



SOCIETY OF
ACTUARIES®

2019 **ANNUAL
MEETING**
& EXHIBIT

October 27-30
Toronto, Canada

Session 062: Reinsurance Treaty: Source of Understanding or Discord?

[SOA Antitrust Compliance Guidelines](#)

[SOA Presentation Disclaimer](#)

Reinsurance Treaty: Source of Understanding or Discord?

Moderator:

Jennie McGinnis, FSA, CERA, Swiss Re

Presenters:

Chris Bello, Esq., Gen Re

Tim Cardinal, FSA, MAAA, CERA, Actuarial Compass

Session 062

October 28, 2019



SOCIETY OF ACTUARIES

Antitrust Compliance Guidelines

Active participation in the Society of Actuaries is an important aspect of membership. While the positive contributions of professional societies and associations are well-recognized and encouraged, association activities are vulnerable to close antitrust scrutiny. By their very nature, associations bring together industry competitors and other market participants.

The United States antitrust laws aim to protect consumers by preserving the free economy and prohibiting anti-competitive business practices; they promote competition. There are both state and federal antitrust laws, although state antitrust laws closely follow federal law. The Sherman Act, is the primary U.S. antitrust law pertaining to association activities. The Sherman Act prohibits every contract, combination or conspiracy that places an unreasonable restraint on trade. There are, however, some activities that are illegal under all circumstances, such as price fixing, market allocation and collusive bidding.

There is no safe harbor under the antitrust law for professional association activities. Therefore, association meeting participants should refrain from discussing any activity that could potentially be construed as having an anti-competitive effect. Discussions relating to product or service pricing, market allocations, membership restrictions, product standardization or other conditions on trade could arguably be perceived as a restraint on trade and may expose the SOA and its members to antitrust enforcement procedures.

While participating in all SOA in person meetings, webinars, teleconferences or side discussions, you should avoid discussing competitively sensitive information with competitors and follow these guidelines:

- **Do not** discuss prices for services or products or anything else that might affect prices
- **Do not** discuss what you or other entities plan to do in a particular geographic or product markets or with particular customers.
- **Do not** speak on behalf of the SOA or any of its committees unless specifically authorized to do so.
- **Do** leave a meeting where any anticompetitive pricing or market allocation discussion occurs.
- **Do** alert SOA staff and/or legal counsel to any concerning discussions
- **Do** consult with legal counsel before raising any matter or making a statement that may involve competitively sensitive information.

Adherence to these guidelines involves not only avoidance of antitrust violations, but avoidance of behavior which might be so construed. These guidelines only provide an overview of prohibited activities. SOA legal counsel reviews meeting agenda and materials as deemed appropriate and any discussion that departs from the formal agenda should be scrutinized carefully. Antitrust compliance is everyone's responsibility; however, please seek legal counsel if you have any questions or concerns.

Presentation Disclaimer

Presentations are intended for educational purposes only and do not replace independent professional judgment. Statements of fact and opinions expressed are those of the participants individually and, unless expressly stated to the contrary, are not the opinion or position of the Society of Actuaries, its cosponsors or its committees. The Society of Actuaries does not endorse or approve, and assumes no responsibility for, the content, accuracy or completeness of the information presented. Attendees should note that the sessions are audio-recorded and may be published in various media, including print, audio and video formats without further notice.

Understanding or Discord?



The diagram consists of two large, dark blue arrows pointing in opposite directions, connected by a white, ribbon-like bridge. The left arrow points left and contains the text 'Principles', 'Guidelines', and 'Framework'. The right arrow points right and contains the text 'Rules', 'Legal Definitions', and 'Precise language'. The bridge connects the two arrows, suggesting a relationship or flow between the two sets of concepts.

Principles
Guidelines
Framework

Rules
Legal Definitions
Precise language

Recapture Provisions



SOA Research Project

- Background
 - Sequel to “Life Reinsurance Treaty Construction” (2013)
 - Why now? Recaptures, rate increases, and insolvency
- Two key themes
 - Recapture and related provisions are embedded options
 - Older language did not adequately anticipate or handle today’s business needs and issues
- Other themes
 - The business of treaties
 - Principles and guidelines versus rules and legal definitions

Embedded Options & Treaty Language

- Embedded options are not traded in the market
- Treaty language defines terms
- Defined decades ago
 - Anticipated future, i.e. today's, issues
 - Interpreted by authors' successors
- Broad interpretations favour option buyers

Recapture Provisions

- Change in Retention – Recapture
- Insolvency
- Change in Control
- Change in Ratings and RBC
- Recapture – Rate Increases
- Future Recapture Language – Brainstorming
 - All but one summarily rejected

Errors & Omissions



Errors & Omissions Clause

- Scope / breadth
- Introduces operational risk
- Systemic recoveries can have a major impact on the financials of a reinsurer
- Technology
- Exclusions
- Time frame / sunset

Claims



Claims topics

- Extra Contractual Obligations (ECO)
 - Reinsurer involvement in opinions has generally decreased
- Follow the fortunes
 - Reasonableness, prudence and acting in good faith
- Jumbo Limit
 - Management of breaches

Premium Accounting



Premium Accounting

- Premiums in a reinsurance contract are not guaranteed
 - Reduces reserves, and therefore cost of reinsurance
 - More recently, some public cases in which reinsurers have exercised their rights to increase rate
- Language to minimize impact
 - Recapture provisions
 - “Comparable commitments”

Additional Provisions



Additional Provisions

- Facultative reinsurance (e.g. notice of acceptance)
- Administrative challenges (e.g. risk amounts, reductions, terminations, changes)
- Changes of plan (e.g. conversions)
- Material changes (e.g. changes to non-guaranteed elements)
- Length of premium tables

Life Reinsurance Treaty Construction Report available at
<http://www.soa.org/Research/Research-Projects/Life-Insurance/Life-Reinsurance-Treaty-Construction.aspx>

Life Reinsurance Treaty Recapture Report available soon





**SOCIETY OF
ACTUARIES®**