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REINSURANCE TREATIES—IS COVERAGE ALWAYS CLEAR?

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This past Spring, two one-day conferences dealing with reinsurance treaties were held prior to the Salt Lake City and New York regional meetings. These conferences were sponsored by the Reinsurance Section and its Model Treaty Provisions Committee. Today's session is meant to follow up and build on the excellent dialogue and work which was started by these conferences.

MR. ED MARTIN: Our purpose today is to identify and discuss a number of areas where the interpretation of the provisions of today's typical reinsurance contracts may not be totally clear. Through this discussion, we hope to focus more attention on reinsurance treaty wording and interpretation, encouraging both ceding companies and reinsurers to clear up as many grey areas as possible before problems arise, and hopefully to provide the Model Treaty Provisions Committee with additional ideas and input as they move forward with their work.

We have structured most of today's session in a semi-debate format. We have selected four hypothetical problem situations. Two of our panelists, one from a ceding company and one from a reinsurer, will offer their reactions to the situation presented. We will then allow some time for audience reactions and comments.

I want to state in advance that there is not necessarily an absolute right answer to any of the problems raised. Obviously, in any actual situation, there will be many more facts to consider and questions to pursue. Our goal was to pick out several general issues and use these examples as springboards to discuss areas of ceding company-reinsurer relationships that may not always be clearly defined.

ISSUE #1: Assume that the ceding company has automatic agreements which state that the automatic reinsurers are no longer liable once a case is shopped, and facultative agreements which state that reinsurance does not begin until a risk has been accepted. The company now has a multi-million dollar conditional receipt case on which the insured died between the time the case was shopped for reinsurance and before any of the reinsurers accepted the risk, although all had made "subject to" offers.

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The ceding company contends that facultative reinsurer #1 is liable, because they had the lowest "subject to" offer and since the outstanding requirement was normal and, although reviewed after the death of the insured, it would not have changed the "subject to" offer. The reinsurer stands by the wording of the reinsurance agreement requiring explicit acceptance before liability commences; they do not believe that they are required to modify acceptance by considerations of what they could have, would have, or should have done.

MR. JACK GIES: The facts indicate that the case represents competitive bidding for the lowest rating. The issue is whether the reinsurers accepted the risk. If none did, then there is little to discuss. If, for example, a reinsurer declines coverage there is no basis for a reinsurance claim. However, we are asked to consider a policy on which all reinsurers respond with an underwriting quote prior to the date of claim. Although the direct company's exposure on a pre-paid policy is likely to be limited by the terms of a conditional receipt, such limits are not always upheld, and conditional receipt amounts are quite large today in many companies in any event. We are to assume that the direct company has a substantial early claim liability.

The first question to address is whether, and to what extent, a reinsurer is "on the risk." There are several key elements.

1. Multiple reinsurer involvement, with no formal selection of a particular company for coverage prior to the claim date.

2. Conditional underwriting quotes, subject to demonstration of a normal result on an outstanding requirement.

3. The post-claim finding that the outstanding requirement is normal and could not have adversely affected any reinsurer's conditional offer.

It is worth noting that it is not unusual for a company to receive reinsurance quotes subject to added requirements. The reinsurer has possession of all of the ceding company's underwriting markup. However, for example, a routine specimen may not yet have been returned to the ceding company, and the reinsurance offer may be made subject to a normal finding on the analysis. Another example might be a request for a retail credit report (not originally sought by the ceding company), or perhaps a signature on a form certifying that the applicant does not pilot an aircraft.

In order to simplify the analysis, consider the case where just one reinsurer makes a quote, and the others decline. Make the further assumption that the quote is unconditional. The direct company's position would be that coverage is in force, and the early claim is a shared liability of the insurer and reinsurer.

Consider now a conditional reinsurance quote, again from a single reinsurer. One line of reasoning would develop whether the quote involved a condition precedent to, or subsequent to the start of reinsurance coverage. The reinsurer's determination that the applicant is conditionally insurable at a stated price argues for the proposition that the outstanding requirement is a condition subsequent to reinsurance coverage. Circumstances will color each situation and generalizations are difficult. However, repeated business transactions indicate that when a reinsurer quotes a rating class simultaneously with a request for an additional piece of evidence, the

expectation is that the outstanding requirement is rather routine, that it is not expected to have a major effect on the quote, and almost certainly will not affect the insurability of the life.

