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REPORT ON SOCIETY OF ACTUARIES ANTITRUST REVIEW

Moderator: ROBERT H. HOSKINS. Panelists: ALAN E. LAZARESCU, JOHN E. O'CONNOR, JR.** Recorder: DAVID R. LENT*

The Society of Actuaries has conducted an antitrust review of its activities.

1) Introduction and background. Reasons for the review. Action by Board of Governors.

2) Outside counsel's review of the work of the Committee on Theory of Dividends and Other Non-Guaranteed Elements in Life Insurance and Annuities. Findings and Board action.

3) Overall review of Society of Actuaries activities.

4) Role of the Society of Actuaries office and General Counsel.

MR. ROBERT H. HOSKINS: The Executive Committee and the Board of Governors of the Society of Actuaries have long been concerned that the activities of the Society of Actuaries comply with federal antitrust laws.

The decision last May by the Supreme Court in American Society of Mechanical Engineers, Inc. V. Hydrolevel Corporation added to our concern.

The Executive Committee of the Society of Actuaries, at its meeting on July 30, 1982, considered a proposal for an antitrust review and audit of the Society's activities. The major thrust was to provide reasonable assurance that future Society efforts to provide appropriate services to our membership and to the insurance industry would continue to reflect compliance with the law.

Because the Society's Committee on Theory of Dividends and Other Non-Guaranteed Elements in Life Insurance and Annuities had been scheduled to discuss its progress and recommendations at the Society's 1982 Annual Meeting in October, the President and the Treasurer had authorized a review of these efforts, beginning on July 6, 1982.

The Executive Committee recommended that the Board of Governors approve a motion that outside counsel be retained by the Society to conduct an antitrust review and audit of its activities, that Sidney Rosdeitcher of the Paul, Weiss, Rifkind, Wharton and Garrison firm conduct the review, and that the general scope of this review be made known to the other actuarial organizations at the next Council of Presidents meeting.

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At its meeting on September 10, 1982, the Executive Committee received a progress report on the review by Mr. Rosdeitcher.

The Board of Governors, at its meeting on October 16 and 17, 1982 unanimously passed a resolution adopting the policy recommended by the Executive Committee.

At its meeting on January 19, 1983, the Board received a progress report that the antitrust review was focusing on the following four categories:

1. Fairness of procedures for admission and discipline.

2. Possible anticompetitive effects of any restrictions imposed on members of the Society with regard to such matters as advertising, fees, or methods of competition.

3. Activities which could possibly affect competition among insurance companies, in particular the price or type of insurance products.

4. Procedures for insuring that opinions and projects of the Society are not used to disadvantage any group or class of companies.

MR. ALAN E. LAZARESCU: Purely as an auditing and precautionary measure, the Board of Governors of the Society authorized me to retain a well known law firm to review the Recommendations of the Committee on Theory of Dividends and Other Non-Guaranteed Elements in Life Insurance and Annuities from an antitrust point of view.

As you probably know, these Recommendations basically concern actuarial principles and practices in connection with:

(1) dividend calculation and illustration for participating individual life insurance policies and annuity contracts; and (2) charge and benefit determination for individual policies and contracts which contain non-guaranteed charges or benefits.

After an extensive review involving the Recommendations, background materials, constitution, by-laws, guides and opinions as to professional conduct promulgated by the Society, the law firm concluded that "it is our opinion that the Recommendations do not raise substantial risks under the federal antitrust laws."

The law firm's opinion is based on the fact that the Recommendations do not appear to have any anticompetitive ramifications. It should be noted that the Recommendations are, in substance, guidelines. These guidelines may be deviated from when properly justified.

MR. JOHN E. O'CONNOR, JR.: Antitrust is a word that raises the eyebrows of many business people.

If you are a product of a business school, you probably heard the term in college or, depending upon your role in your company, you may have been exposed to it in your work.

What are antitrust laws and how do they affect professional societies like the Society of Actuaries? Let us start first with a definition of antitrust.

Antitrust is defined as "opposing or intending to restrain business." Antitrust laws are designed to protect the principle of competition--the heart of American business practices since this country's beginning. The major antitrust statutes affecting professional societies are Section 1 of the Sherman Act of 1890 and Section 5 of the Federal Trade Commission Act of 1914.

