurers and manufacturers to look after the interests of the injured. ...

All these subjects require a re-appraisal of the reserves set up in the past to deal with future claims and it will not have escaped your notice that these reserves are constantly being strengthened by Lloyd's underwriters and the more prudent members of our industry.

I believe we are on the threshold of a time of opportunity for sensible underwriting: the ignorant or innocent capacity has been taught its lesson again. I only hope that this time we will not see the usual peaks and troughs and that common sense will have greater longevity. I fear that my hopes will not be well founded."

The Long Term Review Working Party on Membership Requirements (Chairman Mr. P.G. Bird) reported in October 1984. Mr. E. Kulukundis (an external member of the Council of Lloyd's) was a member of the Working Party.

A meeting took place in November 1984 between representatives of Lloyd's and the Inland Revenue, in relation to the Inland Revenue investigation into rollover policies and related matters. There was a strong element of advocacy in Lloyd's presentation to the Inland Revenue and certain remarks (particularly by Mr. Kellett) should be seen in their context. Lloyd's draw attention to the irony (having regard to subsequent events and the allegation in these proceedings of under-reserving) of the Inland Revenue's stance in 1984 that Lloyd's syndicates had over-reserved in the past, and could not justify the large size of the amounts which had been set aside in the RITC process.

Mr. R.J. Kiln delivered an address to the Insurance Institute of London on 6 December 1984 entitled 'Reserving Reinsurances to Close and Their Effect on Profits (1984)'. The views expressed were personal ones. Mr. Kiln said he believed that most long-tail reinsurance companies and many long-tail syndicates at Lloyd's, particularly in the early years of their accounts, were very under-reserved and that Lloyd's minimum audit percentage reserves could be misleading, and past experience showed this.

On 17 December 1984 at a meeting of the Members' Solvency and Security Committee Mr. Murray Lawrence (Chairman), in the course of discussion of amendments to the audit letter, expressed the view that Lloyd's should not pass judgment on syndicates' reinsurance to close. This should, he said, be left to managing agents and auditors. This point of view was representative of the then current thinking of the Committee/Council, and in my judgment reflected the distinction between the role of the Committee/Council and the duties and responsibilities of managing agents/underwriters and auditors of individual syndicates.

A meeting of panel auditors was held on 19 December 1984. Members of the MSSC addressed the auditors on factors affecting reserving at 31 December 1984. In particular Mr. Robin Jackson updated the auditors as to asbestos-related claims and pollution claims.

In a letter dated 21 December 1984 to Sir Kenneth Berrill, Mr. Peter Miller (as Chairman) said that he feared that many brokers were as ignorant as many underwriting agents as to their duties under the law of agency. Some steps had already been taken in the educative process but more were needed.

The Calendar Year 1985

In 1985 Mr. Peter Miller was Chairman of the Council of Lloyd's; Mr. Murray Lawrence was senior Deputy Chairman and Mr. D.E. Coleridge junior Deputy Chairman; Mr. Ian Hay Davison was Deputy Chairman and Chief Executive.

On 10 January 1985 Mr. Miller (Chairman of Lloyd's) attended a meeting of the LUNMA Committee. Members of the LUNMA Committee emphasised that there was a real capacity problem in the non-marine market. Compared to the previous year, rates had improved and business volume had increased and this, coupled with the effect of the sterling/dollar exchange rate, could easily lead to syndicates exceeding their PI limits. The general view of the LUNMA Committee was that some solution to the problem was urgently required: it was unacceptable to consider ceasing underwriting simply because current capacity limits were reached, as they would be early in the year at the present rate. Mr. Miller said that all the solutions suggested were being examined by the MSSC. He agreed that flexibility was needed to enable underwriters to take advantage of the improved business climate. While emphasising the importance of maintaining security, Mr. Miller believed there was possible scope for adjusting the existing PI:security ratio. He also stressed the importance of increasing capacity by introducing more Names during the course of the year, and persuading these and existing Names to take more non-marine business. Mr. Miller believed that LUNMA had an important marketing task to perform in this respect.

On 21 January 1985 a Paper was before the MSSC (Chairman Mr. S. R. Merrett) detailing various proposals which had been put forward as possible solutions to the 1985 capacity problem, which was caused by the general upsurge in rates and the continuing weakness of sterling.

On 8 February 1985 the MSSC reported to the Committee of Lloyd's on the means by which the anticipated shortage of capacity for 1985 might be overcome or alleviated. As part of a fact finding exercise a Corporation of Lloyd's staff team had interviewed a number of underwriting agents to ascertain whether they considered there was a problem and, if so, to obtain their views as to how it might be dealt with in the short term. There was general agreement that a shortage of capacity existed, particularly in the case of the non-marine and aviation markets. The representations made contained a broad spread of views, some urging concessions and others urging that the market must establish its own levels. For 1986 all agents stated that they were planning to increase the number of Names and the premium limits of current Names. In its report the MSSC said that it appeared that notwithstanding the likelihood of a mixed result for the 1982 account there was likely to be a further substantial increase in membership for 1986. The MSSC hoped that this would continue to receive every encouragement. The MSSC was unable to make specific recommendations to assist the 1985 capacity problems of the market which would not impact on security, or cause unacceptable administrative burdens. It was recognised that the Committee and/or Council might feel it necessary to take a different view and should that be the case, it was recommended that certain security measures should be taken to counter any adverse comment.

In March 1985 Papers from a Technical Briefing Conference entitled 'The Future of Lloyd's' were published.

Mr. J. Bannister of Risk Research Group in his Paper referred to Computer Leasing, the Avondale Gas Carriers and the blocking and trapping losses in the Shattl el Arab each of which was within about US$400 - 500 million. He added "The bigger disasters are the liability catastrophes of asbestosis and similar type with a likely cost more than ten times as great."

In his Paper Mr. Ian Hay Davison (Deputy Chairman and Chief Executive) said that the real purpose of Lloyd's was insurance and that the Council had been fortunate to have been occupied with reforms just when the market seemed to have turned and, for the first time in many years, underwriters were wearing smiles.

In a Paper entitled 'Non-Marine Underwriting Today and Tomorrow' Mr. R.D. Hazell, Mr. F.R. White and others said that as far as asbestosis was concerned it was a well known fact that the market was faced with bills of enormous proportions brought about from a totally unexpected source, where numbers of policies issued over a period of many years were considered to be the subject of a continuing loss event or occurrence, which the underwriter knew nothing at all about until some 20 or 30 years after the event.

Mr. A.C.L. Sturge as an external Name who had been involved with the ALM since its inception, in a Paper entitled 'Lloyd's - An Outside Member's View' said that Lloyd's was no longer a rich man's club in the same way it was 20 years ago. No longer was the membership of Lloyd's a cosy club made up of old Etonians, wealthy landowners and working Names. There were women members, overseas members, a large number from the professions and industry. These people joined Lloyd's because they saw it as a very sound investment. Mr. Sturge said that Names quite rightly wanted to spread their risk around the market and added "Woe betide the agent who does not realise this and puts Names exclusively on his own managed syndicates. Agents nowadays are put under scrutiny by their Names, not only with regard to performance of different syndicates...but also with regard to the management of syndicates". Mr. Sturge referred to a gradual squeeze of the members' agents and said that Lloyd's must ensure that the marketing force which the members' agent provided for finding new Names was retained, and the Name must ensure that the members' agent was retained as an alternative to the managing agent. This was because a members' agent is a Name's broker and is able to maintain a more independent and objective view of the market than a managing agent who would be principally concerned with placing Names on his own managed syndicates. Mr. Sturge added that it was essential that a Name had an accurate and detailed profile of the syndicate he was participating in, in order that he could maintain the proper balance between classes of business and types of business within those classes. He should have knowledge (which it should be possible to garner from the annual report of the syndicate) as to the type of syndicate he was writing on. For instance, a Name might not wish to have a commitment to long-tail business, so he should be in a position to judge how large his commitment might be. Mr. Sturge concluded that Names could look forward with confidence to the latter half of the 80s in the knowledge that it should be a profitable period and one in which self-regulation would be seen to be working for the community as a whole.

On 12 April 1985 a meeting was held between Mr. S. Tovey (of MSSD) and Mr. K. Randall, who by then had moved to Merrett syndicates. At this meeting Mr. Randall told Mr. Tovey that a disaster had occurred on the 11 run-off policies written by Merrett syndicates 418/417 (see the Merrett judgment, table 2 page 416). He said there was no reinsurance protection whatsoever for 418/417 in respect of these policies. The recognition of the IBNR had only occurred since the last Solvency Test, and it was expected to be many years before claims would be payable by 418/417. Mr. Randall wanted to establish what help could be provided by Merretts to enable Names to pass the Solvency Test. He said that approximately 40% of Merretts' personnel were on 418/417, some with significant shares. The repercussions for Merretts could therefore be considerable. In addition Mr. Randall said that the syndicate would only be closed when a more certain outcome could be established. (In the event closure did take place. I refer to the Merrett judgment at page 349 to 373 where I considered the closure of 1982 into 1983 of syndicate 418/417. At page 361, I found that Merretts and in particular Mr. Merrett knew that a reinsurance to close figure could not be arrived at with a reasonable degree of accuracy/within a zone of reasonableness, and that Merretts should accordingly have left the year open). I suspect that if 418/417 had left its 1982 year open, this would have had a marked effect on the Lloyd's market and underlined the depth of the problems represented by asbestos-related and pollution claims. The extent to which subsequent events would have taken a different course is a matter of speculation, but the effect would have been significant.

On 19 April 1985 Mr. Ian Hay Davison (Deputy Chairman and Chief Executive) addressed the National Association of Accountants Conference in Paris. He said that Names had increasingly come to regard membership of Lloyd's as an investment and as a result they had begun to behave like investors, claiming increasing information about their underwriting.

As to audit arrangements Mr. Davison said:-

"...There was a continuing risk, not always avoided, that Panel Auditors at Lloyd's lacked independence from their clients... But there was a more difficult problem, the Panel Auditors were not in fact charged with carrying out an audit at all. Their duty was to assist by providing the Annual Solvency Certificate which merely shows that each Name has sufficient assets to meet his liabilities calculated in accordance with the formulae laid down by the Committee of Lloyd's. Agents, underwriters and the Committee of Lloyd's were all under the misapprehension that the work done by the Panel Auditors was an audit in the sense which you and I would understand it. But it was not, a fact which the auditors themselves, to give them their due, had protested from the very beginning. The accounts of an underwriting syndicate, and the determination of its profit, depend upon how much reserve is necessary to close the account. The figure for the closing reserve is provided by the underwriter in the form of the reinsurance to close. Some of the Panel Auditors at Lloyd's were still living in the days of "inventory at director's valuation" which used to be the way in which profit was calculated in manufacturing companies in the UK 30 years ago: they did not consider it part of their duty to audit the reinsurance to close. Under these circumstances is it any surprise that some of the auditors missed the scandals and failed to point the plunder that was going on. They were not charged with performing an audit to normal auditing standards and although they clearly had knowledge of some of the matters that were going on, they may well not have fully appreciated their implications and they did not see it as their

duty to draw the Name's attention to what was afoot. Had they been larger firms, or wiser in the affairs of the world, or perhaps more willing to ask fundamental questions, then they might have exposed it quickly but the fact is, in most cases, they did not."

Mr. Davison went on to describe the accounting reforms introduced at Lloyd's which would, he hoped, ensure that should things go wrong again at Lloyd's the auditors would be under a strict duty and would be able to step in if necessary.

At a meeting of the MSSC (Chairman Mr. S.R. Merrett) on 30 April 1985 the subject of time and distance policies was discussed. It was agreed that Mr. Parkington should write to all Lloyd's auditors stating that a letter dated 1 April from the Manager of the UAAD to all panel auditors on the subject of time and distance policies, should now be read in the context of the current Audit Instructions, especially clause 2 paragraph (ix) and clause 6, first paragraph.

On 9 May 1985 Mr. E.E. Nelson made a speech in Boston which referred to the Super Fund legislation. "Many hundreds of sites have been used as dumps for toxic waste...the Federal Government is making a strenuous effort to clean up the sites and the costs thereof, which are very substantial, are being charged to those responsible for the dumping..."

I refer in this connection to the Merrett judgment at page 351 where I set out the perception as to pollution claims at this time. Pollution claims were recognised to be the next major problem for the market.

At a meeting of the Council of Lloyd's on 13 May 1985 the Chairman (Mr. P. Miller) reported that a Paper was to be sent to Council members shortly indicating the line which would be taken by the Chairs in forthcoming speeches which would encourage applications for membership of Lloyd's. This would take account of the need for increased membership as a result of the shortage of capacity and the conflicting adverse publicity arising from reported underwriting losses for recent years. A number of comments were made by members of the Council which indicated that there was a degree of concern about the current situation, particularly amongst UK Names.

On 14 May 1985 a meeting was held at Mr. Gilkes' request to advise Lloyd's (Mrs. C. Shorthouse AARD and Mr. S. Tovey MSSD) of the audit report which Ernst & Whinney intended to give in respect of syndicate Outhwaite 317. The background to the situation was summarised by Mr. Gilkes and Mr. McNamara of Ernst & Whinney.

On 17 May 1985 Mr. Outhwaite and Mr. Gilkes attended a meeting with the Deputy Chairmen, Mr. Lawrence and Mr. Coleridge. Mr. Stephen, Mrs. Shorthouse and Mr. Parkington attended the meeting. After the meeting both Deputy Chairmen stressed that it would be quite wrong for Lloyd's staff to indulge in any bullying of the type alleged by Mr. Outhwaite and Mr. Gilkes. Mr. Stephen stated he was surprised at the statement made by Mr. Gilkes and undertook to clarify the position.

The 1982 year of syndicate 317/661 was subsequently left open (see 1 July below).

The Wellington Agreement in respect of asbestos bodily injury claims was signed in June 1985.

A General Meeting of members of Lloyd's was held on 26 June 1985. Mr. Peter Miller (Chairman) said in his speech that the international insurance market had been, and to a great extent still was, going through a very severe crisis. The problem lay in the utterly disastrous results of large sections of the American casualty book. A handful of Lloyd's syndicates (out of the 431 trading in 1982) had reported heavy losses and some, very severe losses indeed. Mr. Miller said that the effectiveness of the regulation of the underwriting agency system had been called into question and that the Council of Lloyd's was accused of sitting on its hands and failing to help the Names on the troubled syndicates. Mr. Miller said that Lloyd's as a market had traded at an overall profit in every year since 1948, save three. Mr. Miller sought to answer three questions, first as to the Council's treatment of troubled syndicates (for example the Peter Cameron-Webb syndicate), second the general effectiveness of the regulatory system in relation to underwriting agents and third, the standing of Lloyd's in the world of insurance. As to the question whether a member or prospective member of Lloyd's could trust the system which regulated the market ("Could it happen me?"), Mr. Miller listed measures and referred to other reforms which he said added up to a modern and efficient system of regulation in which Names could readily put their trust. The latest figures showed that new applications for membership for 1986 continued to run 20% above the numbers for 1985. At the same time, about 9,000 existing members were asking to increase their premium income limits for the next year. Mr. Miller added "It is, as we all know, almost impossible to speak of the "right" time to join the market. That said, I believe that this is one of those times."

On 1 July 1985 Mr. R.H.M. Outhwaite wrote to Names on syndicate 317/661 "Following the publication of our accounts we have discussed with many agents the implications of the qualified audit report. We have reconsidered the matter and decided to leave the 1982 year open. ...It is our considered view that...the 1982 year will prove to be profitable."

In July 1985 Sir Peter Green wrote to Mr. Miller on the subject of a possible settlement with the Inland Revenue. In his letter Sir Peter Green said that it would not be easy to convince agents to accept any settlement because:-

"...We feel we should have either placed far more to reserve or made the policies far larger to meet the back years claims which we now have to pay... The 1982 results were "frankly ghastly". ...1983 and future years may be even worse for old syndicates even if the pure year is profitable... The only thing that will save us is the very large earnings on the "Fund" which will go a long way to make up the past under-reserving... There are plenty of horrors in the pipeline and they must be reserved even if figures are not available. The "true and fair" requirement should assist in this... It is perhaps fortunate that the over payment of past profits is falling for recoupment from a far larger number of current Names".

In his statement as Chairman of Lloyd's in Lloyd's Global Report and Accounts 1984 Mr. Peter Miller said:-

"...Of the seven major classes of business, three show a substantial improvement as compared with last year, three show a substantial deterioration and one a modest deterioration. While the marine account is the best for some years and four of the other six major accounts show reasonable profits, the general (non-marine) liability account shows an enormous loss. One wonders what Mr. Micawber, with his nose for which side of the financial line happiness lay, would have made of that particular result. Certainly his recipe for putting things to rights by waiting "in case anything turned up" cannot commend itself to the underwriters whose duty it is to correct this disastrous state of affairs. Figures such as these make it obvious that underwriters must take stringent remedial action as indeed they are. It is worth repeating that a combination of three things is needed, particularly in the all important American casualty business; first, a realistic rating level; second, a reformed policy wording embracing, where needed, a claims made basis for claims and an overall limit, including legal costs; and third, a measure of tort law reform. Without real progress in all three areas, it is hardly to be wondered at if underwriters increasingly withdraw from this class of business, with the result that certain industries will be left without the insurance coverage which they need to continue in business, to the detriment of society in general. ..."

An accompanying report from Mr. Richard Hazell (Chairman LUNMA) included the following:-

"The figures produced for the close of the 1982 Account do not make happy reading from the non-marine market's viewpoint, producing an overall loss of £219m after taking into account substantial investment earnings. It must be remembered when reviewing these figures that they relate to the experience of the insurance market of three years ago when the insurance industry generally was at its lowest ebb for very many years, if not in its entire history.

Undoubtedly, much of the blame for these poor results can be attributed to the need for underwriters to increase reserves for outstanding losses in the light of the more liberal attitudes adopted by the American courts, very often in pursuit of the deep pocket theory. This is particularly apparent, but is not unique, in relation to those claims affecting asbestosis and pharmaceutical products. New laws regarding liability following pollution and other forms of environmental impairment could also produce problems for underwriters as these new laws appear to apply retroactively, thus making it very difficult to underwrite against such circumstances.

It is to be hoped that the newly formed asbestosis facility, which after many years of being discussed has now been established, will enable settlement of claims to be made at a faster rate with a consequent saving of legal expenses. ..."

A document entitled 'ALM. 1982 Lloyd's Syndicate Results' published in September 1985 stated that Lloyd's Global Report and Accounts 1984 "have been distributed to all Names this year for the first time".

On 14 October 1985 Mr. Peter Miller (as Chairman) wrote to Names to report that the Council of Lloyd's had finally agreed a central settlement with the Inland Revenue. The letter explained why the Council had arrived at such a settlement and indicated its main terms. The settlement was for the sum of £42.5 million, together with interest from 1 August 1985. Roll over policies would be terminated as quickly as contractually possible. At the same time, a satisfactory regime was being established for the accounting for time and distance policies. The settlement resolved the tax treatment for 1982 and prior years of account regarding roll-over policies, time and distance policies and reinsurance to close.

On 11 November 1985 Mr. Ian Hay Davison (Deputy Chairman and Chief Executive) gave six months notice of resignation to the Council of Lloyd's. In his letter containing notice of resignation Mr. Davison said that when he came to Lloyd's in February 1983 he set himself three principal objectives: to bring to book those in the Lloyd's community who had misbehaved themselves; to establish a new regulatory framework for Lloyd's, based upon higher standards of disclosure, accounting and auditing; and to improve the staffing, organisation and management of the Corporation. He undertook this assignment for a term of three to five years and saw himself principally as an agent of change. His conclusion in November 1985 that it was time to resign was prompted by the Council's recent initiation of an internal inquiry (Chairman Sir Kenneth Berrill) into the structure of Lloyd's, which had started discussions about changing the Terms of Reference and status of the post of Chief Executive. The preparation of the Corporation's evidence for this inquiry had revealed divergent opinions about the continuing need for the Chief Executive to be independent and responsible directly to the Council.

On 13 November 1985 the Committee of Lloyd's considered a Paper containing recommendations put forward by the MSSC for establishing criteria under which anticipated recoveries under

Names' personal stop loss reinsurance policies might be taken into account in full for Solvency Test purposes. In the course of discussion Mr. Coleridge said that in his opinion if personal stop loss policies were barred by Lloyd's it was likely that the membership figures would be halved. Mr. Barber raised concern that stop loss policies were being written by relatively few underwriters within the market. He feared that the potential liability, in the event of a large call, would fall on a relatively small number of Names who might not have the means to satisfy all claims.

At the same meeting the Committee considered a Paper containing the recommendations of the MSSC in regard to the minimum reserves to apply for the Solvency Test at 31 December 1985. In relation to non-marine "All Other" US dollar, Mr. Murray commented that the existing system for establishing the scale of reserves for this classification was, in his opinion, obsolete. Mr. Barber suggested that in future this classification should be taken out of the published scales of minimum percentages in view of the lack of homogeneity in the business underwritten by syndicates in their non-marine "All Other" US dollar accounts.

By November 1985 there was developing concern in relation to "missing markets" (coverages placed in the London market for which the insured had a certificate or secondary evidence, but where the brokers were unable to identify the market with which the risks were placed). There was concern as to "missing markets"not only in respect of asbestos-related claims, but also with regard to future claims arising out of environmental pollution.

In November 1985 the Report of the Clucas Working Party on Extended Warranties and Consumer Guarantees was published.

A memorandum for the MSSC dated 16 December 1985 reviewed returns made by syndicate auditors (AU 38s) in connection with the 1984 Solvency Test. Syndicates whose reserves were deficient by over 15% were highlighted and individual explanations set out in an appendix. The syndicates identified included syndicate 895 (Spicer &White), five former PCW managed syndicates (plus two stop loss syndicates impacted by PCW losses) and two Robert Napier syndicates formerly managed by Oakeley Vaughan. Fifteen of the 24 syndicates whose reserves were deficient by over 15% no longer underwrote. Of the non-marine syndicates, many explained the inadequacies as being due to under-reserving in respect of latent disease, product and environmental liability and pollution claims. Three of the six marine syndicates attributed the deficiencies in reserving to the same type of problems. Three syndicates referred to a specific reinsurance contract with Transit Casualty Insurance Co of California.

A letter from the DTI to the MSSC dated 18 December 1985 referred to the subject of discounting of reserves. The DTI said that so far as insurance companies were concerned, discounting was not favoured. The DTI was prepared to tolerate it for long-tail (over 10 years) business provided its use and the underlying assumptions were disclosed. "Similarly for Lloyd's reserving we would look for the practice to be dealt with explicitly so that suitable conditions can be specified and the underlying assumptions exposed."

At a Special Meeting of the MSSC on 24 December 1985 Mr. Parkington reported that the DTI had commented on the MPRs proposed by the Committee of Lloyd's. The DTI had looked at the settlements and percentage reserve figures on a purely statistical basis and would consider any arguments which the MSSC could put forward to support the minimum percentages proposed by the Committee of Lloyd's. The approach which the DTI had adopted was different from that adopted by Lloyd's. The DTI had looked at the reserves for individual years of account, rather than the broad overall scale favoured by Lloyd's.

As to non-marine "All Other" (US dollar) the MSSC pointed out that the Johns Manville settlement had affected many of the older years and was almost certainly the reason for the very high settlements in years 16-18. Further, changes to "claims made" forms of policy for professional indemnity and medical malpractice risks were producing an earlier settlement pattern on the 1981 and 1982 accounts. Mr. Merrett commented that it would be inappropriate to increase the percentage at year end 4 from 70% to 120%, as this could penalise some syndicates. Arguments should be put to the DTI for not increasing the percentage reserve which, Mr. Merrett suggested, could include the change in the way in which this class of business had been written and also the Johns Manville settlement. Attention was drawn to the fact that the provision of the Benjamin formulae would have indicated the overall market experience for this class to those syndicates not possessed with data for the earlier years. It was felt that further research into this class of business was vital in order that a reasoned argument could be made to the DTI.

The Calendar Year 1986

In 1986 Mr. Peter Miller was Chairman of the Council of Lloyd's; Mr. Murray Lawrence was senior Deputy Chairman and Mr. M.H. Cockell junior Deputy Chairman; Mr. Alan Lord was Deputy Chairman and Chief Executive from March.

On 10 January 1986 The Rt. Hon. Leon Brittan QC MP announced his intention to establish a Committee of Inquiry into the regulatory system of the Lloyd's insurance market. A Committee of Inquiry into Regulatory Arrangements at Lloyd's (Chairman Sir Patrick Neill Q.C.) was appointed with the following terms of reference:-

"To consider whether the regulatory arrangements which are being established at Lloyd's under the 1982 Lloyd's Act provide protection for the interests of members of Lloyd's comparable to that proposed for investors under Financial Services Bill".

The Committee of Lloyd's at a meeting on 22 January 1986 considered a number of documents on discounting of reserves for solvency purposes, including the report of a Working Party established in November 1985 to consider how the Instructions for the Guidance of Lloyd's Auditors should cover the subject of discounting of loss reserves. The Chairman of the Working Party (Mr. Murray) stated that the view of the Working Party was that Lloyd's could not remain silent on this issue. The continuing requirement to expand the capital base of Lloyd's from sources not already exposed, called for assurance that all undischarged liabilities had been fully reserved. The Committee agreed with the recommendation in the Working Party report that discounting of loss reserves for the time value of money should not be permitted at Lloyd's for solvency purposes and agreed certain specific recommendations. It was noted that the treatment of time and distance policies was covered by the agreed recommendations and by the provisions of the Instructions for the Guidance of Lloyd's Auditors.

A meeting of recognised auditors was held on 29 January 1986. There was a commentary on major issues from representatives of the four major markets. Mr. R.A. Jackson updated auditors on the non-marine market. In particular he referred to the Asbestos Claims Facility, the Johns Manville settlement, new areas of claims (railroads, brakelinings etc), DES and environmental/pollution claims.

By letter dated 27 February 1986 the Neill Committee invited comments on a number of matters including:- whether the information supplied to prospective Names was sufficient to enable them to make informed judgments about the consequences of membership of Lloyd's and the performance of different syndicates; whether in advising prospective Names about the consequences of membership sufficient account was taken of personal circumstances; problems of potential or actual conflict of interest; the accounting requirements for syndicates; and whether it was necessary or desirable to establish some means of compensating Names in the event of serious underwriting losses which arose otherwise than from the normally accepted risks of the business.

In March 1986 a Working Party chaired by Sir Kenneth Berrill presented a report on Lloyd's Corporate Structure.

On 10 March 1986 Mr. Alan Lord attended his first meeting of the Council of Lloyd's as Deputy Chairman and Chief Executive.

In the course of his evidence to the Neill Committee on 18 June, Mr. Miller said there was "a quite widespread lack of perception or appreciation of the full meaning of the law of agency amongst our underwriting agents."

At a meeting of the AASC on 24 June 1986 Mr. C.B. Gough (Chairman) introduced a Paper on the disclosure of information to prospective Names. The AASC was responsible for policy proposals in respect of financial information and disclosures. Three types of information had been identified, Lloyd's material, members' agent disclosures and syndicate information.

On 1 July 1986 Mr. Miller in evidence to the Neill Committee referred to "small syndicates" to define a device whereby the abuse was practised of preferring the interests of one small set of Names, notably but not exclusively the active underwriter and his cronies, over the interests of a larger set of Names for whom the managing agent was responsible, in defiance or ignorance of the law of agency. The mischief was preferring one syndicate over another, whether in writing risks, allocating expenses or dealing with reinsurance. Mr. Miller gave six examples of small syndicates. He said five of those had good commercial reasons for their existence. He was not sure about the sixth.

At a meeting of the SSC on 7 July 1986 (Chairman Mr. C.K. Murray) in a discussion of reinsurance to close and premium income limits, reference was made to the risk exposure where syndicates accepted the run-off of other syndicates. It was suggested that there should be a maximum amount of a Name's limit which could apply to this business.

On 11 August 1986 the Council resolved that the Report of the Committee of Inquiry (known as the Davis Inquiry after its Chairman, Mr. John Davis) should be published. The Committee of Inquiry had been appointed in June 1985 by the Council to look into and report on the management of syndicates by Richard Beckett Underwriting Agencies Ltd and the handling of Names' affairs by RBUA for the period December 1982 to June 1985. These syndicates were formerly managed by PCW Underwriting Agencies Ltd. The Davis Inquiry reached two main conclusions. First, that there was no evidence of fraud or gross negligence by the management of RBUA during the period covered by the Inquiry. Second, primary responsibility for the losses incurred by the Names in respect of the 1982 underwriting year rested with the former management (PCW).

In his statement as Chairman of Lloyd's in Lloyd's Global Report and Accounts at 31 December 1985 Mr. Peter Miller said:-

"...

While 1983 is still within the trough of poor results...it is nevertheless pleasing to be able to report at least an overall profit of £36 million or £179 million excluding the PCW syndicates...

For 1983, of the nine statutory categories in which we make our returns, eight show an overall profit ranging from the modest to the satisfactory. The ninth tells a different story. As last year, the general liability account generates approximately 12 per cent of the total premium income for 1983 - and, for the same year, produces 100 per cent of our losses. Were the underwriting environment for this class of business not to have improved it would be inconceivable that any underwriter would remain in the class. ..."

An accompanying report from Mr. Robin Jackson (Chairman LUNMA) included the following:-

"It is disappointing to report that, once again, the non-marine market has produced an overall loss after taking account of investment earnings. The loss of £231 million is somewhat higher than 1982 and represents a loss of 21 per cent on a total non-marine premium income of £1,074 million.

Although the overall market results of the year 1983 on its own were thoroughly unsatisfactory, they have been exacerbated by the need of a number of syndicates to set aside additional reserves in respect of latent disease claims such as asbestos for the prior closed years of account. The year also suffered a number of catastrophes including winter weather losses and Hurricane 'Alicia' in the United States. ...Hurricane 'Alicia'...may ultimately turn out to be the largest loss yet suffered by the market from one storm.

The US based liability account has yet again been the cause of most of the market's difficulties as, once again, it was necessary for underwriters to increase reserves for asbestos-related losses. Although the Asbestos Claims Facility - set up with the support of Lloyd's - is making significant savings in the legal costs involved, this is to some extent offset by there being no slowing down in the number of new suits being brought. ...

In summary, after some very gloomy reports from my predecessors, I genuinely believe I can be considerably more optimistic than has been possible for a long time. I hope that over the next few years the non-marine market will be able to return to the kind of results of which underwriters may be proud. It should not be assumed, however, that non-marine underwriting has suddenly become easy: it is just that some badly needed corrections have been made and will continue to be made enabling underwriters to be more in control of their own destinies."

In a letter dated 3 October 1986 from the Chairman of LUNMA to the MSSD on the subject of proposed scales of minimum reserves the following appeared under the heading non-marine "All Other" US dollar:-

"...This category is far too broad in that it does not in any way differentiate between, for example, direct business and reinsurance and... there is no clear distinction between business written on a claims made basis and business written on an occurrence form. Nor... does it differentiate between business written on a flat or low level excess basis and that written on a high excess basis. ...(LUNMA's) suggested recommended changes in this audit classification... (were) spelt out in our letter of 2 September 1986."

On 2 December 1986 Mr. C. K. Murray (Chairman SSC) wrote to the Chairman of Lloyd's setting out some personal views about action that should be taken in the near future. Mr. Murray said there had been intense pressure over the last few years to present the attractive and successful face of the Lloyd's market. This may have tended to create a climate where growth in membership and growth in the premium volume of the market were seen as highly desirable ends in themselves. He suggested areas where strengthening should be implemented for the 1989 account (the members deposit, earmarking of deposit, defaulting Names, reinsurance to close and Central Fund). Mr. Murray said that the current queue of Names to join almost every reasonably successful and reliable agent and syndicate suggested that a strengthening in Lloyd's solvency margins would not cause an unacceptable flight of Names or loss of capacity. The market had not been tested over the last 20 years by events that could present the catastrophic potential that the market responded to in the 1906 earthquake or the wind storms of 1938, 1950, 1954 and 1965. Much of the strain imposed by latent disease losses had been absorbed by Lloyd's reinsurers. In the future those reinsurers might well be less able or less willing to absorb the same proportion of Lloyd's gross losses.

At a meeting of the Committee of Lloyd's on 10 December 1986 Mr. Tovey reported upon the comments of the DTI regarding the scales of MPRs, which had been submitted to the DTI for approval.

At a meeting of the AASC (Chairman Mr. C.B. Gough) on 17 December 1986 guidance notes on time and distance policies were discussed. It was agreed that certain amendments should be made and the guidance notes submitted to the Committee of Lloyd's for approval.

The Calendar Year 1987

In 1987 Mr. Peter Miller was Chairman of the Council of Lloyd's; Mr. Murray Lawrence was senior Deputy Chairman and Mr. A. Parry junior Deputy Chairman; Mr. Alan Lord was Deputy Chairman and Chief Executive.

The Report of the Committee of Inquiry (Chairman, Sir Patrick Neill Q.C.) entitled 'Regulatory Arrangements at Lloyd's' was presented to Parliament by the Secretary of State for Trade and Industry in January 1987. The Report addressed:- self-regulation at Lloyd's; the recruitment process; syndicate membership; the legal relationship between Names; members' agents and managing agents; complaints and disputes; indemnity and compensation schemes; conflicts of interest; the registration process - underwriting agents; Lloyd's brokers and syndicate auditors; monitoring and enforcement; investigation and discipline; and the constitution. A list of 70 recommendations involved changes in Lloyd's rules or the constitutional framework within which they were made. In paragraph 1.4 the Report said:-

"...the Council have acted with energy and determination in using their powers. They have transformed self-regulation at Lloyd's. The many byelaws, and associated regulations and codes of practice introduced since 1982 are eloquent testimony to the reforming zeal of the Council. We know of no profession or equivalent organisation which has accomplished such a major programme of reform in such a short timescale."

At a meeting of the Committee of Lloyd's on 21 January a Paper developed by the AASC as to proposed guidance in relation to time and distance policies was discussed.

A Special Meeting of the Council of Lloyd's on 22 January 1987 considered the core recommendation in paragraph 1.9 of the Neill Report that the composition of the Council should be changed. This involved reduction of the number of working members to 12, retaining the number of external members (8) and doubling the number of nominated members to 8. After discussion the Chairman said he would make it clear to the DTI that the core recommendation was accepted subject to transitional arrangements.

A memorandum dated 26 January 1987 by MSSD/Advisory Department for consideration by 'O' Group on the subject of the Outhwaite run-offs concluded that the implications of this area of dispute were far-reaching for Lloyd's, especially if further litigation commenced.

On 27 January 1987 Mr. Peter Miller wrote to members on the subject of the Neill Committee Report, concluding that the Report must be used "fully to restore...necessary confidence in the regulatory system at Lloyd's."

On 29 January 1987 R.H.M. Outhwaite (Underwriting Agencies) Ltd wrote to all direct Names informing them that "We are obliged to question the basis on which certain of (the run-off policies written by 317/661) were placed. We have kept Lloyd's informed of the situation...".

A meeting of recognised auditors was held on 4 February 1987. Mr. R. Jackson provided a commentary on non-marine market issues. He said that the main concern was still asbestos. It had been hoped that there would be a drop in claims in 1986 but this had not been evident; 900 new cases per month were reported in 1985, while 1500 new cases per month were reported in November and December 1986. Mr. Jackson said that some of the more recent claims might prove to be less serious than earlier claims, with fewer claims relating to cancer or asbestosis. Mr. Jackson reported that the Asbestos Claims Facility had settled claims at a higher rate than was expected. During the course of 1986, the London market expended approximately $70 million in Facility billings and to some extent this figure was affected by accelerated cash flow. Mr. Jackson emphasised that even though there could be acceleration on a temporary basis, reserves established in underwriters' books would always be well in excess of payments made. Defence costs had been reduced to 30% of the overall cost of the claim by the Facility, but the reduction was not as much as anticipated. Known claims would account for a 25-30% increase in asbestos reserves at 31.12.86. Much of this increase would come from reinsurance and retrocessional contracts.

As to environmental pollution, Mr. Jackson said that environmental pollution would account for increases in some reserves. The market would end up paying a lot on pollution but policy wordings might provide better defences than on asbestos.

A document prepared by the Regulatory Services Group dated 11 February 1987 compared minimum reserves with actual reserves. In the case of non-marine "All Other" US dollar business the actual reserve as a percentage of minimum reserve was 181.4%.

At a meeting of the Committee of Lloyd's on 11 March 1987 a Paper seeking approval of the issue of instructions to the market covering settlement statistics, including the collection of

information relating to certain reinsurances which might affect those statistics, was considered. The Committee approved the draft documentation for issue to managing agents, along with the normal settlement forms for the year ended 31.12.86.

On 12 May 1987 Mr. R.R.S. Hiscox wrote to Mr. Peter Miller to say that the sentence in respect of Sir Peter Green was so light that it had been rightly criticised. The letter concluded - "Radical reform is out of the question until forced by circumstances, so let us continue to raise our capital from housewives with bank guarantees on the family home and suffer from the consequences at each downturn in the market."

On 19 August 1987 the Committee of Lloyd's was requested to approve the Global Report and Accounts as at 31 December 1986 under authority delegated to it by the Council. As to the draft of the Chairman's statement Mr. Merrett said that it was important to avoid the risk of alarming Names as regards the US casualty scene. This comment has caused me concern.

In his statement as Chairman of Lloyd's in Lloyd's Global Report and Accounts at 31 December 1986 Mr. Peter Miller said:-

"the overall results for 1984, constitute a record profit for the Lloyd's market of almost exactly £300 million, excluding PCW, while the outlook for 1985, at least overall, looks likely to improve on that figure and 1986 is spoken of, almost reverently, as a vintage year...

However, there is one factor which continues to dominate the whole Lloyd's market and indeed it is perhaps no exaggeration to say it continues to dominate the whole world insurance scene. I refer, of course, to the general liability account. I have in previous years drawn attention to the enormous losses made in this area and I must do so again. The overall loss on this account shows a welcome reduction from last year's figure. However, I have to say that the problems facing those underwriting this account, while perhaps reduced as a result of the reforms in the law of tort in the United States, are nevertheless far from solved. Two facts seem to me to stand out; first, that this account produces 12 per cent of Lloyd's premium income and almost 100 per cent of our losses. Second, almost exactly 50 per cent of our reinsurance to close (£2,000 million out of £4,000 million in round figures) has to be devoted to the claims outstanding within this account; on a premium income base of some £400 million any under-reserving must have a sharply disadvantageous effect. In spite of all the efforts that have been made, quite extraordinary court awards and judicial interpretations continue to come from in particular, the American scene.

There are two quite different problems in the whole of this area. First, whether the amounts put aside to meet these claims will be sufficient, a problem of the past which underwriters must do their best to solve. Second, how far it is prudent to commit underwriting resources in the future to a class of business hedged about with such dangers and uncertainties. The problem extends beyond the insurance industry; society, that is to say the general public and its political leaders, will have to reflect and should, sooner rather than later, act to clarify how they feel that their damaged citizens should be fairly compensated."

An accompanying report from Mr. Bryan Kellett (Chairman LUNMA) included the following:-

"The results of the non-marine market are, once again, dominated by the loss in the general liability section, which for the 1984 year of account amounts to £170 million on a premium income of £365 million. A substantial proportion of that loss results from the need, as in previous years, to add to the reinsurance to close item as the result of reassessment of liabilities on business written in prior closed years of account.

This class of business, much of which comprises policies issued to insureds in the United States of America, continues to be adversely affected by certain features of the legal system of that country.

One such feature is the contingent fee system whereby lawyers are rewarded by sharing in the damages which they are able to secure for their clients, often leading to spurious cases being pursued. Another is the system of awards by juries in civil damages cases where they are encouraged to think of the insurance industry as having a "deep pocket" from which victims may be compensated, regardless of whether or not there is fault on the part of insured defendants.

The problems are considerably compounded by the time which may elapse between the occurrence giving rise to injury and an eventual court ruling that this was in some way due to the negligence of the policyholder.

Thus, underwriters of this class of business are faced with two problems. Firstly, they are being called upon to indemnify insureds in respect of losses for which they had not expected to be held liable. Secondly, the computations of the amounts - which will be needed to pay losses already incurred and which should be charged as premium on new business - will be based on inadequate and unreliable data. ..."

At a meeting of the SSC on 17 September 1987 Mr. Savage introduced a Paper reporting on the review of returns made by syndicate auditors on Form AU38 in connection with the 1986 Solvency Test. The Chairman of the SSC (Mr. Murray Lawrence) suggested that almost every old non-marine syndicate would be expected to have shown inadequacies in reserves of some degree. The meeting concentrated on those syndicates appearing deficient by more than 15% (14 non-marine and 7 marine syndicates). Of those deficient by more than 15%, most were syndicates in run-off. It was agreed that representatives of those syndicates which did not provide adequate explanations for inadequacies of over 15%, would be called for interview with the senior Deputy Chairman.

The storm of October 1987 "cut a swathe across southern England and western Europe".

At a meeting of the SSC (Chairman Mr. Murray Lawrence) on 12 October 1987 it was reported that LUNMA had suggested that the Solvency Test Instructions should stress more firmly that the MPRs were the absolute minima to be reserved and that most syndicates should be reserving at levels significantly above the minima, particularly in the case of long-tail business.

At a meeting on 27 November 1987 the Council of Lloyd's considered the extent of any duty which it might have to monitor the underwriting performance of managing agencies. The general consensus was as follows. The Council should not take additional powers (and therefore responsibility) beyond those implicit in the existing byelaws, to monitor the exercise by managing agents of the underwriting functions entrusted to them by Names. Beyond the primary duty of the managing agency board, a further responsibility in this area lay with the members' agents. Council did not wish to derogate from either the duty of the managing agents or the duty of the members' agents by intervention, other than in the most exceptional circumstances.

The PCW offer went unconditional on 19 June 1987 when it had been accepted by 90% of those to whom it had been made. By the end of 1987 over 99% of those to whom the offer was made had accepted it.

The Calendar Year 1988

In 1988 Mr. Murray Lawrence was Chairman of the Council of Lloyd's; Mr. D.E. Coleridge was senior Deputy Chairman and Mr. A. Parry was junior Deputy Chairman; Mr. Alan Lord was Deputy Chairman and Chief Executive.

At a meeting of the Committee of Lloyd's on 27 January 1988 Mr. Merrett expressed concern that substantial increases in asbestosis/pollution claims were being notified by the AWP and ECG. However, the SSC did not have access to figures showing the overall position but had to rely upon the reports of individual syndicates. The level of reserving would require significant increases for the next year and future years and Lloyd's needed greater comfort that agents were adopting adequate figures in their accounts. In Mr. Merrett's view this was a problem that needed to be addressed centrally. The ECG was finding difficulty in getting market people to serve. In the ensuing discussion the point was made that the level of reserving was a matter for the managing agents and should not become the subject of instructions from Lloyd's centrally. At the conclusion of the discussion it was agreed that Mr. Merrett would report upon the outcome of the annual meeting to be held the following week with Lloyd's recognised auditors.

At a meeting of the Committee of Lloyd's on 10 February 1988 Mr. Merrett reported that the annual meeting of the recognised auditors had taken place and had proceeded satisfactorily. Mr. Robin Jackson, however, had been referred to as a pessimist as regards asbestos/environmental pollution. Mr. Merrett had tried to explain that Mr. Jackson was in fact being optimistic, considering the background against which he was working.

A Paper on the subject of "Missing Markets" was prepared for consideration by the CEG on 11 March 1988.

At a meeting of the Council of Lloyd's on 13 April 1988 the Chairman (Mr. Murray Lawrence) reported that the Committee had discussed the Outhwaite situation and had agreed that as regards the solvency position Lloyd's should not double guess the auditors, that there were no grounds to justify Lloyd's intervention on 'fit and proper' criteria, and that it was an unattractive option for Lloyd's itself to intervene and offer a cap on the policies.

In about May 1988 the Freshfields Report into the underwriting activities of Outhwaite syndicate 317/661 was completed.

The 1985 year of Merrett syndicate 418/417 was left open in mid 1988.

At a meeting on 8 June 1988 the Council of Lloyd's received a presentation from Mr. M.V. Williams, Chairman of LUNMA.

On 20 June 1988 Freshfields circulated to Names on Outhwaite syndicates 317/661 for the 1982 year of account, a copy of their Report into the writing of run-off policies by those syndicates.

At a meeting of the Committee of Lloyd's on 22 June 1988 Sir Peter Miller reported that at a recent meeting of the Outhwaite Names, criticism had been voiced that Names had not been sufficiently warned of the likelihood of open years.

On 29 June 1988 at a General Meeting of members the Chairman (Mr. Murray Lawrence) reported that a broadly acceptable regime had been agreed with the Inland Revenue as to the tax treatment of reinsurance to close.

As to the immediate future Mr. Lawrence said:-

"Present market conditions, uncomfortable though they may be, are overshadowed by the need to provide for the development of past year claims, some as yet un-notified and unquantified, springing mainly from long-tail liability business in the United States. The deterioration in claims in this area over the past 12 months and the provisions that have had to be made as a result, have reduced in many instances the anticipated profit last year for the 1985 account. They are, in addition, responsible for the two current major problem areas in the market namely syndicate number 317 (Outhwaite) for the 1982 account and number 553 (Warrilow) for the 1984 account."

In July 1988 an explosion destroyed the North Sea oil production platform, Piper Alpha.

At a meeting on 27 July 1988 the Committee of Lloyd's considered a Paper which provided an analysis of run-off years of account as at 31.12.87 and which presented various options that had been suggested with a view to alleviating the resulting difficulties for Names. The Paper stated that there were 76 syndicates with years of account in run-off, and a total of 120 years in run-off, of which 23 were showing a profit. These figures excluded syndicates managed by AUA 2 (Sasse) and AUA4 (PCW). The discussion Paper said that claims arising from asbestosis and pollution risks, together with other US liability business, appeared to explain why 56% (67 in number) of the run-off years of account remained open. A further 13% of run-off years of account (15 in number) had been left open because of problems associated with run-off reinsurance policies written with or by Outhwaite and Merrett, and 9% as a result of "general uncertainties".

The Chairman said that a particular characteristic of the problem syndicates was their exposure to US liability business. It was difficult to write this kind of long-tail business on a one year basis, with a three year period of account. At the conclusion of the discussion, the Chairman said that he would take the Committee's views away and consider them before deciding how best to progress this matter.

At the same meeting Mr. Merrett advised that the Piper Alpha oil platform had been declared a constructive total loss.

At a meeting of the Council of Lloyd's on 3 August 1988 the Chairman (Mr. Murray Lawrence) reported that it was intended to use the Globals Press Conference to counter adverse reporting on the level of resignations and of new Names.

At the same meeting the Council noted a Paper on the subject of the Outhwaite syndicates and endorsed the position outlined therein that Lloyd's should not interfere in commercial disputes, but do everything to ensure their early resolution.

In his statement as Chairman of Lloyd's in Lloyd's Global Report and Accounts at 31 December 1987 Mr. Murray Lawrence said:-

"Over the past twelve months, two events have served to emphasis the vital role played by insurance and by the Lloyd's market in particular.

The devastation created by the storm of October 1987 which cut a swathe across southern England and Western Europe is being described as the world's largest insured loss, estimated to be 3 billion US dollars. More recently, in July this year, the dangers inherent in offshore oil production were brought into stark focus by the explosion which destroyed the North Sea oil production platform, Piper Alpha, involving tragic loss of life. ...

The deterioration in the claims experience over the past twelve months, together with the need to provide for the development of past year claims, especially in relation to long-tail liability business in the United States, have particularly affected the 1985 account results. This emphasises the crucial need to provide for future liabilities by way of full and appropriate reinsurance to close at the end of each year. The same problems are also reflected in the number of syndicates with years of account left open at the end of 1987. At the end of December 1987 there were 76 syndicates with a total of 120 years of account left open. Problems associated with asbestosis and pollution risks, together with other US liability business appear to account for the vast majority of the run-off years. To have so many syndicates left open must be considered unacceptable to underwriters, members and agents alike. Consideration is, therefore, being given by the Council of

Lloyd's to ways of dealing with this problem. ...

The difficulties associated with long-tail liability business highlighted by the Chairman of the Non-Marine Association have resulted in both an underwriting loss and an overall loss. This business is now, however, being written at rates that better reflect the present climate and with policy wordings appropriate to the changed circumstances. ...

It is clear that Lloyd's faces an abundance of opportunities in the years ahead...

I am, therefore, optimistic for the future of Lloyd's market place. ..."

An accompanying report from Mr. Michael Williams (Chairman LUNMA) included the following:-

"The 1985 result is, disappointingly, a deterioration on 1984, showing an overall loss of £5.3 million equivalent to 0.4 per cent on an income of some £1,331 million and an underwriting loss of £84.2 million. The result includes the well-publicised Outhwaite syndicates 317/661 for the 1982 account in run-off, accounting for some £85.4 million of losses without which the 1985 results would have shown a profit. ...

Our two main areas of difficulty are in asbestos-related claims and environmental impairment.