On the other hand one can visualize circumstance in which an outstanding requirement could bear heavily on the insurability of the life. In this case, one might question the wisdom of quoting a price in the absence of all the facts necessary to adequately determine insurability.

The point is that the direct company's disposition of the case is dependent on the reinsurer's action. When a reinsurer declines the risk the direct company closes the file. When the reinsurer's telex indicates acceptance of the case (whether conditional or not), the file is kept open and the direct company's expectation is that the reinsurer is bound as it is bound, and that the liability of each company commences and ends simultaneously. It is worth noting, at this point, that typical facultative-only treaties state that the reinsurer's liability is the same as, and commences simultaneously with, that of the ceding company provided that reinsurer has accepted the risk. However, many treaties are not specific as to what constitutes acceptance of the risk. In the situation at hand there is almost simultaneous occurrence of the application for coverage and claim incidence. The ceding company and reinsurer have no opportunity to complete normal processing prior to the date of claim. It's worth noting also that in practice, the first notice a reinsurer receives on the status of offers made is the formal premium cession at the time the ceding company recognizes that the policy is paid and in force. This may post date by weeks or even months the date on which the offer is originally communicated to the originating company.

The narrowest possible focus, then, revolves around the tightness of the reinsurance offer and acceptance procedure, and whether the conditions were such that reinsurance coverage is in force. Although treaties are not specific on what constitutes acceptance of the risk on the part of the reinsurer, it can be argued that the telex specifying the reinsurer's conditions (rating class/requirements) constitutes acceptance of the risk. Certainly the fact that the direct company relies on the reinsurer's action supports the conclusion that there is shared risk. This is consistent with the notion, particularly true in field oriented shopping programs, that the reinsurer has "borrowed" the direct company's field force for the acquisition of the particular class of business, and has the obligation to back the direct company's insurance liability in all cases where a reasonable reading of the facts indicate that it should.

Having said that, it's nevertheless clear that more attention needs to be given to the question of risk assumption in both the insurance and reinsurance areas, and particularly so in the shopping programs which have become a major part of many companies' marketing efforts.

For example, if one now considers the situation of multiple reinsurers, all with conditional reinsurance offers, should the claim payment be awarded to the company with the lowest rating? Would the answer be the same if the reinsurer with the lowest rating was the one with an outstanding requirement? What if the outstanding requirement was directly related to the cause of death? For example, consider a quick claim from a piloted air accident where one reinsurance quote is unconditional with a flat extra of

$5 per thousand, and another standard (no extra premiums), but contingent upon a signed no flying statement.

There are a number of possibilities, and the only thing that is clear is that a second major issue is the fair and equitable sharing of the claim liability among reinsurers. Let's review some of the options.

1. Low bid wins.

2. First offer wins (or first lowest offer wins).

3. Equal share (or equal share among lowest offer).

As before, consider whether the presence or absence of outstanding underwriting requirements would influence the allocation. Prior comments indicate that it should not. Generally, it's my observation that the price of the reinsurance (rating class) is a weak basis for claim allocation in these circumstances. Given that several reinsurers have affirmed insurability, an equal claim share for each seems preferable. An argument could be made (by either party) that the standard operating procedure in allocating paid policies within the direct company should control. Consider whether such a procedure exists at your company, and if so, whether it is loose and informal, or a documented hard and fast rule.

Clearly, the direct company is not disinterested in the potential claim allocation problem. Ultimately, it is the direct company's contract that guarantees claim payment to the beneficiary. However, the reinsurer has perhaps an even greater responsibility for clearly defining limitations on its liability. Most direct companies would fully expect the backing of the reinsurer(s) in the cited example.

