

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
INTERNATIONAL INSURANCE ISSUES COMMITTEE  
NEWPORT, RHODE ISLAND  
JULY 8, 2005  
DRAFT MINUTES

The National Conference of Insurance Legislators' (NCOIL) International Insurance Issues Committee met at the Hotel Viking in Newport, Rhode Island, on Friday, July 8, 2005, at 9:30 a.m.

Rep. Mark Young of Vermont presided over the Committee in the absence of Rep. Karen Carter of Louisiana, Committee Chair.

Other members of the Committee present were:

Sen. Joe Crisco, CT  
Sen. Steven Geller, FL  
Rep. Terry Parke, IL  
Rep. Gabe Leland, MI  
Assem. Nancy Calhoun, NY  
Assem. Ivan LaFayette, NY  
Sen. Duane Mutch, ND

Other legislators present were:

Rep. John Coghill, AK  
Rep. Steve Fontana, CT  
Sen. Alan Sanborn, MI  
Rep. George Keiser, ND  
Sen. Harvey Tallackson, ND  
Assem. Bill Barclay, NY  
Sen. Bill Larkin, NY  
Rep. Tony Melio, PA  
Rep. Craig Eiland, TX  
Rep. Gene Seaman, TX  
Rep. Gini Milkey, VT  
Rep. Michael Reese, VT

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Erik Olson, NCOIL Director of Legislative Affairs & Education,  
Health, Life, and Workers' Compensation Insurance

#### LONDON BOMBING

Upon initiation by Rep. Young, the Committee and meeting attendees shared a moment of silence in acknowledgement of the recent London bombings.

## MINUTES

Upon a motion duly made and seconded, the Committee voted unanimously to approve, as submitted, draft minutes of its last meeting, held on March 4, 2005, in Hilton Head, South Carolina.

## EU/US DIALOGUE

Mr. Peter Skinner, member of the European Union (EU) Parliament (MEP), spoke regarding issues relating to the reinsurance marketplace. He said that EU Parliament members had been challenged internally in their attempts to achieve a semblance of order and authority over the EU reinsurance market.

Mr. Skinner said that the EU reinsurance industry is a strong international player and that five of the largest reinsurers in the world are based in Europe, including Munich Re, Swiss Re, Hannover Re, Lloyd's, Allianz Re, and SCOR. He said that the vast majority of U.S. reinsurance purchased from non-U.S. reinsurers is written by the ten largest reinsurers. He said that globally, primary insurers ceded \$350 billion in 2003 to EU companies and that the EU reinsurance market represents \$94 million of net reinsurance premiums written in that same year.

Mr. Skinner said that European companies have a large global reach. He said that the European companies comprise 77 percent of reinsurance net premiums, while non-European companies comprise 23 percent.

Mr. Skinner said that 25 members and numerous national legislators comprised the EU. He said that the EU Parliament had introduced a reinsurance directive, which he was responsible for. He said that these national legislators, very much like U.S. state legislators, wanted to act together to facilitate cross-border trade at an efficient and economic level that would protect consumers and businesses at the same time.

Mr. Skinner said that he is directly elected and represents Southeastern England, which has eight and one-half million people and is a large territory to represent. He said that 736 MEPs represent the countries across the EU and they all meet on a continual basis in Brussels and in Strasbourg to pass legislation for laws suitable at the European level. Mr. Skinner said that he understands the U.S. state-federal dynamics, as the EU experiences the same kind of tension at the state-federal level.

Mr. Skinner said that the EU reinsurance directive, which was proposed by the EU Commission in 2004, actually came to the EU Parliament at a hearing in November of last year. He said representatives of Swiss Re, a non-EU entity; Hannover Re, an EU entity; and a French regulator were invited. He said that quite a discussion between politicians, industry and regulators ensued. He said that in April of this year, the European Parliament Committee on Economic Affairs (ECON) voted on the directive based upon a "trialogue" between the Council of Finance Ministers, the governance across the member countries; the Parliament, represented by him; and the Commission, which is equivalent to the Administration in the U.S. He said that eventually they held a plenary vote in June 2005 to determine amendments to the Commission's proposed directive. He said that the Council, the federal level, had agreed to introduce the EU Parliamentarian's recommended directive. He said it was an extremely tough battle and that the EU Parliament had thrown out Council

recommendations that would intrude into the national states' own particular subsidiary. He said that, eventually, all parties negotiated an amenable position.