The rate of new asbestos-related claims rose steeply from an average 700 per month in 1985 to 2,000 per month in 1987, due largely to intensive publicity from the plaintiff bar and the seeking out of new industries with an "asbestos connection". There are, however, grounds for future optimism as the rate of increase has declined markedly in recent months.

The second major factor in the development of back years is the incidence of environmental pollution claims in the US. Claims for clean-up costs of dump sites are being made for circumstances in which it was never the intention of the insurer or the expectation of the insured that coverage should apply: in many cases insureds deliberately dumped waste knowing it to be harmful to the environment; in other cases dumping occurred at sites licensed for the purpose at the time. Depressing though this may sound, I should point out that underwriters are confident that there are excellent defences to these claims and they will oppose them with the utmost vigour. ..."

A Council Briefing Note dated September 1988 referred to the 'Liability Crisis' and stated that almost 50% of Lloyd's reinsurance to close (£2000 million out of £4000 million) was devoted to outstanding liability claims.

A discussion Paper prepared for consideration by the SSC (Chairman Mr. Merrett) on 14 September 1988 requested the SSC's comments on proposals for regulating personal stop loss business in the Lloyd's market. The discussion Paper pointed out the hazardous nature of personal stop loss business which derived from the reversal of the normal insurance and reinsurance process. In the circumstances of a major catastrophe, rather than spreading risk amongst the many, it could concentrate highly geared liabilities on the few.

A letter dated 5 October 1988 from Mr. C.W. Rome (Chairman of the LUA) to MSSD set out the justification for alterations proposed by the LUA Committee to the MPRs for the marine liability account. Mr. Rome wrote:-

"In no area of their business have Lloyd's underwriters been so substantially and so consistently under-reserved as in the liability accounts. Asbestos-related claims have been with us for some time now, but only recently has there been a serious threat of a substantial volume of such claims falling on marine policies. At present, the P&I Clubs appear to be in the front line, but to what extent they - and their reinsurers in the marine market at Lloyd's - will eventually be involved is unknown. Asbestos was widely used in the construction of ships, but to what extent and over what policy years ship builders and ship repairers policies will be involved no one knows."

At a meeting of the Committee of Lloyd's on 12 October Mr. Merrett raised the subject of aggregation of liability. There were three very large losses outstanding. Hurricane Alicia, though occurring in 1983, had been transferred (via reinsurance to close) to the 1986 year of account. In 1987 there had been the October storms and in 1988 the Piper Alpha disaster. There were thus three major losses on each of the three latest open years. Mr. Merrett said that the burden of the three losses was now beginning to come together with the same syndicates, and thus the same Names, being affected. The amounts involved were immense in relation to the syndicate cash balances and those syndicates had a heavy drain upon their resources for the three separate losses. The position had been reached where some syndicates were significantly through their reinsurance protection for three successive years and yet their Names knew nothing about it. Mr. Merrett continued as follows. The answer was not to be found through the regulatory route, but by managing agents establishing the position of their managed syndicates by requiring the underwriters of those syndicates to produce a worse case scenario. This information could then be passed on to the members' agencies. Agents should be made aware of the questions they needed to ask and reminded that, whilst it was natural to focus upon Piper Alpha, the same questions were relevant to Alicia and the October storms. If there was a heavy un-notified net loss to Names for three

years, then the Names should be told. The LUAA was considering a form of questionnaire which would include appropriate questions for members' agents to ask of managing agents (see 8 November below).

At its meeting on 17 October 1988 the SSC (Chairman Mr. Merrett) agreed that a syndicate's gross writing of PSL business should be restricted to 5% of its stamp capacity as from 1.1.90 and that this proposal would be put to the Committee of Lloyd's.

A letter dated 8 November 1988 from the LUAA (Chairman Mr. R.M.H. Gilkes) on the subject of market losses stated: -

"Your Committee is concerned that two recent catastrophe losses, the October storm and Piper Alpha seem to have been off-loaded onto the reinsurance market and then to be disappearing. As we are dealing with the largest non-marine and marine physical damage losses the insurance world has ever seen, we would expect Lloyd's underwriters to be paying rather more than what appears to be a few fairly modest retentions. Your Committee feels that we need to go beyond the rather comforting letters which managing agents have sent out on Piper Alpha. The attached questionnaire is designed, after considerable market consultation, to find out where these two losses, and Alicia, are finally going to rest so that our members' agents get information which they need for themselves and their Names. Please therefore complete the questionnaire for each of your managed syndicates, adding explanatory notes where necessary, and send it as soon as possible...to your members' agents. ..."

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Appendix 1

LLOYD'S LITIGATION (AND RELATED LITIGATION)

LIST OF CASES

	Date	Title of Action	Description
1.	29.11.90	Lark v Outhwaite [1991]LRLR 1.	Hirst J. Trial of preliminary issues. Wellington Agreement.
2.	11.03.90	Hiscox v Outhwaite [1991] LRLR 93.	HL. Arbitration award was a Convention award.
3.	10.91	Stockwell v Outhwaite.	The first Names' action to go to trial - settled January 1992 without judgment being delivered.
4.	03.03.92	Boobyer v David Holman & Co Ltd and the Society of Lloyd's [1992] 2 Lloyd's Rep 436.	Mervyn Davies J. Transfer to the Commercial Court.
5.	1.04.92	Ashmore and Others v Corporation of Lloyd's [1992] 2 Lloyd's Rep 1.	House of Lords allowed appeal from decision of CA (20.9.91). Order of Gatehouse J that preliminary points of law should be ordered, upheld.
6.	16.04.92	Boobyer v David Holman & Co Limited and The Society of Lloyd's (No. 2) [1993] 1 Lloyd's Rep 96.	Judgment of Saville J refusing the Names' application to restrain members' agents from giving notices required to use their personal reserves and securities at Lloyd's to meet unpaid cash calls.

7.	14.05.92	Napier & Ettrick and Others v R.F. Kershaw Ltd and Others.	Judgment of Saville J. The Premium Trust Deed did not embrace sums recovered in litigation against agents (Outhwaite) in respect of negligent underwriting.
8.	22.05.92	R v Lloyd's of London ex parte Briggs and Others.	Judgment of Beldam LJ and Laws J rejecting the applicants' claims for an interlocutory injunction to restrain the respondents pending the hearing of the application for judicial review from drawing down on the applicants' deposits.
9.	12.06.92	Napier & Ettrick and Others v R.F. Kershaw Ltd and Others [1993] 1 Lloyd's Rep 10.	Judgment of Saville J in relation to subrogated claims to Outhwaite settlement moneys advanced by Stop Loss Underwriters (see 9.7.92 and 10.12.92 below).
10.	02.07.92	Ashmore and Others v Corporation of Lloyd's (No. 2) [1992] 2 Lloyd's Rep 620.	Litigation in relation to Oakeley Vaughan syndicates. Judgment of Gatehouse J on preliminary points of law rejecting the specific duties contended for by the Names:- (a) a duty to take reasonable steps to alert the plaintiffs Names about matters which might seriously affect their underwriting interests and (b) a duty to impose a premium income monitoring system even if it was only an ad hoc system of monthly monitoring of the syndicates managed by an agent in trouble.
11.	9.7.92	Napier & Ettrick and Others v R.F. Kershaw Ltd and Others [1993] 1 Lloyd's Rep 10.	CA. Dillon LJ, Staughton LJ and Nolan LJ. Partially successful appeal by stop loss insurers against the decision of Saville J on 12.06.92 (see 10.12.92 below).

12.	17.07.92	R v Lloyd's of London ex parte Briggs and Others [1993] 1 Lloyd's Rep 176.	Judgment of Leggatt LJ and Popplewell J. Successful application by Lloyd's to set aside leave to move for judicial review granted by Potts J on 19.05.92 in relation to cash calls on Names (see 22.05.92 above).
13.	10.12.92	Napier & Ettrick and Another v Hunter and Others [1993] AC 713 [1993] LRLR 305.	HL. Appeal concerning subrogated claim of stop loss insurers. Stop loss insurers' appeal allowed. Stop loss insurers had a lien over settlement moneys. Names' cross appeal dismissed. Names not entitled to be indemnified out of the settlement moneys until the stop loss insurers had been indemnified in full pursuant to their right of subrogation.
14.	16.12.92	R v Corporation of Lloyd's ex parte Lorimer.	Pill J. Application to quash decision of Lloyd's Members' Hardship Committee refused.
15.	15.03.93	The Society of Lloyd's v Morris and Others.	Judgment of Tuckey J. Recoveries under Personal Stop Loss Policies taken out by Names at Lloyd's are not subject to their Lloyd's Premium Trust Deed. (See 28.05.93 below).
16.	13.05.93	Feltrim and Gooda Walker actions.	Judgment of Saville J on "pay now, sue later" clauses. Names who had failed to pay cash calls made upon them by their Agents before the issue of proceedings could sue the Agents in relation to underwriting. (See 30.07.93 below).

17.	28.05.93	The Society of Lloyd's v Morris and Others [1993] LRLR 217.	CA. Judgment of Bingham MR, Steyn LJ and Sir Christopher Slade. Appeal dismissed on the construction point. Personal stop loss recoveries by Names not caught by Premiums Trust Deed. Appeal allowed on the estoppel issue between Lloyd's and Mr. Morris in respect of the 1991 solvency test. Mr. Morris estopped from denying that recoveries from his personal stop loss insurances had been assigned to his Premiums Trust Fund. Cross-appeal by Names on assignment issue dismissed. There was an effective assignment of Names' contractual rights to receive personal stop loss recoveries to the trustees under their Premium Trust Deeds.
18.	05.07.93	The Society of Lloyd's v Canadian Imperial Bank of Commerce and Others. [1993] 2 Lloyd's Rep 579.	Judgment of Saville J. Held that the only substantive defence to a claim by Lloyd's as beneficiary under letters of credit was that there was fraud of a relevant kind.
19.	20.07.93	The Society of Lloyd's v Canadian Imperial Bank of Commerce and Others.	Judgment of Saville J. Summary judgment for Lloyd's. (See 05.07.93 above).
20.	30.07.93	Feltrim and Gooda Walker actions [1994] LRLR 168 [1996] LRLR 135.	CA. Appeal against Saville J decision 13.05.93. Judgment of Bingham MR, Steyn LJ and Hoffman LJ dismissed the appeal.
21.	12.10.93	The Merrett, Gooda Walker and Feltrim Cases. [1994] 2 Lloyd's Rep 193.	Judgment of Saville J on certain questions of law as to the existence, nature and scope of alleged legal obligations of managing and members' agents.

22.	20.10.93	Sheldon and Others v R.H.M. Outhwaite (Underwriting Agencies) Ltd and Others. [1995] 2 Lloyd's Rep 197.	Saville J. In a further Outhwaite Names' action, defendants' strike out application refused. The plaintiff Names could rely on Section 32 Limitation Act 1980 to overcome a statutory bar otherwise applicable to their claim, where the deliberate concealment alleged occurred after the cause of the action had arisen.
23.	13.12.93	The Merrett, Gooda Walker and Feltrim Cases. [1994] 2 Lloyd's Rep 468.	CA. Judgment of Bingham MR, Hoffman LJ and Henry LJ. Unsuccessful appeal of Managing and Members'Agents against Saville J decision of 12.10.93.
24.	16.12.93	The Society of Lloyd's v Clementson The Society of Lloyd's v Mason.	Judgment of Saville J on preliminary issues. Claim by Lloyd's for reimbursement by Names of sums paid from Central Fund. Clause 7 (d) of the Central Fund Byelaw held valid. Alleged terms should not be implied into the contract Members make with the Society. Preliminary issues relating to European Law Defences. The action of the Society to recover sums disbursed from the Central Fund held not to constitute an activity subject to Article 85 of the Treaty of Rome.
25.	12.04.94	Sword-Daniels v Pitel and Others Brown v KMR Services Ltd [1994] LRLR 10.	Judgment of Gatehouse J. Members' agents held negligent in advising two individual Names as to portfolio selection.
26.	26.05.94	Arbuthnott v Feltrim Underwriting Agencies Ltd and Others.	Judgment of Cresswell J. Plaintiff Names' application successful for the discovery and production by the Members' Agents of seven transcripts of evidence given by them to the Feltrim Loss Review Committee.

27.	26.05.94	Brown v KMR Services Ltd Sword-Daniels v Pitel and Others.	Judgment of Gatehouse J. Response to representations made since judgment of 13.04.94.
28.	21.06.94	Arbuthnott v Fagan and Others. [1996] LRLR 143.	CA (The President, Staughton LJ and Rose LJ). Appeal from Cresswell J (26.05.94) dismissed.
29.	27.06.94	Sword-Daniels v Pitel and Others.	Costs judgment (and assessment of damages).
30.	30.06.94	Sheldon and Others v RHM Outhwaite (Underwriting Agencies) Ltd and Others [1995] LRLR 20.	CA (Bingham MR and Kennedy LJ, Staughton LJ dissenting). Successful appeal by defendants against judgment of Saville J of 20.10.93 on preliminary ruling on the limitation issue. (The plaintiff Names could not rely on Section 32 Limitation Act 1980 to overcome a statutory bar otherwise applicable to their claim where the deliberate concealment alleged occurred after the cause of action had arisen).
31.	25.07.94	The Merrett, Feltrim and Gooda Walker Cases. [1995] 2 AC 145.	HL. Affirmed the decision of the Court of Appeal (13.12.93). Held. (1) that a duty of care was owed by managing agents in tort both to direct Names and indirect Names, and that the existence of such a duty of care was not excluded by virtue of the relevant contractual regime either under the pre-1985 agreements, or under the terms of the agreement prescribed by the 1985 byelaw, and that the Names were free to pursue their remedy either in contract or in tort. (2) That on the true construction of the prescribed agency agreement the members' agents had agreed to underwrite on behalf of the Name at Lloyd's, and the fact that they delegated that task to the managing agents did not alter their implicit promise that reasonable care and skill would be exercised in carrying out that agreement; that the circumstances that the managing agents

			themselves were under a similar, though non-contractual, duty to the Name did not alter the obligations which the members' agents had agreed to assume by their bargain.
32.	04.10.94	Deeny v Gooda Walker Limited. [1996] LRLR 183	Judgment of Phillips J. Gooda Walker (LMX) action. Judgment in favour of some 3000 Names who sued their managing agents and members' agents for breaches of duty owed in contract and in tort. The breaches alleged and proved related to the negligent conduct of the business of writing excess of loss reinsurance on behalf of Names. Taxation issues to be tried separately.
33.	14.10.94	Hallam-Eames and Others v Merrett Syndicates Ltd and Others.	Judgment of Gatehouse J. Certain limitation issues decided under RSC Order 14A.
34.	10.11.94	The Society of Lloyd's v Clementson The Society of Lloyd's v Mason [1995] LRLR 307	CA. Judgment of Bingham MR, Steyn LJ and Hoffman LJ. Appeal from Saville J (16.12.93). Appeal as to alleged implied terms dismissed. Appeal as to the Community Law issues allowed.
35.	25.11.94	R v Chairman of the Regulatory Board of Lloyd's ex parte Macmillan and Another.	Macpherson J. Application for judicial review of a decision of the Regulatory Board refusing to suspend the loss review of syndicate 80, dismissed.
36.	07.12.94	Deeny and Others v Littlejohn & Co (a Firm) and Others.	Arden J. Transfer to the Commercial Court.
37.	08.12.94	Bates and Others v Robert Barrow Ltd and Others.	Gatehouse J. Section 132 Financial Services Act 1986.

38.	11.01.95	Deeny and Others v Gooda Walker [1995] STC 439.	Potter J. Taxation issues.
39.	13.01.95	Hallam-Eames and Others v Merrett and Others.	CA. Judgment of Sir Thomas Bingham MR, Hoffman LJ and Saville LJ. Appeal against Gatehouse J decision of 14.10. 94 (section 14A Limitation Act 1986) allowed.
40.	16.01.95	Cox and Others v Bankside Members' Agency Ltd and Others [1995] 2 Lloyd's Rep 437.	Judgment of Phillips J. 'First past the post'. Issues of construction of E&O policies.
41.	10.02.95	Aikens and Others v Stewart Wrightson Members Agency Ltd and Others [1995] 2 Lloyd's Rep 618.	Preliminary issues judgment of Potter J. 1. The members' agents owed a duty in contract to all plaintiffs to act with reasonable skill and care; 2. Pulbrook Underwriting Management Ltd (PUM) owed a duty in tort to all plaintiffs to act with reasonable skill and care; 3. The members' agents and PUM were in breach of these duties; 4. Save for agreements under seal all of the plaintiffs' claims in contract against the members' agents statute-barred.
42.	10.03.95	Arbuthnott and Others v Feltrim Underwriting Agencies Ltd and Others.	Judgment of Phillips J. Feltrim (LMX) action. 1594 Names brought similar claims to those in Gooda Walker 04.10.94 against their members' agents and their managing agents. The gravamen of the Names' complaint that their underwriters negligently left them exposed to the risk of huge losses in the event of one or more catastrophes occurring, upheld.

43.	21.03.95	Barrow v Bankside	Phillips J. Application to strike out portfolio selection claim against members' agent refused. The rule in Henderson v Henderson.
44.	06.04.95	Deeny and Others v Gooda Walker Limited and Others [1995] LRLR 117 [1996] LRLR 176.	Judgment of Phillips J. Damages awarded in respect of claims that had been paid. That part of claim relating to anticipated claims reserved for future determination.
45.	11.04.95	Caudle and Others v Sharp [1995] LRLR 389.	CA (Nourse LJ, Evans LJ and Rose LJ). Appeal from Clarke J (23.02.94) allowed. Outhwaite run off contracts. Reinsurance. Whether E&O losses under 32 run off contracts could be aggregated - "each and every loss". Mr. Outhwaite's ignorance or failure not a single event.
46.	04.05.95	Sheldon and Others v RHM Outhwaite (Underwriting Agencies) Ltd and Others [1996] 1 AC 102	HL. (Lord Keith, Lord Browne-Wilkinson, Lord Nicholls) allowed the plaintiffs' appeal from CA (30.06.94) (Lord Mustill and Lord Lloyd dissenting). The words of section 32(1)(b) Limitation Act 1980 were wide enough to apply both where the concealment of relevant facts was contemporaneous with the accrual of the cause of action and where it occurred subsequently.
47.	05.05.95	Hallam-Eames and Others v Merrett Syndicates Ltd and Others.	Judgment of Cresswell J on application by LMCS for orders in relation to privileged/confidential material.
48.	12.05.95	Cox and Others v Bankside Members Agency Limited and Others [1995] 2 Lloyd's Rep 437.	CA. Judgment of Bingham MR, Gibson LJ and Saville LJ dismissing the appeal on 'first past the post' (16.01.95).

49.	25.05.95	Deeny v Gooda Walker Ltd (No.3) [1996] LRLR 168.	Phillips J. Basis on which interest ought to be awarded.
50.	28.06.95	Arbuthnott and Others v Feltrim Underwriting Agencies Ltd and Others (1993 Folio 1191).	Judgment of Gatehouse J for the plaintiffs against managing agents for damages to be assessed with interest.
51.	12.07.95	Brown v KMR Services Limited [1995] LRLR 241.	CA. Appeal from Gatehouse J (12.04.94). The defendants contended that (1) the judge should have found that even if he had been warned, Mr. Brown would have done nothing different from what he did; (2) the loss in fact suffered was too remote. By cross-appeal, Mr. Brown contended that (1) the judge was wrong to conclude that as much as 30 per cent of Mr. Brown's pil would have been placed on CAT/XOL and LMX syndicates; on quantum of damage: (a) the judge was in error in setting off or giving credit against the losses incurred in 1988, 1989 and 1990, profits made on CAT/XOL and LMX syndicates in 1986 and 1987; (b) the judge was wrong in excluding from the damages Lloyd's expenses. Held, by Stuart Smith LJ (dissenting in part), Hobhouse LJ and Gibson LJ, that the appeal would be dismissed, the cross-appeal allowed on the first ground and - 22 per cent substituted for the judge's 30 per cent; (Stuart Smith LJ dissenting) cross-appeal allowed on the second ground; cross-appeal dismissed on the third ground.

52.	31.07.95	PCW Syndicates v PCW Reinsurers [1995] LRLR 373.	CA dismissed an appeal from Waller J sitting as a judge-arbitrator. Sections 18 and 19 of the Marine Insurance Act 1906.
53.	09.08.95	Arbuthnott and Others v Feltrim Underwriting Agencies Ltd and Others	Judgment of Phillips J on the application of the basic principle that damages awarded should place Names in the same position as if the underwriters had purchased reinsurance protection sufficient to restrict the Names' net exposure to the PML to 100% of stamp.
54.	21.08.95	Cox v Deeny [1996] LRLR 288.	H.H.J. Diamond Q.C. E&O policy proceeds. Determination of issues.
55.	05.10.95	Deeny v Gooda Walker Ltd [1995] LRLR 361 [1996] LRLR 109.	Taxation issues. CA. Judgment of Simon Brown and Gibson LJJ, Saville LJ (dissenting). Dismissed appeal from Potter J (11.01.95).
56.	20.10.95	Rew and Others v Cox and Others.	Cresswell J. Professional indemnity insurances. Application for stay pursuant to section 4 Arbitration Act 1950 refused.
57.	24.10.95	Marchant & Eliott Underwriting Limited v Dr Higgins [1996] 1 Lloyd's Rep 313.	Judgment of Rix J. Summary judgment for managing agent for cash calls based on "pay now sue later" provision in agents' agreement.
58.	31.10.95	Henderson and Others v Merrett Syndicates Ltd and Others [1997] LRLR 265.	Cresswell J liability judgment in action (Long-tail) by Merrett Names against agents and auditors. Successful claim as to RITC's in years 4, 5 and 6 but claim failed as to RITC's in years 1, 2 and 3. Some run off contracts held to have been negligently written.

59.	07.11.95	Barrow v Bankside Members Agency Ltd and Another.	CA (Bingham MR, Peter Gibson LJ and Saville LJ). Appeal from decision of Phillips J (21.03.95) dismissed. The rule in Henderson v Henderson.
60.	04.12.95	Deeny v Walker and Others Deeny v Littlejohn & Co and Others [1996] LRLR 276.	Judgment of Gatehouse J. Whether pleadings against brokers and auditors should be struck out.
61.	20.12.95	Arbuthnott & Others v Feltrim Underwriting Agencies Ltd & Others.	Judgment of Gatehouse J. Feltrim 1990 claim of negligence against members' agent.
62.	21.12.95	Marchant & Eliott Underwriting Limited v Dr Higgins [1996] 2 Lloyd's Rep 31.	CA. Judgment of Leggatt LJ, Rose LJ and Roch LJ. Appeal by Dr Higgins against judgment of 24.10.95 dismissed.
63.	01.01.96	Arbuthnott & Others v Feltrim Underwriting Agencies Ltd & Others [1996] CLC 714.	Judgment of Longmore J. Further issues as to damages, following judgments of Phillips J 10.03.95 and 09.08.95.
64.	21.02.96	Henderson and Others v Merrett Syndicates Ltd and Others [1997] LRLR 247.	Judgment of Cresswell J following on from main judgment of 31.10.95. Limitation, misrepresentation / non-disclosure, general principles as to damages and contribution considered. Interim payment ordered.
65.	07.03.96	Deeny and Others v Gooda Walker Ltd and Others [1996] LRLR 109.	Taxation issues. House of Lords dismissed appeal from CA (05.10.95).
66.	19.03.96	Berriman and Others v Rose Thomson Young (Underwriting) Limited [1996] LRLR 426.	RTY Names action (LMX). Judgment of Morison J as to liability in favour of Names.

67.	16.04.96	Wynniatt-Hussey and Others v R.J. Bromley (Underwriting Agencies) PLC and Others.	Bromley Names action (LMX). Judgment of Langley J as to liability in favour of Names.
68.	19.04.96	Judd and Others v Merrett and Others [1997] LRLR 21.	CA. Appeal from Gatehouse J (07.12.95). Leave to defend conditional on interim payments.
69.	07.05.96	The Society of Lloyd's v Clementson [1997] LRLR 175.	Judgment of Cresswell J. Community Law issues. Central Funds arrangements held valid (not void by reason of art. 85 of the Treaty of Rome).
70.	16.05.96	The Society of Lloyd's v Woodward and Another.	Judgment of Sir Richard Scott VC. Litigation recoveries and the Premiums Trust Deed.
71.	22.05.96	Charter Reinsurance Co Ltd v Fagan [1997] AC 313.	HL. The meaning of the words "actually paid" in the context of the ultimate net loss clause.
72.	23.05.96	Wilde Sapte and Deeny v The Society of Lloyd's.	Judgment of Sir Richard Scott VC refusing application under O.85 rule 2 to authorise the distribution to Names of litigation recoveries.
73.	20.06.96	Axa Reinsurance (UK) Plc v Field [1996] 2 Lloyd's Rep 233.	Basis of aggregation. Originating "cause" and "event".
74.	06.07.96	Henderson v Merrett Syndicates Ltd	Cresswell J. Provision of documents to the Council of Lloyd's.

75.	16.07.96	Aiken and Others v Stewart Wrightson Members Agency Ltd and Others.	CA. Judgment of Neill LJ, Otton LJ and Ward LJ dismissing the appeal from Potter J ordering interim payments (10.02.95/31.07.95).
76.	24.07.96	Hill and Another v The Mercantile & General Reinsurance Co Plc [1996] LRLR 341.	HL. Follow settlements clause. "Within the terms and conditions of the original policies".
77.	15-16.08.96	R v The Council of Lloyd's ex parte Susan Rachel Johnson & Others.	Judgment of Brooke LJ. Application for Judicial Review of R&R dismissed on grounds of delay and merits. Lloyd's were acting within their power in putting forward the R&R proposals.
		SEPTEMBER 1996 MARKET	SETTLEMENT
78.	24.10.96	Napier and Ettrick and Another v Kershaw Ltd Lloyd's v Woodard and Another [1997] LRLR 1.	CA. Judgment of Nourse LJ, Hobhouse LJ and Pill LJ. Appeal in Napier v Kershaw allowed (see 14.5.92). Appeal in Lloyd's v Woodward allowed in regard to litigation recoveries (see 16.5.96).
79.	20.02.97	The Society of Lloyd's v Leighs and Others [1997] CLC 759.	Judgment of Colman J. Claim by Lloyd's (assignee) for recovery of Equitas premium. Summary judgment granted on preliminary issues. Equitas Scheme not outside scope of the venture.
80.	24.03.97	Fawkes – Underwood v (1) Hamiltons and (2) Hereward Phillips.	Judgment of Goudie QC. Defendants in breach of duty in failing to advise Mr Fawkes-Underwood that he should not allow himself to be on certain syndicates.

81.	23.04.97	The Society of Lloyd's v Leighs and Others [1997] CLC 1012.	Judgment of Colman J on further preliminary issues arising out of Lloyd's claim for the Equitas premium. Summary judgment in favour of Lloyd's. Defendant Names not entitled to rescind their membership contracts with Lloyd's; precluded from setting off their counterclaim for damages for fraud against Lloyd's claim for Equitas premium; and not entitled to a stay of execution of a judgment against them for the Equitas premium.
82.	08.07.97	Re Yorke v Chataway (1997) TLR 451.	Judgment of Lindsay J. Executors are at liberty to distribute deceased's estate to the beneficiaries.
83.	31.07.97	Manning v Lloyd's Lloyd's v Colfox and Others Philips v Lloyd's [1998] LRLR 186.	Judgment of Mance J in favour of Lloyd's under O.14. "Conditional Acceptors" case.
84.	31.07.97	The Society of Lloyd's v Leighs and Others [1997] CLC 1398.	CA. Judgment of Saville LJ, Ward LJ and Phillips LJ dismissing the Names' appeal against decisions on 20.02.97 and 23.04.97.
85.	03.12.97	Lloyd's v Fraser and Others.	Tuckey J. An abuse of process for Names to seek to advance allegation of bad faith relating to R&R.
86.	16.01.98	Yasuda Fire & Marine Insurance Company of Europe Ltd v Lloyd's Underwriting Syndicates 229, 356, 462, 571, 661 and 961 [1998] LRIR 285.	Cresswell J. Aggregate Extension Clause. Construction.

87.	27.01.98	Lloyd's v Daly.	Tuckey J. Foreign securities legislation argument did not provide a defence to claims for Equitas premiums.
88.	05.03.98	Denby v English and Scottish Maritime Insurance Co Ltd and Others. Yasuda Fire & Marine Company of Europe Ltd v Lloyd's Underwriting Syndicates Nos 209, 356 and Others [1998] LRIR 343.	CA. (Hobhouse LJ, Brooke LJ and Chadwick LJ). Aggregate Extension Clause. Construction. Appeal from Cresswell J (16.01.98) dismissed. Appeal from Waller J [1996] LRIR 301 allowed.
89.	08.06.98	Norwich Union Life Insurance Society v Qureshi [1999] LRIR 263.	Rix J. Summary judgment - Guarantee Plan marketed to Names.
90.	31.07.98	Aldrich and Others v Norwich Union Life Insurance Co Ltd [1999] LRIR 276.	Rimer J. Guarantee Plans for Names. Names' case struck out.
91.	31.07.98	Lloyd's v Fraser and Others [1999] LRIR 156.	CA. Judgment of Hobhouse LJ, Pill LJ and Judge LJ. Leave to appeal against decisions on 03.12.97, 27.01.98 and 04.03.98 (Quantum) refused.
92.	23.11.98	Aldrich and Others v Norwich Union Life Insurance Co Ltd [1999] LRIR 453.	CA. (Morritt LJ and Tuckey LJ) leave to appeal from 08.06.98 and 31.07.98.
93.	02.12.98	McAllister v Lloyd's [1999] LRIR 487.	Carnwath J. Hardship Agreement. There was an arguable case under rule 6.5(4)(b) of the Insolvency Rules that the debts were disputed on substantial grounds.

94.	02.01.99	Lloyd's v Jaffray [1999] LRIR 182.	Colman J. Lloyd's application to stay proceedings because of failure of Names to pay sums ordered by the Court, dismissed.
95.	23.03.99	Lloyd's v Robinson [1999] LRIR 329.	HL. Appeal from CA (24.10.96) allowed in part. Amendments to clause 2 of the Premiums Trust Deed validly made. All three categories of damages subject to the trust.
96.	10.06.99	Garrow v Lloyd's [1999] LRIR 482.	Jacob J set aside Lloyd's statutory demand served on a Name on the ground that he had a serious cross claim.
97.	30.07.99	Aldrich and Others v Norwich Union Life Insurance Co Ltd [2000] LRIR 1.	CA. (Evans LJ, Ward LJ and Mummery LJ). Appeals dismissed (see 08.06.98, 31.07.98 and 23.11.98).
98.	13.10.99	Garrow v The Society of Lloyd's [2000] LRIR 38.	Appeal by Lloyd's dismissed (see 10.06.99).
99.	22.10.99	Price v Lloyd's [2000] LRIR 453	Colman J. Claim by Lloyd's for Equitas premium - whether basis of calculation could be challenged - whether Lloyd's owed duty to regulate market - whether pursuit of claims amounted to harassment.
100.	16.12.99	Jones v Lloyd's	Rattee J. R&R Penalty argument rejected.
101.	03.03.00	Lloyd's v White and Others	Cresswell J. Names parties to Jaffray proceedings and proceedings in Australia. Anti-suit injunction granted.

102.	23.03.00	Lloyd's v Twinn and Another	CA. (Sir Richard Scott V-C, Chadwick LJ and Buxton LJ). Appeal from Jacob J allowed. Whether acceptance of R&R offer?

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Appendix 2

List of US cases concerning coverage for asbestos losses for the period 1978-88

Because the US operates under a federal system of government, comprised of 50 States, there are 50 distinct jurisdictions within the over-arching federal government. The US Constitution grants specific powers to the federal government and reserves all other powers to the States. Thus such matters as tort law, contract law and the regulation of insurers are within the province of each individual State. In particular, each State is free to (and does) formulate its own rules for the interpretation of contracts such as insurance policies.

Most of the judicial decisions listed in this case list were made by Federal Courts. US Federal Courts have jurisdiction to hear matters involving State law where the dispute is between residents of different States. In such circumstances, the Federal Courts are compelled to apply State law but often, as in the case of litigation concerning asbestos insurance coverage, Federal Courts find there is no applicable rule of precedence. In such cases they are forced to "predict" the rule the forum State would follow.

The US Federal Courts are divided into trial courts (US District Courts), intermediate appellate courts (one of several US Circuit Courts of Appeals) and a final appellate court (the US Supreme Court). State Courts always consist of a trial court level (the names differ from State to State) and the final appellate court (usually but not always referred to as the Supreme Court of that particular State). Most States have an intermediate level appellate court as well.

The cases cited come from a variety of different courts. Generally speaking, Federal Court coverage decisions are neither decisive nor binding on State Courts. Decisions by State or State trial courts are first instance decisions only and have no stare decisis (decided case status), and are therefore not binding on any other court.

List of US cases concerning coverage For asbestos losses for the period 1978-88

09/10/73	Borel v Fibreboard Products, 493 F.2d 1076 (District Court decision unpublished) (5th Cir. September 10, 1973), cert. denied, 419 U.S. 869 (October 15, 1974): Court of Appeals for the Fifth Circuit applied the doctrine of strict liability in asbestos disease cases and subjected producers to joint and several liability. Plaintiffs, in order to state a viable claim, need only show their exposure to defendants' asbestos or asbestos containing product and an asbestos-related disease. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
25/11/77	Porter v American Optical Corp., 1977 U.S. Dist. LEXIS 12735 (E.D. La. 1977): District Court applied manifestation trigger of coverage for asbestos bodily injury claims. Federal Court decision interpreting state law in the absence of a definitive State Court decision.

04/05/78	INA v Forty-Eight Insulations, 451 F.Supp. 1230 (E.D. Mich. S.D. 1978): District Court applied exposure theory of coverage for asbestos bodily injury claims, with liability being apportioned on the basis of the relative lengths of their respective coverage. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
21/10/80	INA v Forty-Eight Insulations, Inc., 633 F.2d 1212 (6th Cir. October 21, 1980). op. clarified 657 F.2d 814 (March 5, 1981): Court of Appeals for the Sixth Circuit upheld application of exposure theory and concluded that insurers have a duty to defend asbestos bodily injury claims brought against the manufacturers of asbestos. Court held that insurance liability would be pro-rated among all insurers on risk during exposure period, with the burden of any uninsured years falling on the producer. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
30/01/81	Keene Corp v INA 513 F.Supp.47 (D.C. Dist.Col. 1981.): District Court applied exposure theory of coverage for asbestos bodily injury claims (i.e., the same as the decision in the INA v Forty-Eight Insulations case, not triple trigger). Federal Court decision interpreting state law in the absence of a definitive State Court decision.
08/04/81	Porter v American Optical Corp., Case No. 78-1953 (U.S.D.C. E.D. La. November 25, 1977), aff'd and rev'd in part, 641 F.2d 1128 (5th Cir. April 8, 1981). Court of Appeals for the Fifth Circuit reversed District Court's application of the manifestation trigger of coverage and applied the exposure trigger for asbestos bodily injury claims. Court expressly concurred with the Sixth Circuit's Forty-Eight Insulations decision and held that insurance liability would be pro-rated among all insurers on risk during exposure period. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
14/08/81	Eagle-Picher Industries Inc v Liberty Mutual Ins. Co, 523 F.Supp. 110 (E.D. Mass. August 1981): District Court held that coverage for asbestos bodily injury is triggered when signs or symptoms become manifest, as determined by the date of actual diagnosis or, with respect to those cases in which no diagnosis was made prior to death, the date of death. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
01/10/81	Keene Corp. v INA, 513 F. Supp. 47 (D.C.C. January 30 1981) rev'd 667 F.2d 1034 (D.C. Cir. October 1, 1981): Court of Appeals for the District of Columbia Circuit applied a triple/continuous trigger of coverage for asbestos bodily injury claims. In doing so, the Circuit Court reversed the decision of the District Court limiting coverage to the exposure period. Federal Court decision interpreting state law in the absence of a definitive State Court decision.

04/12/81	Commercial Union Ins. Co. v Pittsburgh Corning Corp. (E.D. Pa. 1981) 553 F.Supp. 425: District Court applied the exposure theory of coverage to asbestos bodily injury cases, holding in addition that the primary insurer owed an unlimited duty to defend despite exhaustion of liability limits. In 1988, in the case of Pittsburgh Corning v Travelers, cited below, the same court broadened its decision to incorporate continuous trigger, following Keene. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
07/12/81	INA v Forty-Eight Insulations, Inc., 633 F.2d 1212 (6th Cir. Mich. October 21, 1980), op. clarified, 657 F.2d 814 (March 5, 1981), cert. denied, 454 U.S. 1109 (December 7, 1981): US Supreme Court denial of petition for writ of certiorari.
07/12/81	Porter v American Optical Corp., Case No. 78-1953 (U.S.D.C. E.D. La. November 25, 1977), aff'd and rev'd in part, 641 F.2d 1128 (5th Cir. April 8, 1981), cert. denied, 454 U.S. 1109 (December 7, 1981): US Supreme Court denial of petition for writ of certiorari.
08/03/82	Keene Corp. v I.N.A, 513 F. Supp. 47 (D.C.C. January 30, 1981), rev'd 667 F.2d 1034 (D.C. Cir. October 1, 1981), cert. denied, 455 U.S. 1007 (March 8, 1982): US Supreme Court denial of petition for writ of certiorari. Also, on the same day, US Supreme Court denied rehearing of prior denials of petitions for writs of certiorari in Porter v American Optical Corp. 455 U.S. 1009 (March 8, 1982) and INA v Forty-Eight Insulations, Inc. 455 U.S. 1009 (March 8, 1982). The US Supreme Court denied a rehearing in Keene on 26 April 1982, 456 U.S. 951 (April 26, 1982).
30/06/82	Eagle-Picher Industries. Inc. v Liberty Mutual Ins. Co., 682 F.2d 12 (1st Cir. June 30, 1982): Court of Appeal for the First Circuit affirmed the District Court's application of the manifestation theory of coverage for asbestos bodily injury claims, rejecting Keene, but modified the appropriate definition of "manifestation date" to be not when the disease was actually diagnosed but when it becomes reasonably capable of medical diagnosis. Remanded to District Court for factual investigation as to when manifestation occurred. In August 1984, on remand, the District Court determined that asbestos-related disease becomes reasonably capable of medical diagnosis "six years prior to the date of actual diagnosis". Federal Court decision interpreting state law in the absence of a definitive State Court decision.
07/03/83	Eagle-Picher Industries. Inc. v Liberty Mutual Ins. Co., 682 F.2d 12 (1st Cir. June 30, 1982), cert. denied, 460 U.S. 1028 (March 7, 1983): US Supreme Court denial of petition for writ of certiorari.

13/06/83	American Home Products v Liberty Mutual Ins. Co., 565 F. Supp. 1485 (S.D.N.Y. 1983): The District Court refused to apply Keene to a DES case, criticizing Keene as "result-oriented" and instead applied an "injury-in-fact" trigger focusing on when disease was diagnosable and compensable. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
07/07/83	Emons Industries, Inc. v. Liberty Fire Ins. Co. United States District Court, S.D. New York 567 F.Supp. 335 (S.D.N.Y., 1983): DES case. A denial of a motion for summary judgment. In doing so the Court criticized the Keene decision on the grounds that the manifestation trigger is not an unreasonable trigger of coverage for long term disease claims. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
02/08/83	Crown, Cork & Seal Co., Inc v Aetna Casualty and Surety Co., No 1292, slip op. (Court of Common Pleas, Philadelphia August 2, 1983) (Mealey's, Asbestos Litigation Reporter, 12 August 1983 page 7,022): Pennsylvania State Trial Court, in an unpublished decision, triggered all policies in effect during exposure, exposure in residence or manifestation to indemnify and defend the insured, following Keene. A first instance State Trial Court decision and so not binding on any other court (i.e., without stare decisis, decided case status).
25/11/83	AC&S, Inc v Aetna Casualty and Surety Co., 576 F. Supp. 936 (E.D. Pa. 1983): District Court followed Keene and held that coverage was triggered by exposure, exposure in residence and manifestation and that the duty of liability insurer to defend is separate from, and broader than, the duty to indemnify, and insurers must continue to defend their insureds even after exhaustion of policy limits. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
13/11/84	American Home Products v Liberty Mutual Ins. Co., 565 F. Supp. 1485 (S.D.N.Y. 1983), aff'd as modified 748 F.2d 760 (2d Cir., 1984): The Court of Appeals for the Second Circuit affirmed the District Court's choice of "injury-in-fact" but disagreed with the District Court's finding that "injury-in-fact" was the same as "diagnosable" or "compensable" and remanded the case to the District Court for further proceedings to determine when "injury-in-fact" occurred. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
21/11/84	Owens Illinois, Inc. v Aetna Casualty & Surety Co. 597 F. Supp. 1515 (D.D.C. 1984). District Court bound by Circuit Court decision in Keene. Applied triple trigger theory of coverage for asbestos bodily injury claims. Federal Court decision interpreting state law in the absence of a definitive State Court decision.

22/03/85	Vale Chemical v Hartford Accident and Indemnity Co. (Pa. Super. Ct. 1985), 490 A.2d 806, rev'd. on other grounds, 17 October 1986, 516 A.2d Pennsylvania: Pennsylvania Intermediate Appellate Court found DES claims implicated continuous injury from ingestion to discovery of cancer in offspring and triggered all policies in effect during the time frame, following Keene. The Pennsylvania Supreme Court reversed on procedural grounds, erasing the intermediate and lower court decisions as precedents.
17/06/85	AC&S, Inc v Aetna Casualty and Surety Co., 576 F. Supp. 936 (E.D. Pa. 1983), 764 F.2d 968 (3rd Cir. June 17, 1985): Court of Appeals for the Third Circuit affirmed the District Court's decision that exposure, exposure in residence and manifestation all trigger coverage, following Keene, but overturned the District Court's decision that there was an unlimited duty to defend, holding that an insurer has no duty to defend if it is established at the outset of the action that the insurer cannot possibly be liable for indemnification because policy limits have been exhausted (explicitly refusing to determine whether or under what circumstances an insurer may terminate its defense of a claim in "mid-course"). Federal Court decision interpreting state law in the absence of a definitive State Court decision.
23/07/85	Commercial Union Insurance Co. v Sepco Corp., 765 F.2d 1543 (11th Cir. July 23, 1985): Court of Appeals for the Eleventh Circuit upheld exposure trigger of coverage, following Porter. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
31/07/85	Lac D'Amiante du Quebec, Ltee. v American Home Assurance Co., 613 F. Supp. 1549 (D.N.J. July 31, 1985): District Court in New Jersey adopted the continuous/triple trigger of coverage for asbestos property damage and bodily injury claims. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
02/12/85	Hancock Laboratories, Inc. v. Admiral Ins. Co., 777 F.2d 520 (9th Cir. 1985): Coverage dispute arising from allegedly defective heart valves. Court of Appeal for the Ninth Circuit rejected Keene theory on the grounds that it was adopted because it was difficult to discern from medical evidence when and how an injury occurs from asbestos inhalation. Instead, it applied the exposure theory, holding that the bodily injury occurred when the defective heart valve was implanted. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
14/02/86	Aetna Casualty & Surety v Abbott Laboratories, Inc., (D.C. Circuit) 636 F.Supp. 546: District Court in Connecticut applied an "injury-in-fact" trigger of coverage to a DES case.

03/04/86	Standard Asbestos Manufacturing & Insulating Co. v Royal Indemnity Ins. Co., No. CV-80-14909, slip op. at 9 (Mo. Cir. Ct. Jackson Co. April 3, 1986) (Mealey's Litigation Reports, Insurance, 1986, page 2,424): Missouri State Trial Court, in an unpublished decision, triggered policies in effect at the time of injurious exposure only ("injury-in-fact"), rejecting Keene and following INA v Forty-Eight Insulations. The Court commented in regard to the asbestos coverage issues: "One of the problems in insurance law is that it is result oriented. In an effort to compensate litigants, the courts have manipulated concepts of contract law and interpretations of insurance contracts and have vastly expanded theories of liability and contractual relationships. While the motive may be laudable, the result is that there is no stability in the law and no one can predict the result in any given case." A first instance State Trial Court decision and so not binding on any other court (i.e., without stare decisis, decided case status).
09/05/86	Abex Corp. v Maryland Casualty, 790 F.2d 119 (D.C. Cir. May 9, 1986): Court of Appeals for the District of Columbia applied "injury-in-fact" as trigger, refusing to follow Keene because it recognised that a different rule would result under New York law, and following the American Home Products case. In the Abex case the Court was concerned with interpreting New York law. The panel of the Court of Appeals for the District of Columbia Circuit expressed disagreement with the same Court's earlier decision in Keene. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
27/05/86	Zurich Insurance Company v Raymark Industries, Inc, 145 Ill. App. 3d 175, 494 N.E. 2d 634: Appellate Court of Illinois upheld the trial court's decision that insurance coverage for asbestos-related claims was triggered both by exposure and by manifestation but not exposure in residence (although the court did affirm the trial court's finding that if, during the "pre-disease" state, an individual "suffers from a disordered, weakened or unsound condition but it has not yet progressed to the point of impairment", he may be classified as having "sickness", which would trigger liability) ("dual trigger"). However, the court overturned the trial court's decision that insurers had a duty to defend claims even after the limits of their policies were exhausted by the payments of judgments or settlements, even in respect of pending claims. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
21/01/87	Clemtex, Inc. v Southeastern Fidelity Insurance Co., 807 F.2d 1271 (5th Cir. January 21, 1987): Court of Appeals for the Fifth Circuit, in considering the applicability of deductibility provisions, was not asked to rule on the District Court's determination that the exposure trigger of coverage applied to silicosis under Texas law. Federal Court decision interpreting state law in the absence of a definitive State Court decision.

23/04/87	Clemco Industries v Commercial Union Ins. Co 665 F. Supp. 816, 830 (N.D. Cal 1987), aff'd mem., 848 F.2d 1242 (9th Cir 1988): Silicosis claim applying the exposure trigger and holding that insurer did not act in bad faith by refusing to embrace exposure theory, as law remained unsettled and unclear. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
29/05/87	In re Asbestos Insurance Coverage Litigation, (Armstrong World Industries, GAF, Fibreboard), tentative decision in Phase III, ultimately incorporated in the final decision entered 24 January 1990, California Superior Court, City and County of San Francisco, Judicial Council Coordinated Proceeding, (No.1072), aff'd. Armstrong World Industries 45 CA 4th 1 (Cal. Ct. App. 1996): The Court applied a Keene type result following its own distinctive analysis of the policy wording and broadened the period of continuous trigger found in Keene, to include the period from first exposure to asbestos or asbestos-containing products until date of death or date of claim, whichever occurs first. The Court followed Keene in requiring any insurer on risk during continuous injury to pay the entire claim up to policy limits, allowed the insureds to choose which insurer would be obligated to defend and relieved the insureds of responsibility for any uninsured or self-insured periods. In addition, the Court held that insurers were not required to defend actions, or even to continue to defend pending cases, once policy limits have been exhausted, although the cost of providing a defense does not reduce primary policy limits. State Superior Court first instance decision.
14/09/87	Zurich Insurance Co. v Raymark Industries, 514 N.E.2d 150 (Ill. Supreme Court, September 14, 1987): The Supreme Court of Illinois affirmed the lower courts' findings that coverage attaches upon bodily injury, which the Court determined is concurrent with exposure, or disease, which the Court determined is diagnosability (i.e., "dual trigger) as well as sickness, which the Court determined is ill-health, a disordered, weakened or unsound condition, but not exposure-in-residence. The Court also upheld the appellate court's finding that there was no unlimited duty to defend. State Supreme Court, so binding upon Courts in that particular State.
16/09/87	Eagle-Picher Industries, Inc. v American Employers Insurance Co.,685 F. Supp. 9 (D. Mass. 1986), appeal after remand, 829 F.2d 227 (1st Cir.1987): Court of Appeals for the First Circuit affirmed and modified the District Court's decision on what constitutes manifestation. The Court of Appeals upheld the District Court's finding that manifestation is six years before the actual date of diagnosis, but allowed an insurer to bring evidence to show otherwise. Federal Court decision interpreting state law in the absence of a definitive State Court decision.

20/01/88	Pittsburgh Corning v Travelers Indemnity Co., Civ.A. No. 84-3985 E.D. Pa. 1988, 1988 WL 5291 and 5301: In the decision reported at 1988 WL 5291 the District Court for the Eastern District of Pennsylvania determined that coverage for asbestos property damage is triggered at the time of discovery. In the decision reported at 1988 WL 5301, the District Court determined coverage for asbestos bodily injury, sickness or diseases is triggered "if any part of the injurious process... from time of exposure to time of manifestation... occurred within" the policy period. Federal Court decision interpreting state law in the absence of a definitive State Court decision.
28/12/88	Lac D'Amiante du Quebec, Ltee. v American Home Assurance Co 613 F. Supp. 1549 (D.N.J. July 31 1985)., vacated on other grounds, 864 F.2d 1033 (3d Cir. Dec. 28, 1988): Court of Appeals for the Third Circuit reversed the District Court with instructions to dismiss this action, and ruled that the District Court should have abstained from exercising jurisdiction. The lower court decision was questioned in the Third Circuit Court of Appeals' decision, but no conclusion was reached.