MR. BOB MANGINO: Jack has done a very nice job not only in presenting the case but in elaborating on what ceding companies do and what reinsurers might want to do. We are talking about facultative certificates coupled with the fact that we are dealing with an underlying conditional receipt. So right away you have a kind of a double-wammy, and reinsurers in those situations have to take an adamant position, and the position is that strict adherence to contract principles is an absolute necessity. When a ceding company wants to leave the traditional "womb" of the reinsurance treaty or the automatic agreement to venture out into the area of shopping for the same type of coverage in the facultative market it has to realize that they are now venturing probably into the land of common law contract or strict interpretation of contracts. The reinsurance certificate takes on the character more of an insurance contract rather than a reinsurance agreement, where you are used to the old stand-bys of "follow the fortunes" and "do justice among the parties" and so on that are normally contained in a treaty relationship.

It is becoming more and more prevalent that we are dealing with types of cut throat contract interpretations.

Let us consider the facts of this particular case. A set of conditions were offered to several reinsurers. Those reinsurers had an opportunity to bid on the risk. They submitted their bids and requested more information. So far, what you have in this situation is a conditional offer made by a reinsurer

to a ceding company. The conditional offer is based on the ceding company obtaining additional underwriting facts that are acceptable to the reinsurer, sending them to the reinsurer, and the reinsurer being satisfied with what it sees. Up until the time the reinsurer receives this additional information, there is an offer sitting on the table which has not been specifically accepted. Up until the time the reinsurer is satisfied with the additional information, under the usual common law principles of the contract law, the reinsurer can decide to recall its offer. Maybe it does not want to be involved with this particular risk anymore. Then the ceding company would have to look to the next highest bidder. Those are the strict conditions of contract language.

The problem is even more serious in a situation where we are dealing with conditional receipts. I am sure you are aware that conditional receipts often contain amount limitations. Where the face amount of the policy is for $1 million, typically the conditional receipt would have a limitation of $250,000 in it. This might provide some kind of comfort to the ceding company, but as a reinsurer we know from experience that courts try their best to disregard these limitations in conditional receipts. Either they say the language is too well hidden from the insured or it might not be hidden but it is not understandable. Or even if the insured is made aware of the limitations in the conditional receipt, and it is explained well by the agent, the courts might throw it out anyway as being entirely unjustified under the circumstances. In those situations, where you thought you might have had a $250,000 maximum amount, you end up with a jumbo claim of $1 million or more.

When it comes to dealing with facultative certificates and the relationship between the ceding company and the reinsurer, you must resort to strict contractual terms.

There was some question as to whether or not the offer made by the reinsurer might be considered an offer or an acceptance of a contract with a condition subsequent that might have other legal consequences. You are dealing with an insurance company and a reinsurance company who know what they are doing, or ought to know what they are doing. The language is there on the table. Both sides can read it. I think both sides better start reading those facultative certificates and understand what they mean.

Now what might a ceding company or reinsurer do, under the particular circumstances of this case. The ceding company, as I've said all along, from a strictly legal stand point probably does not have a prayer. However, all is not lost. If the ceding company can somehow convince the reinsurer to go to aribitration on this, there is a chance, because arbitrators do not have to live by the strict letter of the law in deciding arbiration cases. They have to "do justice" to the parties. In this situation, if two of the three arbitrators feel that the ceding company really should not get stuck for $1 million where it thought or expected to have coverage, then the arbitrators might assess damages against the reinsurer. The reinsurer, on the other hand, would be well advised to go to court. Common law judges understand what contracts are. They understand what offer and acceptance mean in the strict sense of those terms. They do not really understand too much about reinsurance.

There is an interesting question that might arise. If there were an arbitration clause in the facultative certificate, what does that do. If, on the one hand, one side says "well, there was no contract, so we can just disregard the certificate", and the other side says "well, if there were a contract, I would be allowed to go to arbitration", where would that come out? I do not know. I will leave it up to you.

MR. TREVOR HOWES: It was interesting to hear the remarks at great lengths on the background of the case and the various possible allocations of risk. One thing that first struck me is the first couple of lines of the description of the issue indicated that the agreements were very explicit in the way they were set out, that the automatic agreements stated the automatic reinsurers are no longer liable once the case is shopped. Secondly, the faculative agreements stated that reinsurance does not begin until a risk has been accepted. Clearly, all parties considered where the risk should lie and how the allocation should have been done in drawing up these agreements in order to avoid to the extent possible any risk under the conditional receipt. Now, what about possibilities refunding cash where there was a risk that the court will still honor the claim, and secondly, an error in processing or an error of omission in their process of refunding and somehow the claims sneaked in before the actual refund had been effected. I think those two possibilities raise a couple of interesting considerations, especially for the automatic reinsurer and perhaps situations that should also have been covered in the automatic agreement.