Mr. Skinner said that the EU reinsurance directive, a series of rules that set prudent supervision of the EU reinsurance industry (including solvency oversight), has been adopted by the EU Parliament, would be adopted by the Council in late 2005, and subsequently would be incorporated into member countries' statutes. He said that it was necessary to negotiate a transition period to allow member states, particularly France and Portugal, which had problems with moving to a more prudent supervisory system, to do so. He said that the transition period gave such states two years (the normal limit given to a member country to introduce and adopt laws and supervisions on administration changes) plus 12 months, to the end of 2008 or beginning of 2009. He said this was due, in part, to another new set of administrative supervisory rules coming into play under a new insurance directive, Solvency Two.

Mr. Skinner said he felt that reinsurance, as a business to business negotiation, was much easier to supervise than insurance, a business to consumer enterprise.

Mr. Skinner said that today, many issues related to reinsurance place a heavy burden on companies. He said that higher costs have resulted from, among other things, administration of cross-border transactions, duplicating or inventing new rules, and complying with various requirements in different jurisdictions. He said that the EU had thought it necessary to consider how to change existing rules in order to act as a single market.

Mr. Skinner said that the sub-optimal functioning of the EU reinsurance market had been left to national discretion. He said that, in issuing the directive, EU legislators sought minimum harmonization in order to negotiate amongst member countries and with third-party countries like the U.S., Japan, and Bermuda.

Mr. Skinner said he felt that the EU had succeeded in creating a strong supervisory framework across all the member countries. He said that ongoing, one mandatory license scheme will allow a member country to do business in home member states. He said that if a German company wants to do business in Britain, it will do it under the home supervision of the German supervisor. Mr. Skinner said that the single European insurance market allows for a passport to cross borders and thus reduces the barriers to trade.

Mr. Skinner said that the reinsurance directive has helped the EU to better discuss the global reach of reinsurance in the future. He said that so many companies want to do business on more than just "one side of the pond"—they want to do business globally. Therefore, he said, it is vital to define the rules of the game.

Mr. Skinner said the EU also wants to see equal treatment with countries outside the EU. He said that third-party companies doing business in the EU have been treated equal to EU companies because the EU believed this promoted efficacy and efficiency.

Mr. Skinner said that he would be lobbied as to what should be involved in the new insurance directive and said he would like to dialogue further with NCOIL legislators to ensure that the EU/U.S.

communication remains open. He said he thought this open dialogue would help consolidate NCOIL efforts, which he felt were moving toward an international community role in setting global standards. He said at the same time the dialogue would set the stage for a future discussion on insurance industry solvency standards.

Rep. Young said that, after listening to this and other presentations by EU representatives in the past, he was struck by the similarities between U.S. and EU state-federal issues, such as overarching licensure and cross-border issues. He said that he hoped to continue the discussions in the future. In response, Mr. Skinner said that he would be happy to host a meeting in Brussels inside the EU Parliament and introduce NCOIL legislators to MEPs, as he thought that would promote the ongoing discussion.

#### IAIS/NAIC INTERNATIONAL ACTIVITY

National Association of Insurance Commissioners (NAIC) President Pennsylvania Commissioner Diane Koken reported on NAIC ongoing international activity, on behalf of NAIC President-Elect Maine Superintendent Al Iuppa, current chair of the International Association of Insurance Supervisors (IAIS) Executive Committee, who was unable to attend the meeting.

Commissioner Koken said that the NAIC recognizes the globalization of the insurance business and the importance of working together with its international counterparts. She said the NAIC is increasingly involved in not only the IAIS in the NAIC's key role of chair of the Executive Committee, but also in the Joint Forum and the Financial Stability Forum, the Organization for Economic Cooperation and Development (OECD) and also the International Accounting Standards Board (IASB).