Because these laws deal with issues which are fundamental principles of our country, penalties for violation are severe. Convictions can result in substantial fines and prison sentences. Conspiring to fix prices, for example, is a felony and carries a maximum prison term of three years and a maximum fine of $100,000 for individuals and $1,000,000 for corporations.

Why is the Society of Actuaries concerned about this? We do not feel that we fix prices, restrain trade, or condone such actions on the part of others.

The reason is that professional societies, like ours, are subject to antitrust laws. In fact, a recent Supreme Court ruling against one such association has made this all the more evident.

Your Board of Governors recognizes its vested responsibility of taking all reasonable action to insure continued conformance with antitrust regulations. Professional societies do have serious exposure to these laws and we are here to discuss what we are doing to recognize our responsibilities.

I would like to review the antitrust laws, particularly as they apply to professional societies.

ANTITRUST LAWS

The fundamental purpose of antitrust laws is to assure equal opportunity among business competitors; that is the laws are designed to protect the basic American principle of encouraging business competition.

The Sherman Act, one of the laws referred to earlier, states that, "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal," and that, "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be declared guilty of a felony."

For professional societies like ours, most cases of antitrust violation have been brought under Section 1 of the Sherman Act. There are three main elements of a violation under this section:

1. There must be a conspiracy of two or more parties, for example in a code of ethics, or by-laws, etc.

2. The conspiracy must cross state lines.

3. It must be unreasonable or "contrary to the public good."

Antitrust laws consider certain practices "per se" violations. Per se violations are practices presumed to be inherently wrong regardless of the motivating factors. These would include agreements to fix prices, to divide markets, to allocate production, or to impose boycotts.

EXEMPTIONS FROM THE ANTITRUST LAWS

There are two major exemptions under which the professional societies can avoid prosecution.

1. The so called "learned professions exemptions." This states that certain activities of learned professional societies are not considered "trade" or "commerce" as intended by the antitrust laws. For example, medical and legal services may not be considered technically "trade" or "commerce" under antitrust laws.

2. The second exemption is the "state action exemptions" whereby the action of a state might require a professional society to take some action which restrains trade.

GOLDFARB v. VIRGINIA STATE BAR

A landmark case involving professional societies with antitrust laws is that of Goldfarb v. Virginia State Bar Association. In this case, Mr. Goldfarb, who was in the process of buying a house, could not find a lawyer to examine the title for less than the minimum fee prescribed in a schedule published by the Fairfax County Bar Association and enforced by the Virginia Bar Association. He therefore brought a class action suit against both associations for antitrust violations. The Fairfax County Bar Association claimed immunity under the doctrine of a "learned profession." The Court of Appeals ruled in its favor, but in 1975 the Supreme Court ruled against an automatic exemption from the antitrust laws on the basis of the "learned profession" theory. The court ruled that "the nature of an occupation, standing alone, does not provide sanctuary from the Sherman Act."

In general, then, a professional society's action violates the antitrust law if:

- the action is commercial in nature

- it is not essential to the pursuit of the profession's legitimate goals

- it restrains trade outside the profession's group

ANTITRUST LAW ENFORCEMENT

Antitrust laws are enforced in three major ways:

1. The Justice Department

2. The Federal Trade Commission

3. Private Parties (suits)

Usually private party allegations would be referred by the United States Attorney to either the Justice Department or the Federal Trade Commission.

SPECIAL ANTITRUST PROBLEMS OF PROFESSIONAL SOCIETIES

While it is obvious that exposure to antitrust problems varies from profession to profession, most professional societies deal with sensitive problems from an antitrust viewpoint, e.g., statistical information, standards, and certification.

In these areas, a guiding principle for professional societies is to avoid agreement which restricts the member's freedom to make independent decisions in matters affecting competition.

PRICING

Pricing is a fundamental concern of the antitrust laws. Price fixing is illegal per se, that is, without regards for the reasons advanced. Therefore the fact that prices which are fixed are fair or reasonable is not a factor in antitrust laws.

SOCIETY MEETINGS

Meetings are intended to provide a forum for appropriate education and learned exchanges, but if not properly structured, may allow antitrust problems to occur. For example, at Society meetings the moderators and workshop chairmen must have all material to be distributed and discussed at their sessions reviewed and approved by the Society's legal counsel before the meeting. The Society is now instituting a procedure whereby all workshop chairmen and moderators are informed that, should inappropriate pricing discussions occur in their sessions, they are to interrupt such discussions and provide a warning concerning possible antitrust exposures. If the discussion continues after such a warning has been issued, the Society's policy is to terminate the session.