MR. MARTIN: I think that it is probably true that in many cases agreements might provide the resolution of certain situations, but I wonder if a lot of times if parties to them really totally understand them at the time, or if they really looked at what the treaty said and tried to discuss as much as possible the various alternatives you might get into.

MR. GIES: I think that in the second paragraph the statement of the problem also states that there must be explicit acceptance. However, there is not uniformity in the treaties, at least in my company. We are dealing with the expectation of the parties involved. The direct company has the expectation that its activities are in fact reinsured and, to the extent that they are not, it seems to me that both the reinsurance and the insurance community must get together and make this clear. The quality of the relationship is also very important.

MR. ELI GROSSMAN: Mr. Mangino said, "if the ceding company could convince the reinsurer to go to arbitration". I thought that the treaties normally say if there is a disagreement that it may be taken to arbitration. Please comment on that. If the reinsurer has a precedent, in other words if the reinsurer had paid a claim similar to this for a small amount which might have been tempting to do in the past and then suddenly changed when the amount got bigger, that would be considered. The third point I would like to mention is that the lowest bidder is rather an indefinite term to me because the ceding does not always take the lowest bidder. They might be wooing a reinsurer and try to get certain amounts of business to him, or they might find it difficult to determine what is the lowest bidder because of possible dividends if they make a certain volume quote or something like that. So I think that term too would add another complication to the already complicated ones brought out.

MR. MANGINO: I think we tried to make a differentiation here between a facultative and treaty relationship, which does typically contain arbitration clauses which are automatic and you have no choice when it involves a question of treaty terms and so forth and facultative relationships. Here we are dealing with a facultative certificate. The ceding company went beyond the treaty and shopped outside of it. Once it does that, other considerations apply and one of those considerations is that it is a new deal entirely. The second thing is that you are not automatically entitled to arbitration, and so you either have to get it voluntarily with a handshake or go to court (those are really your only options). If you do go to arbitration, for example, and the ceding company can show through past practices that the reinsurer under the same or similar circumstances often paid in situations where the amounts were much smaller, then it would be relevant in arbitration to show what the general practice of a company was, and also the practice of an industry. However, even there, if you have to go to court, that type of evidence would be inadmissable. There is a strong distinction between the two avenues of approach.

Finally, a ceding company selects its reinsurers to go shopping with, it will select reinsurers who it feels are financially stable to begin with and so it will only get responses from companies that it are comfortable with. Obviously, if that is the case to begin with, then it will usually take the lowest bid.

MR. PETER PATTERSON: Just a comment in terms of this problem that you put in front of us with relation to how it was viewed at the Canadian Guidelines Committee. Many of you may be familar with the fact that in Canada there was a committee that was looking at proposing a set of guidelines for the handling of reinsurance, and one of the problems that they confronted directly was the issue of this gap between the ceasing of the coverage provided by the automatic reinsurers and the commencement of the coverage by the facultative reinsurers. The Guidelines Committee developed their solution which was to provide that the automatic reinsurers continued coverage on shopped cases with some limitations in terms of time and decline cases and other things. But generally, the automatic reinsurer provided coverage through the time that the facultative reinsurer was notified that the facultative reinsurer was on the risk. Now I have feedback from a number of U.S. reinsurers to say that that may well work in Canada, but it is not practical in the United States. The Canadian automatic reinsurers themselves were not thrilled with the idea of providing coverage during the auction period. It was simply that the alternative approach seemed to be to try to determine who would have been on that risk. This case actually described here is almost simple compared to some of the situations where you get a combination of conditional and unconditional offers and at different levels and some of the conditions cannot be fulfilled, such as a chest X-ray, because the man is dead and you do not know what it would have revealed. You can get legitimate differences of opinion as to who would have got the case, and the conclusion that the Guidelines Committee reached was this particular approach, although it appeals to our sense of equity, is not practical or workable. Maybe it can be made workable, but the Guidelines Committee could not come up with that solution. Therefore they took the simple solution, which does not seem to leave obvious gaps, which is that the automatic reinsurers are on the risk until the facultative reinsurer is notified. It will be interesting to see if the committee that Bill Tyler is

going to report on is able to find a different solution with the approach of trying to determine who was on the risk.