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Appendix 3

THE CHRONOLOGY OF CERTAIN INFORMATION RELEVANT TO ASBESTOS - RELATED CLAIMS FOR THE PERIOD 1978-88

The keys represent an attempt to identify recipients of a document, but do not constitute a finding that any particular individual or syndicate received or was aware of the document or its content.

Key: SI = Syndicates at interest or interested insurers

SS = syndicate specific PA= Panel Auditors

AWP = Asbestos Working Party

Chronology of certain information relevant to asbestos-related claims for the period 1978-88

00/00/64	The Occurrence of Asbestosis among Insulation Workers in the United States. Published by Dr Selikoff, Churg & Hammond. Ann. N.Y. Acad. Sci. 132, 139.	
00/10/64	International Conference on the Biological Effects of Asbestos. To review the data and discuss the problems, sponsored by The New York Academy of Sciences.	
27/11/77	Asbestos-Associated Disease in U.S. Shipyards. Prepared by I.J. Selikoff and published in 1978 March/April issue of the Cancer Journal.	
26/04/78	Califano Statement on the Health Effects of Asbestos. J. Califano, U.S. Secretary of State for Health issues a formal statement advising of the risks associated with exposure to asbestos. Two thirds of all asbestos was used in the construction industry, with ship construction having an especially high use. It is estimated that 20-25% of workers exposed to asbestos before the era of Government regulation die of lung cancer, 7% die of asbestosis, 7-10% of mesothelioma and 8-9% of gastro-intestinal cancers. 4.5 million persons worked in shipyards during World War 2, and it is estimated that 500,000 to 1.4 million since the War. Other industries in which there has been significant exposure to asbestos included asbestos mining and processing; construction work involving insulation; building demolition; roofing; and automotive work in brake and clutch lining installation and repair.	

00/00/78	Attorney H. Draft Report. Asbestosis Disease and the Liability of Manufacturers of Asbestos Insulation Products. Disease caused by asbestos is rarely manifested in less than 10-20 years from exposure. It has become widely accepted that a manufacturer is held accountable for a product which proves to be unreasonably dangerous. The concept of strict liability has gained rapid acceptance in the US. It was first applied to a case of asbestosis by the Federal District Court in Texas in the case of Borel v Fireboard Paper Products Corp. This case precipitated most if not all of the later cases. In this case the Court examined the history of the disease developed by medical testimony and concluded that the dangers of asbestos had been recognised for well over 50 years. It also cited the testimony of Dr Selikoff. In relation to damages, the Defendants argued that the Plaintiff was unable to show with any degree of precision how much damage was attributable to any one product and therefore recovery should be denied. However, the Court held that "where several Defendants are shown to have each caused some harm, the burden of proof ... shifts to each Defendant to show what portion of harm he caused. If the Defendants are unable to show any reasonable basis for division, they are jointly and severally liable for the total damage". Nor was the case statute-barred because the cause of action should not accrue until the injury could with reasonable diligence have been discovered. The Circuit Court later affirmed the decision of the District Court and the motion for a re-hearing was denied. The Certiorari was denied by the US Supreme Court. The Borel case was followed in the case of Karjala v Johns-Manville tried by a Federal District Court in Minnesota. Attention must now be focused upon the insurance coverage problems that are arising from the Court decisions. The most immediate problem is which year shall be charged with the loss. Is it the year when the action is started, the year when the disease manifests itself, the year of first exposure, the year of diagnosis or some combination of the above? "As at this writing I have not uncovered any prior judicial opinion which may be used as guidance or authority, persuasive or otherwise, under the circumstances". The manifestation date is the simplest solution. Whether or not this will be adopted by the Courts remains to be seen. It may be decided in one or two cases being brought by Assured 16. The policy concerned expired on 31 October 1972 and so would not be effective from a manifestation viewpoint. Once the loss date issue has been resolved attention must be focused upon the application of aggregate coverages during a given policy year. As for what the future has in store, a bill has been introduced into the House of Representatives in the US but it is sheer speculation to guess what will emerge from this. "Insofar as the filing of cases is concerned, that seems to have peaked out, and conceivably from here on in we shall see a reduction in filings. I hasten to add, however, that there is no current	

	clear-cut trend evidencing such a fact".	
24/08/78	Attorney H letter to Underwriters at interest Re Assured 3B. Reports on INA's unsuccessful application for declaratory order against Forty-Eight Insulations Inc. The Court held that there was damage during each of the periods of coverage and that accordingly each insurer at risk at the time the damage occurred was the primary insurer. The Court therefore adopted the exposure theory. The attorneys continue that, in view of the finding in the INA case, loss data must be compiled from both an exposure and from a manifestation and/or diagnosis approach, at least until such time as appellate procedures in both the INA and Hartford cases have been exhausted, and hopefully the courts will find a unified approach. To prepare for this eventuality, they recommend that underwriters establish an arbitrary reserve of $200,000 for each year of account.	SI
22/12/78	Wall Street Journal: Group claims millions of school children have been exposed to asbestos hazard.	
25/06/79	Business Insurance: Insurers Recoil in Wake of Asbestos Claims. "Plagued by a massive amount of litigation over injuries to asbestos workers, most insurers have stopped underwriting the trouble-maker and, once burned, are taking a harder line on other product risks, especially hazardous materials. "Hopefully we have learned the lesson that insurers have to learn" said John J. Dwyer, National Account Director for Aetna Life and Casualty. The lesson: definitive data can, because of something external to the insurance relationship, be thrown off ... The asbestos claims could eventually be removed from litigation if a compensation board is established to handle future claims as proposed by U.S. Rep. Millicent Fenwick whose home district includes a major facility of Assured 1, the nation's largest asbestos producer. Under Ms. Fenwick's scheme, the government would pay asbestos claims from the time the law is enacted through the end of that year. The government could then sue the manufacturers for claims paid during that interim period explained Lawrence Rosenshein, her aide. Future claims would be paid by the compensation board from funds collected from asbestos producers, manufacturers of products containing asbestos and the tobacco industry, since smoking increases the likelihood of someone exposed to asbestos contracting asbestos or other disabling diseases. For asbestos producers, the fund's assessment would be	

	2% of sales for the corresponding quarter 15 years prior. Manufacturers of products containing asbestos would be assessed 1% of sales and there would be a levy of three-tenths of 1% of sales against tobacco manufacturers."	
00/07/79	Document entitled "Reserving Asbestosis Claims for London Insurers" concerning a meeting held at the offices of Attorney H on Tuesday, 19 June 1979 at the request of London Underwriters. Attended by the representatives of Attorney H, Attorney K, Attorney I and Attorney G. Recent developments in the asbestos litigation field were discussed. Two new declaratory judgment actions have been brought by Assured 3B and Assured 10 against Lloyd's Underwriters and other insurers in California and Florida as to when coverage attaches for the asbestosis claims. US Courts of Appeal are currently deciding other actions involving when coverage attaches for asbestosis claims. The US attorneys present at the meeting listed the asbestos manufacturing companies and producing companies directly insured in the London market. A lengthy discussion then followed as to an evaluation of a probable exposure to each of these assureds for their asbestosis claims. It was commented inter alia that both verdicts and settlements in the future would be more expensive. Also that certain extremely unfavourable evidence had been discovered in some of the asbestos cases showing that certain assureds had attempted to discourage the dissemination of knowledge concerning the dangers of asbestos. US attorneys make a joint recommendation that the direct London insurers establish a gross reserve of $75,000 on each of the asbestosis claimants. This would relate to each claimant but not to each assured (most claimants have brought claims against multiple defendants). Assured 1 itself has been excluded from the recommended reserves because it did not become directly insured in the London market until 1978 and because (due to its central position in the asbestos litigation) it involves special considerations. The reserve figure does not purport to apply to reinsurance interests. In summary the US attorneys say that "the one certain fact about the asbestos litigation is that at present we cannot estimate the number of claims that will eventually be brought against your assureds". Some experts believe the number and severity of claims will peak "within the next year or two". Others estimate that more	

	than 2 million people will die from asbestos-related cancer. The report stated inter alia: "We do know that the number of law suits has increased dramatically each year since 1973"	
19/09/79	Letter from Attorney H to Attorney G. Reserving Asbestosis Claims. "Confirming our telephone conversations, Underwriters agree with [the recommendation of the US attorneys] that the direct London insurers establish a gross reserve of $75,000 on each of the asbestosis claimants. However, because of their direct excess participation on Assured 1, they desire that Assured 1 be carried at 20% and that the following reductions be made ... 20% for Assured 1 is $15,000 thereby bringing the total to $75,000. Underwriters say that we all recognise that this provisional basis of apportionment will only hold good pending discovery process on various accounts but they are content to accept year end reserving applying this formula as an interim measure ..."	
13/11/79	Financial Times: Scale of awards goes soaring.	
21/11/79	Attorney K Report to Underwriters at interest (c/o Sedgwick Forbes N.A Ltd.) Re: Assured 15. "Since our last report, an additional 900 cases have been filed against the insured and are reflected on the bordereau ... Generally speaking, asbestos related litigation is increasing dramatically and is receiving national attention in the media ... The latent and slowly progressive nature of an asbestos related disease has created an unsettled state in the area of insurance law. The issue in need of resolution is which insurer is obligated to defend and indemnify the asbestos manufacturer for injuries resulting from the inhalation of asbestos fibres ... Nearly all other manufacturers who have stated their position in various court actions, and numerous other insurers, have joined with the Travelers Indemnity of Rhode Island Insurance Company and Forty-Eight Insulations in adopting the exposure theory or a variation thereof, and in rejecting the manifestation theory... The action between Forty-Eight Insulations and its insurers is a lead case in the asbestos litigation throughout the country. It is the only declaratory judgment case that has been tried, and therefore, is the only case on appeal. We are closely monitoring this situation and once the Appellate Court announces its decision, we shall immediately notify Underwriters regarding the court's ruling ... We suggest that Underwriters maintain a $40,000 Attorney K expense reserve herein.	SI

	We also suggest that Underwriters establish a $260,000 loss reserve, from the ground up, as to each of the years they were at risk. In our view, Underwriters' estimated total exposure, from the ground up, is $3,900,000 because they insured Assured 15 during 15 of the past 30 years. As a result of our previous discussions with Underwriters, it was determined that the estimated damage to each claimant was $75,000 and that Assured 15's share is $6,000 per claimant ..."	
10/12/79	Letter from C J Ayliffe to E E Nelson Chairman, Non-Marine Association, Lloyd's Underwriters Non-Marine Association. "I have been expressing concern at a number of declaratory relief actions which have been filed against underwriters at Lloyd's arising out of the long term product situation which currently faced the market. This problem surfaced in regard to asbestosis when we were faced with suits filed by the two insureds in circumstances where the domestic first excess layer adopted a different view on the attachment of loss than that which had been up to then adopted by the primary carrier. The result was that the insureds, having been denied ongoing reimbursement, were left with little alternative other than to file suit. Interestingly enough in the suit filed in respect of Assured 3B and Assured 6 the insureds were taking contrary views in pleading their case with their carriers, and it became apparent that in the interests of this market it would be helpful if we could reach a common approach to attachment throughout the Lloyd's market to enable us to respond. Although many discussions took place at that time it ultimately proved impossible to get a common approach in the market and, as you are aware, the markets split into two camps: One supporting the manifestation approach and the other that of exposure. As a result of this split in the market it became necessary for each view to be separately represented in the ongoing handling of the defence preparation and to this extent the market is now incurring a duplication of legal expense and effort ... a more recent development, but basically an extension of the same problem are the losses we have outstanding in connection with DES ... it was with this developing background that I called an informal meeting last week of claims settlers to discuss whether it is possible to arrive at some method whereby we can respond to the insureds' need and yet at the same time preserving the basic issue of where attachment ultimately should fall ... Whilst it was fully appreciated that in any discussions of this nature there could be no market mandate it was nevertheless recommended that a small Working Party be set up who would have the authority to explore, both with the insureds and domestic companies, some form of solution that would eliminate the proliferation of Declaratory Relief suits by reason of the industry's inability at the present time to provide indemnity to many long standing	SI

	accounts in this market."	
28/12/79	Attorney G c/o Joseph Hadley (Insurance) Ltd to Underwriters at Lloyd's Re: Assured 4. Difficult to ascertain the precise coverage provided by underwriters to the assured. In turn it has been difficult to obtain the requisite claims investigation from the assured. The attorneys ask for authority from underwriters to acknowledge coverage to the assureds for certain periods and layers for which there is no written documentation. To date there has been 363 individual claimants who have filed 336 law suits against the insured (most of which are in the preliminary stages). The attorneys note that asbestosis cases as a class manifestly represent grave potential exposure to asbestos producers. However, it does not appear that this Assured will be one of the truly major defendants. It is difficult to set reserves because it is uncertain the theory of coverage which will be applied. If "manifestation" "we do not believe that underwriters will be required to make any loss payments on behalf of the Assured". If "exposure" then underwriters will be required to make "substantial loss payments". Estimate that 1,200 new claims will be brought against the assured in the next few years.	SI
31/12/79	Syndicate 604/605 (1979 Report). "With the inclusion of reserves for these claims the reinsurance to close now involves a premium in excess of £17,000,000 being paid from the 1977 Account to 1978 Account. This sum covers all outstanding liability on closed years and included among its many items are Asbestosis and the drug "DES", for which reserves have been carried for a number of years."	
07/01/80	Attorney G to the Interested Insurers Re: Assured 18. The number of claims filed against the Assured has increased dramatically and it will be named in a substantial number of future claims. Because of this the attorneys are now of the opinion that it would be prudent for underwriters to establish a loss payment reserve for each of the 13 years when they are on risk for this assured. They have still not been able to obtain complete information or documentation as to the details of coverage provided by underwriters. Since the last report an additional 33 asbestos related lawsuits involving 437 individual claims have been filed against the assured. Therefore total asbestos claims = 43 suits with 471 individual claimants. The asbestos related claims as a class clearly represent serious potential exposure to	SI

	the asbestos producers of the past 30 years. Establishing reserves difficult due to uncertain attitude of American courts (as between exposure and manifestation theories of coverage). Reserve figure of $75,000 set at meeting of London insurers American counsel in New York in June 1979 (this assured to bear a 2% portion of this reserve or $1,500 for each claim. Therefore recommend gross exposure reserve of $2,868,000 (based on an estimate of 2,500 claims including PVC and SBR of which assume 90% will be asbestos-related). The report contains the following passage: "If .. American courts adopt an exposure theory of coverage then we believe that Underwriters could be required to make substantial loss payments under their policies on this assured." The figures relate to the liability of a single assured, namely Assured 19.	
08/01/80	Attorney H to Underwriters at interest Re: Assured 1. Preliminary reserve has been agreed of $75,000 per asbestos claimant, (20% of which ascribed to Assured 1), that is $15,000 per claim. This is strikingly close to the average contribution made thus far on behalf of Assured 1 in settled cases. The litigated cases present a different picture. Four cases tried in December 1979 resulted in damages of $435,000 per plaintiff. These Virginia cases were also interesting because a Federal Judge ruled that the US Government was not liable to asbestos manufacturers for injuries to shipyard workers at the Norfolk Naval Ship Yard. "... the Travelers' reserves are structured on the "exposure" theory which approach is concurred in by Assured 1 ... Reserves from a manifestation approach ... would at most be minimal as far as underwriters are concerned." Lastly, the loss date issue is no closer to resolution than it was 12 months previously. INA v Forty-Eight Insulations is still before the Sixth Circuit Court of Appeal (exposure). The Fifth Circuit Court of Appeal has not yet scheduled arguments in Porter v American Optical (manifestation).	
23/01/80	Telex from Attorney H to Sedgwick Forbes. The Travelers and Assured 1 have agreed to the application of exposure theory for loss attachment purposes. Reserves Travelers established in accordance with this theory set forth in report without comment, as we have not as yet accomplished a review of the 4,000 plus pending actions. Underwriters' policies recited can only be involved if exposure theory becomes law of all asbestos cases. This issue is still unresolved. Additionally Travelers has taken posture its policies (sic) for years 1951 through 1953 written on aggregate basis, but as we pointed out this also in doubt. Therefore in view severe question regarding loss date and question regarding aggregates for years 1951 through 1953, concluded best approach would be to leave it to each Syndicate's discretion whether or not to establish reserves consonant with those established by Travelers or on some other basis, each of which at this time could	SI

	be equally appropriate.	
21/03/80	Attorney H report to Underwriters at interest (c/o Messrs. Willis Faber & Dumas Ltd.) Re: Assured 3A/Assured 3B. "On the claims side, Assured 3B continues to settle cases where the plaintiff is able to establish (1) asbestos related disease, and (2) exposure to one or more Assured 3B products, on a per average claim of approximately $4,000. Defensively, the principal argument is still that the manufacturer's knowledge was such that prior to Dr Selikoff's report of 1964, the industry was not aware of undue exposure to insulation workers from the use of asbestos-containing products. In substance, what Dr Selikoff's report revealed was that the then considered threshold limit value of 5,000,000 pp/cu. ft. of air was too high and that insulation workers were at risk. Commencing in 1965, they placed warning labels on their products cautioning against the inhalation of dust particles and if adequate ventilation was not possible, to wear a respirator .... The claims continue to come in at a rate of approximately 100 per month and it has been estimated that this may continue for an appreciable time into the future ..."	SI
27/03/80	Memorandum from C J Ayliffe to R A G Jackson. Handling of asbestosis claims in the Lloyd's market. "We are advised by most major insureds that the frequency of loss reports will continue at much the current levels for at least 5 years to come, and, to be realistic, if we accept this information as reliable, it would appear that we should now be calculating what the ultimate cost would be to the Market some 5 years hence. So far reserve recommendations for the market have been based upon cases which are presently known. Attorney G, who is now involved in reviewing the re-insurance of the Home for the account of Assured 1, are seeking guidance and support from the market as to their putting up reserves which do take into account a projection of something in the region of 4 years ... The other problem which presently exists is that although we have only 5,000 cases in suit at the present time most cases name all the major companies with whom we are involved ..." "Not unnaturally the size of the figures that would then be recommended would be very large. Inevitably the impact of projected reserves on our Market would be substantial and I feel that it would be extremely difficult for the leads to make this type of determination by reason of the implication it carries."	

07/04/80	Business Insurance Assured 1 Sues 27 Insurers in Asbestos Risk. "Assured 1 filed suit in the superior court on March 31 seeking damages from the Home Insurance Company for denying coverage and an order for insurers to provide coverage .... Assured 1's suit in San Francisco asks the court to determine how 27 insurers should respond in the cases pending against the company. The issue is whether the claims should be handled on an exposure theory or a manifestation theory..."	
09/04/80	Letter from Lumley, Dennant & Company Inc. (Signatures on it indicate wide circulation). "We enclose a copy of the letter dated 6th December 1979 to the above assured (Assured 7) which is self explanatory and which we believe comes about because of the possibility of asbestosis claims being made under the Umbrella coverage which has been written for a number of years."	SI
14/04/80	Business Insurance: 9 accept asbestos settlements.	
24/04/80	Lloyd's List: Court rulings may provoke claims flood. A recent decision by the California Supreme Court may hit the London Insurance Market. Several Lloyd's Syndicates have already began to increase their reserves to meet asbestos claims. The case (which concerns the drug DES) established "industry wide" liability. There is no need for the person injured to identify specifically the manufacturer of the product as long as the harm has been proved. One of the main problems for insurers is that the illness often does not show itself for many years. Notes the comments of David Mackintosh and Bernard Seigne of Davis, Arnold & Cooper in Product Liability International Magazine: They have handled upwards of 1,200 asbestos cases during the last fifteen years and are now involved in about 360. "The unfortunate message to be read from a UK experience of asbestosis claims is that the US explosion is likely to be even larger than has been predicted to date and that it will inevitably include many borderline cases which will need defending on diagnostic grounds".	
30/04/80	Letter from Stephen Merrett to Names enclosing accounts of the syndicates as at 31 December 1979. RAG Jackson mentions in his report the insurance industry's delayed recognition of substantial exposure to losses, perhaps in years "closed" a long time ago, related to the asbestosis problem. "You may have seen or heard comment on recent activity in the United States Courts on the filing of numerous suits and in particular on attempts to determine whether the liability of insurers is on policies current at the time when the claimant began to	SS

	contract the disease by his "exposure" to the dust, or on the policies current when the claimant became aware of his disease by its "manifestation". If "exposure" is adopted there may be many claims made on policies current in the 1940's or even earlier, and it is inevitable that some insurers will have made inadequate provisions for such losses against those years. It would be prudent to suppose that other substances or work processes will increasingly be found by Courts to have damaged employees and others, and the exposure of the insurance industry to third party actions and Employers' Liability Workmen's Compensation claims against policy holders is very considerable indeed."	
03/05/80	Attorney G to the Interested insurers Re: Reinsurance of the Home Insurance Company first and second casualty excess of loss treaties. Assured: Assured 1. Present opinion is that excess reinsurers are at risk of grave exposure on both first and second casualty excess of loss treaties in the period 1963 - 1974. As of March 1980 there were 4,323 claims in suit against Assured 1. 196 cases closed with an aggregate loss payment of $2,938,548 = average loss of $14,993 per case. New claims are being brought on the average of 100 per month. Both the Assured and its primary insurers between 1947 - 1976 (The Travelers Insurance Company) have adopted an exposure theory of coverage for asbestos-related bodily injury claims. Asbestos cases as a class represent a serious potential exposure to asbestos producers, the cases against such producers being "convincing". There are difficult problems in reserving for asbestos claims: (i) it is uncertain what principle of coverage will be adopted by the American courts; (ii) the position on underlying aggregates is unclear; (iii) it is unclear whether the Assured's deductibles from 1966 onwards are applicable; (iv) there is an ever present possibility of punitive damages; and (v) due to the long latency periods of asbestosis diseases, it is impossible to predict the number of claims that will ultimately be brought against the Assured. Notes that the recommended bodily injury exposure reserve of $2,228,448 (including defence expenses) for excess reinsurers relates only to those claims filed thus far. It does not take into account future bodily injury claims to be brought against this Assured. Assured 1 believes the number of claims have now peaked and that, because of improved working conditions, there should be progressively less claims in the future. On the other hand some say that claims filed to date represent only the tip of the iceberg: e.g. The Secretary of Health, Education & Welfare in US recently stated that 67,000 each year will die from exposure to asbestos during the next 30 years. It is further known that 8 - 11 million workers have been exposed to asbestos in the US since the beginning of World War II. It is estimated that one-third of those heavily exposed have died, or are likely to die, of asbestos-related cancer. It is recommended that each underwriter on the first and second and third excess of loss treaties be shown its report. The attorneys also strongly recommend that each underwriter take all these	SI

	facts into account in determining the loss reserve to be posted on these claims.	
00/06/80	Syndicate 90 (1979 Report). "The 1977 account trading was satisfactory in itself but rendered improfitable by the need to create substantial additional reserves for possible losses on earlier years. The main problem has been the recent adverse development of serious liability claims (under both reinsurance contracts and direct US insurances) from victims of the industrial disease of asbestosis who allege that this has been caused by exposure to asbestos dust many years ago. Although these are disputable features in these claims it would have been wrong to close the 1977 account without making appropriate provisions in the reinsurance premium paid to the 1978 account."	
24/06/80	Lloyd's List: Defendants fight yard asbestosis case award. There are 4,000 to 5,000 outstanding liability cases over asbestosis in the US, most involving shipyard workers, according to Travelers Insurance Company. The Defendants, Assured 1 and Assured 20 have filed post-trial motions challenging the awards made in a recent case.	
04/07/80	Letter from RAG Jackson to E.E. Nelson. "I have been trying to get hold of you for some time to talk about asbestosis .. Jim Ayliffe. Wrote you a letter on 10th December about the seriousness of this problem. Since that time as you are probably aware it has become even more serious a problem particularly as the split between the exposure and manifestation. Has become embittered a number of people have persuaded me to be the catalyst in getting a working party under-way and it is to this end that Jim Ayliffe and I have been speaking to a number of people in the market."	
07/07/80	Business Insurance: Travelers asks to join suit. Travelers is attempting to join Assured 1 in its legal fight to decide which of 27 insurers is liable to pay asbestos product liability losses. Travelers has filed a petition to intervene in the case, originally brought against the Home Insurance Company, to protect its own interests. Home is refusing to indemnify Assured 1 for $800,000 paid to claimants for property damages, claiming that Travelers is liable.	

17/07/80	Attorney K to Underwriters at interest. Re Assured 15: Current developments in asbestosis litigation. Reserves: "Since our last report of May 28, 1980 we have received approximately 500 additional cases naming the assured as a Defendant. This brings the total number of cases to approximately 2,300 and a total exposure of $13.8 million for the past 30 years. The average disposition cost of an asbestos claim to all defendants continues to total approximately $67,000 ... therefore, we suggest that underwriters increase the gross loss reserve to $460,000 from the ground up for each and every policy year they were on the risk."	SI
05/08/80	Letter from the AWP. Handling of asbestos claims in the Lloyd's market. "... Market's involvement in the claims arising out of asbestosis have been gathering momentum over the past six months to the extent that there are now six Declaratory Relief actions pending and more could arise ... during the course of last year discussions took place with those law firms representing the Market's interest to ensure that there was a standard approach to the manner in which reserves were established, and following discussions with each of the firms involved it was agreed that for the present reserve recommendations to the Market would be based on an average cost of $75,000 per claimant. Bearing in mind that in most suits that have been issued there are multiple defendants a percentage scale was arrived at which embraced the major direct writings within the London Market, and by application of the scale percentage attaching to any particular insured we have been able to ensure that no duplication of reserve arose in regard to different insured named in any particular suit. ... the frequency with which new cases are filed is likely to continue at the present level for at least five years ... Assured 1 had indicated that in their opinion there are likely to be between 2,400 and 3,000 cases filed in each of the next ten years and similar statements, although somewhat less pessimistic, have been made by other major firms involved in this litigation. This then raises the problem of whether or not our representatives should be taking into account in their reserve calculations forward projections of claims in regard to both direct and reinsurance business. Bearing in mind the substantial increase in costs over the coming years it will be immediately apparent that reserve projections in this matter will have a serious impact on the Market as a whole and yet, on the other hand, not to acknowledge the fact that reserves will inevitably increase would be irresponsible. Arising out of the Market's inability to arrive at a common agreement on the basis on which losses of this nature attach it has been necessary for there to be dual representation on each Declaratory Relief suits that have been filed.	AWP

	... it is unreasonable to expect matters to be controlled by the few leads involved and it has therefore been proposed that a joint inter-market working party be established which would have the responsibility of considering the day to day problems that have and will develop as the litigation proceeds. It is contemplated that the Working Party be made up of representatives from the Non-Marine and Incidental Non-Marine Markets and also to include a representative involved in LMX writings. It is intended that the party should include both Underwriters and claims representatives ... In addition, in view of the significant participation in certain areas of London Companies it is suggested that Mr John Heath of HS Weavers Underwriting Limited be invited to join the Working Party. It must be emphasised that the potential involved here is so large and the issue so complicated that we cannot allow a muddle through somehow approach ... it has become clear that the split in the Market is serious and that the legal costs involved are going to be astronomical."	
08/08/80	Attorney I to the Insurers at interest. Re: Assured 10 et al: Asbestos-related claim review. Even assuming no further delays on the part of the assured, it will no doubt be several months before we are able to assimilate the data on these thousands of claims and render our final report to underwriters. We recommend that an expense reserve of $200,000 be set at this time.	SI
27/08/80	Minutes of an AWP meeting. C J Ayliffe (in the Chairman's absence) emphasised to members that "the purpose of the Working Party was to deal with overall Market problems and it was therefore important that there should be seen to be complete impartiality in regard to the manifestation/ exposure attitudes that exist." "Present indications were that the rate at which law suits are being reported will continue for at least the next five years, and the projections indicate that by that time there will be some 25,000 cases in being ..." "At the present time there are six Declaratory Relief actions pending and the first of these, that of Assured 6, is due to come up for hearing in Boston on the 15 September. At this time it is not possible to indicate whether all matters currently in litigation will proceed to hearing ... Inevitably there will be appeals from the rulings of the lower court and it appears there will be a considerable passage of time before ultimately we have a clear indication of the thinking of the courts." "It was noted that it was important not to adopt an unreasonably pessimistic approach which could mislead the Market in considering the reserve problem."	AWP

	There was a discussion of the approach to reserving. It was recognised that whatever approach was adopted by a particular Underwriter or company they would undoubtedly use their discretion on posting reserves which produced to them their highest involvement, even though that reserve may not necessarily be in line with the position they were advocating.	
01/09/80	Business Insurance: Doing nothing may be answer to asbestos risk.	
02/09/80	Lloyd's List: Lloyd's to look into asbestosis. A working party has been set up at Lloyd's to help co-ordinate the handling by underwriters of the thousands of asbestosis claims which are arising in the United States.	
08/09/80	Business Insurance: Lloyd's Group to monitor claims for asbestosis.	
11/09/80	Post & Insurance Monitor: Lloyd's Working Party to examine asbestosis claims. "The spate of asbestosis claims now emerging in the US has led to Lloyd's non-marine underwriters to set up a working party to examine the future effect on the Market ... Insurers in the United States are worried that if all the compensation sought by these and other workers, who at some time or another in the past 40 years may have been in proximity to asbestos, was totalled together, it could reach the massive sum of nearly $2 billion. But these are purely speculative estimates and no one yet knows the effect on Lloyd's, which is now beginning to feel the impact of recent American lawsuits. The first of more than 1,000 cases brought in Los Angeles by Long Beach workers ended in a $1.2m jury award. But this was reduced by the trial judge to $250,000, so that the amount of settlements likely to be determined for other litigants is still uncertain. But the problems, which had been lurking in the minds of Lloyd's insurers for some time, came to a head in June when $1.2m was awarded to Richard Hogard, a Long Beach worker, who cited Assured 1 and Raybestos-Manhattan as defendants. the reduction of Hogard's award to $250,000 is being watched with future settlements in mind."	
22/09/80	Business Insurance: California bill sets a fund for asbestos claimants. The California legislature has appropriated $2.6 million for the workers compensation fund in respect of asbestosis.	

23/09/80	Attorney I to C J Ayliffe, Merrett Dixey Syndicates. Re Assured 10 Claims Review. "You are no doubt aware of this tremendous volume of pending litigation involving asbestos, the high rate of new filings, and what appear to be increasing verdicts. These general factors, combined with the preliminary information gathered in our claims review, leads us to be concerned that the present method of reserving (as we understand it) may be under-estimating the exposure of underwriters."	SI
29/09/80	Business Insurance: Asbestos firm says it has way to share liability. Standard Asbestos Manufacturing seeks in court to make tobacco companies co-defendants in asbestos-related suits.	
01/10/80	Attorney G to Underwriters at Lloyds, c/o Merrett Dixey syndicates. Attention: C J Ayliffe. Notes the monumental significance of the "manifestation" versus "exposure" issue. In relation to Assured 1, Lloyd's would be on risk for 31% of all the years of alleged exposure by the asbestos claimants, but only 7% of the claims if manifestation rules were adopted. "It is widely accepted that asbestos liability will be the most significant legal and loss cost issue in the history of the insurance industry ... The number of potential future claims is staggering". In a statement on 26 April 1978 the US Secretary of Health, Education & Welfare estimated that 8 - 11 million American workers had been exposed to asbestos since the beginning of World War II. Dr Selikoff had predicted 20,000 asbestos related deaths per year in the US until the end of the century. The attorneys say it is their opinion that, due to the long latency period of asbestos diseases, there are likely to be thousands of new asbestos claims at least until the 1990's. A great number of claims will ultimately come from all of the major industrial areas. On the other hand, despite the 8,000 or more cases filed to date, there have only been to our knowledge about 25 asbestos products cases tried to verdict thus far. Plaintiffs and defendants have won about 50% of time. However, underwriters are told to note the size of several of the jury verdicts in favour of the plaintiff (as high as $1.1m after appeal). Notes possible sources of indemnity: (i) third party actions against suppliers of raw asbestos which could be deemed to have merit and represent a serious potential exposure to the suppliers; (ii) the US Government (because of the exposure of workers in US Navy shipyards), although the Department of Justice has vigorously refused to contribute to any of the most recent asbestos settlements. Attorneys believe that it is not unlikely that sooner or later courts will permit indemnity or contribution actions against the US	SI

	Government which could provide some relief to asbestos manufacturers. Potential claims against asbestos employers have generally been brought under workman's compensation schemes but, since the Supreme Court of California's decision in the Rudkin case, it has been possible to sue Assured 1 directly for concealing the dangers of working with asbestos. This decision could "open the door to a great number of suits under the Employers' Liability policies". Attorneys also note attempts to intervene legislatively. The report concludes that "it would appear that any federal relief to insurers is fairly remote at the present time". It is the attorneys' view that underwriters can continue for the time being to reserve each claim on the $75,000 previously suggested by Counsel. However, more sophisticated information should allow a reallocation of percentages among the various assureds. "As indicated we believe the number of claims will continue to increase for the next several years ... We believe that eventually the asbestos manufacturers will obtain substantial indemnity help from the asbestos suppliers and from the US Government". The Report also indicated that the Attorneys could provide date as to loss payments and costs incurred by certain American assureds thus far in the trial and settlement of asbestos claims. "We believe that these statistics form a reasonable basis from which to estimate probable future loss payments and expenses to be made on behalf of these assured".	
03/10/80	Attorney H to Merrett Dixey Syndicates Attention: C J Ayliffe Re: Asbestos Claims. With regard to future developments in the overall asbestos problem, it is possible to come up with "very dire projections depending on the statistics drawn upon to support these projections". New lawsuits continue to be filed at the rate of approximately 100 per month or 1,200 per year. Conclusions: 1. Higher settlements likely as a result of increased jury awards; 2. No legislative relief in prospect for insurers. Essential that the current reserve recommendations be adjusted to reflect future potentials. Recommends increasing the present general per injury reserve of $75,000 to $100,000 which "while seemingly steep at first blush" ... "should sustain us through the mid point of the 1980's".	SI

13/10/80	Attorney K to Merrett Dixey Syndicates, Attention: C J Ayliffe Re: Asbestosis Litigation. Asbestos litigation continuing to develop at an unpredictable rate. New claims flow into this attorney's office at the rate of approximately 50-75 per month and sometimes higher. Flow of new claims appears to be undiminished, if not increasing. Asbestos related injury receiving substantial publicity in the American press. The defence posture of key manufacturers is deteriorating ... "the problem is presently one of unpredictable size both from the aspect of number of plaintiffs and potential value" ... "the defence picture (is) darkening rather than lightening". Also a suggestion that property damage claims are potentially of a substantial value and should be separately monitored. "At this date the attorneys also recommend that property damage claims be monitored separately".	SI
16/10/80	Attorney H to Merrett Dixey Syndicates, Attention: C J Ayliffe. "In my earlier letter I observed another area where the Working Party might find our comments useful and that is with regard to our experience with percentages of claims that were assigned to the various insulation manufacturers involved in asbestos litigation."	SI
03/11/80	Business Insurance: Court restricts policies available for latent injuries. "Insurance policies written over the years when workers handled asbestos are the only source of funds available to pay today's claims for recently discovered diseases says the Federal Appeals Court here ... In its decision (of) Oct. 22 in INA v Forty-Eight Insulations Inc. the court chose the exposure theory. It rejected the theory favoured by 48 Insulations that would prorate liability among all insurers from the time of exposure to the time of discovery ..."	
06/11/80	Minutes of AWP meeting. "The Chairman [Mr Nelson] then asked if sufficient legal decision had now been taken for one side or the other to change their views and have a common approach. He felt that when the Assured 6 decision was known there would possibly be full agreement. Mr Ayliffe said that the point had not been reached where agreement was likely. Mr Ayliffe continued that there would be another Court of Appeal decision shortly but it could be at least a further year before any Industry decision was likely. One of the difficulties he said was to whom does this Group talk in America bearing in mind there is still diametrically opposed opinion. Mr Heath confirmed that he felt when the Eagle-Picher declaratory relief action trial was known there would be an appeal and we must therefore, wait for the decision of the Higher Court ... Mr Kemp felt that the Supreme Court would be brought in if different states took	AWP

	different views and this was confirmed by Mr Heath ... Attorney G stated that there were 13 declaratory relief actions but only 6 were known in the London Market. Mr Kemp felt that the remainder would be known by now if there was a UK lead".	
10/11/80	Letter from CJ Ayliffe to EE Nelson. Re Asbestos Working Party. "My concern basically stems from the fact that all attorneys who are handling the asbestos problem are aware that the working party is giving consideration to the difficult question that is raised by the manner in which reserves should be approached.. My basic concern on this problem is that whilst I am as conscious as you of the delicate manner in which the year end reserves must be handled, and also fully agree that our obligation must be to provide to the markets sufficient background information to enable them to make the final decision, I am nevertheless concerned that reserves now are possibly lower than they would have been had the working party not come into being. In the case of matters being handled by Attorney H, as I have said, it has been made clear to me that it would have been their recommendation that reserves be increased on a per claim basis, and the reserves they would have put forward would have taken into account some form of projection. Neither of these developments have taken place due to the belief that a Working Party would be providing guidance, and if matters were left as they now stand it would effectively mean that we would be explaining to the Market the imponderables and that any loadings that individual Boxes decided to apply would be attached to reserves which would have already been higher had we not become involved"	
10/11/80	Business Insurance: Winner, Loser both seek re-trial in asbestos case. Refers to the "precedent setting decision" on insurer responsibility for asbestos claims made by a US court on 22 October 1980 in the case of INA v Forty-Eight Insulations Inc. This supported the exposure theory of coverage. Both INA and Forty-Eight Insulations want the Sixth Circuit Court of Appeals to rehear the case. INA wants the court to reverse the decision in favour of the exposure theory and adopt a manifestation theory. Forty-Eight Insulations wants the court to reconsider part of its ruling that makes insurers responsible for coverage and defence costs only for the years they insured a risk.	

12/11/80	Lloyd's List: Tobacco Firms Should Share Asbestosis Claims. "Two California courts are being asked to rule that cigarette companies are at least partly to blame for the illnesses of many asbestosis sufferers and should pay part of the compensation..."	
12/11/80	Attorney I to the insurers at interest Re: Assured 10 et al. Tampa claims review. Assured has more than 4000 open claims files and this figure is growing by approximately 100 each week. In addition more than 500 claims have been settled and claims continue to be settled on a daily basis. Aetna Casualty is alone amongst the insurers in having paid a significant number of claims. However neither Aetna Casualty nor any other insurer has ever reviewed the insured claims files which suffer from "the most rudimentary organisation". The attorneys are further informed that Aetna Casualty has exhausted its limits for certain policy years and so cannot be relied upon to formulate any rational claims handling policy. The Sixth Circuit Court of Appeals has recently affirmed the decision of the lower court in the Forty-Eight Insulations case. Strong support for the exposure argument. "An escape valve is provided. Liability among the insurers, said the Court, is not joint and several, but rather is individual and proportionate. Therefore, if an insurer can show that no exposure to asbestos products manufactured by its Assured took place during certain years, it is not liable for those years. However, the valve is effectively closed when the Court makes the burden of demonstrating this exculpating factor purely the insurers'. This burden will be well nigh impossible to carry in many situations."	SI
28/11/80	Minutes of AWP meeting. "Mr Ayliffe believed that Attorneys should make recommendations for year end purposes but it was for the individual Underwriters to determine the figures used when closing the account. He was concerned that reserves currently carried on files, were lower than would have been the case under normal circumstances. Those concerned were looking for recommendations from the Working Party before final decisions were made. This view was supported by Mr Jackson, who thought that a figure of $125,000 per average claim was more realistic than the present figure of $75,000 currently used as a yardstick ..." He thought Attorneys should in fact provide two sets of figures:- (a) Reserves as at 31st December, 1980 on known cases. (b) The projected literally number of claims for the next five years, based on information currently available but to include an inflation allowance. "... Messrs Rokeby-Johnson, Skey, Taylor, Kemp and Froude thought that $125,000 was excessive and $100,000 more realistic. They were not in favour of making	AWP

	projections of eventual numbers involved, but did agree that Attorneys should provide information on this matter ... Mr Heath was in general agreement with Mr Jackson and said that it appeared the number of new cases was more than doubling in each successive year from 1976 onwards". Summary of the Chairman (EE Nelson) included the audit Committee were reluctant to identify individual situations for audit purposes. The asbestosis situation was well known in the Market. underwriters were aware of the potential problems.	
08/12/80	Attorney H report to Underwriters at interest (c/o Willis Faber & Dumas Ltd.) Re: Assured 3A/Assured 3B. Detailed report on US Sixth Circuit Court of Appeal's decision in INA v Forty-Eight Insulations	SI
24/12/80	Attorney K to E E Nelson c/o K F Alder (Underwriting Agency) Limited Re: Asbestos Claims. Average case settlement price $67,000 comprised of contributions from various defendants. ... "one can expect future settlements to increase substantially to $100,000" or higher. While the number of defendants to the litigation is likely to rise (lessening the exposure of the individual asbestos manufacturers towards individual settlements) the average settlement package will "quite likely continue to increase in size ... it is likely that an average asbestos settlement will approach $100,000 per claimant over the next few years, with an additional $10,000 allocated for expenses." "Asbestos claims are multiplying rapidly" (this attorney gets 50 per month). US court decisions may substantially increase the number of asbestos related claims that will be brought and raise some further coverage questions. In particular: 1. in the case of Judith Ferriter v Daniel O'Connel Funds Inc. the Massachusetts Supreme Court held that the spouse and children of an injured worker have a right to sue the worker's employer based upon an allegation of negligence, even though the worker accepted workman's compensation payments; 2. the Supreme Court of California (Rudkin), and Appellate Courts in Delaware and Texas, have recently upheld actions brought on the basis of intentional or wilful misconduct by employers. It remains difficult to project the number of claims to be filed in the years to come. This attorney estimates that, in the next 6 to 8 years (1980-86/88), 1,000 new claims may be filed each year. They suggest that this figure should be continually revised and	AWP

	updated on the basis of case law and new causes of action on at least a semi-annual basis. Selikoff projections referred to in the above connection.	
24/12/80	Attorney H to E E Nelson, K F Alder (Underwriting Agency) Limited. (Response to E E Nelson's letter of 10 November 1980). Since the Borel jury returned a verdict of $79,000 in 1972 the amounts of settlements have increased to several multi-million dollar awards. Currently the attorneys recommend that underwriters should increase reserves to $125,000 per claim (which they believe will see them through until 1983-84 including an item for defence expenses). The attorneys predict that the peak years "may very well be fixed for 6 or 7 years hence". Claims are being filed at an average rate of approximately 100 per month or 1,200 per year. "We currently do not see any marked increase in this number, nor on the other hand do we anticipate a sharp reduction." However these comments are to be considered as "guarded" because, over the past 30 days, there has been a sharp increase in filings. Assured 3B alone has had 286 cases filed since 1 December (1979). Attorneys say their "guesstimate" is that cases will not peak until at the earliest mid-1985.	AWP
29/12/80	Telex Attorney G to E E Nelson (c/o K F Alder (Underwriting Agency) Limited). "... thousands of additional claims can be expected at least into the 1980's. For these reasons we would deem it prudent to raise reserve for each known BI asbestos claim to DLRS US 125,000 with such reserve including costs ..."	SI
19/01/81	Letter from C J Ayliffe to E E Nelson. Referring to reports from US attorneys such as Attorney H, C J Ayliffe states: "... I think you will agree that it is important that the Market should have access to the reports in question and form their conclusions from those comments rather than be influenced by anything that we might independently say in the form of a report".	

26/01/81	Attorney G c/o C T Bowring & Co to the Interested Reinsurers Reassured: Assured 1. "We regret to advise the excess reinsurers that the situation has materially worsened since our last report". The number of claims against the insured has increased sharply, there have been several large settlements made, and some verdicts have been returned against the insured which "portend" poorly for future litigation. The case of INA v Forty-Eight Insulations has supported the "exposure" theory of coverage. The primary insurer states that aggregate limits on three of its annual periods have been exhausted and that exhaustion of its limits for all other years is imminent. "It thus appears that the Reinsured must become in effect a primary insurer with defence obligations in the very near future". The attorneys therefore recommend a substantial reserve increase to the excess reinsurers: "We request each reinsurer to carefully consider his own reserve on these claims". There is a possibility that "a great number of claims may be brought in the future". The reserve which has been indicated by attorneys does not take into account either loss or expenses of reserves for future bodily injury claims which may subsequently be brought against the insured or indemnity or contribution claims that might be brought against the assured.	SI
27/01/81	Lloyd's Underwriters' Non-marine Claims Office, (LUNCO). Circulates US attorney reports about Glen Alden Corporation asbestos-related claims review correspondence.	
00/02/81	Assured 2's Annual Report. "Assured 2's youth and the relatively small involvement of its former subsidiary in the asbestos-containing thermal insulation Market put the Corporation in a unique position relative to other defendants. Assured 2 is nevertheless being exposed to the same legal liability as miners and suppliers. Most of these have substantially greater resources and continue to have a stake in the Market. Unlike Assured 2, they can recover the costs of their asbestos cases from their current operations. Assured 2 is making every effort however, to resolve the asbestosis problem facing the Corporation. Management and its counsel believe that the disposition of existing possible unasserted asbestosis claims and other cases will not have a material effect on the consolidated financial position of the Corporation."	
02/02/81	Business Insurance: Asbestos suits cloud firm's 1980 report. Assured 1 has qualified its annual financial report for 1980 because of uncertainty over whether its insurance will cover its potential liability in the thousands of asbestos suits brought against it. There has been a dramatic rise in the number of suits filed against it (from 2,707 to 5,087, and the costs of disposing them has risen from $13,000 to $23,000.)	

10/02/81	Letter from AWP (Mr E E Nelson) to the Active Underwriters. The insurance industry, including the London Market, continues to be divided as to whether asbestosis claims are attributable to policies on an "exposure" or a "manifestation" basis. A significant decision was given recently in the appeal in one of such actions, INA v Forty-Eight Insulations, Inc (U.S. Court of Appeals for the Sixth Circuit) which, in affirming the trial court judgment, adopted the exposure theory by a majority of two to one. The dissenting opinion argued that the date of loss was when the condition was first discoverable. This could be considered a "half-way" house between the exposure and manifestation arguments, a further complication of the issue. Lloyd's has been actively involved in another Declaratory Relief Action, the Assured 6 case, which was tried in Boston, Mass. towards the end of 1980. Judgment is expected at any time now, and whatever the decision, the case will be appealed. A Declaratory Relief Action by Assured 1, who probably have the largest involvement in the asbestosis problem of any Insured, is not expected to be heard until next year. "In all the circumstances it is reasonable to assume that the manifestation against exposure issue will not be resolved in the near future." "With the approach of the year-end attention has focused upon claims reserves particularly bearing in mind the following: (1) the rising trend of settlement figures and the effect upon them of inflation in the U.S; (2) as underlying aggregates are exhausted some insurers may look to excess carriers to absorb defence costs; and (3) during the past year the number of cases in suit has increased from about 5,500 to in excess of 8,000 and at this stage it is not possible to project how many more claims will be filed". "It cannot be emphasised too strongly that you should make yourself aware of the contents of [your U.S. legal representatives'] reports".	AWP
12/02/81	The Post Magazine - Problems of disease claims. "In the United States by the late 1960's so many workers had contracted asbestosis that manufacturers had begun to cut back on the production of asbestosis containing products ... Claims on behalf of many injured workers were made against manufacturers. This was on the basis of strict liability for defective products; the workers arguing that the manufacturers had not warned them of the dangers. Since it was impossible to tell which particular manufacturer had been involved with so many thousands of products on the Market, the workers contended that all relevant asbestos manufacturers should be jointly and severally liable."	