EXPOSURE OF PROFESSIONAL SOCIETIES TO ANTITRUST LAWS FOR MEETING DISCUSSIONS

The likelihood of a professional society being prosecuted for discussions with antitrust implications at its meetings depends upon the extent that the society promoted or condoned the discussions. Guarding against these discussions at Society meetings places a great deal of responsibility on our Board of Governors, our General Counsel, and myself.

PRICING STUDIES

Because pricing discussions by members of a professional society are dangerous, it is important to understand the extent to which the Society of Actuaries itself can gather and distribute price information. Guidelines for

this area indicate that a professional society can safely distribute such information if it is reporting prior transactions and dealing with composite information. Additionally, this information must be available to all members and nonmembers alike.

That concludes our limited discussion of membership meetings as a major exposure area to antitrust laws.

MEMBERSHIP STATUS

Another area that we must continue to examine for antitrust violations is Membership Status. Generally speaking, people join professional societies to enhance their professional knowledge and stature through affiliation with their peers. If a professional society denies membership, it can be interpreted as impairing a person's ability to compete. Don't misunderstand me, it is not wrong to deny membership; however, membership criteria must be reasonable, consistent and clearly defined.

NONMEMBER SERVICE

Professional societies are also required to make membership programs and services available to nonmembers. Reasonable price differentials are acceptable but the services must be made available.

WHAT IS THE APPROPRIATE ROLE FOR PROFESSIONAL SOCIETIES IN STATISTICAL AND COST REPORTING?

A common function of professional societies is to report on various statistics or costs of the industry they serve. In general, these reporting costs and statistics do not violate antitrust laws if their purpose is clearly spelled out, are voluntary, and deal only with past transactions. These studies must also be made available to the general public.

Up to now we have talked about antitrust laws in general and their overall applicability to professional societies.

HYDROLEVEL DECISION

Now let us talk about a specific case that hit the association field within the past year. This case is referred to as the Hydrolevel Decision. In May of 1982, the United States Supreme Court reminded us of the exposure we as a professional society have to Federal Antitrust Laws. It involved a ruling against the American Society of Mechanical Engineers, Inc. The general thrust of the case is as follows:

The American Society of Mechanical Engineers, Inc. (ASME) is a nonprofit membership corporation. For many years it has been active in developing voluntary codes and standards. One set of standards deals with boiler and pressure vessels, including a device which is designed to block the flow of fuel to a boiler when the boiler falls to a critical level. For several years one manufacturer, McDonnell & Miller, Inc. (M&M), has enjoyed a dominant share of the market for this device.

A company called Hydrolevel Corporation entered this particular segment of the market with a new device that provided serious competition to the McDonnell & Miller product. Conforming with its past practice, ASME's Board of Governors delegated the review of this new product to its Boiler and Pressure Committee. This committee could in turn refer the review to a subcommittee. A Vice President for M&M (the competing firm) also happened to be the Vice Chairman of the subcommittee which sets the standards for this particular product. This individual, along with other officials of the M&M corporation (the established firm in this product area), conspired to damage the reputation of the new product during a meeting with the Chairman of the subcommittee. Their plan called for developing a letter of inquiry to be sent by another M&M corporation official to the subcommittee. The letter asked if the new product would satisfy the subcommittee's code requirements. It was drafted in a way that they believed would elicit a negative response. After receiving this letter by the ASME, in conformance with existing procedures, it was referred to the subcommittee, the chairman of which was part of the conspiracy. Again, ASME knew nothing of the conspiracy and was following standard procedures for these types of inquiries, drafted an "unofficial" communication critical of the new product and sent on ASME letterhead and sent over the ASME Secretary's signature.

What happened next was that M&M sales people used this critical letter from ASME to gain a competitive edge in the market place. When the Hydrolevel Corporation found out about the letter, they demanded that ASME cure its effect. Ultimately the full ASME standards committee issued a new letter indicating the acceptability of the new product. The conspiracy between the two committee persons did not become knowledge until several years later.