MR. RODNEY WILTON: It seemed to me from this question that if a direct writing company actively shops, then the automatic reinsurer will be on the risk for many cases in which they will never receive premium. Therefore, the automatic reinsurer has a greater risk with companies which actively shop than with ones that do not. Yet my understanding is that in negotiations for reinsurance deals, that is not taken into account too much in the price or the deal you get. As reinsurers, to what extent would you take that into account?

MR. GIES: As a direct company, if we unfortunately run into one of these situations in our facultative program, what would be our position vis-a-vis the automatic reinsurer who was not a part of the shopping program at all? We would not ask them to back up the claim.

MR. WILTON: Even if once the shopping started the automatic insurer was not on the risk, there was a period of time between which the conditional agreement is given and the shopping starts and which presumably the automatic reinsurer is on the risk but does not receive any premium for it.

MR. GIES: You are referencing the fact that the case would be large enough to be an excess over retention kind of a situation. The sense that I got from talking with our underwriting people was that we would not feel right in giving that claim to the automatic reinsurer. It was not designed for him, it was a case on which our company declined the risk, and we just would not feel right in giving that case to the automatic.

MR. MARTIN: I would guess that the decision to shop a case is generally made fairly quickly, and that there is no explicit pricing for whatever that short period is in automatic pricing.

ISSUE #2: A large claim is reinsured 100% with a ceding company having full claim authority to settle without consultation with its reinsurer. The company paid the claim and forwarded copies of all papers to the reinsurer.

A review of the papers revealed that the insured was in the hospital when the application was being underwritten, at which time his terminal illness was diagnosed. In spite of clear company rules outlining procedures, the agent took money after the application was submitted without obtaining a health statement and delivered the rated policy without a health statement. In neither instance did the company home office people note the failure to obtain the health statement. The company admits that, but for the action of the agent, the adverse health history would have been discovered and the policy declined.

The reinsurer wishes to proceed against the agent's error and omissions carrier, but the ceding company will not agree because he is one of their biggest producers.

MR. JOE KOLODNEY: As the claim was reinsured 100%, I am making an assumption that this was a facultative case and the claim occurred within the contestable period. Another scenario would be that this was an automatic reinsurance cession where the company had been fully retained on the risk

previously and ceded 100% under its automatic privileges with the reinsurer. Thus the reinsurer never had any opportunity to see the papers until the claim materialized.

Question: Is this negligence on the part of the company or errors and omission? There is a two transaction theory here. #1 is with the company and the insured and #2 is with the company and the reinsurer. The reinsurer acknowledges the company's authority to settle the claim because the reinsurer has no privity of contract with the insured. Ideally, the reinsurer should follow the fortunes of the ceding company, but that following presupposes ultimate good faith and due diligence on the part of the ceding company in all its dealings with the reinsurer, especially in exercising its authority to settle claims. In this case, it appears the company failed to exercise due diligence on two separate occasions; cash with application in violation of company rules; the issuance of the policy with no statement of good health. In addition, the failure to consult with the reinsurer prior to settling the claim (even though not technically required) leaves the implication that, as the case was 100% reinsured, the company did not feel it necessary to incur expenses or possible litigation to protect the reinsurer's interests. It would appear that not only was the handling of the policy issue process inept, but the entire chain of the company's activity leaves a bad taste as to its fulfilling the role of protecting the reinsurer. To further enhance an already negative scenario, the company now wishes to protect its biggest producer who flagrantly violated two cardinal rules designed to protect the company and the reinsurer.

The reinsurer has an option to deny payment to the ceding company because of its negligence and/or bad faith in guarding the reinsurer's interest. This may result in arbitration.