Commissioner Koken said that the NAIC also recognizes the importance of its training function for government officials in developing countries. She said that the NAIC stresses to those countries the importance of a well-regulated marketplace, as well as transparency and competition, which it believes will create a healthy and stable insurance marketplace. She said that the NAIC also recognizes that this kind of interaction also enhances the ability of U.S. insurers to compete on a more global basis, to expand their marketplace, and to ultimately benefit U.S. consumers.

Commissioner Koken said that, as mentioned previously, the NAIC participates in the IAIS Committee, which meets annually and quarterly. She said that the Committee is working on a number of significant projects at the moment, including the development of core principles, which is also being worked on through the IAIS Solvency Committee. She said the Solvency Committee is very ambitiously working on a program on a supervisory framework of international solvency standards. She said that Virginia Commissioner Al Gross sits on that Committee. She said that Massachusetts Commissioner Julie Bowler chairs the IAIS Reinsurance Committee, which at present is working on finite risk reinsurance guidance and how to define mutual recognition.

Commissioner Koken said that the NAIC provides support and expertise to a number of other committees. She said that Commissioner Kevin McCarty represents the NAIC on a Joint Forum committee, which works on the development of future supervision of financial conglomerates.

Commissioner Koken said that commissioners participate and provide their expertise at OECD meetings. She said that just last week, she, along with representatives of trade organizations and the Department of Commerce, participated in an OECD meeting focusing on issues of mega-catastrophes, medical malpractice insurance, finite reinsurance and terrorism. She said NAIC participation in organizations like the OECD is critical. She said, by way of background, that the OECD is an organization resulting from the Marshall plan, which initially comprised developing countries, but now comprises many other countries around the world. She said that the OECD focuses on pension and insurance issues and that the Department of Commerce sits on the OECD on behalf of the U.S.

Commissioner Koken said that the NAIC is increasingly called on to assist the federal government in international trade negotiations, most notably in connection with the new round of world trade negotiations under GATS and heightened attention to regional CAFTA and FTAA and bilateral trade agreements.

Commissioner Koken said that the NAIC has developed pilot programs for regulatory cooperation and technical assistance. She said under a China pilot program held last year, five employees of the Chinese Insurance Regulatory Commission (CIRC) experienced four-week long internships in state insurance departments. She said that this allowed the interns to better understand solvency and market conduct, as well as other processes the insurance departments regulate.

Commissioner Koken said that the NAIC had received requests from Brazil, Vietnam and India for similar opportunities and has scheduled future programs. She said that at a recent OECD meeting, Russian regulators expressed interest in achieving a better understanding of the U.S. solvency mechanism and the risk-based capital approach, and requested technical assistance in their development of such a process.

Commissioner Koken said the NAIC has benefited from its involvement. She said that several commissioners met with Wu Dingfu, chairman of CIRC, who invited them to participate in an international panel to discuss the topic of building a modern insurance supervisory system. She said that panel also discussed the issue of corporate governance.

Rep. Parke said that NAIC and NCOIL are tied so closely together—that they depend upon each other for basic survival, which includes moving their agendas forward together. He said that after listening to her report on NAIC outreach to global counterparts, he suggested that the NAIC might want to reach out to NCOIL to educate legislators. He encouraged the NAIC to apprise NCOIL of such meetings and to invite legislators, as public policymakers, to them. He said that the NAIC has resources and that many legislators don't. He said he thought the NAIC would want to do this since legislatures ultimately provide funding to the NAIC.

Commissioner Koken said that the NAIC could certainly do a better job in this matter and that it is increasingly important for all of us to recognize the global implications of insurance. She said that perhaps the NAIC international newsletter might be a vehicle for educating legislators. She added that the NAIC International Committee meets at each NAIC national meeting, though she recognized that NCOIL leadership finds it difficult to attend those meetings.

Rep. Parke said that he and certain other NCOIL legislators hoped to attend the New Orleans

meeting and that perhaps when NCOIL and NAIC held their dialogue, there would be more to discuss.

Commissioner Koken noted that the IAIS was holding its annual meeting in Vienna, Austria, on the third week in October. She suggested that this meeting would provide a good forum for such education.

