



***Meeting of the Working Group on New Technologies, Prevention and Insurance***

***22nd May 2008, 14:30-17:00  
HanseMerkur, Siegfried-Wedells-Platz 1  
Hamburg***

***Guidelines for the meeting***

**I. Planned research**

It includes the New Technologies (NT) in relation with the private insurance. Inside the NT we will focus on Internet (Information and Communication Technologies (ICT), Genetic Engineering (GE) and Nanotechnology (Nt). By means of study and comparison of legislations, doctrine of the courts and scientific insurance practices we try to find out

- What are they
- Which risk they generate
- Which coverages are or may be affected
- How they affect the precontractual, contractual or claims stages
- What juridical influence has the existence or absence of the risk safety, prevention and lessening measures

**A. The ICT**

The most significant manifestation of the ICT is Internet; the development of the electronic trade has been and is one of the milestones of the technological revolution. The rapidity of the transactions through Internet and the universality of the network



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facilitate an agile trade of international character that presents many advantages for the economic operators.

The negative aspect is that the **risks** associated with the ICT are great. The undue use of networks, products and services produces economic losses and/or of image of the services providers, their clients and third parties.

There are frequent the prejudices caused by the loss or limitation of the integrity or confidentiality owed to failures in the information, applications, systems or communications channels. The sources of these risks are located in organization faults, act of God, human errors or technical failures or, in general, in fraudulent actions due to sabotages, vandalism, hacking or virus computer.

The **affected coverages** are the classics ones as those who have arisen out from the new situation; the special coverages try to eliminate the gaps and ambiguities of the conventional ones.

In the conventional ones (Property in general, CAR, EAR and Engineering, Electronic Equipments) appear problems with regard to the risk definition and description and the scope of the coverage.

In the field of the liability insurance the affected policies are Professional Liability, D&O, E&O, EPL and CGL and the umbrellas coverages.

Infidelity, fraud and Credit policies remain also affected.

A crucial point is the study of risk **safety, prevention or lessening** measures incorporated or to be incorporated in the policies. We should have present that the major computer risk is today the way of protecting the information by means of the passwords and that the criptology methods are questionable.

## **B. Genetic Engineering**

GE is the technical process for selectively modifying genetic information in living organisms; the hereditary material of a living organism is isolated and transferred to a gene considered useful to another organism by means of certain biological tools and a vector for the transport; as a result of it the receiving organism contains the properties and characteristics contained in the transferred gene; it is necessary that the hereditary pattern of both organisms is of the same material and that the information that it contains is submitted to an identical processing (the genetic code is universal).

As real **risk scenarios** we might mention Investigations related to the human health realized with invasive procedures or not; donation and use of sperms, preembryons, human foetuses or their cells, tissues or organs for biomedic investigation and its possible clinical applications; treatment, storage and movement of biological samples; biobanks or treatment of sensitive personal genetic information; genetic tests (prenatal invasive diagnosis, amniocentesis, puncture and analysis of the umbilical cord, genetic molecular investigations of the hereditary material or the detection of the predisposition to diseases with a great anticipation).

The advances in GE affect **insurers** in more ways than just health or life insurance, but also in other lines of business such as liability, agricultural and engineering insurances.



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The GE represents an important risk for the liability insurance since it can concern the life, the health, the animals and plants or the environment due to allergies, faulty design and production of medicines or liberation of genetically modified organisms producing permanent and harmful changes in the fields microorganisms or in the adjacent cultures; there remain affected the coverages for defective products, products recall, among others.

In agriculture insurance, the resistance to herbicides and insecticides is one of the most relevant features of the use of genetically modified crop plants (maize, soya, cotton). The risk of pollution of conventional cultures and the production decrease is evident.

The GI also affects considerably the engineering insurance (excavators, cranes, derricks, airports, giant dams, gigantic tunnels, big power stations) etc.) in the majority of the processes, for example in the use of specially figured microorganisms in sewage treatment plants, or in the industrial production of medicines (insulin) in bioreactors or in the field of the artificial intelligence research.