The Hydrolevel Corporation brought antitrust suits against the manufacturer of the other product (M&M) and received an $800,000 out of court settlement.

Although the conspiracy occurred without the knowledge of the "official" ASME structure, Hydrolevel Corporation also brought an antitrust suit against the association. The courts ruled against the ASME and awarded $3,300,000 in damages to the Hydrolevel Corporation in accordance with Federal Antitrust Statutes.

One of the underlying principles of this suit was that ASME committee members acted within their <u>apparent</u> authority when they participated in the conspiracy.

The major theme running throughout the majority opinion of the courts is that it is neither inequitable nor unjust to hold a professional society liable since that society stands in the best position to prevent the objectionable conduct of its members.

Some questions and issues the case raises as applied to professional societies like ours are:

1. Who <u>may</u> act on behalf of our Society?

Board
Executive Committee
Chief Staff Members
Committees
Members/Volunteers

2. Who should be able to act for our Society?

Board
Executive Committee between Board meetings
Chief Staff Executive
Should all others have expressed authority?

3. What procedures should be established to insure "agents" of the Society act properly?

By-Law Provisions
Guidelines or Policy Statement or Personnel Manuals with Job Descriptions
Publication and Appeal Procedures (Due Process)

What does the Society of Actuaries do now to protect itself against exposure to possible antitrust violations?

Presently the Society does this in various ways:

- All members of the Board of Governors receive a manual which is intended to delineate their authority and responsibility.

- All key staff personnel have written job descriptions covering their responsibilities and authority.

- The Society has a widely published Constitution and By-Laws--reprinted annually in the Yearbook.

- The Secretary reports on "non-routine" business of the Board of Governors and Executive Committee at regularly scheduled intervals.

- All members can request copies of the Board of Governors minutes.

- All committees are encouraged to publish their annual report to all members in the "Committee Reports" booklet.

- The Board of Governors has established policy committees to oversee and recommend policy for our various operating committees.

- All Society meeting contents, programs, and handouts are reviewed in advance by our legal counsel.

- The Program Committee continually alerts its participants to avoid sensitive areas with antitrust implications.

- Our Legal Counsel attends all meetings of the Society's Committee on Complaints and Discipline.

The Society of Actuaries has been very sensitive to antitrust issues in the past and perhaps has more safeguards than many professional societies do. However, we also have recognized that the publicity in both government and industry resulting from the Hydrolevel Decision has sent shock waves throughout the association field.

Even though the Board of Governors is confident that there have been no past antitrust violations by the Society, it is committed to the prudent exercise of its vested responsibilities as Governors. Accordingly, it has arranged for an antitrust review of the Society of Actuaries by the well respected law firm of Paul, Weiss, Rifkind, Wharton & Garrison, which has several partners specializing in antitrust practice. The attorneys will review all Society activities and provide recommendations accordingly.

MR. LAZARESCU: In my opinion one of my principal duties as legal counsel is to guide and assist the Society in avoiding problems in the sometimes murky waters of antitrust laws. It should be noted that the antitrust area of the law is somewhat technical and it is possible to violate antitrust laws without intending to do so.

In this presentation I will attempt to give you an overview, in nontechnical terms, of some of the areas involving antitrust laws . The purpose of antitrust laws is to retain and foster competition between persons (which includes corporations and associations) engaged in business matters. On the federal level there are two antitrust laws which directly affect associations, namely, the Sherman Act and the Federal Trade Commission Act. Basically, these acts prohibit a person from making a contract (implied or formal), or engaging in any action, with another person which restrains commerce or trade (i.e., competition). The Sherman Act is enforced by the United States Justice Department and private persons can bring an action thereunder for treble damages. The Federal Trade Commission Act is enforced by the Federal Trade Commission which has broad powers in defining what are "unfair methods of competition." The penalties for an antitrust laws violation can be civil (money damages) and criminal (fine and/or jail term).

Most states have their own antitrust laws. However, for purposes of this presentation it suffices to say that compliance with federal antitrust laws will generally constitute compliance with state laws in this area.

I am sure that many of you are familiar with the McCarran-Ferguson Act. Basically, this Act provides that the federal antitrust laws do not apply (except for acts of "boycott, coercion or intimidation") to the "business of insurance" to the extent such business is regulated by the states. Recent United States Supreme Court decisions have substantially narrowed the definition of "business of insurance." It is questionable whether the Society would be considered to be in the "business of insurance." This being the situation, any discussion herein is based on the assumption that the exemption is not applicable to the Society.