Rep. Eiland recommended that NCOIL have representation at the annual IAIS meeting and further that NCOIL have a constant presence at these meetings. He said it is important that NCOIL be side-by-side with the NAIC, as it takes two to tango here in the U.S., but hopefully not three. He said that the Executive Committee would discuss this issue further. Rep. Young observed that NCOIL had grown exponentially in the last decade and said he agreed with Rep. Eiland.

Ms. Nolan reported that at the NCOIL spring meeting, the Executive Committee had determined that NCOIL join the IAIS not as an “observer,” which would be inappropriate, but as an “other governmental entity.” She said that she had spoken with Yoshi Kawai, IAIS Secretary General, and that she was in the process of initiating membership.

#### ISSUES RELATED TO NAFTA

Commissioner Koken said that Texas Commissioner Jose Montemayor, who has recently left the Texas Insurance Department, had been highly involved on the behalf of the NAIC in NAFTA issues. She said that California Commissioner John Garamendi and New Mexico Superintendent Eric Serna would represent the NAIC in the future. She said that the NAIC continued to work with regulators, the industry, and transportation officials in particular to try to remove impediments to providing seamless insurance coverage for cross-border trucking. She said that the NAIC does have a NAFTA working group that meets independently and jointly with the Tri-National Insurance Working Group, which includes Canada, Mexico and the U.S. She said the group discusses cross-border trucking issues, litigation, surety bonds, workers’ compensation issues associated with NAFTA, and cross-border issues relating to the U.S. Patriot Act.

#### INTERNATIONAL ACCOUNTING STANDARDS

Doug Barnert, Executive Director of the Group of North American Insurance Enterprises, a trade association of property-casualty and life insurance companies dedicated to the interaction and development of international accounting standards and other solvency issues, spoke regarding recent developments on those issues. He apprised legislators of an increasing amount of convergence in these areas. He said that joint projects of the International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB) of the U.S include determining, in relationship to international standards, how to recognize revenue, how to report on income statements, and the conceptual framework underlying each set of standards. Mr. Barnert referred to a joint IASB/FASB paper “Revisiting the Concepts,” which addresses differences between U.S. and international accounting, including a new concept of conservatism.

Mr. Barnert said that as part of such explorations, FASB is addressing the definition of liabilities and equities, while the IASB is leading a modified joint insurance project. He said that, in reaction to activity and interest in finite reinsurance and other risk transfer issues this spring, FASB

has decided to start a project on risk transfer and reinsurance, which is now underway at the staff level. He said that staff is trying to limit the project to these issues and not let it become a full-blown insurance study. Mr. Barnert said that the lack of a definition of insurance in U.S. general accounting principles (GAP) was problematic. He said that U.S. GAP language refers to “contracts,” but does not specifically define insurance. He said that his group, in an effort to assist, is reviewing state laws to pull together statutory language regarding state definitions of insurance.

Mr. Barnert said that FASB had just started a project on financial guaranty insurance. He said that staff is again trying to limit the project and perhaps follow what IASB did regarding financial guaranties. He said that he expected to see something on that exposed in August. He added that the FASB was working on a project on life settlements to clean up an antiquated method of accounting such transactions. He said a staff position on the issue was expected to be circulated within the next 30 to 45 days.

Mr. Barnert said the NAIC had been providing expert assistance to the IAIS and that the IAIS has presented a paper to the IASB regarding decisions regulators may have to make as they move to international accounting standards-type GAP accounting. He said that both GAP accounting (for reporting to stockholders) and statutory accounting standards (SAP) (for insurance regulators) exist in the U.S. But, he said, the rest of the world only has one set of books. He said as standard setters are moving to set up GAP-type accounting for the rest of the world, U.S. regulators have questions, including will there be enough conservatism, will reserves be high enough, and will there be enough protections for policyholders.