If the company admits that the claim wouldn't have been paid except for the agent's actions and doesn't support a recovery under the agent's E & O policy, is the reinsurer supposed to stand alone on a case when the cedent had nothing at risk and proposes to eliminate a legitimate avenue of recovery available to the reinsurer? Has the company acted in good faith? What about the implied "Gentlemen's agreement" to do the right thing by each other?

If the application was taken in the hospital, there is a clear inference that the agent and the insured were perpetrating a fraud against the ceding company.

Q: What would the company's attitude have been if the insured died while the case was being shopped and the agent had the money?

Q: What action would the ceding company have taken against the agent had there been no reinsurance?

MR. JOHN NIGH: In today's environment, the issue of a health statement is largely contractual either forming a part of the delivery letter, the application, the agent's contract, or any combination of these. Insurability at issue and continuation of good health is just something that is to be understood between the company and the agent and the insured. However, this is not really the issue here. The issue is whether or not the company was

aware of the hospitalization prior to payment of the claim and did they act improperly, or were they not aware of it, in which case only the agent acted improperly?

In the instance that the company acted improperly, I would think that the reinsurer's only recourse would be to demand that an amendment to the contract be made to require their authorization before payment of any contestable claim or any claim on which the full retention has not been retained by the ceding company. They should also attempt to force the company to go against the agent's error and omissions coverage, but I doubt with any success. Of course, cancellation of the contract should also be considered.

In the latter event, where the company was not aware of it, the reinsurer should make every effort to work with the ceding company to ascertain why a review of the papers did not reveal the hospitalization when the application was being underwritten where a review of the same papers by the reinsurer revealed the hospitalization. I would also suggest that there always be an understanding that the reinsurers review of their claim papers should be made before payment can be authorized. The company's decision as to whether or not they should proceed against the agent's error and omissions carrier should be predicated on the trade-off between losing the future production of their agent and the ill will and reputation caused by not taking this action. In any event, the company should make sure that future occurrences such as these are procedurely addressed. That is, either the policy of the company is to decline a case or to go against the agent's error and omissions carriers.

In my own company, we have had claims such as these before, none I might add where the case was 100% reinsured, where we have gone against the agent's error and omissions carrier and other cases where we denied coverage. Our current policy is to deny coverage and, in the event that we felt there was culpability on the part of the agent in knowing that there was hospitalization involved and a deterioration in health, to cancel the agent's contract.

MR. MEL YOUNG: I am glad to hear mention a couple of times during your comments about looking at procedures. I am surprised nobody mentioned that in the first case. I think that that maybe is the message for the people working on the section committees. Our lives have become much more complicated because of more complicated products. I think that it is time for everyone, reinsurers and ceding companies, to be looking at procedures. A lot of questionable claims or questionable liability situations would get cleared up if ceding companies would discuss procedures with their reinsurers and within their own shops and establish some precedents in that way.

MR. CLAUDE PAQUIN: When you state the question wrongly, you are bound to get the wrong answers, if you get any sort of an answer at all. This was particulary true with respect to issue #1, but I'll confine myself to issue #2. The first red herring in the case is that there is a threat to sue the agents error and omissions carrier and the notion that one needs the ceding company's permission to do it. First of all, I do not think the ceding company's permission is needed at all.

Secondly, you do not sue an insurance carrier for the misdeeds of an insured, you sue the insured, and it's up to the insurance carrier to defend its insured. I think everybody pretty well knows that if I have an automobile accident and I am accused of being negligent in the case, I would be sued, and, in fact, the insurance company will not even be known to the jury so the same thing applies here. I think the question is misstated at the end. The main question is whether the reinsurer would have any opportunity to prevail against the agent. It seems to me that there can be some conflicting views on that. I think if we analyse the whole set of errors, the ceding company had the last clear chance of preventing the coverage from taking effect when it failed to review the various papers that were sent to it and failed to secure the appropriate health statement. Everything that happened before that could have been rendered moot by simply making sure that the health statement was part of the papers. I think that is the crucial issue that one ought to focus on.

I think in cases of mere negligence the reinsurer's fortunes do follow those of the ceding company. But we have a case here that appears to be one of fraud on the part of the agent. Whether the agent, by being the agent of the ceding company, was also the agent of the reinsurer is something there could have been some dispute about. I think it is necessary here to proceed to an analysis as to whether it was fraud. There are elements of fraud, and I think they might well all be present in this case. It could be a little bit difficult to prove however.