18/02/81	Attorney G to Underwriters at Lloyd's Re: (Assured). "It is generally accepted that asbestos liability will be the most significant legal and loss cost issue in the history of the insurance industry. The number of future potential asbestos claims is overwhelming." The attorneys note the estimate that 8-11 million American workers have been exposed to asbestos since the beginning of World War Two (Califano Speech, April 1978) and the US Government study in 1978 which projected that 13%-18% of all cancer deaths over the next 30 years would be asbestos related. The Director of the National Institute for Occupational Safety and Health has predicted that tens of thousands of asbestos deaths are likely to occur annually. "We can continue to expect thousands of new asbestos claims at least into the 1990s ..." There are approximately 9,800 claims in suit against this assured. The assured has concluded settlements at an average loss payment of $9,000 per claim. There are problems with reserving for asbestos-related claims: 1. the basis of coverage is still uncertain; 2. it is impossible to predict the number of product liability claims; 3. there are inconsistencies where primary insurers have adopted a manifestation theory, and reinsurers an exposure theory. The attorneys emphasise to reinsurers that suggested reserves relate only to claims known to have been made against the assured so far: "... there are numerous well informed people who believe that many hundreds or even thousands of additional claims can be expected in the future". Reinsurers should consider all factors in establishing reserves.	
23/02/81	Attorney H to Underwriters at interest Re: Assured 1. Several significant developments have recently occurred which warrant underwriters' prompt attention. Of immediate concern is the fact that the Travelers as primary insurer for Assured 1 spanning the years 1947 through 1976 has just about exhausted its aggregate limits.	SI
23/02/81	Attorney G to the Interested Reinsurers. "There have been some favourable developments since our last report and we no longer believe that the indemnity claim brought by Forty-Eight Insulation Inc against the assured, a subsidiary of General Dynamic Corporation will ultimately represent exposure to the excess reinsurers herein. We are now pleased to report that the trial Court has dismissed the Count of the claimant's complaint praying for a Declaratory Judgment on all pending as well as potential indemnity claims that the claimant might have against the assured ... Since our last report we can advise that on October 21, 1980 the United States Court of Appeals for the Sixth Circuit handed down its decision in the INA v. Forty-Eight	SI

	Insulations Case previously discussed. The Court of Appeals affirmed the trial Court holding that the date of loss, triggering coverage in the asbestos-related bodily injury cases against this claimant was the date when the individual bodily injury claimants were exposed to the alleged defective asbestos products. This decision is certainly favourable to the excess reinsurers here who could be subject to far greater liability under a manifestation rule in the 1975-1978 period. The rulings of the US District indicate that the Court will view each individual bodily claim as a separate occurrence. If this interpretation continues then the reinsurer should bear no losses."	
00/03/81	Lloyd's Bill receives second reading in the House of Commons.	
06/03/81	Attorney G to Interested Reinsurers Re: Assured 25. Repeats that it is generally accepted that asbestos liability will be the most significant legal and loss cost issue in the history of the insurance industry and that hundreds if not thousands of new claims can be expected until the 1990's at least, asbestos exposures ranging from a few years to as many as forty to fifty years. Currently twenty declaratory judgment actions being litigated between insurers and insureds in the US. The attorneys have reviewed claims brought against each of the 19 individual assureds at risk with the reinsured and suggest reserves in respect of each assured calculated on both an exposure and a manifestation basis. The reserve calculations have been made only on the basis of claims that have been brought to date against such assureds. Additional asbestos-related bodily injury cases must be reserved for separately. Potentially there are other risks (depending on the law of employers' liability).	SI
13/04/81	Notes of an AWP meeting taken by Elborne Mitchell. Reporting on trip to the US of C J Ayliffe and K R Rayment: discussions had been held with Attorney H and Attorney G in respect of the Assured 1 coverage 1951-63. "It would appear that the excess layers covered by London Underwriters were on an occurrence basis only between 1951-60 ... this left them with a gap in coverage ... However, Underwriters' lawyers are by no means certain that Underwriters will be able to benefit from this coverage problem ... if the coverage situation described ... above is correct, then the exposure of the London Underwriters may be substantially reduced between 1951-60... Can London agree to any funding arrangement in these circumstances? Could this situation lead to a lump sum settlement with Assured 1 for those years? Assured 1 have said they will revert when they have further investigated	AWP

	the coverage situation". "Assured 12 is being sued by 9,000 claimants and is a larger problem than previously realised. First layer insurances are now exhausted - above them is the Home and above the Home are London Underwriters. The Home is involved with all 28 Assureds which concern London, except Assured 20 and Assured 17". "The Fifth Circuit U.S. Court of Appeals has reversed the judgment in Porter v American Optical and applied the exposure theory of assigning liability. The Court agreed with the reasoning of the Sixth Circuit in I.N.A. v Forty-Eighty Insulations Inc".	
13/04/81	Business Insurance: Asbestos: Judge ties California suits. Judge Ira Brown has issued an order co-ordinating four pending actions to determine whether insurance cover would apply under exposure, manifestation or pro rata theories. This affects more than one sixth of the pending asbestosis liability suits in the US.	
14/04/81	Attorney I to the Insurers at interest. Assured 10 Claims Review: The US attorneys have reviewed the 4,500 individual claims files of the assured, some of which contain hundreds of claimants. "We understand that the entire London Market is considering a consolidated claims review process which would encompass all London insureds." $125,000 is the reserve figure for each pending asbestos claim (8%, or $10,000 worth, is assigned to Assured 10). The attorneys recommend underwriters periodically consider the adequacy of the $125,000 figure. It may be accurate in respect of average settlements in 1981 but may not be an accurate prediction as to the ultimate settlement value of pending asbestos claims. Reserves have been recommended tentatively and on the basis that the sheer volume of claims means that underwriters may face liability no matter what the specific terms of policies, or which theory of coverage is eventually adopted. Legal decisions: 1. District Court for District of Columbia has ruled in the Keene case, following the INA v. Forty-Eight Insulations decision and ruling in favour of an exposure theory of coverage. The court in Keene extended this decision to Mesothelioma and Bronchial Carcinoma as well as asbestosis. The Court went on to pro rate the obligation to defend and indemnify for each insurer on risk during the exposure period. Appeals are underway; 2. the Environmental Protection Agency in the US has recently found that asbestos poses an "unreasonable risk of injury" to school children and school employees. Potential property damage claims arising out of making school buildings safe;	SI

	3. The Sixth Circuit of the Court of Appeals has denied a request for an open hearing in the Forty-Eight Insulations appeal and has extended its prior ruling to Mesothelioma and Bronchial Carcinoma; 4. Van Buskirk litigation in Philadelphia has held that an asbestos manufacturer cannot rely on workmen's compensation immunity. This may have a significant impact on the coverage provided by underwriters; 5. claims by 890 asbestos workers in New Jersey recently settled by establishment of $59.4 million fund. The average per claim claimants settlement was $13,500, far below the current national average; Reserves discussed do not allow for new claims.	
17/04/81	Letter from Attorney D (US attorney) to K F Alder (Underwriting Agency) Limited Attention: E E Nelson. Encloses a copy of the recent proposal authored by the American Re considering the asbestos claims handling procedures. The enclosure headed "asbestos claims handling procedure" sets as its objective: formulation of a procedure for the unified control of evaluation, negotiation and litigation management by the insurance industry. It envisages "form a national asbestos litigation committee ..." "Why is such an elaborate and unprecedented organisation required: (A) Asbestos litigation is the largest phenomena that has ever hit the casualty insurance industry. The present mechanism is not capable of handling it effectively. (B) Asbestos litigation is going to get much much worse. No one knows how bad the problem will ultimately become. (C) Even some prominent members of the bar have stated the waste in defence cost because of the lack of uniform co-ordinated approach is scandalous. This problem will only get worse as time goes by."	
20/04/81	Attorney G report (c/o C J Ayliffe, Merrett Dixey Syndicates Ltd.) Re: Assured 4. "Several hundred new suits have been brought against the assured and it appears that Underwriters' involvement may be greater than initially believed ... Since our last report, we can advise Underwriters that we have documentary evidence that there have been 571 additional claimants who have filed 351 additional lawsuits against the assured nationwide. Thus, to date, we know for certain that there have been a total of 943 individual claimants who have filed 637 lawsuits against this assured. However, this number may not represent the true correct status as the assured has recently reported to us that there have now been 1,099 lawsuits brought against it on behalf of 2,019 individual claimants ... Our information as to the assured's average disposition of these claims remains generally unchanged from our last report .... the assured generally will not be a target defendant in these cases. We continue to believe that the	SI

	asbestos-related bodily injury cases represent grave potential exposure to the producers of asbestos and to the manufacturers of products containing asbestos. However, we do not believe that this assured will be one of the truly major defendants in the asbestos cases ... It thus appears at this point that the exposure theory as opposed to the manifestation theory will probably prevail in the American Court system .... we suggest a reserve be established herein based upon an average total cost per claim of $2,500 ..."	
23/04/81	Attorney G to the Interested Insurers Re: [various] Lloyd's Policies. Assured: Assured 19. "It ... appears at this point that the exposure theory as opposed to the "manifestation" theory will probably prevail in the American court system in the asbestos cases". This could be unfavourable to excess underwriters in the US. The issue of the self insured retention by assureds is not yet resolved. Attorneys recommend a conservative approach. However, "because of new coverage information we are now recommending a substantial reduction in the exposure reserves previously suggested ..."	SI
28/04/81	Victor Levit, Managing Partner of Attorney F of California, gives a talk at the invitation of Lloyd's Under 30's Non-Marine Claims Committee entitled: Recent Developments in Insurance Coverage of Asbestos, Agent Orange, DES, Radiation Hazards, and Similar Catastrophic Product Liability Development. Figures suggest that (at 1 February 1981) 25,000 individual plaintiffs have sued for asbestosis (with 500 more suits per month). Losses and expenses from these suits alone in 1980 are costing $1.35 billion per year (liability premiums are $6.35 billion). Assured 1, the principal defendant in most asbestos suits, is running out of primary insurance for the period 1947-1976 (its accounts for 1979 and 1980 had to be qualified). Assured 20 will have qualified accounts for 1978-1980 and this may be only the "tip of the iceberg". The staggering size of toxic latent disease claims could threaten the solvency of some insurance companies. Levit notes Dr Selikoff's recent study on the long latency period for asbestosis (15-45 years). If an exposure theory of coverage is accepted this could put a great financial burden on insurers. A recent California case indicated that Assured 16 alone had potential exposure of $20 billion. The same case stated that the Court should construe insurance policies to promote coverage. Two recent cases have also shown that victims are not confined to claims under workers' compensation schemes. A recent consolidated action settlement involving 680 workers at a Assured 20 plant involved the establishment of a $9.4 million fund. A 1978 settlement in Tyler, Texas, provided a $20 million fund for 445 asbestos workers. The opinion has been expressed that such settlements may encourage more suits. "I believe that there will be many more claims than we can possibly anticipate from toxic substances, that such	

	claims will often take many years to manifest themselves, and that the dollars involved will be far greater than we can possibly imagine".	
00/05/81	Syndicate 219 (1980 Report). "A major problem which has recently reared its ugly head is summed up in one word "Asbestosis". Although it has long been known that the inhalation of asbestos fibres damages lung tissues, causing disability and sometimes death, it is only recently that the US Courts have upheld the legal theory that manufacturers of asbestos are liable for failing to provide warnings regarding the dangers of its use. There are now 8,000-10,000 claims pending and this figure will probably rise rapidly. Although insurers themselves have had to go to court to ascertain who covers what, the general view emerging is that 'bodily injury' occurs repeatedly with each exposure over the years and that insurers at risk during the periods of the individual exposure will have to respond since manifestation can be up to 45 years after initial exposure. In practice this means that policies issued decades ago are likely to be involved. This Syndicate commenced underwriting in 1956 and already we have some advices on our very early years. As Members are aware the Syndicate carries substantial reserves for such contingencies but as the situation develops over the years it may well be considered necessary to increase those reserves."	
04/05/81	Business Insurance: A modest proposal? Asbestos comp trust may clear legal backlog. Attorney D (a US attorney) suggests that it is time for the insurance industry, with the co-operation of policy holders and the government, or even independently, to find a workable solution aimed at reducing the avalanche of asbestos claims. The solution must involve the disposition of a substantial number of asbestos claims leading to a reduction in legal costs. This could take the form of a asbestos compensation trust.	
11/05/81	Minutes of AWP Meeting taken by Elborne Mitchell. "Mr Maitland reported that the Commercial Union were advocating strongly that the tobacco companies be made parties to Asbestosis litigation..."	AWP

12/05/81	Asbestos a Social Problem: A position paper prepared by the environmental issues task force and issued by the Commercial Union Insurance companies: The estimated number of cases to date ranges as high as 12,000, involving some 25,000 plaintiffs and more than 260 defendants. Likely that many thousands of additional claims will be filed during the next 25-30 years, placing a severe burden on the insurance and asbestos industry. Viewed objectively, the proliferation of asbestos claims jeopardises the financial stability of many companies. "Estimates as to the total number of individuals who will contract an asbestos-related disease are frightening. In 1978, Joseph Califano, the then secretary of a former department of health, education and welfare, warned that as many as 5.6 million Americans may die of cancer of other diseases associated with asbestos...". The courts are grinding to a standstill and the situation is likely to get worse in the future. Thousands of additional law suits can be anticipated. It is impossible to assess with exactitude the total liability that the insurance industry will have to bear. A study conducted by the Insurance Services Office indicates that for the period between July 1976 and 15 March 1977 the average payment in an asbestos case (for settlements and jury awards) was approximately $170,000. If just 1 million asbestos claims are resolved at that average value, the insurance industries liability will be £170 billion. "...It is not inconceivable that several million claims will ultimately be filed... We can anticipate an increased instance of asbestos-associated diseases during the next two or three decades". The number of asbestos product liability claims may be "staggering", potential liability "immense". "It is conceivable that the damages that will be ultimately awarded will exceed the combined assets of the insurance and asbestos industries". Concludes that there is a need for a federal solution.	
00/06/81	Lloyds League Tables 1978 (produced by Chatset). In respect of Non-marine business: "A vintage year with the total result of 22%, nearly double that of 1977. The settled claims figure was much the same but there were not those special provisions for reserves which were charged in 1977 so there was a much lower increase in reserves and a better underwriting result. The principal reason for this appears to have been that those special provisions in 1977 for computer leasing and asbestosis were considered adequate when closing 1978. It would appear likely that additional reserves will have to be made in the 1979 and 1980 accounts against further asbestosis and DES claims. Asbestosis has been described as the largest ever insurance loss and will not only affect the Non-Marine Market. 1979 and 1980 were showing higher settlements at the end of 1980, so the Non-Marine section as a whole will certainly be back into an underwriting loss". (Published in 1981).	

00/06/81	Syndicate 90 (1980 Report). "... Although the asbestosis claims which caused the loss in the previous year have continued to accumulate we have been able to buy a substantial measure of reinsurance protection for the 1974 and previous accounts ..."	
00/06/81	Syndicate 334 (1980 Report): "This has exposed us to a number of potentially serious asbestosis claims on closed year. The most recent reports from our legal advisers (received in February 1981) have caused us to take a serious view of the possible cost of these claims and we decided that a substantial additional provision had to be made before closing the 1978 account. We shall endeavour to do what our Non-Marine colleagues have done, namely to buy r/i to protect the old years of the syndicate against any worsening of the position in regard to asbestosis or similar liability claims."	
01/06/81	Minutes of an AWP Meeting taken by Elborne Mitchell. "Assured 1 understand that the post 1956 London Market cover wording is on an occurrence basis and that this will lead to their claim, which at present stands at US $347,753 on the 1952-1960 London Market covers being rejected. Assured 1 indicate that they will look to Marsh McLennon for this shortfall, thus both the American brokers and the London Market will have to be involved in any final settlement with Assured 1."	AWP
04/06/81	Attorney H to the Underwriters at interest Re: Assured 1. Travelers has exhausted its aggregate limits and, as a consequence, Assured 1 has demanded direct immediate payment from underwriters of US $347,753 on an exposure basis against the years 1952-1959 (as their contribution to the $1,872,027.27 settlement of 73 asbestos claims). Reports warning of the exhaustion of Travelers primary limits given to C J Ayliffe at a meeting on 7 January 1981 with Mr Von Wald (Corporate Counsel, Assured 1). At a subsequent meeting with Von Wald (also attended by K R Rayment and J Heath) on 9 April 1981, limits and attaching levels were considered in detail. Counsel for Assured 1 also conferred at length with R A G Jackson. It was discussed that as the policies are on an occurrence basis then underwriters would be required to respond only to those cases where the loss exceeded the stated occurrence limits.	SI

29/06/81	Business Insurance: Asbestos insurers apply exposure rules. Spokesman for Assured 16 and Aetna reaffirm their support for the manifestation theory despite recent court decisions to the contrary. However, some insurers, for example Travelers, have recently adopted the exposure theory in the light of these court decisions. Aetna is also willing to work out agreements based on the exposure theory but reserves its right to review these. The insurance industry as a whole will pay more under the exposure than the manifestation theory and can be expected to continue fighting it in the courts. Two key cases are Eagle-Picher v Liberty Mutual Insurance, which is about to be decided by the district court and Keene Corporation v INA, in which a decision is also due soon. A ruling in the consolidated cases in California could be more than three years away. Pending Californian asbestos coverage cases were consolidated in March 1981.	
11/07/81	The Economist: Warning: Asbestosis may cost you more than money. "In the past two years, there has been a quintupling in the number of law suits in which Assured 1, once America's biggest Asbestos producer, is named as Defendant. Law suits against Assured 2 have risen ten fold .... Auditors Coopers & Lybrand qualified both the 1979 and 1980 accounts of Assured 1 because of the potential liability from law suits. The 1980 accounts of Raybestos-Manhattan were also qualified, and some other asbestos companies must expect the same treatment in future. There are roughly 25,000 cases against asbestos companies pending in the American Courts ... The Industry is now desperately worried because some courts are awarding punitive damages - in effect, saying that asbestos companies wilfully did not do enough to protect workers against the hazards of asbestos ... Some believe that legislation will be needed if great chunks of American industry are not to go bankrupt."	
04/08/81	Telex from C J Ayliffe to Attorney I Re: reserves on asbestos cases. "The Working Party are now considering the reserve philosophy to be adopted for the coming year end in regard to all the accounts which come direct to London Market and it is our intention to now adopt a reserve per case for each insured based upon average cost of settlements achieved to date plus loading to take care of inflationary trends."	

10/08/81	Minutes of an AWP Meeting taken by Elborne Mitchell. "Elborne Mitchell ... had now obtained copies all of the slips in respect of Assured 3 and Assured 7. They have not been able to obtain the slips for Assured 4 since the brokers were having difficulty in finding some of them". CJ Ayliffe noted that Assured 4 held cover notes stating that 100% coverage was placed in the London Market. That company had 900 claims. CJ Ayliffe reports that "a great deal of information was coming to the Leading Underwriters in respect of Asbestos claims and a central store of this information was required ... general reports were shown to the Market by the brokers. However any reports of a delicate nature would be reviewed by Elborne Mitchell prior to a decision as to their release to the Market". Attorney H sought the Working Party's agreement to certain estimated per claim figures, arrived at by adding a 20% inflation factor to the average claim payment during the first half of 1981. The per claim figures were: Assured 3B $5,500; Assured 6 $15,600; Assured 17 $15,000; Assured 12 $12,000; Assured 2 $12,600; Assured 13 $10,500; Assured 14 $10,200; Assured 7 $18,200; and Assured 1 $25,000. Attorney H also recommended an expense figure of 25% for each claim.	AWP
31/08/81	Business Insurance: Court Reverses trend to maximise coverage. Reports the carefully worded decision of a US district court on 14 August 1981 in the case of Eagle-Picher v Liberty Mutual Insurance. The court ruled in favour of a manifestation theory of coverage. However the significance of a decision is unclear since the decision in favour of the manifestation approach maximised coverage in this case.	
14/09/81	Business Insurance: Asbestos Maker, Insurers differ on liability theories. Commercial Union says that the solution of the problem cannot be found in the court room and that legislation is needed to handle the flood of claims from asbestos-related diseases. Assured 1 agree that legislation is needed but argue in favour of wide liability for insurers. A spokesman argues that an exposure theory of coverage is now the law.	
21/09/81	Minutes of AWP Meeting taken by Elborne Mitchell. Assured 11. Following figures for asbestosis claims made against this assured which gave some indication of the increasing rate at which new claims are made: 1977 - 96 claims; 1978 - 386 claims; 1979 - 310 claims; 1980 - 632 claims; first half of 1981 - 860 claims.	AWP

25/09/81	Letter from Lloyd's Underwriters Non-Marine Association Re: US Reinsurance Contracts Covering Casualty Business. "The Non-Marine Reinsurance Committee has given a lot of time and thought to the attitude that they should take as individual Leaders in connection with the renewals of U.S. Reinsurance contracts covering casualty business in the fight of the latent disease problem. As a result a "discussion paper" has emerged which those Underwriters who have signed it intend to use as a basis for discussion with their reassureds at the time of the renewal of their programmes. A copy of this paper is enclosed for your information." Discussion document: "the potential for losses arising from asbestos products has been known for some time and obviously will continue to be dealt with by the insurance industry for many years to come. The same latent disease characteristics, in some degree or another, are unfortunately common to many elements, compounds, chemical mixtures and products ..."	
28/09/81	Business Insurance: Government liable for asbestos ills: Commercial Union, taking the lead position in the insurance industry fight against asbestos litigation, is waging a full scale effort to lay the liability for asbestos claims with the Federal Government.	
05/10/81	AWP meeting which reported on Keene.	
26/10/81	Minutes of AWP Meeting taken by Elborne Mitchell - Recent Keene Decision. "Mr Ayliffe who had recently returned from the United States, reported that the insurance industry, including Assureds, considered the Keene judgment to be erroneous and detrimental to products coverage as a whole."	AWP
02/11/81	Business Insurance - Keene case concerns London Insurers. Insurers that cover manufacturers of asbestos products must seriously review their policy terms in light of a recent US Court decision that widens the scope of asbestosis claims liability one Lloyd's underwriter says. "We must give serious thought to where we go from here", says R A G Jackson, an underwriter with Merrett Syndicates Ltd. "It's too early to tell how this decision will affect the liability market. But I am asking a lawyer for an opinion on our position ..."	
09/11/81	LUNMA letter to Market. "A Market meeting has been arranged for 4pm on Monday 16th November 1981 in Committee Room A, at the Institute of London Underwriters ... to enable a report to be given of the current developments in connection with the Asbestosis claims. The report will touch on both direct insurance and reinsurance."	

10/11/81	Minutes of an Advisory Panel of Auditors meeting attended by, inter alia, N F Holland of Ernst & Whinney. Notes made by D Stevens of Littlejohn & Co. Potential claims in connection with asbestosis make computer leasing appear insignificant by comparison. As a result of the Keene decision the insured may claim both on exposure and manifestation theories of coverage. Murray Lawrence stated that there would be a report on the 10-12 major assureds showing the underwriters' lines of each syndicate on all years of cover. The report will project the number of claims forward for five years to show which layers the policies are exposed. It is also to produce some information on the reinsurance side. It could not be over-emphasised how serious the losses will be as a result of asbestosis.	PA
10/11/81	Minutes of an Advisory Panel of Auditors meeting taken by N F Holland (dated 9 December 1981) [in relation to the same meeting as the above minutes]: W N M Lawrence made a fairly detailed statement on asbestosis. Following a recent decision in the US courts, both exposure and manifestation were a basis for settlement. Accordingly, all years covered on each basis were vulnerable for claims. Attorney H were preparing a report in respect of direct business and were going through the 10-12 major assureds covering all years and the losses on each year on all known covers. They would then project figures forwards, hopefully giving some feel for the loss on direct writing. It would then be up to each syndicate to consider what reinsurance protection it had and arrive at net losses. R J Kiln said he did not wish to see mention of specific claims in the Audit Instructions. On reinsurance, W N M Lawrence could give no help at all. Each syndicate would have to do its own "rough shot" of its potential exposure and would hopefully develop some feel for the sources from which claims will materialise. W N M Lawrence was pressed to call a meeting of Panel Auditors early in 1982 to keep them informed of the latest position and he agreed to talk to E E Nelson and see what could be done. It was hoped to monitor available information in the market. Clearly there were some major losses developing and it was important that some form of intelligence was established with a view to pooling all available information from all sources within the London Market.	PA
10/11/81	Minutes of an Advisory Panel of Auditors meeting held on Tuesday 10 November 1981 [in relation to the same meeting as the above two sets of minutes]: Reserves: the Panel consider that the current reserves were reasonable. Under "Any Other Business", there was a discussion of asbestosis. R J Kiln reported that claims being made on notices as far back as 1947 where underwriters had been involved in direct insurances or reinsurances of companies covering liabilities of companies subject to asbestosis claims. WNM Lawrence reported that a data bank	

	was being produced which would contain details in respect of 10-12 major assureds with all years of cover. Loss adjusters would then be able to make some estimate of underwriters' lines on such risks. Projections of claims for 3 or 5 years hence would be made and predictions of loss expenses for 2 or 3 years hence (in both cases in respect of direct business only). From the data bank it would be possible to give a rough estimate as to the exposure in respect of reinsurance business. "R J Kiln pointed out that he did not wish to see mention of these specific claims in the Audit Instructions." W N M Lawrence said that a Lloyd's market meeting would be held soon to appraise everyone (including auditors) of the situation in respect of the data base. It was agreed that a further meeting of the Panel would take place early next year to consider asbestosis and any other unconcluded business.	
11/11/81	Attorney G to Underwriters at Lloyds Re: Assured: Assured 5. Recommends substantial reserve changes reflecting a huge increase in the number of claims brought against the assured since their last report (January 1980). Since then 3,753 new claims have been brought against this assured by individual claimants throughout the US. As of 1 November 1981 the attorneys had received notices of a total of 4,656 claims. That is not all. As at 30 June 1981 the assured has stated that a total of 6,210 suits involving 7,877 claimants have been filed against them. Moreover, since 30 June 1981 there have been an average of 300 new claims per month meaning a current total of approximately 9,000 claims filed against Assured 5. Reports cases of Porter v American Optical and INA v Forty-Eight Insulations which support the exposure theory of coverage. Notes that more recently, the Federal District Court in Eagle-Picher v Liberty Mutual ruled in favour of manifestation. More recently still the Circuit Court of Appeals Washington DC has held in the Keene case that coverage attaches on all years of inhalation exposure as well as during the years when the fibres were present in the human body without inhalation (exposure in residence) as well as to the year of manifestation of the disease. All four decisions are being appealed. So coverage remains a "perplexing issue". "... It is thus possible that the manifestation rule of coverage may yet prevail which we believe would relieve the London excess insurers here from any liability. On the other hand, if the exposure theory as opposed to the manifestation theory ultimately prevails in the American Court System then we believe that Underwriters here in the 1964-1967 years will be required to make substantial payments on behalf of this assured".	SI

	"... We should advise Underwriters that there are numerous well-informed people who profess to believe that claims filed to date represent only the beginning of a potential flood of asbestos litigation ... Although the assured's involvement with products containing asbestos does not appear to be as substantial as other defendants in these matters, it may be that in the future the assured regularly will be included among the growing group of frequently named defendants in these cases ..." As usual excess insurers are warned that the reserves relate only to those claims known by the assured thus far. Underwriters should carefully consider all the factors when establishing their reserves for asbestos losses.	
23/11/81	Business Insurance: Asbestos makers increase claims against government. There are more claims being made against the US government by asbestos manufacturers seeking a contribution to the massive settlements in respect of asbestos related diseases.	
23/11/81	Attorney H to the Underwriters at interest Re Assured: Assured 13. To establish a prima facie case an asbestos plaintiff merely needs to produce evidence that: 1. the defendants manufactured, marketed or distributed asbestos insulation products; 2. the products were defective and unreasonably dangerous; 3. the plaintiff was exposed to any of the defendants' products; 4. the plaintiff's exposure was sufficient to be a producing cause of certain asbestos related lung diseases; 5. the plaintiff has or had an asbestos related lung disease; 6. the plaintiff suffered damages. The industry generally recognises that when these criteria are established a case should be settled rather than risk the uncertainty of jury trials (juries impose far greater damages). Settlement is therefore the "conduct of choice". Cases: Porter and INA cases in favour of exposure, Keene, in favour of "triple trigger". And one district court in favour of manifestation (Eagle-Picher v Liberty Mutual). The principal thrust on Keene is that if any of the three triggers (exposure, manifestation	SI

	or exposure in residence) occurs during a policy period then coverage is triggered in full for defence and indemnity. A trial Judge in the US District Court in Pennsylvania in the case of Commercial Union v Pittsburgh Corning noted "the indisputable scientific fact that cumulative physical damage resulting from asbestos inhalation occurs prior to manifestation. As a matter of law, such exposure is a covered occurrence during the policy which results in injury. At a minimum the policy language is ambiguous and must be construed against the insurer". The attorneys recommend that underwriters establish a $125,000 per year reserve for claims servicing in addition to the indemnity and defence expense reserves.	
23/11/81	Attorney H to Underwriters at interest Re: Assured 7. "As of the end of September 1981, Assured 7 reported to us that it had 11,315 open cases, and that new cases were being filed at the rate of approximately 100 per week ... It is our observation that in cases where the Plaintiff is able to make out a prima facie cause of action, juries do find liability...." Reserves: Not accompanying this report, but being transmitted directly to underwriters are the reports of the "Asbestos Claims Information System"... We are pleased to report that these reports are the end result at this point of intensive efforts on the part of outside computer consultants, Alexander Grant and Co. Inc., and members of the Asbestos Claims Sub-committee, C J Ayliffe and K Rayment and J Heath, to achieve computerisation of all asbestos claims. Two Circuits have adopted the "Exposure" concept and one Circuit has adopted an extension of that concept in Keene v INA. One District Court has held to the manifestation concept. Recommend that Underwriters establish reserves for claims servicing at $125,000 per year, in addition to indemnity and expense reserves.	SI
23/11/81	Attorney G to the Interested Insurers Re: The Assured 10. "We are recommending in this report substantial loss reserves based upon an exposure theory of coverage. We do not believe the excess Insurers here should sustain a loss if the manifestation theory... is deemed to be applicable." New claims are being filed at rate of approx. 500 per month and no decrease in number of new claims in reasonable future is foreseen. This risk represents substantial exposure to the London Excess Insurers in the 1967-	SI

	1972 period. The attorneys recommend substantial loss reserves based on an exposure theory of coverage. Assured believes that if the US Government were judicially compelled to share in the asbestos related bodily injury loss payments then national legislation might be forthcoming to help avert the potential financial collapse presently being faced by many asbestos manufacturers and producers. A figure of 9,955 individual claimants given as at 5 June 1981 may not be accurate because there may have been some duplication of claims. 1,945 additional claimants have brought suits as of 31 October 1981. The loss payment of the assured as of 16 September 1981 in respect of 897 individual claimant files closed since 1975 was $6,285,547 (or $7,007 per claimant). The asbestos cases manifestly represent grave potential exposure to asbestos manufacturers and producers and the situation must be viewed as one of certain liability. There are problems in establishing reserves: 1. the basis of liability coverage remains uncertain; 2. it is impossible to predict with certainty the number of product liability claims; 3. it is not yet known whether the underlying coverage was written on an aggregate or per occurrence basis. Suggested reserves only refer to claims known to have been made against the assured to date and do not consider future bodily injury claims. Excess insurers are urged to consider these factors in establishing reserves to accommodate future claims.	
23/11/81	Attorney H to the Underwriters at interest Re Assured: Assured 1. "We wish to advise that we have now received a 6th claim from Assured 1 seeking reimbursement from underwriters subscribing the policies for the years "7-1-52 to 6-30-60"." The report discusses the case of Borel v Fibreboard and how a plaintiff can satisfy the burden of proof in an asbestos claim. Recommends that claims servicing reserves are increased to $125,000 per year, in addition to loss reserves.	SI

01/12/81	Letter from AWP to all Interested Underwriters containing a report by Elborne Mitchell summarising activities of the AWP since it was set up. The report summarised some of the functions of AWP including to assist in the establishment and development of a database to provide claims information for reserve purposes. In this regard it noted that a database had been established with the assistance of Alexander Grant, computer consultant, and Toplis & Harding, Chicago. Further, that reports providing year end reserve information based upon the database output will be circulated to Interested Underwriters and that in the near future a room will be available at LUNCO for inspection of the numerous documents and computer printouts. The report also noted that Assured 1 exhausted their primary cover with Travelers earlier in the year, but that a difficulty has arisen on the policies with the description of the underlying insurance on a number of years and that underwriters position has been reserved in this respect. That the broker has been unable to produce all the policies and slips for Assured 4, but that Assured 4 have sufficient proof to establish coverage in the London Market on all years from 1949 to 1960. Assured 7 has recently been reported as exhausting its primary domestic insurance cover with the result that claims will shortly be presented to Interested Underwriters in London. As to the division between Underwriters and so-called manifestation versus exposure theories, the report stated that "it is not certain that the exposure and manifestation declaratory judgment actions are proceeding theories are either mutually exclusive or that they include all available alternative methods of allocation". Numerous in the US in which the manifestation/exposure issue is before the courts. Four major cases have been decided: (a) Eagle-Picher v Liberty Mutual (Court of First Instance) - decided in favour of manifestation. (b) Porter v American Optical (Court of Appeal) - decided in favour of exposure. (c) Forty-Eight Insulations v I.N.A. (Court of Appeal) - decided in favour of exposure. (d) Keene v I.N.A. (Court of Appeal) - decided in favour of a combined manifestation and exposure. The report said that "appeals are pending in each of these four cases and while Underwriters generally are looking to the Supreme Court of the United States for guidance it is not yet determined whether the Supreme Court will hear any one of more cases; nor is it clear to what extent a determination by the Supreme Court would assist in clarifying a different case on different facts". Finally the report noted that the "database currently shows 14,526 individual claimants but on the basis of various projections which the Working Party is not in a	SI

	position to verify, the total claimants will, in the end significantly exceed this number".	
04/12/81	Letter from Lloyd's Underwriters Non-marine Association. Enclosing another position paper to be read in conjunction with the September position paper on US reinsurance contracts covering casualty business. "Obviously claims from the asbestos-related diseases are catastrophic and disastrous so far as whole the Insurance Industry is concerned but this fact alone does not automatically qualify them to be treated as "a catastrophe" or "a loss" within the definition or intent of the excess contracts."	SI
07/12/81	Business Insurance: Tobacco firms share asbestos liability. This charts attempts by insurers and asbestos manufacturers to make the tobacco industry partly responsible for damages paid to victims of asbestos-related diseases.	
12/12/81	Lloyd's List: Asbestosis may cost insurers more than $1 billion. Insurers in London and the United States fear that compensation claims arising from the industrial disease asbestosis could well top $1 billion, making it the largest ever insurance loss. There is growing pressure on the insurers who include Lloyd's and the major companies to work together to handle the massive stream of claims from asbestos-companies in the US who are having to compensate workers suffering from inhaling the mineral. Beside the actual claims insurers are facing enormous costs by acting individually. A Lloyd's estimate is half as much again, but the major US Company Travelers calculates 77 cents in costs for every $ 1.00 in a claim.	
14/12/81	Business Insurance: Supreme Court refuses asbestos policy cases. "The Supreme Court's refusal last week to hear two appellate Court decisions on insurer liability for asbestos claims indicate that it will also refuse to hear the appellate Court decision in the far reaching Keene Corporation v INA case attorneys say."	

14/12/81	Business Insurance: Settling asbestos claims. Editorial: It now appears that the Supreme Court will not rule on coverage. Different coverage interpretations invites more costly litigation. BI encourages underwriters to heed the suggestion of R A G Jackson of Lloyd's that they adopt a clear policy on latent injury losses.	
28/12/81	Business Insurance: Defending asbestos suit pays off for UNARCO. A US District Court in November 1981 absolved two asbestos manufacturers of liability in an asbestos-related claim, apparently vindicating UNARCO's decision to defend cases as vigorously as they can.	
31/12/81	Syndicates 604/605 (1981 Report) "As in previous years, provision for liability for various latent diseases especially Asbestosis, remains a major factor in the amount of premium required to assume the outstanding liability on prior years. In addition there is the Whole Account Excess of Loss reinsurance taken out last year giving additional protection to 1977 and previous years."	
00/01/82	Paul W. McAvoy: The Economic Consequences of Asbestos-Related Disease. By 2015 there will be between 154,000 and 450,000 excess deaths from asbestos. Future compensation would be between $8 billion and $87 billion, with most likely estimate being $38 billion. The large payments that will result from asbestos product liability suits are likely to go beyond the financial capacity of the insurance industry to meet them as well as their other financial obligations.	
11/01/82	Minutes of AWP Meeting taken by Elborne Mitchell. C J Ayliffe stated that "there might be some 150 insureds involved in asbestos-related claims but his view was that there were only 19 principal accounts placed in the London Market..."	AWP
15/01/82	Minutes of a Panel Auditors Meeting - Notes taken by Audit Department: "The main purpose of the meeting was to inform Auditors of the latest position with regard to the large number of outstanding claims due to various latent diseases." E E Nelson then mentioned Agent Orange, Love Canal, DES and Asbestosis. "Mr Nelson briefly mentioned the first three but said that at present they were not significant compared with the problem of asbestosis .... A department had been set up within LUNCO premises ... all the details of the slips and losses etc. had been fed into a computer and auditors were advised that they should seek their clients' permission to access the information on this computer. The computer programme would give a fully computerised claims pay out breakdown.	PA

	E E Nelson than went on to explain that due to varying interpretations of where the liability should fall by way of the Courts, there was still great doubt as to which years of account were liable to pay the claims. There were two bases of liability: 1. Manifestation ... 2. The liability could be spread over all years on which the insurers were on the risk. In certain Court decisions in the US it has been decided that whichever route produced a greater settlement for the plaintiffs could be used, and this, E E Nelson said, was grossly unfair to reinsurers and was still being contested."	
25/01/82	Note of a Panel Auditors Meeting which took place on 15 January 1982. Memo to Lloyd's audit partners and staff from P B Milne of Littlejohn Fraser. Re: Lloyd's Audit of 31 December 1981 E E Nelson advised on asbestosis: There is to be no specific audit instructions other than a reference to the incidents of late claims arising from product and disease insurance. There have been some 15,000 claims notified (increasing at the rate of 400 per month). By mid to end 1980s it is expected there will be some 25,000 claims in total. E E Nelson thought that the estimate by the Prudential of 2 million claims was well wide of the mark. The Committee of Lloyd's has set up a database whereby the full details of all known syndicates liable are stated. At present loss reserves have been based on an average cost per claim of $125,000 plus expenses of £10,000 per claimant. Currently this means a total claim of $2.025 billion. On an exposure basis 40% is with the London companies and Lloyd's, on a manifestation basis it is 10%. E E Nelson also reminded the Panel Auditors of three other product claims requiring consideration; Agent Orange; Love Canal; and DES. Court actions to date have taken the form of 15 declaratory actions to determine whether insurers are liable to assureds. Courts have ruled in three actions; 1. INA v Forty-Eight Insulations (exposure); 2. Eagle-Picher (manifestation); 3. Keene (both exposure and manifestation to ensure that maximum benefit accrues to the claimant). "Clearly, the foregoing decisions are a bit of a nonsense and the London Market is currently in the process of appealing to the US Supreme Court to obtain a sensible ruling".	PA

16/02/82	AWP Letter to Market (Mr Tayler) "The arrangements are complete for the establishment of an office at LUNCO where documents and computer print outs can be inspected by underwriters. Your auditors may also want to see the information, however, in view of the need for confidentiality it will be necessary for them to be accompanied by your own representative". "In view of the uncertainties of the future, it is difficult at this stage to provide the Market with any meaningful projection of the developments that are likely to take place over the coming years in regard to this problem. However, the number of claims is likely to escalate and for this reason, I must emphasise that future deterioration is inevitable."	
24/02/82	The Neville Russell letter.	
01/03/82	Minutes of an AWP Meeting. "The Chairman stated he was concerned over the reaction from Underwriters regarding the opening of the Claims Office at LUNCO and thought it was fair comment to say there was some disappointment. In particular, many had envisaged the Office would be capable of informing them of individual syndicate participation in respect of the numerous Assureds. Mr Ayliffe stressed that the information would improve." Panel Auditors. "The Chairman raised the question of the letters which had recently been circulated to Underwriters by the Panel Auditors. He believed the Auditors appreciated that it was not possible for Underwriters to be precise in their reply although he was disturbed at the ignorance displayed by certain syndicates on the question of Asbestosis generally."	AWP
02/03/82	Meeting of Lloyd's Audit Committee. Mr Chester raised the question of the reinsurance of underwriters asbestosis liability in the Lloyd's market (i.e. effectively amounting to reinsurance of the asbestosis "tail") and expressed concern that such liabilities could fall on comparatively few syndicates. Mr Merrett considered that it would be inappropriate for such reinsurances to go unnoted and unreserved by Panel Auditors and that it would be improper for a syndicate taking such reinsurances without telling its own Names.	

09/03/82	Meeting of the Lloyd's Panel of Auditors. E E Nelson said that there were at present 400 new claims per month being advised. If this were projected over ten years it would lead to 50,000 claims. E E Nelson said that in his view a figure of 50,000 new claims over the next ten years was realistic but that the report of 2 million new claims could well be an exaggeration. Mr Chester raised an ancillary matter which was the writing by certain Lloyd's syndicates of the reinsurance of other syndicates asbestos liability. He said that this could lead to the funnelling of a large amount of liability into a small number of names. He continued by saying that consideration was being given to asking the market to stop writing such reinsurances in the open years.	PA
11/03/82	E&W internal letter from MA Bolger to Partners and Managers involved in Syndicate Audits. In the white letter accompanying this year's Lloyd's audit instructions the attention of auditors is drawn to risks which include liability for latent diseases and products liability when assessing the adequacy of reserves. The fact that there are major losses under these categories has been known in the Lloyd's Market for some time and syndicates have created reserves in respect thereof. The subject was raised at a meeting of advisory panel of auditors in November 1981 at which it was decided to hold a special meeting to provide further information for auditors. The special meeting was held in January under the chairmanship of RJ Kiln and auditors were addressed by E E Nelson, the immediate past chairman of a Lloyd's Committee set up to investigate asbestosis losses. The meeting was told that asbestosis was one of a group of diseases which are referred to as latent diseases. These comprise Agent Orange, Love Canal, DES and asbestosis. These losses are principally in US $ and can mainly be classed as products liability claims. The Lloyd's Market is meeting claims in non-marine syndicates, in marine-syndicates writing non-marine business and also in aviation syndicates. The losses can arise from direct writings, from the reinsurance of particular US companies, from other reinsurance contracts and in some cases by the acceptance of running-off accounts ... It is understood that there are 40 insureds of which 19 are direct in the London Market. In respect of 15 of these, all the slips placed in the London Market have been found. The total number of cases in litigation is in the region of 15,000 and this number is growing by approximately 400 per month. The product was readily available between 1945 and 1975. The pattern in Lloyd's is that up to 1962 syndicates have insured American carriers direct, and thereafter they have covered American companies by reinsurance in the London Market. The current state of litigation suggests some uncertainty as to who is liable, Courts in the USA having settled cases on both an "exposure" and a "manifestation" basis. There is apparently the possibility of an appeal being made to the Supreme Court but this has, so far, been turned down. The size of the asbestosis problem became apparent some 2 years ago when it was agreed that normal assessments of settlements were not suitable. A committee was set up and in April 1981 a data base	

	was established on computer ... Estimates have been made on the basis of an average cost per claim together with an estimate of expenses. The average was said to be $125,000 plus $10, 000 for expenses ... an office has now been established within LUNCO and the records can be examined by auditors provided they are accompanied by an underwriter ... In compiling reserves for asbestosis reports have been made available to underwriters by brokers in the usual way setting out policies which have covered the various asbestos insureds ... this information has enabled underwriters to calculate their maximum exposure on direct writings. The data base which is also limited to direct writings is available as a back-up to records compiled by individual underwriters. Syndicates will have to assess liability on facultative and treaty reinsurance and on any run-off business accepted, and then see what reinsurance protection they have available. In the office, a questionnaire has been prepared which has been sent to clients, there having been some liaison between firms following the Panel Auditors meeting. As a result of problems that have arisen in quantifying reserves for asbestosis, further meetings between Panel Auditors and the Audit Committee at Lloyd's have taken place.	
18/03/82	The Murray Lawrence letter.	
19/03/82	Ernst & Whinney internal memo from NF Holland to Insurance Partners and Managers Underwriting Department. "Herewith the latest epistle on asbestosis. I cannot believe that at some stage we are not going to find a syndicate where there is a major problem. If any partner is unhappy about a particular situation I suggest he lets me know and we will try and organise a PSP type meeting so that a view can be formed and the partner can then talk to his clients knowing he has the full backing of his colleagues".	PA
22/03/82	Minutes of an AWP Meeting taken by Elborne Mitchell. "The Chairman reported that up-to-date computer printout information was expected at the claims office shortly and that this indicated a 22% increase in asbestos related claims for the current quarter. It was agreed that this information should be released to the Market promptly. No Insureds, in addition to those already known, are shown in this latest information".	AWP

16/04/82	Ernst & Whinney internal memo from NF Holland to Insurance Partners. Asbestosis. Comments that in view of the well publicised problems in estimating outstanding liabilities in respect of asbestosis claims, and the subjective judgments involved therein, it is imperative that audit files are accurately documented this year. In particular, auditors must insist on syndicates supplying specific information in relation to asbestosis and other latent diseases in view of the letter issued by Lloyd's on 18 March 1982. Insofar as this letter goes beyond the information requested by auditors in their letter this additional information should also be recorded on the auditors file.	PA
27/04/82	The Washington Post: The asbestos mess. "The likelihood of bankruptcies among manufacturers and insurers, the lack of remedy for the victims and the unmanageable legal mess that is burdening court schedules make it imperative for Congress to stop its endless studying of the problem - this has been going on for years - and take action."	
28/04/82	Letter from Chairman, AWP and Chairman, Non-Marine Reinsurance Sub-Committee to Market. "The Non-Marine Reinsurance Sub-Committee has recommended that the Asbestosis Working Party make arrangements to add treaty reinsurance asbestosis related claims to the existing computer programme. As the Working Party has no authority to handle treaty reinsurance matters, this will be a record keeping exercise only".	
00/05/82	Syndicates 418/422/417 (1981 Report): "During the year there have been significant developments in the United States which have led us to increase the very substantial provision already made for claims as a result of asbestosis and after latent diseases. There has been a substantial increase in the losses advised, both in terms of total numbers and in the anticipated average settlement of such cases as may be proved: the legal charges are very considerable. With more information available, reinsurance claims are also higher. Perhaps of greater significance has been the thrust of judgments in the United States Courts. It has become necessary to review our exposure not merely on the basis of exposure (those years when the plaintiff was exposed to the noxious substance) or manifestation (that year when the disease was detected), but an aggregation of both plus all the years in between. It is too early to estimate (in public) what the consequences of the development of this approach of the Courts might be. Unfortunately such reinsurance as the syndicate carried in some of the years has already been exhausted by earlier recoveries. Our annual review of other continuing liability on old years has shown some need for increase, not unexpected where awards will see some inflationary effect."	

00/05/82	Syndicate 553 (1981 Report): You will be reassured to learn that I have no reason to believe that the syndicate is heavily involved with asbestosis claims."	
00/05/82	Syndicate 219 (1981 Report): "Last year I referred at some length to the "Asbestosis" problem which, as anticipated, has worsened during the year and will continue to do so for quite a while to come. The situation is further confused by the total failure of American Courts to decide which insurers should pay what and, with the Supreme Court declining to intervene, it is difficult to see a speedy solution being found."	
00/05/82	Syndicate 367 (1981 Report): "Another factor which affected the 1979 Account adversely was Asbestosis, about which a lot has been written in the National Press. This has produced potential claims going back about 30 years. Though in themselves, our losses are relatively small they do accumulate into quite a substantial figure. It is very difficult to predict the outcome of these, but we have carried forward a considerably higher figure then the claims advised to take care of Asbestosis and other latent disease claims."	
00/05/82	Syndicate 918 (1981 Report): "The 1979 account of Syndicate 918 has been left open because of the uncertainties surrounding the ultimate liabilities with regard to "Asbestosis" claims, for which a specific provision amounting to £747,813 has been made in addition to our reinsurance to close ..."	
00/05/82	Syndicates 112/114/316 (1981 Report): "You should know the position we have taken with regards to claims on Asbestosis. We have put into reserve a sum in excess of $300,000, [sic] which is the amount of expected claims that we anticipate may be settled. There are figures given to us which are in excess of this amount but I am unable to give credence to such figures ..."	
00/05/82	Syndicate 34/652 (1981 Report): "In view of the potentially serious situation which is developing in connection with claims being made in the USA by sufferers of asbestosis, it is the wish of the Committee of Lloyd's that any involvement in these policies should be made known to the Names concerned. We did write a number of such policies between 1959 and 1969 in our Incidental Non-Marine Syndicate. At this stage, the extent of the losses is far from clear; however we are confident that, in the light of the knowledge we have at present, the reserves that we have set aside are more than adequate for the worst eventuality."	
00/05/82	Syndicates 310/236 (1981 Report): "We have been advised of, and have settled, one asbestosis loss this year ... The figures involved are small but I think it wise to establish a fund for this type of claim and, accordingly, I have increased our reserves to cover this unknown and un-noted contingency."	