Mr. Barnert said that another document moving through the Committee of European Insurance (Comité Européen des Assurances or CEA) and Occupational and Pension Advisors (CEIOPS), which makes recommendations to the European Commission Insurance Committee, will look at things like conservatism and will make recommendations by year-end. He said year-end is their deadline because January 1, 2006, is the first year for international accounting standards in Europe. He said that yesterday, the EU Accounting Regulatory Committee, one of the reviewers of international accounting standards, adopted a financial instruments standard (IAS 39), which included a fair value option. He said this option provided for holding any asset or liability at fair value. He said that FASB is considering a similar project. Mr. Barnert said that U.S. industry is concerned because the fair value option requires that a company use its own credit risk to determine what its liabilities are. He said that would mean that the worse condition a company was in, the lower its reserves would be. He said that this is counterintuitive to any one involved in insurance regulation, but in an accountant’s viewpoint, it makes sense. Mr. Barnert said that his group is hoping that the EU Parliament will take a strong look at this option before it adopts it. He said that FASB on the board level is skeptical about the provision’s appropriateness and has questioned FASB staff as to why this option should be included on credit risk.

Mr. Barnert concluded by reporting that the IASB continues to push forward on its insurance contracts project and doesn’t anticipate a draft until the first quarter of 2006. He said IASB is now working on life insurance issues and that the IASB had adopted at the board level a provision to require that non-life reserves be discounted. He said that the U.S. industry was unified in its opposition to this concept and has the support of Standard and Poor’s. He said the idea of discounting reserves, e.g., trying to predict interest rates and then holding them as your reserves is a highly risky

situation. He said that this is not adopted in the final standard.

Rep. Eiland noted that U.S./EU accounting standards are involved in the reinsurance collateral discussion to be held later in the afternoon. In response to Rep. Eiland's question regarding the time frame for a unified accounting standard, Mr. Barnert said a final standard might be adopted around 2009 or 2010. He said that subsequent transition time could take one or two years.

In response to another question from Rep. Eiland, Mr. Barnert said that after FASB adoption of the model, the NAIC would review it through its Statutory Accounting Working Group and consider what it wants to include as part of statutory accounting. He said that there is increasing pressure to bring SAP and GAP as close as possible to increase ease of accounting, as long as there is no reason to differentiate.

In response to a question from Assemblyman Lafayette, Mr. Barnert said that he did not envision a state role due to federal governmental authority through the Securities and Exchange Commission (SEC) to adopt rules for public companies, which applies to GAP. He said there was even a question as to a Congressional role. He said that didn't mean that states would not be called upon to review their current rules with respect to solvency protection, reserves, and risk-based capital.

Mr. Barnert said that pressure existed to create a single standard for general purpose accounting in order for companies to get access to capital markets worldwide. He said the U.S. government through the SEC had indicated willingness to consider international accounting standards as a direct substitute for U.S. GAP, if the IAIS follows a certain path over the next three or four years. He said that this would allow French, German, or Chinese companies access to a listing on the U.S. stock exchange just by following international accounting standards. He said that obviously there is no advantage to just one company using general accounting standards.

## FINITE INSURANCE AND REINSURANCE

Commissioner Koken said that investigation into finite reinsurance is broad and includes two of the most well-known insurance executives in the world—Hank Greenberg of American International Group (AIG) and Warren Buffett of Berkshire Hathaway. She said that regulators, the FBI and the SEC are looking at fraudulent finite reinsurance transactions, and the Financial Services Authority (FSA) in the U.K., as well as officials in Australia are investigating related concerns. She said that Hank Greenberg and Howard Smith at AIG had resigned, two General Re executives had plead guilty in a suit brought forward by the Justice Department, and chief executive officers of General Re's Faraday Group in London and TIAA-CREF were given paid leaves of absence.

Commissioner Koken said that reinsurance, traditional and finite, has many legitimate purposes. She said such legitimate purposes include, among other things, capacity and stability. She said that the finite reinsurance comes into play where a reinsurance agreement's primary element of risk is financial, as opposed to underwriting, and where the risk to the assuming enterprise is limited.

Commissioner Koken said the crux of the issue was whether finite reinsurance transactions should be accounted for as reinsurance or as a deposit. She said that a transaction should be accounted for as a deposit if there is insufficient risk and that when sufficient risk is involved, it is appropriate to

use reinsurance accounting.