For those who might need a refresher as to what constitutes fraud: "fraud involves either a misstatement or a failure to state that which one was under an obligation to state". In this case, the agent failed to perform an obligation that was cast upon him, and this is essentially equivalent to making a misstatement to the insurance company for which he worked. There is a question of intent as to whether he intended to defraud his own company. That can be read into his actions, but that is a little bit harder to detect. The fact that the insured was already in the hospital, I think, is a very good sign. One would have to know about the degree of sophistication of the agent and the nature of the ailment. There are all kinds of facts to be investigated that are not present here which makes the solution for us here rather difficult.

The third element basically is an inducement on the part of the agent or the person who is accused of having committed the fraud that causes action on the part of the insurance company. I think the agent did induce the insurance company to accept the risk.

The fourth thing is that the inducement did cause an action on the part of the insurer, and we have that here - the insurer acted.

The fifth element is detriment, and there was a detriment to the insurance company because it paid the claim. Although some argument could be made that they didn't have to pay to start with. So in essence we are left with a problem without solution which could possible go either way.

MR. MARTIN: We have heard the mention of arbitration and taking them to court often this afternoon. Given the nature of the issues, we will probably hear it some more. I think those are options that none of us in this room want to pursue. One of the objectives that we have is to identify those

areas that we can be a little more careful with, address a little more clearly ahead of time, so that things like arbitration and going to court do not really ever enter into the picture.

MR. KOLODNEY: Just one more statement, and that is that this particular scenario strikes close to home, and there was a happy ending. We had a case like this about 8 years ago where there was a fraud between the agent and the insured who was in the hospital with terminal cancer, and fortunately, it was discovered, and the policy was voided. So it was a happy ending for the company and the reinsurer.

MR. NIGH: I'd like to comment on one statement Claude made. Our actual procedure is to issue a demand letter first and then sue, so I use the phrase, "go against the errors omission coverage" as a matter of convenience. I would doubt that the reinsurer could instigate the law-suit or the demand letter on their own. Their contract is not with the agent.

ISSUE #3: A policy is 100% reinsured, and the reinsurance agreement gives the ceding company full authority to handle claims, without consulting the reinsurer. The insured died and the ceding company denied liability. The beneficiary subsequently brought certain points to the attention of the company and threatens to sue. The company still refuses to pay, and the beneficiary sues for policy benefits, plus punitive damages. The ceding company now approaches the reinsurer and asks for assurances that the reinsurer will reimburse the punitive damages in view of the fact that the case is 100% reinsured. The reinsurer contends that anything warranting punitive damages has already been done and will not accept retroactive liability for the actions of the company.

MR. NIGH: In this case I would state that if the reinsurer gives the ceding company full authority to handle claims without consulting the reinsurer, the reinsurer's position, that anything warranting punitive damages had already occurred and therefore will not accept any liability for the actions of the company, is ludicrous. Obviously, the company was acting within what they thought was a full authority. In assuming that the company was acting in good faith, there is no reason for them to assume that the reinsurance company would not have followed their action. If, on the other hand, the company was frivolous in its actions, the reinsurer's only recourse is to work with the ceding company and outline procedures to follow on contested claims. In our own company, we have become sensitive enough to such issues, particularly on the subject of contested claims, that we have simply informed the beneficiary that we are proceeding on our investigation while requesting the opinion of the reinsurance company as to their suggested course of action, even to the extent in one case that the reinsurance company suggested that we pay instead of declining the case.

MR. MANGINO: There are several sound reasons why a reinsurer should not be expected to share in a punitive damages assessment against a ceding company. A primary reason, of course, is that the reinsurer is indemnifying the ceding company against liabilities arising from the life or health insurance policy that is issued to a policyholder and is not indemnifying nor receiving premium to cover acts of wrongdoing on the part of the ceding company through its agents. Putting aside the question for the moment as to whether there might be a punitive damages exclusion in the treaty, it would

be against public policy and be in violation of certain state laws for a reinsurer to relieve its ceding company from its just punishment.