00/05/82	Syndicate 342 (1981 Report): "The Committee of Lloyd's has strongly advised us to inform Names of any involvement in Asbestosis claims and the manner in which the Syndicate's current and potential liabilities have been covered. I have no reserves or claims as such, but I do have one policy where an involvement is remotely possible. I have made provision in my reinsurance to close for that policy to be a loss."	
00/05/82	Syndicates 584/667 (1981 Report): "The most remarkable and dangerous event of the year [1979 and previous] was the flood of claims for asbestosis ... Many of these claims relate to insurances which expired 20 or 30 years ago and the complications are considerable, so far this Syndicate has not been deeply affected, but I have thought it right to provide for possible future exposures. For the first time the total Syndicate carry forward exceeded £10 million."	
00/05/82	Syndicate 183 (1981 Report): " Turning to the Accounts, it is worth noting the dominant effect our reinsurance to close has on the result for the year. With the problems of asbestosis, and the like, very much in all our minds, we clearly cannot afford to underestimate the value of claims still to be reported. On an account such as ours we have only seen the tip of the iceberg to date and we have done our best to make a realistic assessment."	
00/05/82	Syndicate 810/840/930 and 618/408/346 (1981 Report): "The 1979 account of syndicates 618, 408 and 346 has been left open owing to the uncertainties surrounding the ultimate liabilities with regard to "Asbestosis" claims, for which a specific provision amounting to £1,882,964 has been made in addition to our reinsurance to close. These funds and the investment income earned thereon will be available to meet losses when they arise."	
00/05/82	Syndicate 918/940 (1981 Report): "The 1979 account of syndicate 918 has been left open because of the uncertainties surrounding the ultimate liabilities with regard to "Asbestosis" claims, for which a specific provision amounting to £747,813 has been made in addition to our reinsurance to close. These funds and the investment income earned thereon will be available to meet losses when they arise."	
00/05/82	Syndicate 471 (1981 Report): "Claims arising from Asbestosis are being incurred on the Liability Account, but at present, are not of great frequency or size to the Syndicate and special reinsurance arrangements have been made to limit any future changes in this situation to amounts which should be easily contained within the normal operation of the Account."	

00/05/82	Syndicate 947 (1981 Report): "As predicted in my Report last year, 1979 has closed with a loss. The fall in the value of the pound against the US Dollar during the year, which increased the loss on U.S. Dollar business in terms of Sterling, cost no more than expected. However, the purchase of reinsurance has relieved the necessity of making substantial reserves to cover losses arising from past underwriting years, in particular those associated with latent disease claims. All years prior to 1976 have been reinsured in full, with Lloyd's Syndicates providing unlimited reinsurance in excess of a policy placed with an insurance company. I am hopeful that the problems of the casualty account are now behind us".	
13/05/82	The Financial Times: Perils of US Asbestos litigation. "Asbestos claims are the latest and fastest-moving product of the US litigation industry. They run into tens of thousands, necessitate the appointment of additional judges to deal with them, and present a potential threat to [the solvency?] of manufacturing and insurance companies alike. The legal issues generated by these claims are largely unresolved - or, to be more exact, have been resolved differently by different appellate courts ... The refusal of the Supreme Court to review the [Keene] case leaves the lower courts free to go their own way, and manufacturers and insurance companies uncertain about their liabilities and claims ...That decision represents a financial threat to industry and insurers of such a magnitude that it could be handled only within the assistance of public funds. Commercial Union estimates that, as a result, liability over the next 20 years connected with deaths caused by previous exposure of former asbestos workers could amount to some $38 billion. To this would have to be added claims for injuries that do not result in death, and claims by others, for example those using asbestos products. The combined assets of the asbestos industry and of their insurers would, it is evident, not be enough to meet such claims .... The Court [in Keene] went so far as to say that insurers were liable to Keene even during the period its insurance may have lapsed."	
27/05/82	Order made by the US Environmental Protection Agency ("EPA") in May 1982. Required that all schools and similar public buildings constructed prior to January 1979 be tested within 12 months to determine the presence of friable (i.e. flaking) asbestos. There may have been isolated instances of property damage claims before this order, but this was the origin of the bulk of the subsequent property damage claims.	
00/06/82	Syndicate 707 (1981 Report): "Members of this Syndicate will probably wish to know of their involvement in Asbestosis. The claim situation concerns persons working in the asbestos industry and the alleged death and disability resulting from their exposure to asbestos dust. The	

	policies on which we are concerned go back many years, in some cases thirty years ... we have ... allocated reserves for this situation and these retentions have been increased this year. This loss is being closely monitored and I am convinced sufficiently protected ..."	
00/06/82	Syndicate 90 (1981 Report). "...The small loss on underwriting was mainly due to additional provision for possible claims relating to asbestosis and other types of latent disease on old year policies and reinsurance contracts ..." "Our last two reports have mentioned asbestosis and we feel that our Names would like a summary of the position..." [a summary of the syndicate's position follows].	
00/06/82	Selikoff Report - Disability Compensation for Asbestos-Associated Disease in the United States. Dr. Selikoff issues a further report for the US Department of Labor. The report, running to 650 pages, describes in detail the effects of exposure to asbestos and projections of death and partial incapacity which were to be expected as a result of exposure to asbestos. From 1940 through 1979, 27,500,000 individuals had potential asbestos exposure at work. Of these, 18,800,000 had exposure in excess of that equivalent to two months employment in primary manufacturing or as an insulator. 21,000,000 of the 27,500,000 and 14,100,000 of the 18,800,000 are estimated to have been alive on January 1, 1980. Approximately 8,200 asbestos-related cancer deaths are currently occurring annually . This will rise to about 9,700 annually by the year 2000. Thereafter, the mortality rate from past exposure will decrease, but still remain substantial for another three decades. One of a number of reports produced by Dr. Selikoff.	

14/06/82	The Wall Street Journal: Suits Over Asbestos Touch Off War Among Insurance Firms Over Who Will Pay Billions. Some 16,000 damage suits already filed against asbestos companies, with new cases arising at a rate of more than 450 a month. A few experts contend that some insurers could collapse under the weight of asbestos claims. The flood of legal cases is likely to grow. Selikoff has estimated that 8,500 workers will die each year until the end of the century from asbestos-related cancer. The fight among insurance companies is likely to get worse. The US Supreme Court has refused to decide between conflicting theories of liability. This leaves standing a series of often contradictory State and Federal Court decisions. Paul W McAvoy, a Yale University Economist, predicts that payments to asbestos disease victims are likely to exceed $38 billion and could go as high as $90 billion over the next 35 years. He argues that some insurers may face financial ruin. Others think that such talk is "nonsense". However critics of Mr McAvoy have failed to come up with their own figures. Insurers are wrapping their asbestos liabilities in an "veil of secrecy". It is unclear how many claims are going out of the back door to reinsurers. Only 30% of asbestos claims are filed under Workers' Compensation schemes since their awards do not match the hefty awards made by some juries.	
14/06/82	The Wall Street Journal. "U.S. schools are facing the costly task of locating (and), fixing asbestos hazards. The EPA estimates that up to 14,000 public and private schools may have potential asbestos hazards ... Estimates of the cost of either covering up or removing potential asbestos hazards in the nation's schools run as high as $400 million to $900 million ..."	
27/06/82	Financial Times: Assured 1 overwhelmed by law suits. "Assured 1 yesterday petitioned for protection under Chapter 11 of the Federal Bankruptcy Code. It is the first time in memory that a constituent of the Dow Jones Industrial Average has taken this step ....The Company is now forecasting at least 32,000 more law suits. Mr McKinney said the total costs could exceed $52 billion."	

16/07/82	Letter HR Rokeby-Johnson to Winchester Bowring for Sturge. The claims arising from the ingestion of asbestos fibres by all those involved in handling this material seem likely to be the biggest claim ever to confront the Insurance Industry not only in the United States but also throughout the world. Various attempts have been made to quantify the potential final sum of all payments and some very large figures have emerged. Over 7,000 people actually die each year in the United States from asbestosis and it is expected that this figure will soon increase to 9,000 or 10,000 these deaths and disablements will continue to be reported for the next decade or more and if it is reasonable to suggest that the average settlement of each claim is of the order of $100,000 including costs and expenses and that the number of serious claimants may reach 100,000 or more the final claim would be $10 billion at least. On these figures it is not impossible to forecast the Sturge gross involvement at $40,000,000 - $50,000,000.	
26/07/82	The Financial Times: Underwriters prepare for huge asbestosis claims. Insurers are facing the largest series of claims in their history as victims of asbestosis file suits. Estimates are that claims could amount to $150 billion (£85 billion) by the end of the century. Insurers, including Lloyd's, are already involved in more than 15,000 legal actions. Special reserves are being created by underwriters. "The exposure of Lloyd's on the asbestosis problem is by no means as great, although underwriters there might be liable for anything up to a quarter of whatever is claimed". Although claims will exceed by a great margin those paid out on computer leasing liability the asbestosis claims will be mitigated by being spread over many years. Lloyd's identified its difficulties over asbestosis three years ago. It faces a double problem: it insured industrial companies and it also reinsured other insurers who had offered liability cover. The main problem for underwriters is extensive litigation, as asbestosis victims claim compensation in the courts. One underwriter reports that the problem "gives us enormous difficulties in identification of who is responsible for indemnifying the assured". Insurers are finding it difficult to arrange retroactive reinsurance cover on their outstanding asbestos liabilities.	
30/07/82	WIR: Commercial Union Assurance Co. Ltd. London, considers asbestos litigation a major threat to the property and liability industry. It estimates liability over the next twenty years connected with deaths caused by exposure of former asbestos workers could amount to $38,000 million, and that the combined assets of the asbestos industry and their insurers would be insufficient to meet such claims. An average of $233,000 per claim settled has been estimated by a Yale University study partly financed by Commercial Union.	

02/08/82	A M Walker. Projections of Asbestos-Related Disease 1980-2009. Final Report. Epidemiology Resources Inc. The study foresees between 18,700 and 21,500 new mesothelioma cases, 55,000 new lung cancer cases and 135,900 to 178,100 new asbestosis cases of which 41,900 would become suits. Relied on Assured 1 by its bankruptcy petition. Estimates between 30,000 and 120,000 new lawsuits related to asbestos; likely figure to be 120,000.	
26/08/82	Assured 1 and most of its subsidiaries file for Chapter 11 bankruptcy.	
28/08/82	Financial Times: Assured 1 claims $5 billion. Assured 1, the world's biggest asbestos company, filed for protection under the US Bankruptcy Code on Thursday. It is seeking punitive damages of $5 billion from insurance companies alleging that, by denying insurance coverage for claims over asbestos-related diseases, the insurers forced Assured 1 to file for relief under the bankruptcy law. The Defendants include various Underwriters at Lloyd's of London. [Claim against Lloyd's settles in May 1984 - see below.]	
31/08/82	Lloyd's List: Assured 1 faces $2 billion asbestosis liability. "Assured 1 the world's largest producer of asbestos, has a potential liability of 52,000 lawsuits costing $2 billion ... last week the company sought the protection of United States Chapter 11 bankruptcy proceedings because of the possible burden of litigation costs in asbestosis cases ..."	
00/09/82	Report by Conning & Co: Potential impact of asbestos on the insurance industry. The insurance industry's ultimate liability is estimated as between $4 billion and $10 billion with the lower range appearing most probable at present. The exposure theory seems to have been accepted by the Courts. The impact on the insurance industry is not expected to be catastrophic because of the long period over which the claims will be experienced. However, individual companies may be severely affected and some have already significantly strengthened their reserves. Additional reserve strengthening may be required. It is also possible that "numerous excess and reinsurance carriers may be greatly understating their potential liabilities." Although the Courts have tended to maximise available insurance coverage many legal questions still need to be resolved. This makes projecting with any accuracy very difficult. Current estimates of claimants vary between 25,000 and 50,000. Insurance company officials think the latter figure is closer to the truth but the figures may be misleading because of multiple counting. Reports estimate there are currently between 15,000 and 20,000 claimants involved in asbestos litigation. Assured 1 have reported that they have 16,000 claimants and they have been subject to the bulk of the litigation. This ignores expected future claims which are difficult to project due to the	

	long latency period for asbestos related diseases. Claims against Assured 1 are currently increasing at a rate of about 400 per month. Conning & Co believe that claim incidence rates will not be as severe after 1990 but that new claims will none the less continue to be reported. They believe that between 83,000 and 178,000 asbestos claims can be expected during the next 28 years. Assuming that approximately 50% of these claims will fail this leaves between 40,000 and 90,000 successful claimants.	
24/09/82	W.I.R. Asbestos: US Government refutes liability. "Assistant US Attorney General told a House of Representatives labour standard sub-committee that the Federal Government "will refuse to accept any legal responsibility" for compensation of asbestos victims. Representatives of George Millar, from the sub-committee, said the industry could afford the cost of providing care for asbestos harmed workers ... Assured 1 has released further details of a study which was used to justify its bankruptcy filing last month. The study, by Epidemiology Resources Inc., Boston, estimated a low figure of 30,000 and a high one of 120,000 new law suits related to asbestos health. Manville's estimate of 52,000m based on the lower estimate could go as high as 55,000m based on the higher figure. ... Dr Irving Selikoff, Cancer Expert at Mount Sinai School of Medicine, New York, has said that the Assured 1 study results were too low."	
30/09/82	Syndicates 604/605 (1982 Interim Report): "The legal wrangles over the settlement of latent disease claims, especially asbestosis, continue to persist. The main argument has centred round whether policies in force when the plaintiff was exposed to certain conditions respond or these policies in force when the disease manifested itself. There is even a court decision in the USA which has the effect of making payment possible under both sets of policies."	
01/10/82	Chairmanship of AWP. HR Rokeby-Johnson succeeds D. Tayler.	
09/10/82	Lloyd's List: Assured 1 used two claim assessments.	

03/11/82	Lloyd's List: Company files for protection from asbestos claim deluge. Assured 21 has filed in Philadelphia for protection under Chapter 11 of the Federal Bankruptcy Code from a deluge of asbestos-related damage suits bought before the company since the mid - 1970s.	
08/12/82	Lloyd's List article by David Mann, Director Merrett Syndicates: Asbestos Presenting a Growth Loss Potential. Asbestos claims will have a dramatic effect on the results of insurance and reinsurance markets world-wide. Settlements of claims will undoubtedly stimulate more claims related to this and other environmental or product related causes (e.g. Agent Orange, DES or Love Canal). Although many insurers, especially Lloyd's, have established reserves, the loadings for adverse deterioration may be tested. Markets will probably not have anticipated the measure of likely asbestos claims. It remains to be seen where deficiencies may exist. "Within the Lloyd's market, where very strong opinions are usually to be found, conjecture regarding the ultimate quantum of asbestosis and other latent disease losses have stimulated a relatively new and fascinating level of reinsurance trading." The "run-off" reinsurance policies are mentioned as an example of such unusual innovation. "The syndicates in Lloyd's which have recently chosen to assume the worst potential of the latent disease phenomenon demonstrate that London is still the source of the most interesting and speculative initiatives - Very few reinsurance markets have found themselves able to apply rating judgment to these most volatile risks except on the basis of a limited liability. The consensus of opinion, even in London, appears to judge the unlimited aspects of such risk assumption as involving totally unacceptable long-term characteristics in view of the premiums available."	
22/12/82	Letter from Attorney H to C J Ayliffe Re: Property Damage Litigation against Assured 3B. Reports class action suits pending against Assured 3B and other defendants in Pennsylvania arising out of the presence of asbestos materials in schools and other public buildings. Status of these claims at the present time is uncertain. But separate reserve provisions should be established once additional details of potential exposure become known. In the meantime, confirmed recommendation of an expense reserve of $125,000 per year for each policy year.	
31/12/82	Syndicates 604/605 (1982 Report): "The closed year Account continues to be dominated by the Industry's problem with Asbestosis. There is very little of consequence to say since our interim report except perhaps to mention that the legal expenses are mounting at an ever increasing rate. The position continues to be monitored very carefully."	

00/01/83	Munich Re: Asbestosis, liability loss of the century ... "Extrapolating the current figures up to year 2010, when the dormant period for the presently employed expires, we obtain a total loss amount of at least $4 billion. That does not mean, however, that losses of this amount are also covered by liability insurance ... Is asbestosis really the liability loss of the century? For all insurers and reinsurers operating in the USA it certainly is the liability loss of the 80s, a very costly experience ..."	
11/01/83	Press release agreed at meeting of Asbestos Claims Council. To co-ordinate processing the mounting number of asbestos related claims and then speed their disposition, 11 major asbestos insurers and Lloyd's of London have formed the Asbestos Claims Council. "The insurance industry faces overwhelming litigation" said Ray Stahl, chairman of the Council, "with 20,000 claims pending and tens of thousands more expected over 30 years. The flood of asbestos litigation is adversely affecting not only asbestos claimants but others seeking civil resolutions ... The ultimate cost in insurance payments will be in billions of dollars ... and, if past experience is repeated, half the insurance payments will be spent on legal fees and related defence costs. The Council, comprising senior claims executives of the insurers, formalises the objectives they have been pursuing informally: (1) Identification of the objectives as "We are prepared to move rapidly to help solve the complex asbestos claims problems, starting with co-ordinating claim processing decisions and actions among the insurers". (2) Paragraphs on the people (a long list) with whom the Council will work. Members of the Council and the insurers they represent are, inter alia, James Ayliffe, Lloyd's of London. Raymond Stahl, The Travelers Companies."	
20/01/83	Attorney H to the Chairman, AWP (Rokeby-Johnson) Re: AWP's Activities During the Past 12 months in Asbestos-related Problems. Notes the continuing increase in suits arising from asbestos related claims and the greater involvement of the London market. On coverage, the US Courts have emphatically demonstrated the desire to maximise coverage. Notes the decision of the US Court of Appeals District of Columbia in October 1981 to expand the scope of the judgment of the lower court in Keene v INA. "... it has become the demonstrated goal for insureds in order to secure maximum possible benefits from their coverage." Suits continue to be reported at approximately 500 per month but there are some indications that the severity of injury/disease is less serious. Too early to draw any firm conclusions. The filing of chapter 11 proceedings by Assured 22, Assured 1 and Assured 21, clearly created many problems for plaintiff and defendant alike. All suits	AWP

	being recorded in the data bank (which is now being extended to cover reinsurance). The AWP has established an information office and participants can inspect the print-outs produced by appointment. There is also the fortnightly publication "Asbestos Litigation Report". During the past twelve months there have been few developments in the actions in which London are involved: no consistency in decisions to date. Consideration being given to coordinated defence by defendants in U.S. (e.g. single counsel) given that there are 20,000 claims in litigation. "Per case indemnity and defense cost reserves used on each insured account are adjusted annually to reflect the potential cost of known claims based on the experience of the previous twelve months." Attorney H note that underwriters should be aware as a result of an order issued by EPA in May 1982, it is likely that considerable activity will develop in regard to property damage. The EPA has mandated that all public buildings constructed prior to January 1979 must be tested for friable asbestos. This raises substantial questions as to coverage and the date of attachment.	
24/02/83	Minutes of a Panel Auditors' Meeting. In June 1982 US Labour Department statistics estimated that 21 million workers has been exposed to asbestos in the last 40 years. Estimated that 8,200 to 9,700 deaths attributed to asbestosis would occur over the next 20 years. $38 billion worth of claims expected. Alexander Grant of New York to manage a data bank for direct asbestosis claims. The input would come from claims attorneys. At present there are 25,000 or more claims on the database. Information is available at Bankside House. Assured 1 went into chapter 11 bankruptcy on 26 August 1982 with 4,000 closed cases and 17,000 other cases. They are expected to get 52,000 cases by the end of the century. Assured 7 have 10% of the US market. No agreement on coverage. It is possible that other claims may be made (eg downwind claims or claims related to asbestos in buildings). Auditors have available to them the Attorney H year end report and the AWP report.	PA
04/04/83	Business Insurance. Reviews the asbestos crisis	
00/05/83	Syndicates 34/652 (1982 Report): "Names will recall my reference in last year's report to reserves we are carrying in respect of Asbestosis and other latent disease claims on years prior to 1970.	

	Although many of these claims will undoubtedly be settled eventually, it is heartening to report that new advices have dwindled to a trickle, and that our conservative policy of reserving has virtually obviated the need for any further loading on this front."	
00/05/83	Syndicate 219 (1982 Report): "I have referred in my last two Reports to the problems brought about as a result of asbestosis claims. These are growing and will continue to grow as time goes by. The American state courts come up with a bewildering series of totally contradictory verdicts which seem to be largely dictated by what basis gives the claimants most compensation rather than any real attempt to interpret the Law. Underwriters are anxious to get money to the claimants rather than solely to the lawyers as at present, but with the Supreme Court refusing to give any sort of lead, it is difficult to see any solution. All parties concerned are attempting to join together to form an "Asbestosis Claims Council". Whether this idea will get off the ground I don't know, but possibly this body plus ultimately some Governmental involvement is the only way forward."	
00/05/83	Syndicates 310/236 (1982 Report): "I have continued to reserve on a conservative basis. With a long-tail account, estimating a proper future to cover outstanding claims is at best an inexact science, and it is box policy to reserve with a certain amount of pessimism. To this end, I have increased our fund to cover those well known and un-noted claims on the so-called "health hazards" which I believe will be a feature in our products accounts in future years, if such hazards are ever manifested as illnesses."	
00/05/83	Syndicates 584/667 (1982 Report): "1980 has been closed with a result slightly below expectations; this was due to two factors:- ... 2. There is a general fear of the eventual magnitude of asbestosis claims. 3. In consequence of (2) and of the adverse publicity on Lloyd's accounting methods, it seemed wiser to take a very conservative view of the Syndicate's outstanding liabilities."	
00/05/83	Syndicate 510/511 (1982 Report): "The 1980 Account showed an excellent investment return together with some underwriting profit. We have watched developments within the market concerning liability claims on old years of account and believe that we have taken all reasonable steps to reserve the Syndicate in such a manner as to make it unlikely that a future increase in reserves be required for the closed years."	

00/05/83	Syndicate 947 (1983 Report): "In addition, as I mentioned in my report last year the purchase of reinsurance has relieved the necessity of making substantial reserves to cover losses arising from past underwriting years, in particular those associated with latent disease claims. All years prior to 1976 have been reinsured in full, with Lloyd's syndicates providing unlimited reinsurance in excess of a policy placed with an insurance company".	
28/05/83	The Review. Cape takes on asbestosis.	
00/06/83	Lloyds League Table 1980 (produced by Chatset). In relation to Non-Marine business: "Apart from a favourable settlement of outstanding computer leasing claims, there was little encouraging about the Underwriting Result. Asbestosis and other latent disease related claims are still causing problems and many syndicates are finding it necessary to purchase reinsurance protection, which is making a hole in their profitability." (Published in 1983).	
00/06/83	Syndicate 471 (1982 Report): "The situation on Asbestosis is still unchanged and we do not expect any problems from this source."	
03/06/83	Attorney H to C J Ayliffe, Merrett's syndicates. Re: Assured 23. "We are aware of a second school district class action, which has also been filed in the US District Court for the Eastern District of Pennsylvania. Said action which names a total of 50 defendants, purports to be a class action on behalf of all entities which own or operate in whole or in part any public educational facilities, including religious and non-profit schools as well as public schools throughout the United States ... The allegations in the national complaint, which state that approximately 110,000 public and private schools are involved are similar to the allegations made in the Pennsylvania Class Action described above."	SI

14/06/83	Attorney H to the Chairman, AWP. Re: Asbestos Claims Council. Contains text of press release of Center for Public Resources concerning the attempts to reduce the complexity and overwhelming costs involved in providing compensation to thousands of individuals with asbestos related diseases. Discusses steps which have been taken to develop a "method whereby asbestos bodily injury product liability claims may be conducted on an industry wide basis." Notes that the interests of the London market have been "fully, completely and untiringly represented during these formative stages by Messrs Jim Ayliffe and Keith Rayment who have been participating in Claims Council meetings since their inception". Concludes that although some of the members of the market may be learning of the Facility for the first time from this press release none are likely to object to it. Upwards of 20,000 asbestos cases have been filed to date (Lloyd's Claims Information Service indicate 27,548 as of May 22 1983). While projections differ, with increased surveillance and diagnostic techniques, it is reasonable to assume upwards of 50,000 cases by the end of the day. "With the average indemnity now exceeding $100,000 per case, at the current rate that will equate to a total loss of over $5 billion. Defense expenditures at a one-to-one ratio (which is not the current experience) may equal that number. More realistically they will at least double, and more probably quadruple. It is, therefore, our view that The Facility, with certain modifications currently being addressed by Working Party members, is essential to the London Market to assist The Market to see the thousands of asbestos products liability claims to their final conclusion."	AWP
21/09/83	Letter from Attorney G to Interested Insurers and Reinsurers. A summary of decisions reached at the meetings conducted in Chicago on 6-7 September 1983. These meetings reviewed and established year end loss payments and expense reserves for the seventeen direct asbestos assureds currently tracked by the London computerised asbestos claims information system. US attorneys were requested to provide reserve recommendations (on both an exposure and a manifestation basis) to the London market not later than 21 November 1983. Potential property damage claims are to be separately identified. They will set forth a 100% net reserve figure. And all reserves will be tied to the original assureds' policy periods. All reserve recommendations are to be calculated on the basis of an annual aggregate limit except for any specifically shown to be otherwise. It was stressed that US attorneys must adopt a consistent approach to reserving of the various accounts. London market representatives also requested full year end reports so as to justify reserves previously recommended. These are to be forwarded to London not later than the end of January 1984.	SI

30/09/83	Syndicates 604/605 (1983 Interim Report): "The Insurance Industry's major problem with latent disease and other latent claims continues to be the major factor in the closed year account. Many of the Insurance Companies that the Syndicate reinsured are now in a position to advise us of their potential involvement on asbestosis and its related claims and this has meant an increase in our own reserves. This increase is currently contained within the Whole Account Excess of Loss Reinsurance Protection for the 1977 and previous years account, and the position continues to be monitored very carefully."	
24/10/83	Attorney H to Underwriters at Interest Re: Assured 3A/Assured 3B. "Attached hereto is a schedule of reserves coming through to the various excess layers on the captioned account. Said reserves are for personal injury/wrongful death claims arising out of exposures to asbestos-containing products manufactured by assured. Underwriters subscribing to Policies should also be mindful of the fact that we have recommended a property damage reserve of $500,000 in connection with the Bay Point bulkhead claim ... Said reserve is on a precautionary basis and is without prejudice as to date of loss. The Reserve has not been included in the enclosed schedule ... (continue) to recommend a reserve for our fees and expenses of $125,000 per year of account."	SI
24/10/83	Attorney H to Underwriters at Interest Re: Assured 14. Setting out the reserves coming through to certain accounts in respect of Bodily Injury. Consideration has been given to Property Damage. However, since the policies are PL/PD combined and are fully reserved for bodily injury, the question becomes moot... (continue to recommend an expense reserve of $62,500 per policy year).	SI
22/11/83	Attorney G to Interested Insurers. Report No. 8 Re: Assured 4. "We submit to the London primary and excess insurers our Report No. 7 [sic] regarding the asbestos-related product liability claims brought against the Assured in multiple jurisdictions throughout the United States. This Report will provide only our 1983 year-end loss and expense reserve recommendations to the London insurers. In addition to bodily injury reserves we are also recommending herein a precautionary reserve for each policy period for potential property damage losses which the Assured may sustain in the growing nationwide asbestos-related school and public building property damage litigation."	SI

00/12/83	E&W Insight number 19 refers to the paper by Malcolm Roscow on asbestosis. This says that approximately 24,000 claims have been filed (each of which names an average of 20 defendants). Some 12 insurers are involved in defending litigation, another 15-20 have made payments. Costs of some 3,800 claims averaged $95,000 per claim of which only $60,000 was compensation, the rest being costs of litigation. Costs and compensation are expected to escalate over future years. Although asbestosis claims in the US will obviously continue to impact on the London Market, a recent article in the UK commented that only 267 death certificates in 1981 made reference to asbestosis.	
31/12/83	Syndicate 566 (1983 Report) "Latent disease and environmental impairment, mostly in America, continue to preoccupy the industry. Breathtakingly large claims are surfacing from back years and there is a great deal of uncertainty as to how these will impact the reinsurance market. The problems of punitive damages and astronomical legal fees exacerbate the situation which is unlikely to become clearer or less alarming over the next few years. We are carrying reserves for such contingencies."	
11/01/84	Attorney B to Underwriters at interest. Re: Asbestos Property Damage Litigation. Various trigger dates of occurrence or the more limiting term, accident. "Under the circumstances the producers of asbestos products unquestionably will contend that all of the potential triggers apply, perhaps even a continuing trigger from date of first sale to date of last possible connection to damage (a la Keene). In our opinion, absent peculiar facts, there is no basis in the policy wordings or the case law to apply Keene-type reasoning to asbestos-related property damage claims. Whatever the trigger, it is a single, ascertainable event. Continuing damage cases involving multiple periods, like California Union Insurance Company v. Landmark Insurance Company. 145 Cal. App. 3d 462 (1983), are inapplicable. We conclude that, in light of the many contradictory judicial decisions on trigger of coverage in property damage cases, the most appropriate trigger in cases involving asbestos products, which are performing the purpose for which they were intended, is the period in which the damage - the diminution in value of the property - first becomes apparent".	SI
19/01/84	Attorney H Report to R A G Jackson (Chairman, AWP) Re: AWP Activities for the last 12 Months in Asbestos-Related Problems. "As a consequence of the broad discovery order imposed by the Court in the California Co-ordinated Action, the Working Party were advised by both United States and UK Counsel that reports emanating from servicing attorneys should not be passed through brokers... AWP is going to extend its role to include the reinsurance market. Because of the need to preserve privilege on attorneys' reports, the NMA Reinsurance Sub-	AWP

	Committee is going to make increasing use of the AWP's facilities. US attorneys were requested to provide reserve recommendations for the year-end. These will be sent directly to the Asbestos Claims Information Office. The reports will be circulated as appropriate in the Market. The Asbestos Claims Information Office now maintains the complete record of the Lloyd's and Company Markets, by year and layer, for each individual Reinsurance Contract handled through the office. When report has been approved by the Leader/s and the Sub-Committee the Asbestos Office circulates the Market. This is done by copy report... Although during the course of 1983 the coverage litigation has continued, the decisions that have been handed down have not assisted in providing consistent or uniform method of dealing with the date of occurrence problem ... It will be evident from the reports being received by the Market that property damage arising out of the use of asbestos is now developing into a major issue. Although litigation in this area appears to be limited to date, it may develop. The EPA order has caused a substantial number of suits to be filed in respect of public buildings (particularly schools). It is unclear what theory of coverage will be adopted in respect of property damage (date of installation or date of discovery of damage) or the extent of coverage that will be found to exist (e.g. repairs, inspection fees, etc). A suit has recently been filed by Assured 3B in Los Angeles solely related to property damage and Assured 4, one of the leading property damage defendants, has filed a declaratory action against all of its insurers in Cook County, Illinois. It is important that a uniform approach be adopted by the London Market to this issue. A satisfactory solution is being sought in the Facility discussions. Asbestos Claims Facility ... The Facility concept will enable meritorious claims to be negotiated through a central body without the prerequisite of suit being filed.. claims which are litigated, the Facility provides for a united defence on behalf of all producers and this is likely to be more effective and less costly."	
20/01/84	Attorney A to Underwriters at interest care of C J Ayliffe Re: Asbestos Property Damage Litigation. Producers of asbestos unquestionably will contend that a continuing trigger applies from the date of first sale of the asbestos products to the date of last possible connection to damage (following the Keene case). The opinion of the attorneys is that there is no basis in the policy wordings or the case law to apply Keene-type reasoning to asbestos-related property damage claims. Concludes that the most appropriate trigger in cases involving asbestos products is the period in which the damage (i.e. the diminution in value of the property) first becomes apparent, although there is no controlling decision on the subject in the US.	SI

26/01/84	Meeting of Insurance Partners and Managers of Ernst & Whinney. Asbestosis will be as relevant for many London Market companies as it is for Lloyd's Syndicates. Nigel Holland informed the meeting that progress towards a settlement involving many of the main US manufacturers was being made. An announcement was imminent. The Chairman of the AWP is to address a meeting at which Ernst & Whinney will be present. Nigel Holland will ensure that notes of this meeting are circulated to interested parties. Peter Standish commented that a useful publication entitled "Asbestos Litigation Reporter" had appeared in the London Market.	PA
31/01/84	Letter from R A G Jackson, Chairman of the AWP to Underwriters - Non-Marine Market and Non-ILU Companies. "The matters discussed in this letter concern the most serious claim problem ever encountered by our Industry. I cannot over-emphasise that it is essential for you to give active consideration to the issues that are addressed, and more particularly, your support to the efforts that are being made to develop a more practical way of handling the asbestos problem". Reports the positive conclusion of talks with Producers aimed at establishing a Claims Facility. Agreement was reached in principle on the coverage issue at a meeting in San Francisco on 4-5 January 1984. Summarises the principal issues covered by the proposed agreement. Notes that it is likely to be at least two months before the proposals are put into a detailed form for all parties at interest but states that "the Working Party considers that it is essential that the Market be made aware of these important developments and be provided with some background to the negotiations and likely developments in the future if endorsement is forthcoming from the Insurance Market." States that a Market meeting is to be held on 13 February 1984 and that attendance is essential in order that the AWP and the various US attorneys can address concerns that exist within the Market.	
05/03/84	Minutes of an Ernst & Whinney meeting to discuss latent diseases particularly asbestosis. M Bolger noted that the problems for the insurance industry were: (a) the question of what triggers coverage; (b) the length of the latency period (17 to 18 years); (c) the identification of the relevant insurance policy or carrier; (d) the attitude of the US Courts (manifestation, exposure or triple trigger - the Keene	PA

	case). The number of claims is difficult to determine because of double counting but may be in the region of 25,000. New claims are arising at the rate of 500 per month. The peak may not occur until 1990. Lloyd's underwriters are heavily involved in excess lines. A syndicate needs to establish reserves as best it can, with careful consideration being given to the adequacy of reinsurance protection and an appropriate IBNR. Legal costs are soaring but clarification of coverage issues and the establishment of a claims handling service should help reduce litigation. Ernst & Whinney have sent out a questionnaire designed to elicit relevant information. Steve Abbot stresses the need for Ernst & Whinney's full thought processes to be properly documented on file. "There is no specific guidance from Lloyd's this year" ... but it is clear that liability should not be discounted and it is generally accepted that the higher of the reserve figures arrived at should be used. The reserves must be assessed gross and have reinsurance recoveries deducted. Steve Abbot says that he was not aware of any syndicate that has kept its accounts open because of asbestosis, although some did so for computer leasing.	
00/04/84	Syndicate 440 (1983 Report): "Being a new Syndicate we do not suffer from the problem of Asbestosis or other latent industrial disease claims nor the worrying pollution claims currently in dispute that have arisen in back years for so many Lloyd's Syndicates."	
06/04/84	WIR: Asbestosis and beyond. In a move to inform itself and, eventually, to influence reserving and underwriting standards, the Department of Trade and Industry is asking all authorised insurers and reinsurers about their worldwide exposure to industrial disease claims. The DTI particularly wants to know about potential long-tail liabilities such as asbestosis. The DTI has since circulated a private and confidential letter asking companies if they have written industrial disease/injury business in the past 50 years, whether any of it was in the named risks, whether and in what amounts there have been any claims since 1 January 1980 or indications of claims pending, whether and how much IBNR provision they have for such claims, and the extent to which the named disease/accidents and the IBNR are reinsured.	

00/05/84	Assured 1 announced settlement with insurers. Assured 1 has announced that its primary insurer, Travelers, and two of its major excess carriers, the Home Insurance Company and a group of syndicates connected with Lloyd's of London, have agreed to pay a total of nearly $315 million to settle the claims that Assured 1 brought against them. ($110 million of this sum was to be borne by Lloyd's of London).	
00/05/84	Syndicate 367 (1983 Report): "Two of these categories are causing problems, one in this year and one in the open years 1982 and 1983. The main one being the Incidental Non-Marine USA Liability Account. Here we have claims going back to the 1950's. These are mainly for Asbestosis and other latent diseases ... Adverse court judgements plus ever increasing awards and legal costs could not have been envisaged when the business was underwritten. To highlight the deterioration the following figures may be of interest: outstanding claims at 31 December 1981, on 1977 and previous years were in the region of $5m. By 31 December 1983, these outstandings had increased to $7.8m with $1.8m, being settled during the years 1982 and 1983."	
00/05/84	Syndicate 927/935 (1983 Report): "In addition to these problems there is the thorny matter of Asbestosis. We have an involvement in the thousands of potential claims now being advised to the London Market. ... The advices received from the Asbestosis Working Party have accelerated considerably during the last twelve months and whilst the accumulation of all estimated potential claims is currently some $75,000 in excess of the scope of a Stop Loss Reinsurance that I bought covering Syndicate 60 for all losses settled after 1.1.82, I anticipate further advices in the future. ... There are steps being taken by the Market to put together a form of block settlement on Asbestosis which, whilst accelerating the actual date of payment by Underwriters, would probably have the effect of reducing substantially the legal fees associated with numerous individual settlements. ... it is because of the apparent distortion on the settlements on our Treaty Book and the imponderables allied to the Asbestosis position that I have taken the decision to leave the 1981 Account open."	
00/05/84	Report of a paper presented by R A G Jackson, to the Reinsurance Offices Association, reported in Reinsurance (August 1984) - When the Wrangling Must End. R A G Jackson explains how, four years ago, when asbestos was raising its ugly head, it was suggested that there should be some co-ordination and liaison in the passing of information around the Market, so that anybody who wished to could inform themselves of what was going on.	

	R A G Jackson notes that K R Rayment and C J Ayliffe, the London representatives of the US Asbestos Claims Council have been going over to America every two to three weeks for nearly 18 months. In March 1984 there was a meeting with direct insurers' representatives in London (attended by about 300 people at two meetings) to keep everybody up to date. "There is no doubt that this is the most serious claims problem ever encountered by our industry. The seriousness of it is not only actual quantum of claim but more so in the policy interpretation". The basic rule of coverage now seems clear. It is to maximise coverage to the original insured. There are already four decisions giving different interpretations of how to maximise coverage. Although the Market may not like it, the Courts are clearly interpreting policies in that way.	
00/05/84	Syndicates 105/106/109 (1983 Report): "I have previously mentioned the 'Asbestosis' problems, they still continue. In the last few weeks of 1983 we were advised of further reinsurance involvements of American companies."	
00/05/84	Syndicates 604/605 (1983 Report): "The closed year Account continues to be dominated by latent disease and other latent claims. We have found it necessary to increase our Reserves in this sector to a level which now exceeds the amount of protection afforded by the Whole Account Excess of Loss Reinsurance for the 1977 and previous years. This increase though, has been more than covered by surpluses shown elsewhere in the Account."	
00/05/84	Syndicate 108/768 (1983 Report): "A poor underwriting result. Latent diseases contributing once again to the underwriting loss."	
00/05/84	Syndicate 164 (1983 Report): "As reported last year the 1980 account and all previous years was reinsured out with 100% Lloyd's security on an unlimited basis excess of the reserve created to close the 1980 account. There has been a further deterioration in the Asbestosis and latent disease potential claims protected by this Reinsurance."	

00/05/84	Syndicate 420/377 (1983 Report): "The 1980 account remained open beyond the customary three year period to allow Vanguard the benefit of an additional twelve months in assessing the situation. Despite achieving material progress in obtaining reinsurances recoveries during the past year our review of the Syndicate's potential commitments for future liabilities confirms a necessity to follow the general market tendency to strengthen reserves. The late notification of potential liability emerging from remote and unforeseen quarters of the long tail element of the account together with the continuation of the trend of enhanced court awards in the USA makes this action particularly appropriate for this Syndicate".	
00/05/84	Syndicate 510/511 (1983 Report): "The development of loss information concerning asbestosis and other latent diseases dating from the years when these problems were unknown to those in the industry continues to cause much concern in all markets. The involvement of this syndicate on a direct basis is negligible but we do participate in catastrophe protections for a large number of American insurance companies. Some of these catastrophe programmes cover all classes of business and therefore embrace the third party liability account written by those companies. The calculation of our probable ultimate liability from these losses is still extremely difficult as a number of insurance companies have themselves only set up bulk reserves for all latent diseases losses and have not yet allocated reserves insured by insured, year by year and contract by contract. Only when all insurers do this can the final cost of these losses be assessed with a greater hope of accuracy. The percentage lines of our syndicate on the catastrophe covers which might be affected were not large and our participation in specific liability reinsurances was limited to a few small lines. We believe that we must however expect additional loss advices and our reinsurance forward at the close of the 1980 account and prior years took this into account as it does at the close of 1981. We have also purchased a specific reinsurance to protect any exceptional developments in so called "long tail" losses. This protection could provide an additional US$4,000,000 cover. We may purchase additional protections of a similar nature in the event that the terms and conditions appear attractive."	
00/05/84	Syndicate 404 (1983 Report): "Being the oldest Lloyd's Non-Marine Syndicate, it is inevitable that we are going to be affected from time to time by loss developments on the old years. You have been told about Asbestosis and we are continuing to monitor the situation very closely. In the past 12 months the loss has continued to develop and it is difficult to be very precise about the ultimate outcome.	

	We are carrying very substantial reserves for this item and when taken in relation with the reinsurance protection in respect of the old years as referred to earlier, we feel we have made adequate provision for this situation. There are a handful of other smaller potential losses arising from late manifestation which we are monitoring individually, but none of these give cause for undue concern within our existing reserves."	
11/05/84	Meeting on Asbestos Claims Facility. Speakers RAG Jackson, K.R. Rayment	
00/00/84	AWP caused Toplis & Harding (Asbestos Services) Ltd. to be incorporated. Its letter headed paper was thereafter used, from time to time, by Mr Jackson.	
15/05/84	Syndicates 799/772/771/943 (1983 Report): "The Syndicate's results over the last few years' closing have suffered from the need to strengthen the older years' reserves, including those on asbestos-related claims... Whilst one can never make guarantees in this area, I believe now that the reserves we are carrying will prove adequate to meet the Syndicate's ultimate asbestos claims."	
15/05/84	Syndicates 418/422/417 (1983 Report): "Although 1981 at thirty-six months had settled a substantially higher percentage than 1980 at the same stage, the pure year looks reasonably satisfactory. However, yet again there is a deterioration in the old years which has required not only the utilisation of the special rollover reinsurance for asbestosis liabilities but also some topping up."	
15/05/84	Syndicates 197/726 (1983 Report): "Latent disease and environmental impairment, mostly in America, continue to preoccupy the industry. Breathtakingly large claims are surfacing from back years and there is a great deal of uncertainty as to how these will impact the reinsurance market. The problems of punitive damages and astronomical legal fees exacerbate the situation which is unlikely to become clearer or less alarming over the next few years. We are carrying reserves for such contingencies".	

21/05/84	Syndicate 932/989 (1983 Report): "The reinsurance to close has again been increased reflecting the increase both in the size and number of outstanding claims, especially for asbestosis and other environmental or latent disease claims."	
29/05/84	Syndicate 764/763/145/196 (1983 Report): "the syndicates' reserves have been strengthened to provide additional cover against the problems associated with various latent disease claims. Marine Syndicate No. 764, as previously reported, has taken out special reinsurance against asbestosis claims and we are confident that our liabilities arising there from will be contained within the protection provided."	
31/05/84	Letter from R A G Jackson, Chairman of the AWP, to Underwriters at interest. "I now wish to take this opportunity to advise you that over this period discussions between Producers and Insurers on the Resolution Committee continued, and a final document has now been prepared which was generally released to interested parties in the United States on Friday, 18th May... I cannot express too strongly the need for unity of approach within the London Market, for there is no question that no further opportunity will arise which can bring to an end the coverage litigation, and at the same time establish a rational and cost-effective way of dealing with the steadily increasing volume of claims that exist... With the increasing involvement of the London Market in asbestos-related matters, the development of the Facility and the increasing number of property damage claims, the Asbestos Working party has reached the conclusion that it will be necessary to seek a revised Market Authority to enable us to perform the tasks that lie ahead... As I indicated to the Market in my letter of 31 January 1984 asbestos-related claims have produced the most serious situation ever confronted by the Insurance Industry."	SI
00/06/84	Lloyds League Tables 1981 (produced by Chatset). General Comment: "With the uncertainties surrounding liability business it would be foolish to predict the final outcome for 1982 but one would hope the swinging increase there was for reserving asbestosis and other latent diseases may not have to be repeated." In relation to Non-Marine business: "An extra £242 million was set aside by syndicates as reserves for claims, bringing the total reserves for Non-Marine liability business to 493% of the 1981 premium income. This substantial increase is due to reassessment of expenses to latent diseases, in particular asbestosis. In the last nine months of 1983 no less than 21,000 new cases of asbestosis were reported to insurers .... American Courts have, in a case known as Keene, ruled that liability of an insurer to an assured commences at the time of	

	exposure, continues during residence i.e. during the period when particles of asbestos may be lodged in the lung, and concludes when medical evidence finds that the victim is suffering from an ailment resulting from exposure to asbestosis. This is known as "triple trigger" so any policy during that span of events can be claimed on ..... Lloyd's up to May 1984 had settled some 6,500 claims at an average cost of $89,000 each. It is estimated that over half the cost of each settlement was made up of legal fees ... There have therefore been efforts by the leading insurers involved in asbestosis claims to draw up agreed methods for settling outstanding claims. For instance, recently Lloyd's agreed with two major insurance companies and Assured 1 to settle all Assured 1 claims for $315m, in return for dismissal from litigation". (Published in 1984).	
00/06/84	Syndicates 317/661 (1983 Report): "During the last twelve months events have reinforced my opinion regarding the necessity to reserve ...I mentioned last year the impact of asbestosis (with which I would include other 'latent disease' losses). I would repeat my comments that with our auditors.... we keep such liabilities under constant review. With our reserves and our own reinsurances, we believe the position to be adequately covered."	
04/06/84	Syndicate 90 (1983 Report): "Since the late seventies there has been an increase in the reserves required for losses on closed years mostly due to latent disease claims, the most notorious being asbestosis."	
11/06/84	Syndicate 701 (1983 Report): "The exposure of the Syndicate to claims for latent diseases, especially asbestosis, remains an area of considerable uncertainty... We are confident that adequate reserves have been created to cover the Syndicate's liabilities."	
00/07/84	Syndicate 975 (1983 Report): "1979 and 1980 Accounts were turned from positions of modest profitability to modest losses by the need to make adequate provision for the more recently advised losses on business written before 1973. In an attempt to effect the impact of further determination in this latent disease area we have recently decided to purchase reinsurance in respect of 1972 and all earlier years of account. Unfortunately, such reinsurance is not available on an "unlimited" basis and, of course, the level of protection purchased has a direct bearing on the premium payable."	

26/07/84	Financial Times: Sedgwick told to provide asbestos insurance facts. Three directors of companies in the Sedgwick group, Britain's biggest insurance broker, have been ordered by the High Court to give evidence in a trial in California arising out of multi-million dollar claims by asbestos victims.	
00/08/84	Reinsurance. Article by RAG Jackson	
00/08/84	Reinsurance: Asbestos: co-ordinating the settlements (Article by K R Rayment). Outlines the history of asbestos cases and how the Asbestos Claims Facility is expected to work.	
07/08/84	Lloyd's List: Syndicate has £50 million for industrial diseases. Syndicate 799, managed by Merrett Syndicates, increased by 14% its reinsurance to close the 1981 account. Included in the reinsurance to close was £50 million to pay for losses which have already occurred but of which the underwriters are not yet aware.	
20/08/84	Syndicate 540/174/542 (1983 Report): " a small profit. arises after making substantial provision for Asbestosis claims which I anticipate on the Incidental Non-Marine Account. This provision has been made on a basis established within the Lloyd's market and has necessitated a special loading to reserves in Syndicate 175. I am confident that our approach is the prudent one to adopt in view of all the uncertainties over Asbestosis and other liability claims."	
20/08/84	Syndicate 918/940 (1983 Report): "It has not been possible to close the 1981 year of account and indeed, both the 1979 and 1980 years of account remain open. We shall, over the next 12 months, use every effort in order that we may calculate an equitable estimate of the likely ultimate claims cost for these years of account. The methods utilized in projecting claims ratios forward to their anticipated ultimate cost, whilst being founded on mathematical formulae, are also of necessity weighted by subjective judgment. In the case of syndicates under review the degree of subjectivity necessary is substantial due to their considerable involvement in long-tail classes of business, particularly General and Umbrella liability, where Asbestosis is but one, albeit currently the most serious, problem."	