Commissioner Koken said that existing guidance for general accounting purposes (FAS 113) and statutory purposes (SAP 62) tells where to draw the line. She said these provisions state that a reinsurer must assume significant insurance risks, that both underwriting and timing must be reasonably possible that the reinsurer may realize a significant loss, and that cash flow testing requirements must exist. She said that an existing informal benchmark is that a ten percent chance of a ten percent loss must exist in order to account for a transaction as reinsurance.

She repeated that the NAIC recognizes the legitimate uses of reinsurance and has moved very quickly and aggressively to add a level of transparency and disclosure to existing protections. She said the NAIC Property & Casualty Reinsurance Study Group recently held an interim meeting where it received presentations from interested parties and worked to improve enhanced disclosure requirements for insurers.

Commissioner Koken said these requirements include a CEO and CFO attestation that no side agreements exist that affect losses under the reinsurance contract, that there is documentation available showing the economic intent of the transaction, that risk transfer analysis evidences proper accounting treatment, that compliance with SAP 62 exists, and that there are internal controls in place. She said the requirements also provide that there be disclosure of risks that may have been ceded under any reinsurance contracts that result in a positive or negative underwriting result greater than three percent. She said they require disclosure of risks ceded under reinsurance contracts where the written premium represents 50 percent or more of the entire written premium assumed by the reinsurer, or 25 percent or more of the written premium had been retro-ceded back to a reporting entity or its affiliates.

Commissioner Koken said that the NAIC working group requirements also provide that any reinsurance transaction that is treated differently, for SAP vs. GAP purposes, must be disclosed to the regulator.

Commissioner Koken said that after the NAIC working group passed these disclosure requirements, the NAIC Blanks Working Group in Boston considered them and requested comments due by July 1. She said she thought the Blanks Working Group would be moving on the greater transparency piece and requirements for additional assurance from top management regarding finite reinsurance transactions. She said she believed that the NAIC was on track to have disclosure in place for annual statements reported at end of year, which would be filed with regulators by industry in March 1, 2006, annual statements.

Commissioner Koken said continuing discussion on a recommendation to bifurcate certain transactions into separate deposit and reinsurance allocations for accounting purposes was likely.

In response to a question from Rep. Eiland regarding the number of states that have issued subpoenas or are involved in interrogatory investigations, Joe Sieverling, Senior Vice President with the Reinsurance Association of America (RAA), said that three states had attestation requirements, three other states were considering them, and two states had issued broad investigative subpoenas in regard to finite reinsurance transactions.

Commissioner Koken cautioned that a level of uniformity should exist with regard to any finance reporting mechanism. She said she thought because the NAIC had moved quickly and would have their approach in place by end of year, all states could soon be utilizing that method to assure appropriate disclosure.

Mr. Sieverling said that the RAA and industry in general broadly support the NAIC regarding the issue. He said that industry, in fact, had drafted most proposals before NAIC to improve disclosure and require CEO attestation. He said that while industry supports the NAIC approach, it believes existing statutory and GAP accounting guidance is adequate. He said that this guidance was issued in 1994 and has been reviewed by FASB over the years. He said that industry recognizes that the additional disclosure, particularly the interrogatories being added to the annual statements, will improve the transparency of the reinsurance transactions.

Regarding CEO attestation, Mr. Sieverling said that the industry in principle has concerns. He said that the only similar requirements he is aware of relate to Sarbanes Oxley, which he feels is inappropriate for reinsurance transactions.

Mr. Sieverling said that the RAA prefers an NAIC standard because it is better to have one single properly constructed requirement than several inconsistent ways of approaching the issue, which are applied on an extra-territorial basis. He said that the RAA hopes that, once the NAIC requirements are adopted and part of NAIC annual statement to be filed for this year, states will back away from existing attestations.

Mr. Sieverling said that the bifurcation proposal would fundamentally change the accounting method for reinsurance contracts and that the majority of those contracts did not involve a failure to comply with and to apply existing accounting standards. He said that bifurcation was a bad idea as it would result in significant unintended consequences, including marketplace consequences. He said that reinsurance transactions would be effectively separated somewhat arbitrarily into two separate buckets for accounting purposes. He said that would take away much of the benefit gained by these transactions, as reinsurance is very important in adding and increasing industry capacity in sharing risk.