### **C. Nanotechnology**

Nt is the capacity to manipulate materials at atomic and nuclear scales. The word nano refers to the length scale: one nanometre is one billionth of a metre, that is one thousand times smaller than the micro scale, that is associated with the electronics industry.

The Nt actually embraces advancements over a wide range of scientific and technical disciplines and is concentrated on the study, design, creation, synthesis, manipulation and application of materials, devices and systems in a scale of a nanometre, affecting physics, chemistry, biology, materials science, mechanics and electronics.

The Nt increasing importance has led the European Commission to adopt recently a code of conduct for the responsible investigation in the Nt fields.

The nanoproducts represent a considerable **risk** in areas as different as healthcare, ICT and energy storage; their applications include transport, manufacturing, biomedicine, sensors, environmental management, food technology, textiles, cosmetics, skin care and defence.

The nano materials influence all the assurance segments due to their interdisciplinary character. If one or more nanoproducts or materials cause illness, the claims may affect multiple lines of business and classes of insureds; it is to consider that there are not currently specific exclusions, conditions or terms in the regular wordings.

The lines of business that could be affected include: General Liability, Products Liability, Pollution Liability, Commercial Umbrellas, Products Recall, D&O, E & O, Worker's Compensation, Automobile Liability and the most Property lines. The Liability Insurance exposure could result in diseases with long latency periods; the question of the trigger of coverage and allocation of limits may arise.

The Property and Casualty insurers may be also obliged to learn a new language and to take risk preventive and lessening measures which reach maximum relevancy as for the need to recognize, to reduce, to direct and to control the risk



## **II. COMMON ISSUES REGARDING NEW TECHNOLOGIES IN RELATION TO PRIVATE INSURANCE**

### **II.A. Recent developments in legislation, jurisprudence and doctrine**

#### **1. Legislation**

Please specify and briefly describe any new legislation enacted within the period 2007-2008 in the realm of New Technologies affecting issues concerning private insurance.

#### **2. Jurisprudence**

2.1. Please specify and briefly describe any new judgments passed within the period 2007-2008 on issues regarding New Technologies and affecting private insurance.

2.2. Please specify whether significant changes in case law have taken place within the period 2007-2008 in the abovementioned matters.

In such cases, please specify the type of resolution, the reference of the judgment, and briefly describe the case and the impact on insurance.

#### **3. Doctrine**

Please specify any new publication issued within the period 2007-2008 dealing with any topic regarding New Technologies.

### **II.B. Business scenario and risk perception**

1. How severe is perceived the risk engendered by New Technologies (low, moderate, high)?
2. Are additional difficulties perceived for insuring activities involving New Technologies stemming from lack of knowledge, experience or expert staff?
3. Should you have insurance policies or model policies referring to New Technologies, it would be very useful to attach them to this questionnaire.

### **II.C. Analysis of Insurance Policies**

#### *1. Coverage*

Which risks are usually included in the coverage of the insurance policy?

Which risks are excluded?

#### *2 Risk statement :*

Are New Technologies duly mentioned or taking into account in the description and statement of risks?

#### *3. The role of genetic tests in risk analysis*

#### *4. Prohibition/ limits to genetic tests*



5. As far as risk description and exclusions are concerned, should they be modified, clarified or widen in order to take into account the specialties of the activities covered by the proposed study areas?

6. *Contingency plans, prevention and mitigating measures included in the policy*

In the policies regularly used in your country: are there any specific contingency plans, precautionary or mitigating measures included concerning New Technologies? In such a case, are they agreed upon by the parties or anyhow unilaterally imposed by the insurance companies?

a) Provided the previous question has been answered in the affirmative:

Could you specify the substance of each of the said duties?

b) Please indicate the applicable diligence pattern in order to assess compliance, and whether the fact that the damages can be deemed to have been (totally or partially) caused by the breach of the referred duties is to any extent relevant.

7. *Claims*

7.1. Please describe the claims experience in your country, specifying cases, identifying eventual cases and new scenarios.

7.2. ¿How do New Technologies affect to the multinational or international management of claims?



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