00/10/84	E&W Insight number 25. Insurance Technical Section. Asbestosis: the latest estimate from Lloyd's is that this is likely to cost the Market £1.5 billion (minimum). Lloyd's global result: the 1981 account (closed at 31 December 1983) produced a profit down from £264 million to £152 million. These figures hide an underwriting loss of £43.5 million, the first for 14 years. The Chairman, Mr Peter Miller, has predicted that the next 2 years will be difficult as well. The heaviest losses occurred in the general liability market, particularly industrial diseases (£108.6 million). The amount of reinsurance to close was disclosed for the first time for the 1981 at £2.7 billion. The 1980 comparative was also disclosed at £2.1 billion, an increase of nearly 29%.	PA
08/10/84	Financial Times: Calculating the cost of asbestos claims. Asbestosis and other asbestos-related injuries in the US have already turned out to be the largest natural disaster to hit world insurance and reinsurance markets. It is estimated that there are more than 30,000 individual claims at various stages of processing and about 500 claims are being made per month. The insurance industries are still not able to quantify the ultimate cost of asbestos-related claims. Estimates range from £8 billion to as much as $50 billion .... Drastic situations require imaginative solutions and the insurers involved hope the proposed Asbestos Claims Facility will go some way to solve the claims handling problems .... The prime motivations for creating the facility were the need to find a satisfactory means of solving the various coverage issues and a need to develop a reasonable and practical method of handling meritorious claims at a reasonable cost.	
25/10/84	Attorney H to Underwriters at interest Re: Assured 8. Notifying year-end reserves (based on information outside the databank only). Date of loss has not been determined for property damage. The courts are yet to make a determination as to date of occurrence in property damage cases. Some argue for the date of installation, others for the date of discovery. The report suggests that the Market should support discovery but be aware that earlier years could also be at risk. Myriad of other coverage issues. "All of these factors render the assessment of precise property damage reserves most difficult if not impossible at this time." Recommend a claim servicing expense reserve of $50,000 per policy year.	
29/10/84	Attorney H to Underwriters at interest Re: Assured 6 Asbestos-Related Claims. Notes agreement between Assured 6 and the London Market as of March 1984 that reserves be based upon a five year "roll back" where the date of occurrence is derived by subtracting five years from the actual date of diagnosis. Insofar as policies provide total limits, the attorneys have not recommended separate or additional reserves referable to property damage claims.	SI

05/11/84	Attorney H to Underwriters at interest. Bodily Injury: outstanding claims against Assured 3A/Assured 3B have increased from 17,034 (at year-end 1983) to 20,813 (at year-end 1984). Property Damage: myriad of problems in assessing coverage (especially Date of Loss). Difficult if not impossible to assess property damage reserves at this time.	
16/11/84	Attorney H to Underwriters at interest. Reporting Bodily Injury claims and reserves. Property Damage: myriad of other coverage issues (especially Date of Loss). All of these factors render the assessment of precise property damage reserves most difficult if not impossible at this time. Recommend expense reserve of $125,000 per policy year.	
05/12/84	Attorney H report to Underwriters at interest (Assured 14) Re: year-end reserves. Bodily Injury: on the assumption of no aggregate limits (or $10 million limit), no reserves come through to the Market's layers under either the exposure or manifestation approach; based on per claim indemnity estimate of $8,400 (plus 100% loading for defence costs) on the 18,221 open claims. Property Damage: no Court determination on the question of date of loss, or myriad of other coverage issues. Provisional estimate $200,000 per policy year, which would come entirely within the Market's first excess layer. Expense reserve: confirm to recommend $62,500 per policy year.	
17/12/84	Attorney G to the Interested Insurers Re: Assured 4. "We submit herewith our Report No. 10 providing our 1984 year-end asbestos-related bodily injury and property damage reserve recommendation to the London insurers. We are recommending herein substantial increases in our precautionary reserves for the asbestos-related property damage claims. This is because the Assured clearly has become a target defendant in this burgeoning nationwide litigation... Reserve figures assume all London policies written with aggregate limits for products liability."	SI
19/12/84	Minutes of a Panel Auditors Meeting. Factors affecting reserving at 31 December 1984 were discussed in the context of asbestos losses. R A G Jackson said that it was hoped to introduce a Facility with the original asbestos producers in the US. New advices of losses were still being notified at the rate of approximately 6,000 per year. $50 million had been paid out on claims in 1984. He then made a brief mention of the Assured 1 settlement.	PA

	The pattern of reserving on asbestos losses was that in the early stages direct losses were notified, then 1983 reinsurance losses were quantified and 1984 was the year for retrocessional claims.	
00/01/85	Assured 1 announces it has settled its insurance coverage disputes with three of its excess carriers. Assured 16, The Midland Insurance Company and the Allstate Insurance Company agreed to provide $112 million towards settling asbestos disease claims once the $315 million in coverage from Assured 1's prior settlement with Traveler's, Home and the Lloyd's Syndicates, was exhausted and certain other conditions were met. The agreement provided that if the settlement was approved by the bankruptcy court, and if either Assured 1 or the three settling insurers should subscribe to the Wellington claims facility, the $112 million in coverage would be dispensed under the Wellington plan. It also provided that this insurance coverage would be triggered during the period beginning with the date of a claimant's first exposure to asbestos and ending on the date of asbestos disease, or on which asbestos disease was diagnosed. Assured 1 agreed to dismiss without prejudice the actions it had brought against Assured 16, Midland and Allstate. Also announced it was to continue negotiations with the twenty one insurance carriers with whom it remained in litigation in California.	
00/01/85	Rand Institute of Civil Justice Study: Asbestos in the Courts (late 1983 - early 1985). Asbestos suits unlike any other product liability cases. By the mid-80s a surge of filings begun in 1978 had ended, but the number of dispositions continues to fall behind the number of new filings. The asbestos crisis is far from ending, with new filings projected to continue into the next century. New types of asbestos personal injury and property damage cases will continue to be filed in uncertain numbers.	
28/01/85	Lloyd's List (Reuters textline): Implications of Inland Revenue investigations into tax matters at Lloyd's. The Revenue is considering a number of areas including the reinsurance to close of syndicates, Lloyd's main protection against outstanding claims losses. Lloyd's has been taking a conservative approach to reserving in connection to claims such as asbestosis. A conservative approach means less taxable profits. The Revenue apparently considers that the documentation of reserving policies has been inadequate in the past and that only claims which can be quantified reasonably accurately should be allowed against tax. The tough Revenue attitude has come at a time when problems, particularly in reinsurance, have caused losses on policies written many years ago and when some observers believe the industry to be under-reserved.	

06/02/85	Lloyd's List (Reuters textline): Assured 1 has reached an agreement with Insurance Companies on asbestos-related claims. Following a deal with Assured 1, Assured 16, Midland Insurance and Allstate Insurance will fund certain asbestos-related claims to a total of around $112 million. This obligation is subject to a prior use of funds received from a settlement with Travelers, Home Insurance and UK insurers (including Lloyd's of London) with respect to coverage periods until the exhaustion of underlying coverage layers. Payment by the settling insurers of $112 million will be in full satisfaction of nearly all of Assured 1's claims against these companies. The companies said the effectiveness of the settlement was conditional on entry of a final order approving a reorganisation plan for Assured 1 of a group of its subsidiaries.	
01/03/85	Attorney H to R A G Jackson, Chairman of AWP. Report on AWP Activities during the Past Twelve Months. The Asbestos Claims Facility (ACF). Negotiations aimed at the establishment of the ACF have become somewhat protracted. Although agreement concerning asbestos-related claims was reached by May 1984, developing the necessary support has proved a slow process. In particular, direct writers have been concerned with the negative attitude of the reinsurance market. Regrettably, as matters stand, the absence of participation by a majority of the leading companies could make the position unacceptable. If the Facility were ultimately to collapse this could cause "serious problems" in the London Market. It could be left trying to handle some 30,000 outstanding claims (increasing by some 5,000 new suits per year) and involving new issues such as damage to property. The Facility must be the best forum through which to address issues of coverage in relation to property damage. The reinsurance involvement in the problem has developed during the last year. It is reasonable to expect this trend to continue. Asbestos declaratory actions: Owens Illinois v Aetna Casualty - endorsed the Keene "triple trigger" theory and also found that the manufacturing of the product "Kaylo" should be regarded as a single occurrence (with only one deductible applying). Asbestos Property Damage: as anticipated, there was a continuing increase in 1984 in the number of property damage actions filed against the producers of asbestos (eg a Maryland action seeks damages of $225 million). Reserves: the per claimant reserves continue to be reviewed annually by the Claims Committee and with reporting Counsel. These reserves are based on filed claims and no attempt has been made to project an IBNR factor in respect of the claims yet to be filed.	AWP

	Databank: the London Claims Information System has proven to be the most flexible system yet designed to monitor asbestos claims. A database is being created for the Facility.	
06/03/85	Financial Times (Reuter Textline) Re: House of Lords decision for the production of documents to clarify issues in Californian proceedings between asbestos manufacturers and insurers. The House of Lords held that the English Court will not order a person to produce documents in response to foreign court proceedings if such documents are not separately described and if there is no evidence of their existence or possession by the persons concerned. The Californian case has raised issues of whether certain policies existed, the extent of cover, the construction of policies issued by Lloyd's Underwriters and disclosure.	
19/03/85	Testimony of R A G Jackson, Chairman of the AWP, to Senator Nickels (Senate Labor and Human Relations Committees Sub-Committee on Labor). "1. The number of present and expected asbestos related claims is enormous, and the problems they are creating for the producers and insurers are unprecedented, both in terms of the total dollars involved and of the human resources needed to handle these claims... 4. Against this background of judicial uncertainty, already catastrophic losses, and the reality of massive property damage claims yet to come, the task of fixing meaningful reserves and managing cash-flow to pay claims will continue to demand virtual clairvoyance and a near reckless courage from the executives involved at primary level, as well as from their reinsurer counterparts. You might well ask if we are getting it right. I will show you how we propose to do just that.... 6. Since Domestic USA insurance companies rely heavily upon the availability of proper reinsurance facilities both in the USA and those provided in and through the London Market, the importance of securing all reinsurers' support and cooperation on the Asbestos Claims Facility is therefore paramount.... 9. The Asbestos Claims Facility promises to bring order to an otherwise chaotic legal situation while controlling distribution of losses to insurers and ensuring efficient use of the insurance dollars available, not as legal costs, but in proper timely compensation for the victims.... 10. The Facility is a good deal for producers, claimants and insurers alike because it will: (a) set guidelines for handling the fundamental insurance issues of:-	

- allocating liability and expenses over various policy years;
- regulating application of deductibles and self-insured retentions;
- allocating liability for "aggregate" and "any one loss" policy limits;
- apportioning disputed liabilities between primary, excess, and ultimately, reinsurance carriers;

(b) provide an internal and informal arbitration mechanism for coverage disputes such as continuing defence obligations and applicability of exclusions, as an alternative to costly and protracted litigation;

(c) introduce, by combining the first two benefits, a degree of certainty where none existed before, not only for insurers (and their reinsurers) wishing to determine their eventual asbestos commitment, but also for producers who would for example gain from the release of key personnel committed to claims processing;

(d) offer centralised evaluation, settlement and defence of the numerous future claims arising on a scale which will otherwise swamp existing individual insurer and producer facilities. The opportunity is there for avoiding inefficiency caused by wasteful duplication or dilution of what are, contrary to public belief, finite market resources, and for sharing the initial investment and overheads of a single system with other participants;

(e) provide centralised data capture and storage, giving the broadest base for future management exercises on aggregating losses and deductibles, reserving and the like;

(f) achieve consolidation of negotiations, settlements and defences on numerous claims, and thereby reduce overall legal costs, improve the payment of damages to legitimate claimants, and present a "single" defence where literally dozens would have been pleaded before;

(g) eliminate, as one of the Facility's preconditions, punitive damage suits against insurers, and avoid similar actions against producers, by reducing the delays giving rise to such actions and by the Facility itself being evidence of defendants' willingness to resolve claims promptly;

(h) offer to producers an existing mechanism for continued claims handling on their behalf if, and this is a very real possibility for many, their total policy limits available are eventually exhausted by claims."

23/03/85	Daily Mail (Reuter text line). Hopes of co-operation between insurance companies and manufacturing businesses to fight US compensation claims.	
24/03/85	The Observer (Reuter text line). Losses facing Lloyd's Syndicate 90 could be the first of many on Non-Marine syndicates according to David Robson, its manager.	
12/04/85	Syndicate 406/679 (1984 Report): " I have not found any reason to make any major alteration to the balance of our account. However, in common with other Lloyd's Underwriters and with hindsight, there is an awareness now of some of the past problems relating to liability for health hazards and the disposal of hazardous wastes."	
16/04/85	Financial Times (Reuter text line). Underwriters at Lloyd's estimate that losses on Syndicate 417/418 could reach millions of pounds.	
23/04/85	Daily Express (Reuter text line). Fears that rising number of asbestos/chemicals spillage claims could lead to over 400 Names leaving Lloyd's.	
00/05/85	Syndicate 89 (1984 Report): "I also mentioned in last year's report that the Syndicate had a small element of asbestosis in its incidental non-marine account and that this had been protected by a substantial Stop Loss policy. Unfortunately in the last four months we have been advised by attorneys acting on insurers' behalf of considerable increases in reserves on policies covering asbestosis, other latent diseases and pollution clean up claims ... The reserves we have felt it prudent to create in order to cover the potential liability of the Syndicate are so large that they greatly exceed the level of its Stop Loss policy protection and have caused the greater part of the 1982 Account's loss.... We have felt it necessary to take this decision [i.e. to leave the 1982 year open] not	

	only because of the uncertainty as to the outcome of many of these claims but also because of our concern that there may still be more claims pressed against us of which, as a market, we are still unaware. To indicate the enormity of the problem I have had to recalculate the reserves relating to this section of the Account by upwards of £2.0 million due to the new information which has come to our attention since the beginning of March."	
00/05/85	Syndicate 895 (1984 Report): "We regret to have to report a deterioration on this account. An additional provision of £1,137,088 is required to meet this deterioration in the previous years. This arises almost entirely from latent disease risks, many of them written over 25 years ago. In this respect the syndicate's experience is similar to many other syndicates in the Market this year".	
00/05/85	Syndicate 975 (1984 Report): "It is a measure of the very significant worsening of claims in this area that our volume of outstanding claims, which has to include provision for "incurred but not reported losses", has already exceeded the upper limit of our indemnity". "In the final quarter of 1984 we experienced a surge in the number of advices of new claims arising from asbestosis and toxic waste and, as a result, we have been obliged to recognise the probability of further claims arising from these earlier years as well as the possibility of further deterioration in our existing reserves."	
00/05/85	Syndicates 927/935 (1984 Report): "The second cause of anxiety last year related to the development of latent disease claims on the run-off of Syndicate 60, now contained within Syndicate 935. We have complete records going back to 1960, being the earliest year of our involvement, and we register all claims advised to the Market from which it is clear that the position has deteriorated yet again during the latter part of 1984. After lengthy discussions with our Auditors and a review of our Reinsurance protection, we have again decided to increase our reserves."	
00/05/85	Syndicates 105/106/109 (1984 Report): "As predicted, a very poor underwriting year. Generally speaking, Non-Marine syndicates at Lloyd's have just closed their worst account ever. 1982 was one of those years when nearly everything went badly! To start with there was competitive rating problems, to add to this further advice on Asbestosis in respect of the old years.... The reserves accumulated have made it possible to purchase a reinsurance enabling us to solve our problems for the foreseeable future."	

00/05/85	Syndicate 65/67 (1984 Report): "There have been further developments in respect of industrial disease claims to which we drew your attention last year, and we have once again found it necessary to make adjustments to our reinsurance provisions in the light of increases, particularly of legal fees, during the last twelve months. The sums involved are large and we shall continue to monitor these outstanding losses and the adequacy of our reserves very carefully."	
00/05/85	Syndicate 179 (1984 Report): "It has also been necessary to add further to our reserves in respect of Asbestosis type losses, although our involvement in this and all other claims relating to the 1959-1968 accounts are reinsured in full at Lloyd's".	
00/05/85	Syndicate 223 (1984 Report): "The 1979/80 Accounts combined have had to be "topped" up again, mainly due to the receipt of further claims advices concerning latent diseases which were received in the last quarter of 1984. In most cases the involvement is on an excess of loss basis and therefore individual claims may not ultimately be payable."	
00/05/85	Syndicate 383 (1984 Report): "We all know the damage that losses like Asbestosis, Agent Orange, and others have caused to the insurance industry. Although these are losses with which Syndicate 383 has had virtually no involvement, they do show the problems of existing and former policy wordings. Generally speaking it will not be the intention to involve the Syndicate with liability coverage for certain types of heavy risk unless the coverage is issued on a "claims made" basis".	
00/05/85	Syndicate 918/940 (1984 Report): Notes to the accounts, note 7: "During 1984, business written by both syndicates has experienced an upward trend in settlement and notification of claims, particularly in respect of asbestosis, medical malpractice, errors and omissions and other long-tail liability business, including claims at levels where only limited reinsurance protection is now available. The underwriter has taken into account these factors in his assessment of such liabilities. However it is not possible to ascertain the extent to which this deterioration will continue to occur or abate. As a result of these uncertaintiesall years of account will remain open at 31st December 1984".	

04/05/85	Syndicate 537 (1984 Report): "Outstanding liability is principally for Asbestos losses for which reserves have been made. There was no advised deterioration in these during the calendar year 1984".	
08/05/85	K P McNamara paper on 317/661 Run-off policies (Outhwaite).	
14/05/85	Syndicate 367 (1984 Report): "I am writing this year with a really miserable set of figures ... There is no doubt that the main cause of this debate is the old year outstanding claims stretching back to the 1950s or before. They relate to Asbestosis and other similar latent diseases, but also include such nasty pollution claims as the Shell Oil Rocky Mountain claim. These could hardly have been foreseen at the time of underwriting and have grown out of all proportion to the premium received. It did not help the preparation of our figures either that the majority of the new or increased claims advices came in during the last quarter of 1984... The Asbestosis-only figures by themselves for all years to and including 1982 are as follows...which is a 60% worsening."	
15/05/85	Syndicate 566 (1984 Report): "A major part of the bouquet of troubles afflicting the industry is the very large number of very large claims arising from product and general liabilities, pollution and the like in America. Preposterous court awards today, affecting business written long ago, are crucifying underwriters on both sides of the Atlantic and will continue to do so for some time to come... Our exposures to these problems arise from both direct-writing and reinsurance-writing clients where policies are paying claims of a size and nature which was never envisaged by the underwriters. It cannot be too strongly stressed that the attitude of the American courts represents a serious threat to the financial health of the industry."	
15/05/85	Syndicate 584 (1984 Report): "It appears that the general non-marine experience in calendar year 1984 was that the closed years behaved very badly, largely due to the incidence of asbestosis claims; our own involvement in this area is comparatively light and our reserves have proved sufficient and have not had to be reinforced."	
15/05/85	Syndicates 197/726 (1984 Report): "A major part of the bouquet of troubles affecting the industry is the very large number of very large claims arising from product and general liabilities, pollution and the like in America. Preposterous court awards today, affecting business written long ago, are crucifying underwriters on both sides of the Atlantic and will continue to do so for some time to come... We are carrying reserves for this kind of eventuality because it should be borne in mind that advices on this kind of "long tail" business will take a very long time to reach us... Our exposures to these problems arise from	

	both direct-writing and reinsurance-writing clients where insurance policies are paying claims of a size and nature that were never envisaged by the underwriters. ... it cannot be emphasised enough, in the unstable underwriting environment of the last few years, that reserving policy is of great importance and even greater uncertainty, especially in the context of a reinsurance operation. Recent events have shown that reserves are more often too little than too much."	
21/05/85	Syndicate 970 (1984 Report): "The Incidental Non-Marine account has been affected during the 1984 calendar year by a deluge of new claims advices together with increases in estimates on claims previously reported. These date back to the start of the syndicate's trading. . Classes of business hit have been mainly American products liability and medical malpractice. The United States judicial system and basis of personal injury awards have become a nightmare for insurers. It is possible for, say, one over-generous award or an unexpected successful case against a manufacturer to open the floodgates of similar claims against that and other manufacturers going back a number of years. . Because of the uncertainty, I am recommending that this account remains open."	
24/05/85	Syndicate 404 (1984 Report): "Being the oldest Lloyd's Non-Marine Syndicate, it is inevitable that we are going to be affected from time to time by loss developments on the old years. You are now familiar with the word 'Asbestosis' and the effect it is having on the insurance industry. The loss continues to develop but for the past two years senior insurance executives on both sides of the Atlantic have been negotiating with the principal asbestos manufacturers to create what is known as the "facility" whereby the two parties can work together instead of against each other to resolve the outstanding litigation problems. The facility should become a reality very shortly and the benefits arising from this should show substantial savings in the legal costs."	
24/05/85	Syndicate 557 (1984 Report): In relation to the closing of the 1982 account: "We believe that the syndicate's exposure to latest disease type losses and other third party expenses is adequately taken care of by our reserving policy and supporting reinsurance protections. The final figure transferred into 1983 is in excess of the Lloyd's minimum audit requirements".	

24/05/85	Syndicate 401/404 (Managing Agents' 1984 Report): "The 1982 Account has produced some very mixed results especially in the Non-Marine Market where the shadows of asbestosis on environmental hazards have necessitated Syndicates having to provide greater reserves and reinsurance protections. The Marine Market too has not escaped these difficulties and so it is of some satisfaction to see our Marine 401, Non-Marine and Aviation Syndicates showing modest profits."	
28/05/85	Syndicate 33 (1984 Report): "Significant sums have been spent from the reserves for losses prior to 1975 with the settlement in particular of the Assured 1 asbestos claims, nevertheless the reserve carried forward to 1983 is now nearly £14.3 million against £12 million this time last year (£13.9 million at current rates of exchange). The Assured 1 settlement has still to be ratified by the US courts and could still come unstitched but is notable as the first of the major asbestos producers to agree to a settlement. The insurance industry's asbestos claims handling facility is now nearing implementation and should speed up the settlement considerably. In consequence I expect that during the next three years a significant sum will be spent from our reserves which will of course have some detrimental effect on the funds available for investment. The unlimited reinsurance for 1974 and previous years will in due time play its part and, as and when appropriate, recoveries will need to be pursued from this reinsurer with our usual rigour in order to mitigate the effect upon the syndicate's cash flow. The balance of the reserves for 1975 onwards appears to be sufficient although we shall continue to keep a very close eye on any business which could in any way have an asbestos or North American pollution problem."	
31/05/85	Syndicate 108/768 (1984 Report): "Assured 1 (Asbestos Producer). A deal has been put together to try to settle this matter, money has been advanced and held in escrow in America. Assured 1 is in Chapter 11 (bankruptcy) this is therefore very complicated, the lower courts and Supreme Court will have to rule on this matter, hopefully in our favour. If not, we will be back to square one, therefore we must treat this matter as unsettled and continue to have a loading for Assured 1." "Asbestosis. Bodily injury claims could peak within the next few years, however Property Damage claims are a relatively new complication. Ripping out and replacing asbestos which has been used extensively for types of building work etc. An Asbestos Office in America is to be set-up, nearly all interested parties are giving it backing. This hopefully will cut down litigation expenses which are running at 37.5% of every	

	dollar paid out."	
31/05/85	Syndicate 932/989 (1984 Report): "The 1982 account has now been closed. The pure 1982 account has produced a small profit, but due to an increase in claims paid on the back years and additional reserves required for asbestosis and other latent disease claims and environmental pollution, there is an overall underwriting loss of 13%".	
31/05/85	Syndicate 469 (1984 Report): "Although the calendar year 1984 has produced an increase in reserves, particularly for asbestosis, the settled and outstanding claims are still approximately $750,000 short of the cover [i.e. $5m limit] Certain procedures of asbestosis [sic] and a number of Insurance Companies and Lloyd's have formed an organisation, "The Facility", which will negotiate the settlement of asbestosis claims, and thereby reduce the huge litigation expenses which currently are estimated to represent 40% of the reserves"	
00/06/85	Syndicate 235/237 (1984 Report): "Many Non-Marine Syndicates have been reporting losses on their 1982 Account and Syndicate 231 is unfortunately no exception. The Asbestos claim facility referred to by Mr Wetherell in his report required a substantial cash payment to be made during 1984 and this contributed to the underwriting loss." "The gloomy reports of recent years have intimated the seriousness of the problems facing the worldwide Non-Marine market. The open years are plainly unsatisfactory, the extraordinary competition between insurers which has resulted in extremely low premiums, coupled with the continued necessity to increase claims reserves on back years for Latent diseases and other Long Tail claims, has been more than current underwriting results can sustain. The Nadir has now been reached when even investment income is no longer sufficient to overcome the deteriorating underwriting results. I am sorry to have to report that we have been unable to emerge unscathed in these, the most difficult days since the 1960's. 1982 Has for the first time for many years produced an overall loss. This is entirely due to inadequate premiums throughout the whole Non-Marine Account and the very considerable increase in reserves on Asbestos and environmental claims Latent Disease and Environmental claims:	

	The enormous problems caused by claims arising from Health, Latent disease and Environment hazards are obvious to all. The need to build up adequate reserves has had its effect on the syndicate's results over the past three years. Unhappily this need to reserve has coincided with a particularly deep trough in the Non-Marine underwriting cycle. It is, of course, not possible to say that the problem of Health and Latent disease is over but a very important step was taken during 1983 in the organisation and setting up of the Asbestos Claim Facility involving Lloyd's and U.S. Domestic Insurers and we are now much nearer an agreement between Asbestos producers and insurers. This will, I believe, be of great benefit to all parties. Lloyd's and two major U.S. insurance companies have also reached agreement with the major manufacturer of Asbestos and this settlement should also have a very great bearing on the Asbestos situation. Although the past year has been extremely difficult, as far as the Asbestos problem is concerned, I am sure that the steps we have taken to make very substantial provision for these claims means that our reserves are adequate and this fact, together with the dramatic change in the market, indicates we may well have "the high tide and the turn" at last."	
00/06/85	Syndicates 255/258 (1984 Report): "Previous reserves made to close the 1980 and 1981 years have so far proved adequate and Syndicate members must be happy to realise that, whilst there is always a tail, because the Syndicate was only formed in 1980, they cannot be involved to a great extent on the type of losses which have been widely reported in the press."	
04/06/85	Syndicates 799/772/771/943 (1984 Report): "The better news is that our reserving for claims, both known and unknown, for the years prior to 1970 have held up very well. It was necessary, however, to increase reserves for claims for the years prior to 1970 to meet further claims anticipated as a result of environmental health problems."	
05/06/85	Syndicate 535 (1984 Report): "Claims are also being advised resulting from the dumping of waste chemicals in the US and from the replacement of Asbestos in buildings, etc. where it has now been decided it is a health hazard..."	
06/06/85	Syndicate 701 (1984 Report): "As reported last year, the liability of the Syndicate to claims for latent diseases, especially asbestosis, still remains an area of uncertainty..."	

06/06/85	Syndicate 896 (1984 Report): "I reported to you last year that an aggregate reinsurance had been placed protecting the Whole Account of 1980 and all previous years. This reinsurance was originally taken out to protect the Syndicate from latent disease type claims, principally asbestos related. During 1984/1985 it has become apparent that many other substances, previously considered harmless, are likely to give rise to unexpected claims ... I am pleased to report that currently the amount of indemnity we have available remains adequate for all report and suspected claims."	
06/06/85	Syndicate 660 (1984 Report): "I cannot place too much emphasis on this syndicate's position regarding old years, with particular reference to the latent diseases (asbestosis etc.) and environmental pollution including the enormous cost of cleaning the thousands of toxic waste sites. These and other long-term bodily injury claims such as Agent Orange and D.E.S. from the old years are plaguing the market to produce huge underwriting losses now. This syndicate is protected by an unlimited reinsurance excess of a retention which is reserved in full. The reinsurance protects 1978 and all previous years of account. As the syndicate has not written casualty for many years, its exposure to similar losses in 1979 and subsequent years is virtually non-existent."	
06/06/85	Syndicates 735/178/473 (1984 Report): "The fund established to close the 1981 and earlier years of Account, and the reinsurance premium to close the 1982 Account are considered sufficient to meet the liabilities of the Syndicate, bearing in mind the continuing deterioration on claims in respect of Asbestosis and other latent diseases as well as pollution losses."	
07/06/85	Syndicate 362 (1984 Report): "As regard to losses, we have had to make substantial increases in our reserves against Asbestosis and other latent disease claims, as well as increase our reserves on the Shell Oil pollution case."	
10/06/85	Syndicate 421 (1984 Report): "During the latter part of 1984 these risks showed a very substantial deterioration, due principally to major increases in reserves for asbestos-related diseases, together with brand new advices of losses emanating from seepage and pollution dating back to the 1950's and beyond. The bulk of these advices only became known to underwriters during the course of the 4th quarter of 1984, so that it was only subsequent to this that we became aware of the amounts involved. The deterioration was of such a magnitude as completely to exhaust, on an incurred basis, the reinsurance protection in force."	

10/06/85	Syndicate 112/114/316 (1984 Report): "Asbestosis and Pollution Claims As a Syndicate, I do not believe we have other than a fairly small involvement in this problem. All the same, it did prove necessary for us to strengthen our reserves on closing of the 1982 account to take care of these claims. These losses, in our case, are caused by small lines on some Non-Marine liabilities written in the 1950s and 1960s. This strengthening of reserves came straight off the balance of the 1982 account, and without this the 1982 profit would have been that much larger."	
11/06/85	Syndicate 319 (1984 Report): "We regret to report a worsening of settlements on the years 1978 to 1980 in respect of asbestosis pollution and general US casualty claims. This unexpected increase in settled and outstanding claims has been caused by considerable deterioration in a Syndicate run-off written in 1978. Because of the difficulty surrounding the estimating of reserves from these long- tail claims the 1982 year of account will be left open, with an audit deficit of 239%..." "...The claims on asbestosis and environmental pollution will be seen to be one of the largest disasters to hit Lloyd's and the insurance market..."	
14/06/85	Syndicate 90 (1984 Report): Refers to "...The unacceptable loss on the 1982 account and the decision not to reinsure this account into the open years ..." Increase in losses incurred (e.g. $17m in December 84), of which 97% was Asbestosis and Pollution. "...we currently have almost 900 separate entries for Asbestosis losses which have all been reviewed for year-end purposes..."	
14/06/85	Syndicate 275 (1984 Report): "The decision last year not to close the 1981 underwriting account because of the number of outstanding latent disease claims remains justified. However the cash call we asked for last year appears at this moment to be an appropriate sum in as much as whilst the syndicate has received a number of new advices of losses, a number of outstanding claims have been settled and the overall situation, taking into account syndicate investment income and capital appreciation on the retained fund, shows a small improvement at December 1984. It is my intention to continue to hold this year of account open."	

14/06/85	Syndicate 334 (1984 Report): "We have experienced a considerable increase in notified claims attaching to 1975 and previous year of account arising out of latent disease and pollution liabilities. This strain is catered for by the unlimited reinsurances which protect these years."	
14/06/85	Syndicate 707 (1984 Report): "1982 settled 3.5 points better than 1981 but in spite of that our overall underwriting result was worse. This being due to further enhancement of our asbestosis and environmental pollution reserves .... I have had to make a difficult decision in connection with these very old liability claims, and I came to the conclusion that the fairest way to resolve the problem was to keep a section of the 1982 Account open, namely the Liability and Incidental Non-Marine. The advices we have received are making the outcome difficult to accurately predict. I do not want Names to be unduly alarmed by this decision, we do have considerable reserves, but we need time to see how settlements in the American Courts will effect us. It may be a comfort to Names that the one major asbestosis settlement that was achieved last year did not go beyond our estimated position. I mentioned in my last year's report that I would endeavour to seek some relief on those old years. This has not proved possible as I will not purchase protection which I do not consider to be of the highest order."	
19/06/85	Wellington Agreement - signed by 30 firms in US asbestos industry and 16 US insurers, as well as Lloyd's and London Market companies. Set up the Asbestos Claims Facility ("ACF").	
24/06/85	Financial Times (Reuter text line). Deal between US asbestos companies and their insurers to bring more equitable treatment to victims of asbestos-related disease.	
24/06/85	Lloyd's List: Asbestos pact will help cure litigation "epidemic". "Soaring legal fees in asbestos cases - already well past the $5,600,000,000 mark - at last look set to be reined in ... The London insurance market is expected to give formal backing to the establishment of the new Asbestos Claims Facility next month. ... Support by 50 companies and affected interests, including all the Lloyd's syndicates involved, has nonetheless been a greater (and a) giant step forward in dealing with what must be the US's - and the world's - greatest occupational disease compensation problem." "Mr James Ayliffe of Merrett Syndicates, has been nominated London representative, with Mr Keith Rayment of Sturge an alternate. The two men have been leading proponents of the Facility. Mr Robin Jackson, chairman of the Asbestos Working	

	Party set at (up) by the London market said it was clear that London representatives have committed greatly to the success of negotiations."	
24/07/85	Syndicate 493/494 (1984 Report): "As the Non-Marine account is relatively young it is felt that it should not be open to the extreme vagaries that the general market Non-Marine account is suffering from at the moment, so far as Asbestosis and Agent Orange exposures are concerned. Nevertheless, during 1984, the Non-Marine account has experienced an upward trend in settlement and notification of claims on long-tail liability business. I have taken this into account in my assessment of outstanding liabilities but it is not possible to ascertain the extent to which this deterioration will continue or abate".	
19/08/85	Telex from Karen Ruby of Merretts to Attorney H. Re. Year-end reserve report. "Jim [Ayliffe] has reviewed the draft report and has made the following amendments which he would like incorporated in a second draft report to be in London in time for the Asbestos Working Party Meeting on 22 August ... Page 4 para 2 amended to read as follows: "However we must point out that there has been a noticeable increase in the rate at which new suits are being filed which raises the annual rate to 8,500 new cases per year. It is therefore inevitable that an increase in reserves will result but we are hopeful that the facility concept will enable our recommended reserve to be contained at a lower level than would otherwise have been required. For the reasons already stated there are likely to be noticeable variations between different producer insureds. Finally we wish to again emphasise that our recommendations do not make any allowance for IBNR and the market should not lose sight of the fact that new filings are being reported at a rate of 700 cases per month."	
22/08/85	Attorney H to Underwriters at interest, Re: Year-end Reserves on Various Asbestos Accounts: Notes the execution of the Wellington Agreement on 19 June 1985 establishing the asbestos claims facility. "It has yet to be demonstrated that the necessary co-operation will be afforded by the plaintiffs' bar to enable the Facility to achieve its objective of providing a viable cost effective alternative to the tort system." This Facility has made setting of reserves a much more difficult exercise. US attorneys therefore recommend that the market maintain a conservative approach to establishing reserves at the end of the year, adopting an average per claim base of $85,000. "However we must point out that there has been a noticeable increase in the rate at	SI

	which new suits are being filed which raises the annual rate to 8,500 new cases per year ... New filings are being reported at a rate of 700 cases per month ..." The market is aware that the Facility does not address property damage. There are still no appellate court coverage decisions providing guidance on this. (Only a District Court of New Jersey decision on 31 July 1985 - which adopted a Keene type coverage trigger.)	
00/09/85	Association of Lloyd's Members: Lloyd's Syndicate Results for the 1982 Year of Account. In relation to Non-Marine business at Lloyd's generally: "Results are now seen to be deteriorating more quickly than rates are increasing, however, with underwriters becoming unwilling to write such business. Business written at low rates is now requiring massive increases in reserves as latent diseases such as asbestosis begin to affect the market. Another cause of the increased reserves has been the application of the "deep-pocket" principle in the US courts, where ever-higher awards are made and insurers expected to pay the price. It is interesting to note that the level of reserving of syndicates with long experience in the casualty market is at a significantly higher level than some of those that are either new to the class or new to the market. The run-off of earlier years reinsured into the 1982 account has produced a significant deterioration across the market, affecting each syndicate differently. Its effect on an individual syndicate is dependent on its retention levels before reinsurance recoveries are available, the depth of such reinsurance programmes, the purchase of run-off protection and the state of awareness of possible future problems at the time of the last audit".	
00/09/85	Syndicate 954/986 (1984 Report): "During 1984, business written by Syndicate 986 has experienced an upward trend in settlement and notification of claims, particularly in respect of asbestosis, medical malpractice, errors and omissions and other long-tail liability business, including claims at levels where only limited reinsurance protection is now available. The underwriter has taken into account these factors in his assessment of such liabilities. However it is not possible to ascertain the extent to which this deterioration will continue to occur or abate. As a result of these uncertainties all years of account will remain open at 31st December 1984 ".	

05/09/85	Letter from N F Holland to D Evers of David Evers Limited. "Thank you for your letter of 16th August regarding the audit opinion issued in respect of syndicate 317 ... My firm has received a number of enquiries from various agents regarding the issues raised by the audit opinion given in respect of syndicate 317 and although we have heard of several agents wondering why there is a discrepancy in opinion between 317 and syndicate 418/417, your letter is the first occasion in which we have actually been asked to give a formal explanation. As you can imagine, at the time of the audits, this was a matter which concerned us considerably and, indeed, it was a matter that was considered by a group of partners within this firm on account of the significance of the issue for the syndicates themselves and also for Ernst & Whinney. I believe the best explanation can be given by drawing your attention to note 2 to the accounts of syndicate 317 which sets out the 3 key points to which the reinsurance to close is sensitive ... As between syndicate 418/417 and syndicate 317, there is no difference in the question of the problems surrounding the ultimate amount of claims except for one major factor. Syndicate 317 has, in total, almost 60 run-off reinsurance policies whereas syndicate 418/417 is involved in only 12. Inevitably therefore, the impact of the run-off policies is substantially less as a proportion of the total reinsurance to close in respect of 418/417 than in the case of syndicate 317. You must remember that 1982 was the first account on which we were expressing an opinion as to the truth and fairness of its result. Both underwriters wished to close the account and therefore all the relevant factors that could affect that result needed to be considered and depending on the materiality of the variations to the result so would depend whether or not we could conclude that the result was true and fair. As well as the matters described in note 2, there are uncertainties that attach to the run-off of a long-tail account. In the one extreme are the many lines that will increase for all sorts of reasons over time; in the other extreme are the recoveries, savings or withdrawals of claims. As a consequence the result and the potential extremes of the variations to that result needed to be carefully weighed up and a decision reached as to whether or not those variations were within an acceptable range in relation to the result. In summary, we consider that because of these highly subjective and potentially material variations that it was right to issue a different opinion in respect of 317 compared to syndicate 418/417. You may also care to consider the further position in respect of syndicate 421 where we also did not give an unqualified opinion. The circumstances there, albeit on a smaller scale, were between the position of syndicate 317 and syndicate 418/417 ... Could I suggest you join me for lunch one day?"	PA

13/09/85	Letter from AWP to Insurers at interest discussing subscriptions to the Asbestos Claims Facility. "At this stage (it is) difficult to predict impact of the Facility on reserve movements. There has also been an acceleration of new claims filed currently running at 8,500 per year ... realistically the Market must anticipate increases in existing reserves, but it is also likely that we shall see greater variation in reserves movements from one account to another."	SI
27/09/85	Financial Times: (Reuter textline). Mr Robert Day, head of Assured 4, has said that the company is close to settling the claims against it for asbestosis. Assured 4, and other large groups in the building material sector, have agreed a joint deal to speed up settlements and keep legal costs to a minimum. As a result the remaining 3,000 out of 6,000 injury claims are likely to be dealt with quickly. It is hoped that a similar pact can be secured in respect of 87 of the outstanding 90 property claims.	
00/10/85	Lloyds League Tables 1982 Part 2 (October 1985) (produced by Chatset). General Comment: "The market is haunted by its US liability account. Not just asbestosis but other major claims have arisen However, Lloyds increased the reserves for liability business by £342m to £1.86bn, so it is to be hoped that syndicates are now adequately reserved against future losses ... These liability claims spread themselves throughout the different markets from an asbestosis related claim from a ship-repairer insured in the Marine Market to the manufacturers of a light aircraft built twenty years ago." In relation to marine business: "However, the good result for the marine sector of the market was spoilt by the high incidents of claims reported during 1984 on the liability portfolio of the old years. Some of this was marine liability from pollution claims but the bulk of the losses comes from the incidental Non-Marine (INM) account that many marine syndicates have traditionally written, and although it cannot exceed 10% of the gross premium capacity, losses for Asbestosis, Agent Orange, Love Canal, DES and the Shell Oil Pollution from the Rocky Mountains, have forced syndicates to buy extra protection to increase their reserves and spoil an otherwise reasonable year." In relation to Non-Marine business: "To these losses have been added liability claims from old years, but it is not possible to accurately apportion the blame for the appalling bottom line loss in this market."	

00/10/85	E&W Audit Planning memorandum for year ended 31 December 1985. "The main reason for the large loss in 1982 is the Syndicate's exposure to asbestosis in back years for which there is vastly inadequate reinsurance protection. At the same time, prelims have arisen in relation to other "specials" and "run-offs" requiring the creation of additional reserves ... (in the) General Non-Marine Market. However, it is rapidly becoming apparent that the potential claims arising from asbestosis will dwarf any claim in the history of the Non-Marine Market. It is a fact, however, that in the United States to date under half of the money paid out by the industry has ended up in the hands of the injured party; the balance has ended up in the pockets of the lawyers involved. It is to be hoped that the newly formed Asbestosis Facility, which after many years of being discussed has now been established, will enable settlement of claims to be made at a faster rate with a consequent saving of legal expenses. In addition to this considerable problem, the market is also currently dealing with other products - related claims dating back to the Vietnam War and unexpected side effects of certain medicaments. New laws regarding liability following pollution and other forms of environmental impairment could also produce problems for Underwriters as these new laws appear to apply retroactively, thus making it difficult to underwrite against such circumstances. Such subjects require constant reappraisal of the reserves set up in the past to deal with future claims."	PA
11/10/85	International Herald Tribune (Reuter text line). Assured 3B has gone to court in a bid to force cigarette companies to share liability.	
17/10/85	Lloyd's List (Reuter text line). Thirty-two US states and 1,000s of cities and schools have agreed to a plan to settle most of the $80 billion asbestos property damage claims against Assured 1 for as little as US $155 million.	
18/10/85	Memorandum from K E Randall to R A G Jackson, Merrett Robson. Relatively few of the asbestos claims reports have been received and analysed. However, the trends indicated by the early reports (approximately 20% to date) look encouraging and it is to be hoped that the 1985 reserves will be within the IBNR provisions raised last year. However, there is potential for further deterioration on the large numbers of reports not yet seen and the impact could vary quite significantly from syndicate to syndicate.	SS

28/10/85	A Seminar given by Jim Ayliffe and Keith Rayment in Vienna on "Asbestos-related Claims". [NB: This document has a covering memo from JM Dowlen submitting it as a first draft transcript of the seminar (with some light editing and the addition of sub-headings) to CJ Ayliffe and K Rayment for them to change as they wished. The first five out of sixty-seven pages have been corrected.] Jim Ayliffe: "Keith Rayment and I have been intimately involved with the subject of our discussion this morning ....we have been involved in dealing with problems relating to Asbestos claims since the end of the 1970's... Keith and I have participated in the London Asbestos Working Party ... (171) Before I deal with the development of the Products law in the USA, I would like to quote to you the opening paragraph in a publication which was put out in 1983, and an additional publication in 1984, by the Institute of Civil Justice in the USA. The reasons why that body, a totally independent organisation, became involved in the Asbestos problem was the recognition at that time that vast sums of money was [sic] being expended in paying lawyers but..... The Institute did an analysis ... I think the opening statement in that study puts the whole matter into some sort of perspective: "Exposure to Asbestos and consequent litigation involve potentially enormous personal and economic stakes. Approximately 24,000 people have filed Products Liability lawsuits claiming Asbestos-related injury as of March 1983. Many times that number have been exposed to Asbestos." The severity of the Asbestos problem is such that the Chairman of the Asbestos Working Party in London has identified it as the most serious problem ever to be encountered by the insurance industry. From a financial impact point of view there is no question that that overview is perfectly correct. To address this problem we have worked diligently over the past few years to find a way of containing the problem, a way in which we can handle the tort litigation and more particularly, a way in which we can use the available funds in a manner which addresses claims and does not enrich lawyers... (175) In the 1970's, there was a case brought by ... a man called Borrell [sic], who had suffered workplace exposures from the Asbestos products supplied to his firm by a number of Asbestos suppliers... Now that was really the start of our Asbestos problem that we know today... It didn't take long for the Unions to recognise that there was now a way of getting compensation for their members which didn't require them to go through the workman's compensation route and get minimum compensation even if they qualified. ... They started in a small way ... For the past three or four years we have seen those actions running at a level of approximately 500 new lawsuits per month. Over the past year, that rate has increased to approximately 750 new lawsuits per month. We have at the present time no real feeling how long it will be before we have seen a peaking of the legal activity that has been gradually developing, but we now have had filed approximately 45,000 separate actions by individuals. The problem that Asbestos produced from the injury aspect, was obviously the latency period. The time from the first exposure of the individual to an environment that has

Asbestos dust in the air, to the point when the individual can show a physical disability arising from the accumulation of that dust or fibre, can range between 20 and 40 years. ... If we therefore assume say, a 30 year exposure, it is likely to be the end of this century before we see a major fall off in claims being filed in regard to Asbestos exposure. Not all claims arise from individuals exposed in their workplace ... members of families who have been exposed... We also have claims from persons who live near existing plants that use Asbestos ... (180) A Review of the USA Court Decisions on Insurance Policy Coverage ... (183) the decisions on coverage interpretation coming from the US courts have been, from the insurers' point of view, ever increasing and broad in their findings and in the context of the Asbestos problem, I think you have to recognise that nearly every decision that has come down has, to an extent, been insured orientated ... (184) What we were seeking was equity in the way our contracts were interpreted. Unfortunately as is typical in the USA, we have not received equity. We have received punitive treatment and our contracts have been expanded far beyond anything that was ever intended when they were written. So the present situation is that we are now forced to accept that the Keene situation is not an aberration, it is a fact of life with which we have to live ... (186) The Concerns Facing Producers, Plaintiffs, Insurers and Judiciary, Regarding the Asbestos Problem... (187) Asbestos litigation is slowly clogging up the whole operation of justice within the USA... (188) From insurers' point of view, ... The coverage litigation has occupied a tremendous amount of time, effort and expense on the part of the insurance industry. Dare I say, that not only are the producers concerned about their financial ability to respond to Asbestos claims. There are not a few insurers who have equal concerns about their ability to remain financially solvent due to the problems that have been gradually developing in the Asbestos matter. ... Many insurers can address Asbestos providing it is phased out in the manner in which it has its impact on us. None of us could pay the total cost of Asbestos today because we would all be bankrupt.

That was the big fear that we had, that unless as an industry we could find a solution, we had the threat of a solution being imposed on us. (189) That is the background of the problems that all the different parties involved in Asbestos claims were facing ... let me just give you some figures These come again, from the Rand study. The Rand people are an independently financed prestigious body in the USA. They operate under the name of the Institute of Civil Justice... Dealing with the total expenditure, the amount expended overall in a similar time-frame in addressing Asbestos-related matters, was just in excess of $1 billion..."

Keith Rayment: "(190) The Formation of the Asbestos Claims Facility. I would like to take up from about half way through Jim Ayliffe's talk this morning. The Keene decision came down in about October 1981. I think from London's stand point, we saw the writing on the wall that the court's main objective was to maximise insurance coverage for the insured and that whatever we did, the judge would be looking at what was best for the Asbestos producer. We felt that we should probably try to make

contact with the American domestic insurance companies and the Asbestos producers themselves to see if there was a way we could try and resolve our differences without relying upon the American judiciary. In May 1982, there was a Defence Research Institute seminar on Asbestos in Florida, which a number of people from London attended, including Jim Ayliffe and myself... We left that meeting in May 1982, somewhat despondent... But in October 1982, Jim Ayliffe and myself were invited by the major direct insurers in America to join a committee of insurers, at that stage, to endeavour to find alternative solutions to the Asbestos problem. (195) How The Facility Intends to Resolve the Problem Issues...

(201) Asbestos Property Damage Claims. Unfortunately, this is only half the story. Perhaps a greater liability, certainly more difficult to evaluate at this stage, is Asbestos property damage. Reports say that it could be much larger than the bodily injury claims that we are seeing to date. ... We fear that ultimately there may be claims from utility companies, even house owners which have got insulation in their roofs or wherever. Certain examinations have been done just of small areas of private house owners and over 60% have got Asbestos contained within their houses. The claims alone against Assured 1 (who currently still reside in Chapter 11 of the bankruptcy laws) exceed $50 billion. ... (203) The Assured 1 Bankruptcy ... The unique thing about Assured 1's bankruptcy was that there was another creditor group, the Future Plaintiffs Group. This body represented those out there who have a cause of action in the future but at the moment don't know this. So there is a committee set up to protect those claimants as well and the court employed Leon Silvermann to act as their representative..." (208)

Jim Ayliffe: "Asbestos-Related Claims: Reinsurance Issues. (213) Reserving for Asbestos Insurance and Reinsurance Claims. ... That was the professional reinsurers' approach so far as the USA is concerned. It has, I think, produced a degree of comfort to direct writers, it has brought out of the discussion a meaningful relationship on all the parties knowing exactly where they stand. There are a number of spin-off benefits that actually evolve out of this, which if anything, benefit the reinsurance industry more than most. One is the area of reserving. The Facility as it is now becoming a much stronger voice (it's one voice speaking for 55% of all defendants in the Asbestos scene), can now produce much more meaningful statistics that all of us badly need, to get a handle as to where we stand in regard to our potential exposures, whether we are direct writers, reinsurers or involved on retrocessions... (220) ... All the problems are capable of discussion, but they need to be aired, to be considered, on a commercially sensible basis so that we all know exactly where we stand. We think the Facility has contributed to this because we now have developing a solution to the handling of the original problem. We have in formation the ability to contain the extreme wastage of money on legal costs that we had in the past, the money can now go towards directly settling claims, which is where it should be going. There is a clearer line coming through of where the liability of original insurers will attach under their policies. We

are able to give a clearer indication as reinsurers how we will respond to that liability and people can now get on with their business of dealing with the Asbestos problem and trying to chart what we do in the future as the problem develops. The big difficulty is none of us know how long it will be before evidence comes through that the Asbestos issue appears to be fully under control. ... The uncertainty is how long it will be with us, and the hope that many of us can continue to withstand its impact over the years to come."