Mr. Sieverling recommended allowing the new NAIC disclosure requirement, which would bring finite reinsurance into sharp focus for top management, to move forward and then evaluating how things work before consideration of any fundamental change to accounting procedures.

Julie Gackenbach of the Property Casualty Insurance Association of America (PCI) echoed Mr. Sieverling's comments and commended the NAIC for acting swiftly and in a coordinated fashion on the issue. She said that PCI supports additional disclosures that are targeted on identifying specific transactions and the appropriate accounting procedures. She said that PCI has lingering concerns with the CEO attestation, particularly because a certification is already required for the entire annual statement. She said that PCI commended the NAIC for making improvements to that and said that if there was going to be a CEO attestation, PCI supports a single standard, rather than multiple state standards.

Ms. Gackenbach said that PCI was also concerned about one NAIC proposal to require

aggregate stock loss to automatically trigger disclosure. She said PCI believed that this was unnecessary, as many catastrophe contracts take that form because additional loss limiting or finite features should exist before disclosure is required.

She said PCI is encouraging states to withdraw individual disclosure and attestation requirements and to adopt a single approach. She added that PCI also encouraged states to take a uniform approach in investigations of finite reinsurance. She said that to the extent that states can agree to a common and a reasonable set of standards, focus on their domiciliary states and provide a reasonable time for response, it would provide a much better process for both regulators and for companies.

Diana Chafey of the law firm DLA Piper Rudnick of Chicago said that her firm represented buyers and sellers of finite risk products as well as brokers and intermediaries on both a domestic and international basis. She said that the firm's clients had retained them to evaluate over 100 of these transactions in 2005 alone. She said that this evaluation gave them a unique and practical perspective on the structure and accounting for the different transactions. She said that her firm has provided advice on the legality of the arrangements as well as on their future business practices.

Ms. Chafey said that the views that she expressed were not necessarily those of all of her clients or of DLA Piper Rudnick. She said they represent the views of some of her clients that regularly play in this particular marketplace and reflect practical experience gained by advising these clients on these transactions. She said that her firm believed that a vast majority of the transactions serve legitimate business and economic purposes and have been accounted for appropriately. She said the transactions are entered into by extremely sophisticated parties that perform extensive due diligence; scrutinize management's objectives and seek to draft contracts to reflect them; carefully evaluate the economics underlying the deals, including performing complex financial modeling; scrutinize appropriating accounting treatment; and have internal controls in place.

Regarding current proposals, Ms. Chafey said that there is no indication of a deficiency in the current body of law and suggested that no changes were necessary. She said that she agreed with other interested parties that the current accounting guidance and standards provide the appropriate framework for evaluating the economic substance of these transactions, but that enhanced disclosure by ceding companies could improve these standards. That being said, she said, care should be taken to tailor those disclosures to capture information that is truly valuable to regulators.

Ms. Chafey said that she also agreed with the other interested parties that while CEO attestation might result in CEO/CFO taking more ownership in certain aspects of a company's reinsurance reporting, possibly reduce the risk of unaccounted-for side agreements, and potentially result in reduced internal controls, it would be best achieved by expanding the interrogatories attested to on a page of the annual statements, rather than requiring a separate certification.

Ms. Chafey said that the bifurcation proposal or any other proposal to alter current accounting treatment for these transactions should be undertaken carefully because it could have broad unintended effects on the insurance market generally or certain segments of it. She said, for example, regulators have concerns regarding smaller companies that provide specialized non-standard coverage to customers that cannot get coverage otherwise or cannot afford it, such as medical malpractice

reciprocals and risk retention groups. She said that such groups are involved in quota share reinsurance in order to leverage surplus and create capacity, which could be harmed by such proposals. She added that this also could impact competition and possible result in coverage being exported. Ms. Chafey ventured that any changes made should be done so uniformly because many companies report under multiple standards of accounting, including GAP, statutory accounting, their home country's accounting, IAIS accounting, etc. She said it will be increasingly important for legislators and regulators to work with their international counterparts to achieve a uniform standard.

#### ADJOURNMENT

Upon a motion duly made and seconded, the Committee adjourned at 11:15 a.m.

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