A 1975 United States Supreme Court antitrust laws decision involving a bar association's minimum fee schedule for attorneys' services made it clear that the antitrust laws were applicable to professional associations. A 1982

United States Supreme Court antitrust laws case is worthy of discussion. This is the American Society of Mechanical Engineers v. Hydrolevel Corp. decision which Bob and John mentioned. In this case the Supreme Court affirmed a treble damages claim against the defendant nonprofit professional association. The association was deemed liable for damages because a vice chairman (who was a volunteer and not an employee of the association) of one of the association's subcommittees was apparently a primary mover in having the parent committee render an "unofficial" position, on the association's stationery, which injured a competitor of the vice chairman's employer. It appears that the vice chairman was acting for the benefit of his employer and not for the benefit of the association.

Hydrolevel involved safety standards set by the professonal association. These standards are important because such standards are oten used in safety codes promulgated by local governments. Thus, noncompliance with such standards substantially impacts on the ability to market a product.

It should be noted that in the Hydrolevel case the structure of the association involved is similar, in some respects, to the structure of the Society of Actuaries, namely, a relatively small staff of employees in relationship to the number of members and the need to rely on unpaid member volunteers to carry out many of the functions of the organization. This court decision illustrates that member volunteers can expose the Society to substantial liability when they are acting in a capacity which, to an outsider, "appears" to give them authority to take a particular action on behalf of the Society.

A prerequisite for membership in many, if not most, professional organizations is obtaining an education and degree from a school, college or university in the professional field involved therein. Usually a professional organization is not involved in a person's basic preparation and training for the profession. The Society is a rather unique professional organization because it provides the preparation and examination structure which qualifies a person for membership in the Society. It is clear that the Society of Actuaries has a basic educational as well as a membership function. In certain respects the basic educational function places a greater burden on the Society, from an antitrust laws point of view, than is placed on most other professional organizations.

Membership in the Society of Actuaries is a valuable asset (financial and otherwise) to most of its members. It is the membership, and recognition that flows therefrom, which has helped the member to obtain employment, and/or advancement in position, in the actuarial field. The antitrust laws protect and foster competition within a professional field. Therefore it is important that an organization such as the Society of Actuaries have reasonable membership admission standards and not be considered to be a "closed club" because of arbitrary admission criteria. In this regard the examination structure (which is the basic requirement for admission to the Society of Actuaries) must be relevant and fair in substance as well as form. I am of the opinion that the Society's examination structure does satisfy these basic standards.

As legal counsel I am somewhat involved with the examination process of the Society. I become very much involved with this process when a student protests that the structure is unfair (usually means the student did not pass an examination) or there is an allegation that a student received help while taking an examination (cheating incident). One of my main concerns in these instances is whether the student is being treated fairly. Some of these matters may involve a comprehensive investigation and possibly a hearing with the student's attorney present. At such a hearing the student's attorney may examine witnesses and examine and introduce documents, etc., into evidence.

Discipline of a member of the Society is of concern to me because discipline (sanctions run from a "warning" to "expulsion" from membership) of a member can harm the person in his or her economic and other interests. The Constitution of the Society provides the formal structure for the discipline of a member. To the best of my knowledge I review every case, at or before the time a formal complaint is made, involving a question of alleged unprofessional conduct. One of my concerns in this area is to make sure that the constitutional provisions of the Society have been, and are being, complied with. Also, I am very much concerned with the question of whether the charge of misconduct is reasonable under the circumstances. If it is determined to proceed with the complaint, I must be satisfied that the charges of misconduct are precise and the person complained about is aware of every right he or she is entitled to, including the important right to be represented by his or her own attorney. One of the keys to avoiding antitrust laws liability, and other forms of liability, in this area is to make sure that the person complained about is treated in a "fair" manner.