30/10/85	Attorney H to Underwriters at interest Re: Assured 2. The average per claim base for Bodily Injury has been established at $85,000. It is estimated that Facility members will be obliged for 55% with defence expenses estimated at 35% of indemnity limit. The property damage issues are no closer to resolution than they were at year end 1984. Property damage is not yet addressed by the Facility Agreement. Notes that there is to date only one case addressing the trigger of coverage for property damage issues, that of Lac D'Amiante du Quebec v American Home Insurance Company decided in District Court of New Jersey. Judge held that a "triple trigger" coverage spread applied to both personal injury and property damage claims. The case is presently on appeal and "it is therefore of no precedential value at the present time". The setting of reserves for property damage is "most difficult". The attorneys continue to recommend $200,000 per policy year, although this is precautionary only and underwriters should establish a reserve which they consider appropriate. In addition, recommending a servicing/expense reserve of $125,000 per policy year.	SI
00/12/85	Ernst & Whinney report to the Assignment Partner. Asbestos: These provisions are difficult to assess because there are known uncertainties with respect to the Fireman's Fund (manifestation or exposure), and also with regard to potential new advices for property damage claims. Last year saw a marked deterioration in the number of asbestos claims; the number of sufferers making claims having risen from 500 to 700 per month. This year the number of claims per month has risen to 1,000 per month. The Claims Facility which was being promoted last year has now become effective and it is hoped that it will eventually result in a reduction in costs per claim, although these effects will not be seen for the first year. While some reserves may appear ultra-conservative, it must be considered against potential under-reserving in the case of asbestos losses. Run-off contracts: Last year, the run-off contracts written into the 1981 and 82 years of account saw marked deterioration. Additional information was sought from reinsureds, to provide the latest information, particularly in respect of various latent disease claims, including asbestos, and also in respect of Shell and the actuary then projected what he felt the IBNR factor should be, based on the factors used for 799. The IBNR provision determined by him was 75% of the then outstanding losses. However, in view of the poor reinsurance protection enjoyed by Syndicate 417, by comparison with 799, together with the experience of 417 itself and knowledge of some of the underlying insureds, such an IBNR provision appeared inadequate. Thus the IBNR provision became 100% of the outstandings. Syndicate 418: ... In respect of the run-off contracts the policy adopted has followed Syndicate 417, which is written in greater detail below. A special loading of $4 million was provided at 31.12.84, which brought the overall loading on noted outstanding claims to £15.3 million or 90% of noted outstandings. As with Syndicate 417, this is considered prudent in view of the possible inadequacy of the reinsurance programme of the underlying insureds. The	PA

	run-off contracts, written by Syndicate 418 have proved to be particularly exposed to latent disease losses and it has been recognised that the reserves provided to date may prove to be inadequate in the long term.	
09/12/85	Financial Times. Break through in Assured 1 asbestos claim wrangle. Although Mr. Silverman has not released details of the settlement plan, it is believed to incorporate elements of previous proposals aimed at providing $52.5 billion for present and future asbestos victims. A further $125,000,000 or more is likely to be allocated for property damage caused to organisations -particularly schools - which have had to remove asbestos insulation from their buildings.	
07/02/86	Travelers 1985 Annual Report. "In relation to all hazardous and toxic substance claims The Travelers carries on a continuing review of its overall position ... The latest review confirms that adequate provision has been made for obligations now foreseen under these prior insurance contracts. It is management's opinion that the possibility that the ultimate resolution of all claims arising from hazardous and toxic substances will have any material adverse affect on the consolidated financial position of The Travelers is remote."	
18/02/86	Memorandum from Mr Bolger to Insurance Partners referring to a recent meeting between Lloyd's and Recognised Auditors. In the Non-Marine Market, the Asbestos Claims Facility which was signed in June 1985 by 34 producers will lead to a revision in reserves at 31 December 1985. There are at present about 46,000 claims in the Market. Claims are being notified at the rate of about 1,000 per month but now appear to be "cheaper". On the expense costs as a result of the facility, defence costs have fallen to about 20-25% but the facility is making a charge of about 10% which is to be borne in the direct market only. The Assured 1 money invested in New York includes a London Market share of about $110m. This money is soon to be dispersed and this will represent a large cash outflow in 1986 on both direct claims and retrocessions. It was reported that asbestosis will also extend into property damage claims.	PA
17/04/86	Lloyd's List - Asbestos Claims Facility 'to save insurers billions'. The Asbestos Claims Facility which began operating on Jan 1, 1986 will save hundreds of millions, perhaps billions, of otherwise wasted dollars for insurers and reinsurers, Professor Harry Wellington, of Yale University, told the conference. In settlements made so far without the facility, for every dollar a plaintiff kept it cost the insurers $2.71, as legal costs were enormous.	

16/04/86 - 18/04/86	Presentation by Robin Jackson to the European Product Liability Congress of the Cologne Re: "Asbestos-the London Response." "As is clearly indicated from the enclosures, the London Market as long ago as 1980 recognised the potential problems that could arise for the reinsurance industry out of asbestos related bodily injury claims. The unique position occupied by London in the international reinsurance community has tended to emphasise our predominant involvement for many decades, and it was our perception that in the interests of the reinsurance community it was necessary for London to be seen to be providing leadership in addressing the problems that would arise in the context of asbestos related claims."	
20/04/86	Syndicate 47 (1985 Report): "Just to sound a word of caution, although we have taken appropriate action to protect our past years by reinsurance, we will not be completely insulated from claims relating to environmental pollution. Much the same can be said about Asbestosis; indeed some reinsurers are taking the stand that certain costs associated with procedures to dispose of these claims are not recoverable from reinsurers. We do not hold this view but no doubt some years will pass before this point is settled."	
30/04/86	Syndicate 584 (1985 Report): "As with many other syndicates of our age, we have an involvement with claims arising from latent disease and pollution type losses which at this time appear to be containable, especially taking into account the considerably smaller involvement that Syndicate 584 has compared with many other Lloyd's syndicates. Furthermore, we take comfort from the fact that we have an unlimited reinsurance of years 1961 and prior and a limited reinsurance of years 1962 to 1975 inclusive."	
00/05/86	Syndicates 927/935 (1985 Report): "The run-off of Syndicate 60, contained within 935, continues during 1985 at a very low and acceptable level However, against that improvement we were advised by our lawyers in the United States of further increases in reserves required for Asbestosis and DES drug claims We have every reason to believe that the Asbestos facility that has been set up by Insurers involved on both sides of the Atlantic in an attempt to expedite the settlement of claims and to restrict the associated legal costs, will, once it begins to operate, save the industry substantial sums."	
00/05/86	Syndicate 975 (1985 Report): "Unfortunately, our back year situation has maintained the trend which has been a feature of our reports for the past few years and has once again produced a further deterioration although this worsening has been brought about, in the main, by the need to increase existing provisions rather than by a surge of new claims."	

00/05/86	Syndicate 65/69 (1985 Report): " The package type of general liability policy, however, which often includes a degree of Non-Marine exposure, is now being written on a "claims made" form. The effect of this is in practice is that such claims as industrial disease, i.e. Asbestosis, Agent Orange, DES etc. will in future be paid by the policy in force when the claim is made instead of the policy in force when the claimant was exposed to the hazard, maybe 30 years prior to the manifestation of the disease."	
00/05/86	Syndicate 179 (1985 Report): "As in previous years it has been necessary to increase provisions to cover the potential worsening of the Asbestosis type losses and, stemming from this, our need to increase yet again our provisions to cover losses that may well result from the overall Lloyd's results. These losses arise from the protection given of some Names by way of Personal Stop Loss Policies, a class of business which is no longer written by your syndicate in the same way as hitherto. We do retain however, a small interest in the reinsurance of other Lloyd's underwriters who continue to write the original business at greatly improved terms. It is very difficult to be exact about our commitment arising from the market 1983 Account results but we consider that the increased provision made again this year is both prudent and necessary."	
00/05/86	Syndicate 782 (1985 Report): "The reinsurance to close the 1982 account and previous proved to be more than adequate; it is also nice to report that there has not been any dramatic worsening in the market's major problem areas, such as asbestosis, pollution and DES as far as the Syndicate is concerned".	
02/05/86	Syndicates 283/284 (1985 Report): "The extent of the asbestos and latent diseases exposures of the Syndicate now appears to be better known to us - we have not had a significant increase in new claims advices this year, but we are continuing to exercise caution in our approach to the toxic waste and similar environmental type claims where we have received substantial new advices of all years' involvements."	

08/05/86	Syndicate 570/347 (1985 Report): "Two subjects deserve particular comment. First, the old years' deterioration. Our 1970 and all prior years reinsured in Lloyd's are a clear example of the underlying problems experienced by any insurer active in the US liability market in those years. The deterioration has caused headline hogging news when many American domestic insurers have been forced to top up their reserves to cope, and then very often on a discounted basis. It is of fundamental importance that clear action is taken now to respond in a responsible way to valid pollution claims but ensuring that the vast legal costs incurred with asbestosis are not repeated again on this problem."	
13/05/86	Syndicate 275 (1985 Report): "The syndicate has continued to receive new advices of latent disease type losses but there has been an improvement in the general marine account. There is still considerable uncertainty surrounding latent disease type losses and thus we must continue to leave the 1981 account open."	
15/05/86	Syndicate 345 (1985 Report): "... an increase in reserves for Latent Disease risks following upon additional and revised advices which have been received. Latent disease and pollution claims arise from risks such as ship building and ship repairing policies and from the incidental non-marine part of the whole portfolio ... There are still fresh Latent Disease advices being notified to the market and the eventual pollution loss advices ... remain as the unknown factor."	
16/05/86	Syndicate 582 (1985 Report): " the calendar year 1985 demonstrated a serious acceleration in claims development virtually across the board of our liability book on all years back to 1980, but particularly on 1981, 1982 and 1983 It is our view that the current crisis in America where the market for Liability Insurance has collapsed has occurred as the result of persistent underpricing of premium rates during a period of years when it is now clear the American legal system seems to have run amok I decided at the beginning of April this year that the uncertainties associated with writing a liability account, when we are not a specialist in the area, are now such that we should to all intents and purposes entirely withdraw from the class."	
22/05/86	Syndicate 367 (1985 Report): "Unfortunately, yet again the back years have had an adverse effect on our result ...We are plagued by the likes of Asbestosis, DES, Agent Orange, Environmental Pollution and other such nasty sounding horrors which produce claims going back forty years or so in our Incidental Non-Marine and old Non-Marine syndicates. Although Asbestosis shows that it may be beginning to peak as the deterioration has not been so bad as in the last two years, it still poses a problem. Because of this I have	

	taken out a further long term excess of loss reinsurance policy or "Time and Distance" reinsurance policy."	
23/05/86	Syndicate 896 (1985 Report): "The amount of the loss is, I regret, greater than anticipated ... The reason for this is that in the light of recent US Court awards and after detailed consideration I have deemed it prudent and necessary to make additional reserves against our small book of US Casualty business written in past years ... As is well known, during the last few years the market has been plagued with 'latent disease' type claims and more recently also environmental pollution problems ... Many of the claims have only been advised in the most general terms and when fixing a reserve we have had no alternative but to take what is in our opinion a very cautious view."	
26/05/86	Syndicates 604/605 (1985 Report): "There has been a further deterioration on latent claims in the Closed Year Account which has been well contained within the Whole Account Reinsurance purchased to protect the 1982 Account and all prior years."	
28/05/86	Syndicate 735/178/473 (1985 Report): "Fortunately, claims for Asbestosis and other latent diseases, as well as pollution losses, represent a very small proportion of our outstanding claims except in respect of Non-Marine Syndicate 964, a run-off of part of which was taken on with effect from 1 January 1967. However, this run-off was, in turn, reinsured 100% with effect from 1 January 1977 with other Syndicates at Lloyd's..."	
29/05/86	Syndicate 319 (1985 Report): "The old years are developing in much the way we anticipated ... However, there is still uncertainty over the potential development of these years and we intend to leave the 1982 year open until the clearer picture develops." "Our 1982 year and prior are fairly typical of what is happening throughout Lloyd's and the insurance market in general regarding asbestosis and U.S. liability claims ... "	

30/05/86	Letter from RAG Jackson, Chairman of the Asbestos Working Party to Insurers at interest. "I forwarded to you under cover of my letter of 7 May a copy of the presentation made on behalf of the London Market to the European Product Liability Congress in Berlin on 16 April 1986 ... It is almost a year since the inauguration of the Facility and, bearing in mind the problems that inevitably arise in setting up such a major undertaking, remarkable progress has been made in addressing asbestos claims ... It is too early at this stage to project the reserve movement the London Market is likely to see at the coming year-end, however there are now in excess of 40,000 claims outstanding, and the rate of new suits filed over the past year has reached the level of 1,000 filings per month. There has in addition been an increase in the average per case settlement level achieved by the facility, which is in part affected by the recent resolution of a major class action filed in Texas. If no relief develops in these trends, it is likely that reserves will see a further deterioration, particularly when coupled with the growing asbestos property damage problem, which will impact on I.B.N.R. provisions already established."	SI
30/05/86	Syndicate 219 (1985 Report): "At the end of this report Members will find an addendum giving the background to the Asbestosis and Pollution problems. This has been done to save undue repetition in this report each year, to ensure that new Names are fully briefed. ... Asbestosis ... has posed one of the most serious problems ever encountered by the World Insurance and Reinsurance Industry..."	
30/05/86	Syndicate 108/768 (1985 Report): " our provisions, made at the close of the 1982 accounts, appear to have been generally adequate despite some significant movement on Asbestosis and other latent disease claims and overall we have had to strengthen these reserves by some £204,000 or less than 1% of the gross reserves created as at 31.12.1984. Our aggregate reserves for Asbestosis, Agent Orange and Pollution claims amount at 31.12.1985 to $14,015,045 compared with $12,292,256 at 31.12.1984. We have settled $470,616 during the year and it is gratifying to see that these movements have been contained."	
30/05/86	Syndicate 537 (1985 Report): "Outstanding liability is principally for Asbestos losses for which reserves have been made in prior years. Taking into account paid losses during 1985 and losses outstanding at the end of 1985, the reserves provided at the end of the previous year were adequate".	

30/05/86	Syndicate 557 (1985 Report): "We have carefully reviewed the old years and are satisfied that the reserves are adequate to take care of all reasonable expectations for future liabilities. The 1983 year is notable for its large outstandings, to which we have added an amount for incurred but not reported losses. After taking credit for reinsurances the final percentage carried forward was 26.5%. This figure is in excess of Lloyd's audit minimum but we consider this prudent under the circumstances".	
31/05/86	Syndicate 221/776 (1985 Report): "The additional loss on the 1981 and previous account has been caused by having to increase reserves for latent disease and environmental pollution loss advices. These additional losses are mostly late advices in reinsurance of Lloyd's Syndicates which have been received during 1985. the 1981 and previous account will continue to be left open."	
31/05/86	Syndicate 764/763/145/196 (1985 Report): " We are confident that the position regarding asbestosis and environmental damage claims will have been sufficiently clarified to enable us to make a sound judgement on the reserves required when the 1986 account is closed"	
31/05/86	Syndicate 469 (1985 Report): "It is impossible to predict the final outcome of this account, but the "Facility" established to settle asbestosis claims will greatly reduce legal costs and new claims advices are more likely to attach to the late sixties and seventies."	
00/06/86	E&W INSIGHT No. 32. (492) Audit brief - Lloyd's syndicates. "In March 1986 the Auditing Practices Committee of the Consultative Committee of Accountancy Bodies issued an audit brief dealing with Lloyd's syndicates ... The issue of this brief, however, has not given rise to any changes in the Ernst & Whinney audit approach for Lloyd's syndicates ... The Asbestosis Facility: This facility was set up following the finalisation of an agreement on asbestos-related claims (dated 19 June 1985) in an attempt both to speed up the payment of compensation to claimants and to reduce legal costs associated with such claims. ... When a claim is settled, it is allocated to those participating in the facility using a complex formula; this recognises the involvement in each policy year to which the settled claim is deemed to relate. There is no distinction as to a definitive producer to whom the claim relates as this is almost impossible to determine accurately, because the claimant may have been exposed to asbestos products from different producers over the relevant time period. Obviously such a basis does mean that certain	PA

	producers and their insurers are going to contribute towards claims which do not relate to them; however, it must be borne in mind that they will not be bearing the full cost of a claim which does relate to them because of the sharing mechanism ... . It is understood that, by about the end of March 1986 some 8,000 claims had been cleared from an initial notification to the facility of about 52,000 claims."	
02/06/86	Syndicate 421 (1985 Report): "... during the latter half of 1985 ... there was a worsening in the results of some contracts primarily due to increases in reserves for asbestos, seepage and pollution and other environmentally related losses dating back many years."	
02/06/86	Syndicates 418/422/417 (1985 Report): "As you are already aware, this syndicate has had to bear a heavy cost in respect of claims for asbestos-related and similar injuries and there was further deterioration on the old years when we came to review the provisions at the close of the 1983 account ... We have undertaken a major review of the reserves created for prior years and have strengthened them accordingly, as is reflected in the increase in the reinsurance to close the 1983 account."	
02/06/86	Syndicate 860 (1985 Report): "The most significant development during the last year has been the establishment of the Asbestosis Claims Facility. This facility will enable meritorious claimants to receive compensation in a fair, timely and consistent manner and will, with time, reduce the horrendous legal costs that the insurance industry are currently incurring for this type of loss ... This year end, I am pleased to report that reserves previously established for this type of loss have provided to be sufficient and am confident that reinsurances purchases to protect the Syndicate against any further deterioration in reserves will prove to be adequate."	
04/06/86	Syndicate 56 (1985 Report): "Calculation of the proper reserve for the liability account on old years has become increasingly difficult because of the size of the awards being given in American courts on risks written forty or fifty years ago. Liability has deliberately never amounted to more than 10 or 15 per cent of our account, but the overall reserve has nevertheless had to make an allowance for some forty years of business."	

04/06/86	Syndicate 601 (1985 Report): " Cover in many cases is being restricted and policies are being switched to "claims made" rather than "losses occurring". The main result of this change should be to prevent a recurrence of the flood of "health related" and similar claims going back decades, which are currently causing so many reserving problems for underwriters."	
05/06/86	Syndicate 660 (1985 Report): "I cannot place too much emphasis on this syndicate's position regarding old years, with particular reference to the latent diseases (asbestosis etc.) and environmental pollution including the enormous cost of cleaning the thousands of toxic waste sites. The syndicate is protected by an unlimited reinsurance excess of a retention which is reserved in full. The reinsurance protects 1978 and all previous years of account. As the syndicate has not written casualty as such for many years, its exposure to similar losses in 1979 and subsequent years is very small."	
06/06/86	Syndicate 362 (1985 Report): "Firstly, the 1978 Account and prior years show a further deterioration due largely to continuing increases in latent disease notification. These years are protected by Stop Loss reinsurance and thus deterioration does not therefore result in a loss to Names. Secondly, the 1979 to 1982 Accounts show a faster rate of payment than we would expect. After thorough investigation of the claims payments we have reached the conclusion that this is a the result of a small number of unusually large payments, and that it does not represent a change in the underlying trend ... The Syndicate has now come through three years when the pure underwriting results have been poor. In addition, we have set up reserves in excess of $40,000,000 for asbestosis and other latent disease claims."	
09/06/86	Syndicate 701 (1985 Report): "The liability of the Syndicate to asbestos-related claims and claims from professional indemnity risks continue to be the major areas of uncertainty for which substantial reserves have been established."	
09/06/86	Syndicate 992 (1985 Report): "The account itself continues to deteriorate largely due to asbestos and industrial deafness claims and because of the continuing new advices to the Syndicate involving this type of loss, I have determined to increase the Syndicate's level of reserving."	

11/06/86	Syndicate 329 (1985 Report): Reported that able to close 1982 year into 1984 year (due to arbitration on shipping loss) ... "This is in spite of a worsening in the potential loss position on the account written prior to 1968, due to revised settlement compromises suggested by the "Asbestos Facility", which has been set up jointly by Insurers and producers of Asbestos materials in order to reduce the litigation costs and to accelerate the settlement of genuine claims."	
13/06/86	Syndicate 231 (1985 Report): "In the case of asbestosis and environmental claims it may be very many years after the expiry of the policy that the claim is made. Obviously, this makes quantifying and reserving of claims extremely difficult. Plainly, the hostile climate towards insurers in courts in some parts of the world, coupled with the bizarre philosophy of using insurance coverage as an additional social welfare benefit, has necessitated a radical reassessment of wordings and policy forms to be used for third party and general liability insurance."	
13/06/86	Syndicate 932/989 (1985 Report): "The pure 1983 account has produced a small profit, but due to an increase in claims paid on the back years and additional reserves required for asbestos, latent disease claims and environmental pollution, there is an overall underwriting loss of £9,190,334."	
13/06/86	Syndicate 602 (1985 Report): "It has been reported to you that we are pursuing an underwriting policy which would reduce the amount of long tail business accepted by the Syndicate. It is a source of concern to us that the reinsurance to close the 1983 year of account proved to be inadequate largely due to an unforeseen deterioration of the US non-marine long tail account."	
26/06/86	Syndicate 895 (1985 Report): "There has been a deterioration of £412,000 during 1985 in the estimated result of the 1980 account, into which the 1979 and all earlier underwriting accounts were closed by reinsurance at 31 December 1982. Of the remaining estimated liabilities of this account the majority relate to latent disease claims arising from asbestosis and DES and to environmental pollution claims. The syndicate is participating in market-wide arrangements being made in an effort to control the costs of administering and settling claims of this nature."	

18/07/86	Syndicate 540/174/542 (1985 Report): "Prior to 1983, some North American casualty business was written into the INM (Incidental Non-Marine] Syndicates. During 1985, additional claims (including some for Asbestosis) have been settled and further outstanding liabilities notified on this account. I have therefore added an additional £5.5 million to the Account Retained in the 1983 account. The consequential effect of this extra retention has been abated by the purchase of an aggregate Excess of Loss reinsurance cover, under which a maximum of US$16.3 million is recoverable in or before 1993. The maximum account recoverable has been recognised in determining the 1983 account. This arrangement reinforces the substantial retention which was created for the 1982 and prior years on the closure of the 1982 account last year, and should enable us to cope with future claims arising from this North American Casualty business. The writing of this class of business was discontinued during 1982, and I have no present intention of re-entering this market."	
19/07/86	Minutes of an AWP meeting. C J Ayliffe reported on the recent annual meeting of the Asbestos Claims Facility in Princeton on 3 July. "At present there were 40,700 outstanding [Facility] cases. 4,050 new cases had been notified to the Facility during the months of January to April. This was continuing the 1,000 new cases a month rate which had been experienced at the commencement of Facility operations. This was unexpected. It had been felt that notifications of new cases would fall off once the facility was established." The average settlement figure was $67,000 per claim. "This was considered to be high ... It was felt that this average figure would fall."	AWP
30/07/86	New York Toxic Torts (Statute of Limitations) Act. "S4. every action for personal injury, injury to property or death caused by the latent effects of exposure to asbestos, which is barred as of the effective date of this Act is hereby revived and an action thereon may be commenced provided such action is commenced within one year of the effective date of this Act."	

14/08/86	Letter from R A G Jackson to members of the Asbestos Working Party enclosing a draft Attorney H Report. The draft report discusses the basis of calculating reserves for the individual accounts in the Asbestos Claims Facility. Reporting on the meeting (week of 28 July 1986) with Attorney G and representatives of the AWP, to discuss latest settlement data. It is important to note the wide variations in settlement levels for different physical conditions as between different states ... a realistic average per claim indemnity cost within the facility would be slightly in excess of $52,000 ... The average indemnity settlement level achieved by the Facility to date is slightly in excess of $58,000 per claim. Therefore recommend reserves of $55,000 per claim, plus 15% for defence costs. Reserve projections are based on the most up-to-date loss information available but no provision has been made in the calculations to provide for future deterioration. The rate at which new law suits were filed has steadily increased to an average filing rate of 900 new cases per month during the course of the current year; well in excess of 40,000 outstanding claims have yet to be addressed. The continuing upsurge of claims is of concern although there is some evidence to indicate that more current filings relate to less serious disabilities. Further difficulty caused by a recent New York amendment allowing formerly time barred claimants a 12 month period of extension. Difficult to foresee how much activity will result.	AWP
02/09/86	Letter from R A G Jackson, Chairman of the Asbestos Working Party to C S Restall, Guardian Royal Exchange. "The report which you have been receiving outlines the difficulties faced by our US representatives over a year ago ... quite independent of inflation factors, it was decided to adopt a $85,000 base reserve in the light of our general experience. It was perhaps coincidental that had one applied an annual inflation factor of 10% to the average cost reflected by the Rand Study in 1982, the present day figure would then be approximately $80,000. Nevertheless, it did afford us some additional support for the conclusion that we reached, particularly with the uncertainties that then existed. As is indicated in Attorney H's report, it had formerly been the practice to assess reserves based upon the historical experience of each separate defendant insured, and in those times a loading of approximately 20% was factored into the calculation. Bearing in mind that with the development of the Facility, claims for some 34 asbestos producers were all handled by one entity, and that economies were anticipated, the loading was dropped as part of the consideration for year end 1985. ... as in the past many imponderables continue to exist in projecting reserves for claims of this nature, the most significant being whether there is now developing a change in the severity levels in more recent filings. There will shortly be available to the Market the latest Attorney H report outlining the developments during the past year and the changes that are now indicated for forthcoming reserve projections. In summary,	AWP

	indemnity per case reserves will be increased and defence cost-loading will come down, with the net result that little change is likely upon total per case reserves. However, due to the substantial volume of new filings, there will inevitably be some major reserve increases, recommended for this year end. ... The settling of asbestos reserves is certainly not an exact science and whilst our attorneys endeavour to reassess the various considerations that arise at yearly intervals, the Working Party has always emphasised to the Market the need to give specific regard to IBNR loadings to reserve recommendations."	
03/09/86	Attorney H to Underwriters at Interest Re: Assured 3A/Assured 3B. Assured 3B has not yet applied to join the ACF, accordingly reserves still calculated on the exposure and manifestation concepts. "We continue to use a per claim indemnity figure of $6,500 and a per claim expense figure of $6,000. In view of the general overall increase in property damage litigation and in view of the fact that certain of the target defendants have been found liable for substantial damages, we are recommending that Underwriters establish a reserve of $200,000 per year where policies are not otherwise exhausted by bodily injury claims."	SI
14/09/86	Attorney G to Interested Insurers Re: Assured 4. This Assured is a subscriber to the ACF and so reserves are determined by the Facility Agreement. In relation to property damage, however, rather than precautionary reserves, the attorneys are now recommending substantial indemnity and costs of defence reserves for claims against the Assured, which continues to be a principal defendant in the increasing asbestos related property damage litigation.	SI
19/01/87	Ernst & Whinney meeting designed for all UK Partners, Managers and Assignment Leaders with Insurance Clients. Chairman, Nigel Holland. Agenda: "the market" (John Philpott); asbestosis and other latent diseases (Stephen Hill).	PA
04/02/87	Recognised Auditors meeting held at Lloyd's. Notes dated 17 February 1987 circulated from M A Bolger to Ernst & Whinney Insurance Partners and Managers. New asbestosis cases being advised at a rate of 1,500 per month, higher than previously. The ACF is running which means that expenses are down. There are some reinsurance to close calculation problems which have led to litigation and arbitration. The Assured 1 facility is likely to pay out when the company comes out of Chapter 11 in 1987. However, if an early settlement is not reached, an extra call from syndicates may be necessary. A market letter on this will be circulated in good time. Despite other concerns (eg pollution) the main concern is still asbestos. The hoped for drop in claims in 1986 has not been evident. 900 new cases per month were reported in 1985,	PA

	1,500 new cases in November and December 1986 respectively. The ACF settled claims at a higher rate than was expected. During the course of 1986 the London Market spent approximately $70 million in Facility billings. Emphasised that reserves in underwriters books are well in excess of payments made even on the basis of accelerated claims. The payments are easily contained in the incurred reserves. Known claims will account for an increase of 25-30% in asbestosis reserves at year end (31 December 1986). Much of this increase will come from reinsurance and retrocessional contracts.	
27/02/87	Letter from R A G Jackson, Chairman of AWP, to Insurers at interest. The Facility has expressed concern at the substantial increase in the number of new suits arising from asbestos related causes. "During the course of the first half of 1986 new cases were arising at the rate of approximately 900 per month but this reached 1,500 new cases for both November and December 1986. The reserve projection contained in the year end reports was based on a lower level of claims and if the current level continues during the course of 1987 this will have a material impact upon the reserves in the year end 1987 reports." The tentative goal for 1987 is a budget of $89.75 million although whether this proves attainable must depend on the future litigation activity. On the favourable side, Assured 3B has entered the Facility. The experience of the Facility will be a major consideration when the AWP comes to address the setting of reserves for the 1987 year end. "The main area of concern is the substantial increase that has developed in new filings which are clearly arising as a result of an all out effort by the plaintiffs' bar. ...the problems arising out of asbestos related claims continue to become more serious with the passage of time. Indeed many producers are now being forced to recognise the present trends are such that they must now contemplate that there will be a future point in time at which they exhaust all insurance coverage."	SI
27/04/87	Syndicates 448/50 (1986 Report): "Generally, all parts of the Marine Account settled within our reserved allowance[but] Even in the Marine Account, pollution and asbestosis remain the two threats which are very difficult to gauge." "Syndicate 448 was one of several syndicates whose 1983 Account Reinsurance to close was scrutinised by the Inland Revenue and, though this was not followed through, their estimate of what they termed out "over funding" was quite frightening. I would have considered it totally irresponsible to reduce the carry forward to the figures they suggested."	
29/04/87	Syndicate 584 (1987 Report): "Much has been written about claims arising in North America from asbestosis and environmental pollution but, in brief, this is still very much a growing concern.	

	Although our syndicate's involvement in US liability business over the years has been comparatively modest, the effect of these issues upon us is still material. We have, therefore, felt it necessary to increase our provisions at 31 December 1987 for latent disease and pollution - related claims ..."	
30/04/87	Syndicate 342 (1986 Report): "Since the beginning of the 1980s, legal decisions taken in the U.S. have produced a tidal wave of claimants alleging exposure to and some form of injury arising from common every day products that are an integral part of modern day life ... asbestos, benzene, ... contraceptives, insecticides, medicaments and solvents ... there are early days with much litigation already ... it is the syndicate's past involvement in these long-tail U.S. contracts which is the root cause of the bulk of the bottom line loss to Names ..."	
30/04/87	Syndicate 367 (1986 Report): "The asbestosis outstanding claims are not increasing as they have in the past few years."	
00/05/87	Syndicate 975 (1986 Report): "The main area of liability in this Account is Asbestosis, which again saw some deterioration during 1986, but the element put aside at 31 December 1985 to meet new advices and potential worsening of known advices, has generally stood up well."	
00/05/87	Syndicate 917 (1986 Report): "From 1968 to 1970 the syndicate was still involved in Casualty underwriting and during the past year has had several new claims advices as well as considerable increases on existing outstanding, again largely due to asbestosis."	
00/05/87	Syndicates 105/106/109 (1986 Report): "Asbestosis. The situation is a little disappointing. I was hoping that the claims advices would be reducing, but I regret we have had further increases ..."	
01/05/87	Syndicate 33 (Managing Agents' 1986 Report): "Perhaps it is our failure of 'P.R.' or education of the relevant people - it is clear that no underwriter with an exposure to asbestosis or environmental pollution claims in his old years has had dinner with Chancellor Lawson, or if he has that he was allowed to speak. If he had, I am sure that we would, on the contrary, have legislation to force us to reserve twice the amount we think necessary in order to maintain the British Insurance Industry's dominance position in the world."	

08/05/87	Syndicate 33 (1986 Report): "So far as 1974 and previous is concerned this area is covered by Robert Hiscox's report to you on the subject of the stop-loss policy that we purchased in respect of these years. However, it is without doubt that the claims will continue to develop at a rapid rate and I quote a letter from the Chairman of the London Asbestos Working Party, pointing out that, "approximately 1,500 new cases for both November and December (1986) ... have been advised and that these will have a 'material impact upon reserves' at the year end 1987. He makes reference to new forms of 'ambulance chasing' for asbestos victims. With tactics ranging from dragnet medical screenings to direct-mail solicitations, they are sweeping new groups of workers and companies into the asbestos fray .... At present I think it is virtually impossible to quantify the final cost many years hence, particularly when environmental pollution is added to the foregoing."	
11/05/87	Syndicate 179 (1986 Report): "The result of the 1984 Account with the benefit of the reinsurance shows your Syndicate's strong position as indicated in the accounts last year. Increased reserves, however, are still necessary for Asbestosis related losses that are retained by the Syndicate in respect of years 1969 onwards and it is difficult to see an end to the deterioration of these old years."	
12/05/87	Syndicate 10 (1986 Report): "As with many of the syndicates which were underwriting in the distant past, we have some involvement in asbestos and environmental pollution losses. Fortunately, our syndicate was small in those times and so had losses of similar proportion. We have established substantial provisions for possible incurred but not yet reported losses in addition to those that are known. This position is reviewed on a regular basis and our current settled losses are a small proportion of the overall total amounts already provided. Our larger exposure in this type of business has arisen from the underwriting back in 1974 of the run-off of three old Lloyd's syndicates. When I became underwriter back in 1982, I reinsured these risks with another Lloyd's syndicate for unlimited coverage. We have already received recoveries from our reinsurer in this account and he has agreed our figures at 31 December 1986."	
13/05/87	Syndicates 317/661 (1986 Report): "Reserves for outstanding losses on the 1982 account have increased during the last year to a greater extent than expected. The increase is largely due to further claims arising from asbestosis and environmental pollution."	

15/05/87	Syndicate 209 (1986 Report): "The syndicate is, I believe, properly and well reserved to cope with claims from latent disease, the environment and most significantly claims of a general marine nature. The syndicate is young enough that disease related or environmental claims should not develop to its detriment and I now look forward to a period of consolidation."	
15/05/87	Syndicate 47 (1986 Report): "The run off of the older years particularly continues to deteriorate further and are affected by increasing asbestosis and environmental claims which were certainly not envisaged when the original business was underwritten."	
15/05/87	Syndicate 65/69 (1986 Report): "The reduced underwriting profit is largely the result of the need to provide a further $2,500,000 in our reinsurance to close to take into account increased outstanding claims for asbestosis and other old industrial disease losses together with a number of newly advised pollution losses."	
19/05/87	Syndicate 345 (1986 Report): "The 1982 Account ... settled during 1986 on an acceptable pattern, although an increase is required in reserves for Latent Disease and pollution risks because of additional and revised advices which have been received ... Latent Disease and pollution advices being notified to the market and the eventual pollution loss advices that the market may have to face, remain as the major unknown factor ... pollution claims may well become a greater market problem than the asbestosis affair."	
21/05/87	Syndicates 418/422/417 (1986 Report): "The result for 1984 is disappointing and is worse than anticipated when we reported a year ago. The loss arises principally through a further deterioration of reserves for pollution and asbestos-related claims in both the direct account and on the so called run-off contracts ... Whilst there has been some acceleration on settlements on asbestos cases, we believe it will be many years before the syndicate will be called upon to settle its obligations for latent disease and environmental claims. We have therefore deemed it appropriate, to purchase more "time and distance" reinsurance which effectively allows the benefit of the future investment earnings relating to those reinsurance premiums to be taken by the 1984 Names ... We have adopted a prudent basis for reserving against future claims for latent disease and pollution: our reserves assume that the older years will see some further deterioration in the years ahead."	
21/05/87	Syndicate 421 (1986 Report): "... a further deterioration in the 1983 open year due, almost entirely, to a worsening of the "run-off" contracts. If any vindication were required for leaving this year open,	

	it is certainly provide by the substantial increases required in our reserves for asbestos and environmentally related losses ..."	
21/05/87	Syndicate 701 (1986 Report): "Previous reserves for ... outstanding [asbestosis] claims have proven to be more than adequate and we have made a reduction in the reserve for those claims in the light of the developing information from the Toplis & Harding Asbestos facility."	
21/05/87	Syndicate 927/935 (1986 Report): "The particular areas when problems have arisen over the years are twofold. Firstly, ... over the last five years or so many of these assured have suddenly found themselves involved in either Asbestosis, DES Drug, Agent Orange or one of the environmental pollution problems. Reserving has proved to be an inexact science on these matters and although underwriters clearly have to be guided by lawyers' recommendations, frequent conflicting results of comparable court cases in different parts of the United States make predictions extremely difficult. ... With regard to the second problem area, Syndicate 60 wrote a book of reinsurance protecting a number of non-marine Lloyd's underwriters ... Asbestosis continues to be the largest element of about 60% of the total advised outstandings on Syndicate 60 at 31.12.86, though further developments on various environmental problems have also necessitated increased reserves."	
22/05/87	Syndicate 362 (1986 Report): "This year, the 1978 year and prior years of account have seen a slower rate of growth in their latent disease claims, although major settlements on Asbestosis losses have accelerated the rate of payment of these claims."	
22/05/87	Syndicates 604/605 (1986 Report): "The closed years, being 1983 Account and previous, have experienced very heavy settlement of claims principally from asbestos related losses, the bulk of which have fallen between the 1950 and 1975 Account. Given these circumstances and with these uncertainties it is impractical at this time to determine an equitable premium to ceding and accepting Names to effect a closing Reinsurance premium. Thus, while the 1982 Account and prior years oustandings are still contained within the Whole Account Reinsurance Protection for these years, the decision has been taken to leave the 1984 Account open."	
22/05/87	Syndicate 90 (1986 Report): "Asbestosis - As I predicted, the facility ("the Wellington Plan") has accelerated loss settlements ... The outstanding loss movement of this group of losses has improved for the second year running although much of the improvement has been generated by savings made on two major loss settlements made for amounts substantially within the reserves carried for them by the syndicate."	

22/05/87	Syndicate 329 (1986 Report): "... a deterioration in settlements and outstanding claims arising from Asbestosis liabilities written prior to 1968. Now that the Asbestos Facility ... is fully operational settlements are being expedited ... Asbestosis is a worldwide problem in which the insurance markets are now co-operating to provide an equitable solution ..."	
22/05/87	Syndicate 707 (1986 Report): "It is now twenty four months since we took the decision to keep part of the account open. The asbestos facility which was constituted to achieve an orderly settlement of underwriters' liability in this regard and reduce lawyers' expenses has achieved a number of settlements and in overall terms we have not exceeded our reserves in respect of such settlements. There has been some increase of loss advices in respect of environmental damage and asbestosis claims on both the Incidental Non-Marine and Marine Liability Account, offset to some extent by reductions in the reserving on years of account that are not affected by these claims."	
25/05/87	Business Insurance. New Avalanche of Asbestos Claims Hits. The number of new asbestos claims doubled in the last few months to 2,100 per month compared with 1,000 per month at the end of 1985. Knowlton: "It causes me to think this is going to go on forever." Leonard Minches, VP claims for Gerling Global Reinsurance Co. said "reinsurers are concerned about the increase but they don't yet know whether the increased claims are an acceleration of anticipated claims or were unexpected ... Tyre workers alone could eventually bring 20,000 claims", Mr Gerry predicts. "In addition to tyre workers sheet metal workers are also being screened as part of various medical studies ..." No-one yet knows how much this new onslaught of claims will cost asbestos producers, insurers and reinsurers. Previously the cost of asbestos bodily injury claims has been estimated anywhere from $4 billion to $100 billion. The new wave of lawsuits not only names the major asbestos manufacturers but also many additional small and large manufacturers that used asbestos in their products. " Even before this new wave more bankruptcies of asbestos producers had been expected, and the insurance industries ability to fund asbestos claims had been questioned. William Bailey, former VP of Commercial Union says there is not enough insurance to cover all the asbestos claims that will be filed "	

27/05/87	Syndicate 469 (1986 Report): "I have to report that there has been a serious deterioration in the claims advised on asbestosis. Nearly all our losses emanate from reinsurance policies written prior to 1968 and it is likely that they will absorb all policy limits. In addition environmental damage claims are now being advised and these could become potentially very serious, although likely to fall more heavily on the direct underwriter."	
27/05/87	Syndicate 235/237 (1986 Report): "Results in recent years have been greatly depressed by two major problems. Insurers have been faced with enormous claims going back many years. Liability business written on the "losses occurring" policy forms have produced asbestosis and pollution claims which have recently had to be paid and provided for in the outstanding reserves. This syndicate has had to reserve many millions of pounds for these old years." "Asbestosis: The deterioration continued and additional costs were incurred for this problem. The asbestosis claims facility has speeded payments considerably."	
27/05/87	Syndicate 537 (1986 Report): "Reserves for outstanding liabilities on Asbestosis claims continue to form the major part of the Syndicate's reserves. Taking into account paid losses in the calendar year 1986, and the re-assessment of the outstandings at year end, there is some deterioration. The Syndicate has written a participation in the run-off of an old Lloyd's Non-Marine Syndicate, [N.B. Hill] Syndicate No. 773, for the 1978 year of account and prior. There has been a substantial deterioration in the reserves established by the Managing Agent of Syndicate No. 773 during the course of the 1986 year and the [assessed reserves] required form a substantial part of the underwriting loss being reported. It has been explained to us by the Managing Agents that they have had great difficulty in collation of outstanding reinsurance claims and there is now some doubt as to whether recovery will eventually be made. Some re-assessment was therefore necessary".	

27/05/87	Syndicate 764/763/145/196 (1986 Report): "the old years of account have deteriorated so badly that extra reserves have had to be established to cover possible pollution claims arising our of risks written by this syndicate in the years between 1950 and the late 1960's. You are already aware of a further problem which has arisen at this year's end, concerning the non-payment of a reinsurance. This reinsurance was taken out with Lloyd's underwriters to cover losses which the syndicate may have to pay on "Asbestosis", again on policies underwritten in the years between 1950 and the late 1960's. We have, therefore, had to reserve in full for all these outstanding claims The situation in respect of Asbestosis Excess of Loss reinsurance has developed significantly. As I mentioned previously, one of three underwriters concerned failed to pay his proportion of the lossesand as a result a Writ was issued against him In view of the dispute I regret we are unable to close the 1984 account."	
27/05/87	Syndicate 782 (1986 Report): "The Reinsurance to Close the 1983 Account performed well and proved to be adequate. Although the Syndicate's involvement in Asbestosis and DES has not substantially worsened, we have of course been advised of some further pollution losses."	
28/05/87	Syndicate 108/768 (1986 Report): "Despite considerable activity on asbestosis and other latent disease claims and growing concerns about pollution risks, reserves created at the end of last year have generally been adequate."	
28/05/87	Syndicate 471 (1986 Report): "At the moment, the Syndicate has not had to make significant reserves for pollution, asbestosis or other latent disease losses. However, the current improving trend may not continue."	
29/05/87	Syndicate 895 (1986 Report): "The eventual cost to the syndicate of asbestos-related claims will not be definitely ascertainable until the very last asbestos-related claim has been disposed of and all disputes as to coverage provided by the policies have been resolved."	
29/05/87	Syndicate 219 (1986 Report): "... We continue to be advised of a substantial number of settlements, revised estimates of outstanding claims and new losses, mostly in respect of Asbestosis and pollution type claims."	

08/06/87	Business Insurance. Asbestos firms to gain $275,000,000 from ruling. Three of the asbestos producers involved in landmark litigation stand to gain more than $275,000,000 in insurance coverage to pay asbestos claims following San Francis's Superior Court Judge Ira A. Brown's long awaited decision. All attorneys generally agree that Judge Brown's decision gives the broadest insurance coverage possible to policy holders for bodily injury asbestos claims. Judge Brown ruled that producers are entitled to recover from all insurers that wrote liability insurance policies for them from the time the victim was exposed to asbestos through to the time that the victim filed a claim and on until the victim's death. In many cases this has been more than 4 decades. Judge Brown also found that every policy figured by an asbestos related bodily injury claim must respond in full to the claim and that policy holders do not have to pay a proportionate share of defence and indemnity costs for periods when they were self-insured or uninsured. But, in a part of the decision that favours insurers, Judge Brown held that under pre 1966 policies, insurers are not liable for defence costs after policy limits have been exhausted. Judge Brown also ruled that insurers bear the burden of proving that their policy holders acted intentionally or maliciously in order to deny coverage on the basis the policy only covers losses which are not expected or intended.	
10/06/87	Letter from R A G Jackson, Chairman of AWP to Insurers at interest. "I have no doubt that you will be aware that on 29 May Judge Brown announced his tentative decision on the Phase III issues in the California Co-Ordinated Action. The issues relating to Phase III are of material concern to the Insurance Industry and specifically concern the trigger and scope of coverage, expected and intended defence and obligations relating to defence ... copies [of the decision] can be provided on request. At this early stage our Counsels are still assessing the impact of the decision but I can record that there is substantial concern at the way Court has ruled upon trigger of coverage, particularly in view of their conclusion that the contracts under review were unambiguous. Although basically rejecting the Keene rationale the Court finds that injury commences from the date of first exposure and continues until either the death of the claimant or until a claim is notified to the assured. The injury process is considered to continue over the entire period and as there is no basis on which to measure the damage during each policy period the Court has determined that each policy is liable to respond in full. Bearing in mind insofar as bodily injury claims are concerned the London Market had concluded settlement with those insureds involved in the Co-Ordinated Action, the decision has no direct impact on our Market. However, bearing in mind that this case is the most extensive coverage action ever to come before the U.S. Courts and already has consumed over two years for the Bench to reach this stage, the precedential nature of the ruling will be apparent to all ... I must emphasise that Judge Brown's ruling is not at this stage a judgment, bearing in mind there are two further phases to be addressed by the Court ... However Counsel have cautioned that little substantial change is likely to occur from the tentative	SI

	decision now handed down. Although many critics of the Facility, and in particular certain Reinsurers have maintained that the Facility Agreement was too generous, the latest decision clearly justifies our commitment; indeed the terms of the Facility Agreement are more restrictive in many respects than the latest pronouncements of Judge Brown (in the California Co-ordinated case). The number of claims disposed of by the Facility continues at the rate of approximately 500 cases per month with total indemnity running in the area of US $30 million. It is unlikely that we shall see any material increase in the number of settlements processed in the foreseeable future. With the dramatic upsurge in new cases being reported, we are now facing an ever increasing volume of outstanding claims as each month passes. There were in the region of 25,000 outstanding claims when the Facility started operating in September 1985; by the end of April 1987 we had disposed of 8,500 cases which represents nearly 35% of our original case load. Of much greater significance is the fact that the number of outstanding claims is now in excess of 50,000 cases ... The Working Party is becoming increasingly concerned at the steadily increasing number of claims alleging property damage due to the installation of asbestos products. The general deterioration gives cause for concern for it is now clear that the Market must prepare itself for significant reserve increases in year end reports."	
07/08/87	Asbestos Litigation Reporter: Assured 7 Withdraws From Facility. "All claims after Oct. 3. Assured 7 informed the Asbestos Facility in a letter Aug. 3 that the company was withdrawing its resignation of the Facility as its sole agent for handling asbestos-injury claims filed after Oct. 3 1987. It is the first withdrawal by any of the Facility's 51 members ..."	