One of the many areas an actuary is concerned with is the proper "pricing" of a product. The "pricing" of a product is, in part, the subject of a student's basic education and a part of the continuing education programs of the Society. It should be noted that "price fixing" is considered to be a per se violation of the antitrust laws. This means that when price fixing is involved the courts are not interested in the reason for the price fixing arrangement. Simply stated, a price fixing arrangement violates the antitrust laws. It is one of my concerns as legal counsel that members, in connection with Society functions and matters, do not engage in any activity which may prove to be illegal. The members may discuss the various methods and factors to be considered in pricing a product - however - the members should not discuss, or agree to, the actual prices their employers or clients are charging, or will charge, for particular products.

As legal counsel, I review the programs for Society of Actuaries functions in order to determine whether it is prudent to discuss a particular matter. I attend all meetings of the Board of Governors and the Executive Committee. On a daily basis I render advice to the officers and staff of the Society.

As previously mentioned by the other persons on this program, we did have a well known law firm conduct an antitrust review of the Society. I was one of the principal proponents for such a review because I am a firm believer in a "second opinion" in an area as important as antitrust. The review confirmed my opinion that the structure and practices of the Society are basically sound. However, we must be careful that we do not become complacent and

neglect to do the things that are necessary to continue to keep the Society "clean" in respect to this important area of the law.

Needless to say, the subject presentation did not cover every topic which could be of concern in the antitrust laws area. I would be pleased to attempt to answer any questions you may have.

MR. RICHARD DASKAIS: Alan, you mentioned that in the case of the American Society of Mechanical Engineers one of the important elements is that their standards were often adopted by state, local, and other governmental authorities. Presumably the fact that a third party adopted the standards did not serve as a defense to the American Society of Mechanical Engineers. How would you distinguish our activities in recommending life insurance mortality tables and annuity mortality tables for adoption by the National Association of Insurance Commissioners and the various states, where the particular mortality rates or morbidity rates that are recommended obviously have a significant impact upon the competitive situations of different companies?

MR. LAZARESCU: This is something that we did specifically consider in our antitrust review. There is a significant difference between the situation you mention and the situation in Hydrolevel, namely, the data that went into the mortality and morbidity tables was basically unbiased data and was not slanted to gain a competitive advantage. The data in question is not the data that every company would have. You may have some companies that are writing in a highly specialized market and their mortality and morbidity experience could substantially differ from that set forth in the tables. However, what you try to do is have a fair sampling of the general population which is compiled in a consistent manner. The NAIC should recognize the limitations contained therein.

MR. IRWIN T. VANDERHOOF: I want to get clear in my own mind the relationship between the members of the Society and the General Counsel of the Society.

As General Counsel to the Society, are questions addressed to you by the Board of Governors under attorney-client privilege? What about questions addressed to you by members of the Society in connection with their official participation in activities at Society meetings, are they under the attorney-client privilege?

MR. LAZARESCU: I would treat such questions in basically the same way. If for instance you are an officer or member of a committee and you are coming to me for advice, you are coming to me via the Society, and that would be a privileged matter.

MR. VANDERHOOF: Therefore if someone had a question about whether a particular activity was good or not, even if it had been a bad thing to do, they could ask you about it and you would not be under any obligation for it to go any further?

MR. LAZARESCU: If I am being consulted as General Counsel of the Society, and if I had serious doubts regarding what I am told, I think it would be my

duty to go to the officers of the Society and so advise them about the potential problem. Such communication to the officers would be within the attorney-client privilege and such privilege would not be lost.

MR. VANDERHOOF: My feeling at the moment is that it is appropriate to consider antitrust as a religious discipline rather than purely a question of law. It is a religion that is indigenous to this country. It is not in Canada, or England, it certainly is not in Germany, or on the continent.

MR. STEPHEN G. KELLISON: The American Academy of Actuaries is very sensitive to antitrust concerns just as the Society of Actuaries is. We have taken measures similar to those outlined by John O'Connor in order to minimize our liability exposure.

Antitrust matters are of particular concern for several reasons. First, the penalties are severe, involving treble damages. Second, the laws are technical and an organization can run afoul of them inadvertently. Third, there are per se violations in which intent is irrelevant.

When the Academy hired inside counsel, one of the first projects taken on by counsel was a study of antitrust and our exposure. That effort culminated in the booklet entitled Antitrust Guide which was distributed to our membership in 1980. We still have copies available, and I would be happy to provide a copy to anyone who is interested. This project was completed prior to the Hydrolevel decision by the U.S. Supreme Court in 1982 which has further focused attention on antitrust concerns by professional and trade associations.