24/08/87	Attorney H to the Underwriters at interest Re: 1987 Year-end Reserves on Various Asbestos Accounts. During the past three years (1984-1987) filings have increased from 700 per month in 1985 to 1,000 in the latter half of 1986. During 1987, there has been further deterioration with new filings thus far averaging 2,000 per month. Various sources with whom the Facility are in contact have reached the provisional conclusion that there is unlikely to be any material fall off over the next two years. The reasons include the well publicised activity of the Plaintiff Bar in enlisting clients. There is no tangible evidence to suggest that the existence of the Facility has been the cause for the vast increase in number of law suits. "... Since the Facility's active involvement in settlement of outstanding law suits in September 1985, they have processed some 8,500 cases to conclusion and removed from the active trial calendar a further 1,500 cases which have been transferred to the Pleural Registry or for which Green Cards have been issued... the average compensatory cost of disposition achieved by the Facility from September, 1985 through to December, 1986 ranged between $59,000 and $62,000 ..." To some extent the Facility is a victim of its own success for it is now regarded as the only viable entity to reduce cases pending on the Court calendars, as a consequence, certain Courts are pressing for an increase in the rate of dispositions. Although this may result in a slight increase in the cases disposed of, it is unlikely to be significant, bearing in mind that the handling capacity of the Facility as presently structured is limited to about 6000 cases per year. Asbestos property damage is continuing to develop into a major concern for the asbestos manufacturers and the insurance industry. The Asbestos Hazard Emergency Response Act 1986 passed by the US Congress had began what is likely to be long term effort to remove hazardous asbestos from buildings. After extensive discussion with the London representatives, this firm and Attorney G feel it necessary to recommend that the Market adopt a figure of $64,000 per claim for the purpose of reserve projections to be contained in our year end reports ... US Attorneys have not attempted to address the IBNR potential of this problem which "we have been advised is a separate consideration of each individual insurer". "It is extremely difficult for us to provide any reliable advice as to how the asbestos problem is likely to develop over the ensuing years except to the extent that it now appears that the total insurance limits of most insureds could be consumed by this enormous problem."	SI

26/08/87	Letter from R A G Jackson, Chairman of AWP to Insurers at interest. "The Asbestos Working Party have been extremely concerned at the adverse reports reaching us during the course of this year and the potential impact the deteriorating loss situation was likely to have on reserves for the coming year end. In my last report I warned the market of what was likely to be in store and as it now transpires the situation is perhaps worse than I had feared. Attached to this letter you will find Attorney H's annual report upon the developments they and Attorney G perceive over the past year. The most significant feature of the report relates to the basis on which reserves will be projected both in respect of bodily injury and property damage. When the necessary allocations to the various accounts have been completed there is no doubt that substantial increases will fall upon the London Market. ... As a result of these developments it is apparent that the Facility is at a cross-roads and short of a change of direction could founder. ... Unfortunately problems tend to come in threes and I must tell you that it was announced at the last board meeting that a significant producer, Assured 7, gave the requisite 60 days notice of withdrawal from the Facility in respect of new filings. ... In the face of all these problems I must report to you that the conspiracy and anti-trust suit being pursued against the facility by a consortium of members of the Plaintiff Bar has now reached a stage where discovery has been served."	SI
00/09/87	Lloyd's League Tables 1984 published in September 1987 (produced by Chatset). In relation to Non-marine business: "Undoubtedly 1986 will be a vintage Non-Marine year, but the market as a whole still has the problem of US casualty business and losses and the 'old years' to grapple with".	
28/09/87	Lloyd's List. U.S. Courts set to tackle asbestosis in seafarers. The U.S. legal system is preparing to head the way in the international scene in handling the growing number of asbestosis claims from seamen - but the issues involved are complex and daunting.	
30/12/87	Letter from Toplis & Harding to the Insurers at interest. An enormous increase in the volume of new claims over the past two years has arisen from the activity of the Plaintiffs' bar. There is no evidence to indicate that the existence of the Facility has generated this activity. "Perhaps more to the point it is an acknowledgement that claims arising from the more traditional shipbuilding industry are now on the decline." The massive financial burden on many producers now threatens to exceed insurance coverage of some of those involved and the underlying tensions have effectively split the producers into two groups, which is impairing the Facility's ability to perform its intended functions.	S

	It appears reasonably certain that within a short time three of the producers will leave the Facility in the belief that in the outside world they will be able to exercise greater control over their cashflow. This will cause complex difficulties with outstanding law suits and there is every likelihood that settlement levels will increase overall as a result. "It is a pity that so many so-called professional reinsurers are using negative delaying tactics on such an all important matter ... They should have thought of that before they wrote the business and not now".	
03/03/88	Joint Statement of the Asbestos Claims Facility and Assured 7. "At a regular Facility Board of Directors meeting (on) March 2, 1988, Assured 7 stated that it no longer believes the Facility is the most effective means of resolving meritorious asbestos-related bodily injury claims ... and, as a result, announced that it wishes to withdraw its pending asbestos cases from the Facility ... Six previously identified Producers (Assured 24, Assured 10, Assured 6, Assured 14, Assured 12 and Assured 7) have indicated an unwillingness to go forward with the Facility..."	
09/03/88	AWP letter to Insurers at interest Re: Problems facing the ACF. R A G Jackson provides the Market with a review of the developments in the situation regarding the Asbestos Claims Facility. The much publicised difficulties encountered by the ACF has been adversely affecting its credibility and morale. The major producers precipitating the difficulties are Assured 7, Assured 14, Assured 10 and Assured 12. They have made clear that their concerns have not been dealt with and have indicated that they are anxious to sever their connection with the Facility at the earliest opportunity. Prospective notices of withdrawal have already been given by Assured 14 and Assured 12. Together this group of four producers hold 42.08% of the total indemnity shares. R A G Jackson also reports that Assured 6 withdrew from the Facility with effect from the end of February 1988. This will take the likely loss of support from producer members to well in excess of 50% which is likely to affect the whole future of the Facility. Those producers remaining (including Assured 2, Assured 3B and Assured 17) have urged the board to continue the Facility. Assured 7's position has been unclear but it believes it is unlikely that that Facility can survive. The Board has concluded that there is no alternative but to face the fact that the Facility may have to be dissolved. It remains to be seen whether something can be salvaged from the claims operation. It is disappointing that the purpose of the ACF may have been frustrated by the short term objectives of certain producers. From the perspective of the London Market there is a potential increase in defence	

	costs, although ideas are being looked at for continuing to co-ordinate defences. R A G Jackson concludes that no matter how innovative the insurance industry in seeking to develop practical solutions, these may be defeated where the corporate survival of insureds becomes an issue. "In short the asbestos problem is now becoming so large that short of federal relief it becomes questionable whether the asbestos industry can ultimately survive".	
14/03/88	Business Insurance: Two more firms quit Asbestos Claims Facility. Claims filed by tyre, steel and sheet metal workers have become the most common type of asbestos injury claims filed. The same producers that paid the largest shares for claims filed by shipyard and insulation workers also became liable for the largest share for the new types of claims. These producers contend that tyre, steel and sheet metal workers were not exposed to their asbestos products ...	
21/03/88	Business Insurance: Save the Facility. "We can't fault these asbestos producers for pulling out of the Facility. They have good and valid reasons. A new wave of asbestos claimants who are exposed to asbestos not produced by these six companies has hit the facility."	
19/04/88	Syndicates 927/935 (1987 Report): "Syndicate 60, contained within the run-off of Syndicate 935, has undergone a thorough review again this year and it has become apparent that the deterioration in the Asbestosis claims position that was forecast by the Chairman of the facility in mid-1987 report, does not appear to have come through to Syndicate 60 to the extent that might have been expected."	
21/04/88	Syndicates 448/50 (1987 Report): "During 1985 rates began to improve as the insurance world realised the impact of asbestosis and pollution. We all became more selective in the breadth of coverage offered, most importantly putting Product Liability on to a "claims made" form"	

29/04/88	Syndicate 342 (1987 Report): "Sadly, the situation has continued to deteriorate and my predictions have proved correct ... During the last 12 months, the syndicate has experienced a surge of new asbestos and pollution related claims from U.S. liability policy holders. The size and number of these new loss advices have been quite dramatic ..."	
00/05/88	Syndicates 105/106/109 (1987 Report): "There are four basic reasons why these old years have developed unprofitably ... Asbestos-related claims. There has been a further increase in notified potential losses during 1987 in respect of policies dating back many years. Consequently it was thought prudent to make further reserves based on statistical projections ..."	
00/05/88	Syndicate 89 (1987 Report): "Over the last 3 years, the position of the insurance industry with regard to these US liability claims has become more and more critical, with a deteriorating situation requiring further substantial increases in reserves and no evidence that this deterioration is slowing down. As a result, I have felt it necessary again to increase reserves substantially, particularly bearing in mind: (1) Large increases in the existing advisory reserves recommended by US lawyers handling the asbestos related liability claims, plus further increases arising as a result of the first advice during 1987 of our involvement on many policies ..."	
00/05/88	Syndicates 510/511 (1987 Report): "With the increase in incidence of asbestos bodily injury and property damage claims coupled with the danger of pollution losses, we felt that it would be sensible to increase the reinsurance protections on the United States dollar reserves for the 1984 and prior years. We have therefore purchased additional coverage relating to these reserves."	
04/05/88	Syndicate 469 (1987 Report): "The Chairman of the asbestosis committee had warned the market to expect substantial increases at this year end. We have experienced a large increase to existing claim advices, but an insignificant number of new advices ...Environmental Pollution is still in its early stages of litigation and it is too early to predict how this account will be affected ..."	

04/05/88	Syndicate 764/763/145/196 (1987 Report): "The delay in closing this account has enabled us to reassess both existing and new claims on environmental pollution and various other latent diseases resulting from the "long tail" business written during the 1950's and 1960's. In addition to the increased provision for asbestosis mentioned above, we have reserved a further US$2,850,000 against these potential claims."	
06/05/88	Syndicates 604/605 (1987 Report): "The 1984 Account in run-off will have to stay open as the uncertainty surrounding the ultimate liability remains such as to preclude closing the Account at a figure equitable to both reinsuring Names and those assuming such reinsurance. It is ironic that following the Inland Revenue's assertion that the Account was over-reserved a year ago it is now found necessary to increase these reserves by £5.5 million, most of this increase being necessitated by the enormous increase in year-end Asbestos related advices some of which were only advised to the Syndicate in the first quarter of 1988. Latent type claims reserves dating back as far as the 1940 Underwriting Account now represent 63% of the US Dollar gross outstandings and some 83% of the 1977 Account and earlier years' outstandings."	
10/05/88	Syndicate 367 (1987 Report): "We have examined our back years thoroughly with our Actuaries, Messrs Bacon & Woodrow, and our Auditors, Messrs Ernst & Whinney. This exercise has led to a substantial increase in our environmental pollution and asbestosis reserves ... Pollution claims from the USA are a threat to most syndicates, be they marine, non-marine or aviation, and it is amazing to see asbestosis claims increasing again when they seemed to be falling last year."	
10/05/88	Syndicate 404 (1987 Report): "There are three aspects that require specific mention under this heading. Inevitably Asbestosis requires comment and in this respect further claims development has taken place, which represents the bulk of the movement since last year. Most of the losses under this heading are dealt with through the Asbestosis Claims Facility in the U.S. (known as the Wellington Agreement) and currently there are moves afoot for certain of the "Asbestos Producers" to withdraw from the Facility thus disturbing the balance of the scheme. Attention is being given to this problem to protect insurers' interests..." "Individual year-by-year protection is in place up to and including 19[ ] and to date our practice has been to consolidate each individual year upon closing in the overall closed year protection. This reinsurance has been in force a number of years now and has assisted the Syndicate in coping with the latent development of loss particularly from Asbestosis..."	

12/05/88	Syndicate 33 (Managing Agents' 1987 Report): "Insurance tends to be long-term business and yet Names are grouped annual syndicates which are not ongoing concerns but separate each year from the next. Due to the ever changing composition of syndicates, long-term insurance policies are not permitted to be underwritten ... However, long-tail business with a infinite time possibility of claims has been freely underwritten. The occurrence today of pollution and other losses on risks underwritten many years ago is the major reason behind the growing problem of syndicate accounts being left open. The fact that nearly 100 syndicate accounts are now left open must call into question whether Lloyd's syndicates should be allowed to underwrite the longer-tail risks or whether the system of annual syndicates should change."	
12/05/88	Syndicate 33 (1987 Report): "1974 and previous go from dreadful to worse and the eventual outcome is still not properly quantifiable. There are few small hopeful signs that the US courts will pause before committing the insurance industry to cleaning up polluted America but these decisions are not consistently adhered to in all courts and are in any event balanced by the possible imminent demise of the Asbestos Claims Handling facility. This would presumably lead to an explosion of legal costs in addition to the indemnity which we would be required to pay our Assureds."	
13/05/88	Syndicate 2 (1987 Report): "The overall position of the run off of the old years remains satisfactory. But the Court awards for latent related diseases still cause some concern."	
13/05/88	Syndicate 362 (1987 Report): "We have seen a substantial deterioration in the closed years. To a great extent this has been caused by a $5,000,000 increase in our reserves for incurred and IBNR Asbestosis losses from $39,000,000 to $44,00,000. Of this $22,500,000 deterioration, $18,000,000 relates to years prior to 1978 and has the benefit of our unlimited stop loss reinsurance but the remainder falls to our own account."	

16/05/88	Syndicate 582 (1987 Report): "In that it indicates the closing of an unhappy chapter in the history of the Syndicate, it is with an inevitable sense of relief that I can begin my report by telling you that we have felt able this year to close the 1983 Account the deterioration during calendar year 1985 in loss ratios for several of the prior seven years, but particularly 1983, was unprecedented. Therefore, notwithstanding an underwriting profit on the balance of our book, in view of the uncertainty generated by the development of our US Liability account, we felt it necessary to hoist reserves massively, announced a very substantial loss, and left the year open. it is an immensely difficult task on this type of account to assess ultimate loss ratios with genuine accuracy. This is because of the nature of the brute being handled; namely nothing less than the American legal system itself, a beast which in the recent past has proved to be one of such volatility, unpredictability and downright bias against the insurance industry as to make statistical analysis and projection of claims ratios an absurdly inexact science Reserves have been increased very largely as the result of the continuing flow of new advices on Asbestosis claims and a marked increase in the number of potential pollution claims advised during the year".	
18/05/88	Syndicate 15 (1987 Report) "Asbestosis and Pollution claims continue to be advised to the Syndicate at an alarmingly high level. The nature of these two particular difficult types of claims and the eventual ultimate discussions of the American courts makes it an extremely onerous task to predict the final liability of the Syndicate. The current incurred figure for these years has increased over and above the previously advised amounts. The amount estimated at 31 December 1986 for the anticipated incurred position during 1987 has proved to be inadequate by approximately 125%... I have grave concern over the gross liability of the Syndicate. New advices and increases in reserves in respect of Asbestosis and Pollution losses, many of which are late notifications, this is an inherent problem on this type of Reinsurance business."	
19/05/88	Syndicate 992 (1987 Report): "During the course of 1987, new losses continued to be advised to the Syndicate. These covered mainly Asbestosis and Industrial Deafness losses."	

19/05/88	Syndicate 90 (1987 Report): "The result on the 1982 "open" year is caused by considerable worsening on the twin problems of asbestosis and of seepage and pollution. We can give no indication as to when the account could be closed or what its eventual outcome could be ..." "Asbestosis accounts for 42 per cent of the deficit [on 1982 'open' account]."	
19/05/88	Syndicate 701 (1987 Report): "Previous reserves for the outstanding [asbestosis] claims are adequate and are being maintained."	
20/05/88	Syndicate 47 (1987 Report): "There has been some deterioration in the back years, namely in the late 70s, but these are nearly all due to our old enemies asbestosis and pollution which it must be said have largely fallen on years which were reinsured out."	
23/05/88	Syndicate 329 (1987 Report): "There has been further deterioration in the syndicate's participation in environmental pollution and asbestosis claims. In an increasingly uncertain situation with regard to some of the outstanding liabilities from 20 years or more ago, I consider it right and proper to leave this account open until such time as a more accurate estimate of possible losses from environmental pollution, and other products liabilities, together with asbestosis, can be evaluated ..."	
25/05/88	Syndicates 317/661 (1987 Report): "The reasons for this accelerated increase are not altogether clear, but there are two major factors. One is the continuing advice of asbestosis losses, and the second is the inclusion of pollution and clean-up losses from the US. The difficulties in establishing a proper IBNR are severe. Asbestosis will be a declining factor as the numbers of people affected by exposure to asbestos decline."	
25/05/88	Syndicate 122 (1987 Report): "During 1987 there was a further increase in the reserves the Syndicate holds for its exposure to such risks as Asbestosis, where we have suffered a set deterioration of 34%."	
25/05/88	Syndicate 56 (1987 Report): "The deterioration in the 1984 open year has required an additional reserve for future liabilities. This has been further increased to allow for possible future development of pollution and asbestos related claims."	

25/05/88	Syndicate 65/69 (1987 Report): "with the number of health hazard and pollution claims increasing alarmingly in both numbers and size, the loss to our market during the next decade from these claims may well be horrendous, and may far outweigh the advantages of investment income. This unquantifiable problem causes us concern. Perhaps because of the American legal system combined with the unpredictable judgments and outrageous awards in the courts, American casualty business is becoming uninsurable, and it may therefore be prudent to withdraw from it altogether. Whilst this would go against the grain and be an admission of defeat, to continue or to withdraw is a decision I will make in the near future."	
25/05/88	Syndicate 537 (1987 Report): "This syndicate continues to run-off having ceased business in 1977. I am sorry to report that the syndicate has again shown a deficit in its account following settlements during 1987, together with the reassessment of the outstandings at 31 December 1987. This deficiency is due in the main to the Syndicate's exposure to latent disease, particularly asbestosis, where there continues to be deterioration".	
26/05/88	Syndicates 418/422/417 (1987 Report): "The losses emerging from these contracts relate largely to claims in respect of asbestos and environmental pollution. Whilst the level of advised claims has increased significantly during 1987, the determination has been absorbed to a large extent by the high level of 'IBNR' reserves carried in earlier years. ... A similar problem exists with asbestos property claims, where insurers will still contend that removal of asbestos products from buildings should not expose policies to property damage claims. In this uncertain environment it is difficult to reach conclusions on where to pitch the year end reserves. In the case of the run-off contracts there is the added problem that we get these claims "second hand"... we must be realistic in assessing the possibility that we may be exposed to potential further claims, and this is reflected in our cautious approach to reserving. ... The areas where there has been activity which is not matched by available reinsurance are our own casualty underwriting and the run-off accounts. In the first category we have increased our noted outstanding reserves and especially our IBNR to watch the developing actuarial evidence for the casualty excess of loss account written in the early 1980's and we have made similar provisions for asbestos and other latent disease losses, and environmental damage claims."	
26/05/88	Syndicate 945 (1987 Report): "For the 1982 Names, the calendar year 1987 has produced a return of approximately 2.2%. This has been possible due to the re-assessment of reserves for asbestosis and other long-tail liability business."	

27/05/88	Syndicate 895 (1987 Report): "As far as concerns bodily injury claims arising from the asbestos problem, the extent of the Syndicate's liability is gradually becoming clearer as US courts make their determinations concerning the basis of coverage and, in many cases, the policies to which the syndicate subscribed became exhausted by the payment of losses. A few new exposures arising through reinsurances continue to be identified, but there have been very few new exposures arising on policies directly protecting US companies. One factor which may tend to increase the cost of disposing of the remaining claims is the doubt which has arisen over the future of the Asbestos Claims facility following the withdrawal of some of the asbestos manufacturer members ... [This] is likely to increase the cost of the claims to the insurance industry as a whole and this may well give rise to increased reinsurance claims against the syndicate. The coverage issues relating to asbestos property damage are still unclear. However, because many of the policies potentially affected will be exhausted by asbestos bodily injury claims, and do not provide separate cover for property damage, this aspect of the asbestos problem is not thought to have such a significant effect on the syndicate."	
27/05/88	Syndicate 219 (1987 Report): Records that the 1984 account suffered "substantial deterioration" during 1987, due to general bodily injury and new wave of asbestos claims from railroad employees; asbestos property damage reserves "have escalated dramatically following a major reassessment of potential liabilities by lawyers representing insurers." Report attaches an Addendum (Pollution and Asbestosis) explaining history and nature of the problem etc.	
30/05/88	Business Insurance: Wellington defections kill Asbestos Claims Facility. "When the Asbestos Claims Facility was formed, the formula for determining each producer's share of liability was based on the litigation and settlement history of claims filed by shipyard and insulation workers, which at that time was the most common type of asbestos injury claim. Beginning in early 1987, however, claims filed by tyre, steel and sheet metal workers became the most common type of claim filed ..."	
31/05/88	Syndicate 860 (1987 Report): "... Asbestos related losses continue to be advised to the market. We have always reserved on a conservative basis but have had to further increase our reserves this year. Within these reserves there is an amount for so called Asbestos "Property Damage" claims. There is much uncertainty in this area and despite a recent favourable legal decision we are maintaining reserves where advised by our Attorneys. However, should the legal climate change we may have to revise our	

	position accordingly."	
31/05/88	Syndicate 235/237 (1987 Report): "I also felt it necessary to continue to add to the reserves for Asbestosis and potential pollution claims." "Our results in recent years have been adversely affected by notifications late in the year of heavy claims relating to Asbestos and Pollution. These have had to be provided for in the Reinsurance to Close and it is pleasing to be able to report that the reassessment of Outstanding Claims at the end of 1987 brought a reduced volume of first notifications. However, Asbestosis and Pollution claims are far from over and reserving for these claims will continue for some years, especially as, in addition to Bodily Injury claims, the spectre of Property Damage related losses for asbestos products in buildings looms before insurers and no accurate reserving for these potential clams can yet be quantified."	
31/05/88	Syndicate 932/989 (1987 Report): "The Run-Off of the years 1984 and earlier has proved expensive as a result of additional reserving for Long Tail Non-Marine claims continued with large settlements in the last twelve months. The main problem remains Asbestos with the spectre of Pollution claims a further threat to the Syndicate and the whole market. We do believe, having taken into consideration all known facts and notwithstanding the vagaries of the American Courts, that we are adequately reserved. On the Asbestos front the Wellington Facility, claims handling organisation, is running into difficulties. Although we have seen a considerable increase in the number of claims advised, coverage settlement per claim does not appear to have increased".	
08/06/88	Syndicates 283/284 (1987 Report): "We are clearly monitoring the involvement of the Syndicate in environmental pollution and latent disease claims from the United States. The Asbestos and Pollution market committees advise each Syndicate of the policies which are likely to be affected. Previously we were less able to anticipate the relevant policies and had to take a view that the recent years could well be involved. It is only now in closing the 1985 year that we are able to apply the working parties recommendations, which has resulted in a release of some of the previous reserves. I am nevertheless concerned that we may be liable for further seepage, pollution and latent disease claims. The difficulties of reserving in this inherently unpredictable area are well known and must remain a mater for the individual Underwriter's judgement. My concern has led me to investigate the possibility of reinsuring the Syndicates' old years against further deterioration and I have now purchased an aggregate policy jointly covering the	

	closed years of both Syndicates 284/283 and 282/323 for US dollars 10,000,000 in excess of our current notified outstandings in respect of all aspects of our liability exposures, including the products, latent disease, and pollution type of claim."	
20/07/88	Attorney G and Attorney H to Underwriters at interest. Re: 1988 Year-end Reserves Asbestos Building Claims: As of May 1988, at least 209 asbestos property damage suits had been brought against major assureds of the London market. Attorneys are unable to estimate the number of such suits that will be filed in the future. Note that, although there were some early defence victories in property damage litigation, most of the recent jury and court decisions had been adverse to the asbestos manufacturers. "We are now not optimistic that the defence will win a fair percentage of these cases." Assured 1, in bankruptcy, has been sued for $62 million by 9,031 property damage claimants. The attorneys conclude that asbestos property damage claims continue to present a growing problem to the insurance industry, albeit one that is at present impossible to quantify accurately. However, potential damages appear significant. There have been 200 suits filed by building owners involving thousands of buildings. Whilst there have been only a limited number of settlements and judgments, the amounts paid out are in excess of $100 million. On this basis, the attorneys recommend a year end reserve of $4 billion for property damage indemnity claims (noting that this does not include any IBNR factor).	SI
01/08/88	AWP letter to Insurers at interest. "So far as bodily injury claims are concerned the Working Party are encouraged to see that there is a noticeable reduction developing in average settlement costs and but for the increased reserve levels necessary to address defence obligations by reason of the dissolution of the Facility, it would have been likely that there would have been little movement in Year end reserves . We have all been aware of the significant increase in activity relating to Asbestos Property Damage and our representatives have now developed greater in-depth detail of the problems ..."	SI
01/08/88	Attorney H/Attorney G report to Underwriters at interest Re: 1988 Year-end Reserves Various Asbestos Accounts. "It is our intention to deal with the unfortunate events that have led to the demise of the Asbestos Claim Facility and the uncertainties that this creates in endeavouring to provide realistic reserves projections for the purpose of Year End reports ... It is our view that the Facility represents the only practical and effective way in which the never before encountered volume of underlying tort claims can be properly adjusted and disposed of in the most expeditious manner to all concerned. The virtual trebling of the outstanding case load since its inception in June 1985 has imposed significant burdens upon the Facility's operation and had been directly responsible for the	SI

	dissention which arose from certain of the Producer membership and this has ultimately led to the Board's decision to dissolve the Facility on or before 3 October 1988 ... While it is still too early to hope that the new claims may have peaked, we are nevertheless somewhat encouraged to observe that the rate of filings has not only declined since last year, but also reflects a consistent rate for the last ten months ... Most of the seven major Producers express the view that in the outside world they believe they can reduce the financial outlay presently incurred within the Facility ... The Courts have given a very clear message as to the concerns that arise from the collapse of the Facility, and our major reservation is that the seven Producers that have brought about dissolution may be selected against as cases come up for trial As a result of the past year's activity, the mesothelioma content in pending cases is now down to approximately 3% of the whole. A similar pattern exists in respect to other cancer conditions, which in percentage terms are reducing. This fact, coupled with a less severe disease mix in new filings, has effect of reducing average settlement levels based on the five basic disease categories that are involved."	
00/09/88	Lloyd's League Tables 1985 (published September 1988) (produced by Chatset). In relation to the 1985 year: "Those syndicates with open years such as Outhwaite 317, Warrilow 553, Pulbrook 90 and Holloway 604 were not alone in suffering a spate of claims emanating from US casualty business in 1987. Particularly in the form of new advices at the end of the year. Many Marine and Non-marine syndicates were also caught in this Maelstrom of asbestos and pollution claims that have seriously affected their 1985 result and have forced them to leave the 1985 year open." In relation to asbestos in particular: "Asbestos: Asbestos, by its properties of withstanding searing temperatures and yet being soft and pliable, has been widely used as an insulating material in many industries. However, the inhalation of asbestos fibres has caused asbestosis and similar ailments in those workers who have mined, milled or processed asbestos. A wave of claims against the Asbestos manufacturers caused them with their insurers to set up the Wellington Agreement in 1985 in order to settle claims without expensive recourse to the Court. A new wave of claims against producers has threatened the Agreement. In any case with or without the Agreement, producers will exhaust insurance coverage and be faced with seeking the protection of bankruptcy proceedings. Additionally new industries such as Railroads and Tyre manufacturers are receiving claims in volume, as well as Municipalities who are being required by USEPA to clean up and dispose of asbestos used in their school buildings.	

	As with Pollution there remains confusion within the insurance industry as to which policy should be called upon if there is a case to answer. To date the results have not been encouraging, with one court ruling that asbestos in buildings was property damage, and all policies between the time asbestos was installed through to removal were jointly and severally liable. This despite the fact that the asbestos in building has properly carried out its function as an insulator and had not given rise to any present claims. Apart from the burden of US liability claims, which as well as pollution and Asbestosis also included continuing claims from Darrah Trucking, Transit Casualty and Shand Morahan (although the former two are showing signs of running off), 1985 year was an excellent year for Non-Marine."	
00/10/88	Business Insurance: Asbestos firms launched facility to settle claims. "The former Asbestos Claims Facility was dissolved earlier this year after seven of the largest asbestos producers withdrew ... Inflexibility was the main reason the Asbestos Claims Facility died, observers say ... for example, under the Wellington Agreement the percentage of liability costs paid by each producer was based on historical data on claims paid until 1983 and could not be changed significantly. The Center for Claims Resolution has created a more flexible system for allocating liability costs. The Center's liability formula is based on several time periods and different occupational categories to reflect the changing mix of asbestos cases ..."	
03/10/88	Asbestos Claims Facility - certificate of dissolution filed with the Dept. of State of the State of Delaware.	

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Appendix 4

PRODUCTION OF THE SSOB, AGGREGATE RESULTS AND THE GLOBAL ACCOUNTS

(a) As at 31 December 1981 and prior years

To enable Lloyd's to prepare the SSOB, syndicate auditors were required by the Solvency Letter to produce "Global Statements" in respect of the same categories as required by the SSOB. The forms were available from the Audit Department and set out cumulatively and by year the income and expenditure for the open years of account and the closed year of account.

The auditors provided information in consolidated returns to the Audit Department aggregating the returns for all of the syndicates which they were responsible for auditing. Lloyd's did not therefore obtain any information as to individual syndicates through this process in 1981 and prior years. Lloyd's aggregated the Global Statement returns to produce the SSOB.

Syndicate auditors were also required by the Solvency Letter to lodge "Global Revenue Accounts" in respect of:

(i) marine, aviation and transport business distinguishing:

(A) marine hull and liability;
(B) aviation hull and liability; and
(C) transport;

(ii) motor (UK and overseas);

(iii) pecuniary loss;

(iv) personal accident;

(v) property;

(vi) liability (i.e. non-marine "all other" business); and

(vii) life.

The Global Revenue Accounts contained details, cumulatively and by year, of the income and expenditure of the open years of account and the closed years of account and set out the RITC premiums received and paid, if any, including reserves on accounts running off. (The equivalent form for the SSOB and Aggregate Results/Global Accounts as at 31 December 1985 (GL1) stated separate figures for RITC

premiums and reserves established for year of account in run-off). The information contained in the Global Revenue Accounts was similar to that which would be required in Form 1 of the SSOB for 1982 except that it gave a more detailed breakdown of other income and expenditure.

Syndicate auditors would provide consolidated Global Revenue Account returns for all the syndicates which they were responsible for auditing. The Global Revenue Account returns were aggregated by Lloyd's and provided to the Secretary of State in addition to the SSOB. The Global Revenue Accounts were also aggregated by Lloyd's in order to produce Aggregate Results.

Following the preparation of the SSOB and Aggregate Results by the Audit Department, the Committee of Lloyd's would be asked to approve the filing of the SSOB and circulation of Aggregate Results to underwriting agents prior to the press conference.

(b) As at 31 December 1982

The Solvency Letter was amended and syndicate auditors were required to file only Global Revenue Accounts which were returned on AU 36 forms. This change reflected the change in form of the SSOB set out in the Regulations, such that the previous Global Statements were no longer required. The SSOB were submitted to the DTI in the more detailed form of AU 36 providing a breakdown of income and expenditure. Syndicate auditors continued to produce a consolidated return for all the syndicates which they audited and Lloyd's produced the SSOB and Global Accounts by aggregating the auditors' returns.

The Council of Lloyd's was asked, on 18 July 1983, to authorise the Committee to approve the SSOB and Globals as they were not available at that time and the Council did not convene again until September. The Committee considered the matter on 24 August 1983 and approved the SSOB and Globals.

(c) As at 31 December 1983

An Internal Audit Report into the procedures and method for the production of the SSOB was prepared for the MSSD in October 1983. The report made a number of recommendations including:

(i) auditors should make their returns on an individual syndicate basis rather than a group basis;

(ii) a summary list should accompany the individual returns to show which syndicates had been included;

(iii) there should be a check against Lloyd's Underwriting Syndicates Book to ensure that all syndicates were accounted for and that there was no double counting; and

(iv) controls on receipt of revenue account returns should be improved and auditors should date returns.

The terms of reference of the newly created AASC included a review into the arrangements for the

production of the SSOB. The AARD assisted the AASC in this process and assumed the role of organising the collation and preparation of the SSOB and Global Accounts (and to some degree the Globals themselves).

A briefing paper dated 17 April 1984 was prepared by the AARD for consideration by the AASC setting out the arrangements for the compilation of information for the SSOB and Global Accounts by syndicate auditors. The paper states the following arrangements for the SSOB and Global Accounts as at 31 December 1983:

(i) syndicate auditors would provide returns on the following basis:

(a) consolidated for all the syndicates for which the auditor acted; and
(b) individual returns in respect of each syndicate.

(ii) The return in paragraph (a) above would form the basis for calculating the SSOB and Global Accounts.

(iii) Syndicate auditors were to provide a confirmation in respect of the whole return.

The Solvency Letter required syndicate auditors to file "Statutory Statements of Business" in respect of the same classes as required by the form of SSOB. The AU forms (including the Global Revenue Accounts) were replaced by a series of forms with the prefix GL as follows:

GL1 Three year revenue accounts (this was in the same form as the AU 36).

GL2 Estimated future liability on open accounts.

GL3 Reconciliation of reinsurance premiums.

GL/A Listing of syndicates covered by the return.

A set of notes was sent to syndicate auditors, entitled "Notes for the Completion of Returns by Approved Accountants" providing guidance on the completion of the GL returns. The Notes were thereafter issued annually. The Notes required that:

(i) three year revenue accounts were to be prepared in accordance with the categories of business specified by the Regulations for all the syndicates which the syndicate auditors audited and individually for each syndicate;

(ii) where an account was running-off, the reserves established on the account as at the year end were to be treated as an RITC premium and other information relating to the account was to be included under

the appropriate headings relating to the closed year of account; and

(iii) syndicate auditors were to provide a certificate to be attached to the return for all the syndicates which they audited confirming that the return had been prepared in accordance with:

(a) the Notes; and

(b) the Audit Instructions.

The SSOB and Global Accounts continued to be prepared by Lloyd's by aggregating the consolidated returns from syndicate auditors (and using information from other Lloyd's Departments).

On 6 August 1984 the Council agreed to authorise the Committee of Lloyd's to approve the SSOB and Globals. The AARD produced a memorandum for consideration by the Committee asking the Committee to approve the SSOB and Globals on 15 August 1984. The Committee granted such approval on 15 August 1984.

(d) As at 31 December 1984

Syndicate auditors were required to furnish three additional forms:

GL5 Community Co-insurance business;

GL6 Reconciliation to central solvency and syndicate annual reports; and

GL7 Aggregate premium income (aggregate premium income returns had been made annually to Lloyd's previously on form AU23).

By letter dated 15 March 1984 from the AARD, syndicate auditors were informed of the changes and provided with more detailed Notes to the GL forms. The Solvency Letter for this and subsequent years expressly stated that separate instructions would be issued for the SSOB. Returns were provided by the syndicate auditors both individually for each syndicate and consolidated for all of the syndicates which they audited. In respect of each individual syndicate return it was only necessary to file GL1 to 3 and GL6: see paragraph 9 of the Notes. Lloyd's calculated the information for the SSOB and Global Accounts as before.

On 5 August 1985 the Council agreed to authorise the Committee of Lloyd's to approve the SSOB and Globals formally. The Committee granted the approval sought on 14 August 1985 and 21 August 1985. Due to an error in the approved SSOB and Globals the Committee approved amended versions on 11 September 1985. This error led to the reviews described below.

(e) As at 31 December 1985

A number of reviews of the process for preparing the SSOB and Global Accounts were initiated as a consequence of an error made by a syndicate auditor, in its returns for the year end as at 1984, which had delayed the publication of the SSOB and Global Accounts. A report was prepared by Internal Audit on 25 October 1985. This report made recommendations including:

(a) the consolidated results should be subject to an external audit examination;

(b) the covering letter to the Notes to syndicate auditors should be briefer and the Notes to the GL forms should be more detailed;

(c) the GL6 form (reconciliation of SSOB and Global Accounts with central solvency and syndicate audit) should be redesigned to give greater clarity;

(d) consideration should be given to the use of a computer for the consolidation and reconciliation of the aggregated returns; and

(e) figures relating to run-off syndicates should be shown separately on the GL1 return.

There was a further review of the process for preparing the SSOB and Global Accounts in January 1986 by OSDD/Internal Audit. The report recommended that a number of changes should be made to the GL forms and accompanying notes. The report recommended that a feasibility study should be commissioned into the use of a computer to compute the returns and reconcile the figures automatically. It was recommended that the aim for the future should be to use the computer to consolidate individual syndicate returns.

The principal alteration to the GL forms and accompanying Notes that was recommended was the treatment of run-off accounts in GL1. The GL1 form was amended to provide separate figures for RITC premiums and amounts placed to reserve on accounts that were running off. This recommendation was ultimately implemented but the SSOB, being in a statutorily prescribed form, was not submitted in this more detailed format. The GL6 forms were also amended to improve reconciliation largely in accordance with the recommendations.

Following the problems of the 1984 globals exercise, a Global Task Force was set up in May 1986, reporting directly to the Chief Executive's Group on a weekly basis. The Global Task Force sought to improve the quality of the data submitted to Lloyd's and the controls over its processing.

At the same time Ernst & Whinney were instructed by Mr. Alan Lord, the then Chief Executive, to examine the systems and procedure covering the preparation of the SSOB and the Global Accounts. E&W were to be required to report to the Council of Lloyd's that in their opinion the Global Accounts and SSOB had been properly compiled from returns submitted by syndicate auditors and other relevant

sources and presented fairly the aggregate results for the Lloyd's market on the basis set out therein.

Following the recommendation to computerise the process for producing the SSOB and Global Accounts, a computer system was developed called the "Three Year Revenue Accounts System". The Global Task Force instructed the Computer Audit Section of Lloyd's to review the system and a report was issued in June 1986. This report considered the system adequate and found no evidence of inherent weakness in the software product.

The Head of Market Services and Finance submitted a memorandum to Council seeking their approval for the SSOB and authorisation for the Committee to approve the Globals formally. The Council considered the memorandum on 11 August 1986, approved the SSOB and authorised the Committee to approve the Global Accounts. Following the submission of a memorandum by the Head of Market Services and Finance the Committee approved the Global Accounts on 20 August 1986.

E&W issued unqualified audit opinions for each of the SSOB and Global Accounts for the year ended 31 December 1985. In a letter dated 30 September 1986 E&W made a number of recommendations including:

(i) that the returns should be submitted by individual syndicates and the relevant sections of the SSOB/Global Accounts should be prepared by Lloyd's aggregating the individual returns;

(ii) that it would be practical, and more appropriate, for the syndicate returns to be prepared and reported on by managing agents and to be accompanied by a suitable audit report; and

(iii) information on premiums and claims could be provided more accurately by syndicates themselves.

(f) As at 31 December 1986

A strategy paper prepared for consideration by the CEG identified a series of objectives that had developed in relation to the SSOB and Global Accounts:

(i) to improve the quality and consistency of the data submitted;

(ii) to institute better controls over the production of the global figures;

(iii) to establish an audit trail thereby laying the basis for an audit opinion;

(iv) to improve the presentation of the global accounts with regard to the introduction of an audit opinion, developments in syndicate accounting and developments in public/insurance company reporting.

A discussion paper appended to this memorandum identified that the analysis undertaken in the SSOB

and Global Accounts highlighted general liability as the source of major losses.

The computer system developed for the SSOB and Global Accounts was extended for the audit as at 31 December 1986 so that the data from individual syndicate returns could be consolidated by Lloyd's rather than from the aggregate returns submitted by auditors in the past. The returns continued to be submitted by auditors rather than managing agents.

The Notes issued for this year highlighted a number of changes:

(i) Auditors were required to submit individual syndicate returns and were no longer required to submit aggregated returns for all the syndicates which they audited; and

(ii) There were a number of additional forms:

GL/B	GL1 control sheet indicating for which categories of business a corresponding GL form was being submitted.
GL8	An approved accountants' report stating that they had prepared the return in accordance with the notes and that the accounting records from which the returns were prepared had been examined in accordance with the Audit Instructions and approved auditing standards.

Following the submission of a memorandum by the Regulatory Services Group the Council authorised the Committee to approve the SSOB and Globals on 5 August 1987. Following the submission of further memoranda to the Committee by the Regulatory Services Group the Committee granted the approval sought.

E&W provided unqualified audit opinions in respect of each of the SSOB and Global Accounts. By letter dated 30 September 1987 E&W made a number of recommendations including:

(i) Lloyd's should accept syndicate returns on computer disk;

(ii) GL7 forms (aggregate premium income) should be reconciled with GL1 forms (three year revenue accounts);

(iii) gross claims information obtained from the LPSO indicated that certain claims may be double counted - the matter should be reviewed;

(iv) information on premiums and claims analysis, both gross and net, should be provided by syndicates as part of their submission; and

(v) all in-house information included in the SSOB and Global Accounts should be subject to independent

review and approval.

(g) As at 31 December 1987

E&W were instructed to audit the SSOB and Globals on 26 October 1987. The letter highlights that the required reports, attached to the letter, may be included in the relevant published documents. E&W were required to report in similar terms to previous years.

The CEG considered a memorandum prepared by the AASD headed "1987 Globals Exercise" on 6 November 1987. The memorandum identified the following changes to the SSOB and Global Accounts arrangements:

(i) the returns were to be completed by managing agents. Syndicate auditors would be required to audit and report to the Council on the accuracy and completeness of the returns. It was stated that the new arrangement would establish an adequate audit trail so that E&W could express an opinion suitable to be included in the published documents;

(ii) gross premiums, gross claims and gross investment would be disclosed in the Globals. An additional return would be required in order to compile comparative dates for the 1984 closed year of account; and

(iii) the amount of profit commission charged by managing agents would be disclosed by way of a note to the accounts.

The memorandum identified that there should be a move to obtain the returns from the managing agents by computer disk. It was suggested that a pilot system be run in parallel with the main system to investigate the feasibility of this. Draft letters were appended to the memorandum to be sent to managing agents and syndicate auditors highlighting the changes.

A set of "Instructions for the Completion of the 1987 Statutory Statement of Business Syndicate Return" was circulated to managing agents setting out detailed instructions on the completion of SSOB returns by syndicates. The GL forms were amended and added to as follows:

GL4 Reconciliation of gross to net data.

GL8 Reconciliation of calendar year premium income to year of account premium income.

GL9 Analysis of non-LPSO calendar year gross premiums and gross claims.

GL10 Managing agents' 'report and recognised auditors' report.

There were no significant amendments to the GL1 form to be returned for each category of business

except that they came in the form of computer printouts. There was a separate GL1 form for new syndicates (GL1/n). Separate sets of GL1 forms were required for years of account in run-off but the GL1 forms for the 1985, 1986 and 1987 years of account were also to include run-off data.

GL4 required a reconciliation of gross data to net data for each category of business for premium, claims, investment returns and reserves. A GL4 was required for the open years of account and the closed year of account (and any years of account in run-off).

GL10 contained a managing agent's report and a recognised auditor's report. The managing agent was required to declare that to the best of its knowledge and belief the SSOB syndicate return was accurate and complete. The syndicate auditor was required to state in its opinion that the return had been prepared in accordance with the instructions and reflected fairly the transactions of the syndicate.

Market seminars were held in February 1988 to assist managing agents in understanding their responsibilities for the completion and submission of SSOB syndicate returns.

Pursuant to a memorandum submitted by the Regulatory Services Group, the Council of Lloyd's on 3 August 1988 authorised the Committee to approve the SSOB and Globals formally. The Committee formally gave such approval on 10 August 1988.

E&W issued unqualified audit opinions in respect of each of the SSOB and Global Accounts. The latter opinion was published in the Globals at page 17.

The procedures which were introduced over the years in relation to the Aggregate Returns and Global Accounts were aimed (inter alia) at ensuring that the aggregate results of the market had been properly collated. They were not designed to verify whether, in producing syndicate annual accounts, agents and auditors had carried out their duties properly.

THE DEVELOPMENT OF GLOBALS

(a) As at 31 December 1981 and prior years

The Audit Department produced Aggregate Results in a number of forms from the data provided by the Global Statements and Global Revenue Accounts. Aggregate Results, called "Summary of Accounts", summarised underwriting results for the open years of account and the closed year of account for the following categories of business:

(i) life;

(ii) motor;

(iii) marine, aviation and transit (other than aviation);

(iv) aviation;

(v) all other insurance business; and

(vi) a total of all categories of business.

In addition to the Summary of Accounts was a document entitled the "Summary of results". This document summarised the results, for the above categories of business, for a number of years prior to the closure of the year of account being closed, as at the relevant audit, and the closed year.

Aggregate Results were circulated to the Chairman of Lloyd's and the Chairmen of Market Associations prior to an annual press conference, announcing Lloyd's underwriting results, in order that they could prepare statements for the press conference. Aggregate Results were also circulated to underwriting agents prior to the press conference with a covering letter explaining that the information provided was strictly private and confidential until the press conference. The purpose of the latter action was to enable underwriting agents to be in a position to reply to any enquiries received from Names.

At the press conference the Chairman of Lloyd's made a statement followed by the Chairmen of the Market Associations. A document was released at the press conference containing Aggregate Results and the statements of the Chairs.

The Publicity and Information Department circulated the statements of Chairs and Aggregate Results to the underwriting agents. The statements of the Chairs and the Aggregate Results were publicised in the Lloyd's Log. The Aggregate Results were also published in the accounts of the Corporation of Lloyd's for the 1978 year end (which contained the Aggregate Results for the closure of the 1975 year of account) until the 1981 year end (which contained the Aggregate Results for the closure of the 1978 year of account).

(b) Globals as at 31 December 1982 and subsequent years

A memorandum was prepared by the MSSD on the new form of SSOB and the Globals for consideration by the Committee on 24 August 1982. The memorandum stated that with the introduction of the new statutory requirement for the SSOB the opportunity would also be taken to produce a much more comprehensive and "professional" financial statement of the insurance business of the Lloyd's Market. This new format was noted by the Committee.

The Globals were produced in the form of a brochure, later referred to colloquially as "glossies", reflecting the more detailed SSOB returns to the DTI. The new form of Globals contained the following:

(i) a statement by the Chairman of Lloyd's and the Chairmen of Market Associations;

(ii) three year revenue accounts;

(iii) notes to the accounts which developed into a "Statement of Accounting Policies" in the Globals as at 31 December 1985;

(iv) a five year business summary for the five years up to and including the latest closed year for each category of business; and

(v) a financial statement of the "Security Underlying Policies issued at Lloyd's" (this statement was audited and reported upon by E&W).

The three year revenue accounts, termed "Three Year Global Underwriting Accounts", were in a similar format to Form 1/AU 36/GL 1 for the ten categories of business required by the SSOB.

The RITC figures specified in the Globals included reserves established in respect of years of account running off. The notes to the Globals as at 31 December 1984 expressly state that the RITC figures included reserves established on years of account in run-off.

The Globals continued in a similar format until 1987 where the Three Year Global Accounts (for the Globals as at 31 December 1986) were re-formatted to provide a pure underwriting result as well as an overall result taking into account other income and expenditure. The Global Accounts ceased to show the movements on years of account for each year the account was open; the results were produced on a cumulative basis. The Notes to the Global Accounts stated that the Global Accounts were prepared from returns by managing agents (note 1) and stated the profit commission charged by underwriting agents on the closed year of account (note 5).

The Globals for the audit as at 31 December 1987 published a report from E&W stating that they had examined the compilation of the Globals and they had been compiled accurately and summarised properly the aggregate results of the Lloyd's market.

PROCESS FOR THE APPROVAL OF SSOB AND GLOBALS

The SSOB were required to be filed in a number of jurisdictions; the Audit Department/MSSD/AARD/AASD (the Department) supplied the Legislation Department with copies of the SSOB each year for distribution overseas or to important foreign visitors. The US Treasury Department and New York Insurance Department required the SSOB to be filed by 31 August. The National Association of Insurance Commissioners in the US liked to have the SSOB by 31 August or the first week in September. These filings drove the SSOB and Globals exercise. The SSOB was filed with the DTI and US regulatory authorities usually by the end of August. The information contained within the SSOB was embargoed until the release of the Global Accounts in the first week of September.

On receipt of the SSOB and Global Accounts returns from syndicate auditors in early June, the

Department aggregated the information, manually in earlier years and by computer in later years. Draft SSOB and Global Accounts were prepared and reviewed by the manager of the Department. Once a finalised version was prepared the process for approval was as follows:

First week of August Draft SSOB and Aggregate Results/Global Accounts were sent to the Chairman of Lloyd's and the Chairmen of Market Associations in order for them to prepare statements for the Globals.

Second week of August The Council considered the SSOB and final proofs of Globals (if available) and authorised the Committee of Lloyd's to act on its behalf in approving the SSOB and Globals.

Statements by the Chairman of Lloyd's and Chairmen of Market Associations were finalised. The Department liaised with the Chairs and the Publicity and Information Department.

SSOB and final proofs of Globals were reviewed by O Group.

Third week of August The Committee of Lloyd's considered the SSOB and authorised appropriate officers to sign. The Committee considered the Globals and approved publication and distribution.

The SSOB were signed by the appropriate officers.

The SSOB were filed with the Board of Trade/the DTI. The SSOB were sent to agents overseas for filing with regulatory bodies.

Fourth week of August Globals were sent to printers.

Globals were sent to Council members.

First week of September Press conference and distribution of Globals.

Prior to the SSOB and Global Accounts for the year ended 31 December 1982 the process was similar, save that the Committee was solely responsible for approving the SSOB and Aggregate Results. From the year ended as at 31 December 1985, the process of preparing the SSOB and Globals was audited and the audit opinion was usually given in August.

The approval of the Council was obtained by the submission of memoranda with draft SSOB and Globals (if available) attached. The Department produced a memorandum for the Committee of Lloyd's outlining the procedure for preparing SSOB and Globals and seeking approval and authorisation.