The areas of activity of the Society of Actuaries mentioned here today most frequently that appear susceptible to antitrust problems are the education and examination system, research and compilation of tables based on combined statistics of competitors, and meetings. An area of Academy activity that can easily lead to problems is the development of standards of practice. All Academy standards are subject to thorough legal review, both prior to exposure and prior to adoption.

As a particular example, many of you should recently have received the final adopted version of Opinion A-5 dealing with qualification standards to sign NAIC statements of opinion. This Opinion has obvious antitrust concerns to which we were very sensitive as it was being developed.

One reason that many actuaries are not as sensitive to antitrust potential as they should be is that our roots are in the insurance industry which has an antitrust exemption through the McCarran-Ferguson Act. However, the antitrust exemption which shields the insurance industry does not apply to actuarial organizations, since we are not "in the business of insurance".

One further protective measure I would add to those cited by the panel is the need for committees to be broadly representative of the profession and to include a diversity of members. It is important that a wide range of backgrounds and viewpoints be represented on committees, particularly in sensitive areas such as standards setting. In extreme cases involving

conflict of interest of the chairman, disassociation from an activity may even be required.

I would encourage all of you to consider antitrust matters carefully as you conduct your professional activities. They are very serious concerns indeed.

MR. LAZARESCU: Your comments were excellent and I would like to take the liberty to make a few observations regarding your remarks. We may have inadvertently misled you a little. We did not mean to imply or state that this is the first antitrust audit the society has gone through. When I took over as General Counsel in 1977, I immediately started looking into the matters and I conducted my own audit. This audit has been a continuing process. Talking about conflict of interest, I agree with you completely that we cannot have people in conflict of interest situations within the Society. As for myself, to the best of my knowledge I am the first General Counsel of the Society of Actuaries who has not been counsel to the Academy. I believe prior to 1977 the counsel wore both hats. However, I felt I might find myself in a conflict of interest situation when I took over. I perceived that at a later date there could be some conflict of interest situations between the Society and the Academy.

MR. CHARLES B. H. WATSON: I would say to Irwin that I do not think the situation in Canada and the United Kingdom and the other English speaking countries is exactly as bad as he presents it. It certainly is not the same as in Germany and the continental countries where the governments consciously advance noncompetitiveness. I think it more that in Canada, the United Kingdom, etc. they welcome competition but they do not try to discourage noncompetition as much.

Irwin asked whether, if he came to you in his role as a chairperson of a section and asked for advice, whether that would have the attorney-client privilege. What about someone who is going to participate on a panel and is concerned that what he was going to say might have some problems, would that also fall in the same category in as much as he had been presumably asked by the Society to appear on the panel?

MR. LAZARESCU: Yes. I anticipated that to be Irwin's next question but he never got that far. That would fall within the same category. Clearly what would not fall within that category is if you wanted to go off on a venture which does not involve the Society; I would not even answer such a question.

MR. WATSON: My second question to you has to do with procedure and where we stand. It was not clear to me from what we said this afternoon what the exact status was of the overall review that Mr. Rosdeitcher was doing. Has he rendered a final report yet?

MR. LAZARESCU: We are still in the draft stage. However, for all practical purposes the audit is complete. Some technical refinements have to be made in order to render the final and its opinion.

MR. WATSON: To the extent that is true, I would ask how it is intended that the report be used to make certain that we don't do anything wrong in the

future or to correct any areas of abuse that have been found? Are they going to be published in the form of a guide similar to that of the American Academy of Actuaries?

MR. LAZARESCU: To put your mind at ease I can say that there was nothing disclosed in the audit that disturbed me. Basically we have a clean bill of health in this area. There are some recommendations and most of the recommendations have been put into motion. Whether or not we are going to come out with guides for our membership similar to the Academy I do not know at this time. I will say that I think the Academy's guides are very well done although not very widely read.

MR. DAVID M. HOLLAND: I would like to point out that on some of our exams' syllabi we do have guides to professional conduct from the Academy. It might be that this would be an area where a guide or study notes could be written by someone and could be included on the syllabus. It would not cover all the existing members but at least as people go through our examination program we could be sure that they were exposed to this as a a topic to study.

MR. LAZARESCU: I would be pleased to assist you in this area.