The ceding company, since punitive damages is essentially a corporate liability, should either self-insure for this risk or obtain special corporate E&O coverage from a property/casualty insurer. From a practical standpoint, a reinsurer sharing in punitive damages assessments on a continual basis might encourage sloppy practices by the ceding company or at least remove the deterrent factor from the punitive damages assessment.

The fact that the case is 100% reinsured should make no difference with regard to these considerations. Obviously, the ceding insurer seems to have everything to lose and nothing to gain by aggressively denying the claim. However, under time-honored reinsurance principles, a ceding insurer must handle every claim regardless of the retention as if it were its own. The question of whether a case is reinsured or for how much should not enter the mind of the claims person involved.

On the other hand, some reinsurers will agree on a case by case basis, and especially with a 100% reinsured case, to examine all of the circumstances of the denial and the punitive damages assessment to determine if some type of sharing would be equitable.

MR. DENNIS LORING: I think Mr. Mangino's points are quite cogent and make a pretty good strictly legal argument against the participation by the reinsurer in punitive damages. There are also a number of clauses within reinsurance treaties specifying exactly what the reinsurer will or will not do. Any reference to that was absent in this case. I would just point out that the reinsurer, as we saw in the last case, is also looking to the ceding company to defend its monitary interest in situations where the ceding company will in fact have no monitary interest where cases are 100% reinsured. For a reinsurer to say, "you will please defend our money with all due diligence and all considered efforts, but if you screw up we are not going to back you", might be a little bit hopeful on its part.

MR. MANGINO: I basically agree with you, and that's why I said that in those types of situations it should involve an additional arrangement or some kind of a additional agreement between the parties. But in the absence of that additional agreement, I would stand by the strict legal interpretation of the situation.

MS. JOHANNA BECKER: I am not sure that it is necessary to have a formal agreement in writing with the reinsurer on the side that you will cover punitive damages in certain situations. I think that can be handled more on a gentleman's agreement basis either through a letter of understanding or as the cases come up. On a couple of points regarding punitive damages, we happen to have one treaty that does have some language in it, and it is rather general. It was put in by our reinsurer, and says that in certain undefined situations that they recognize that there may be situations in which they should share in punitive damages. So it does leave the door open yet undefined for whatever the situation may be.

Secondly, I've also seen treaties that say that if the reinsurer has more than 50% of the risk, or if the face amount of the claim is above a certain limit, then the reinsurer not only has to be consulted but must sign off on

claim payment. Now I think in that kind of situation where the reinsurer has some control over whether or not the ceding company pays, the reinsurer should be willing to share in punitive damages that might result because of delays in claim payments or other situations that could arise in determining whether or not the claim should be settled that were the fault of the reinsurers rather than the ceding company, who might have been willing to pay off sooner.

MR. KOLODNEY: I think that in the last couple of years there is an awareness in the industry. As reasonable business people, we should be aware of what the potential liability for our actions might be. In one of the cases, conditional receipt, we can pose the question, 'was this a jurisdiction such as California or Illinois where conditional receipts really are not worth the paper they are printed on now'? If so, should the company not be aware of that?

In this particular instance of punitive damages, it seems to me that about 10 or 12 years ago, the state of New York in reviewing reinsurance agreements found provisions which said the ceding company should consult or get approval from the reinsurer before they paid claims. The state of New York insurance people said that the reinsurer had no right at all to interfere with the processing of claims between the carrier and its insured. That continued to buttress the privity of contract between the carrier and the insured. If the primary insurance industry wants to maintain the viability of its reinsurance outlets, it has to be prudent and diligent in assessing, as Mel Young said, its customs and procedures in dealing with the business it handles. You cannot just wave away a multi-million dollar error or mishap, because it's the reinsurer that is going to have to bite that bullet and even though reinsurers love their clients a lot, I think in this case love may have a price. I just think everyone should be a lot more conscious about the climate that we are in today and respond accordingly from almost every operating department, especially the agency area.

MR. MANGINO: Could I add a word of caution. I really do not think it is good practice to leave the language of a treaty or the understanding between a reinsurer and its ceding company to the effect that because we have been partners for years and been together over a lot of bad times and good times, that if punitive damages are assessed, we'll work it out somehow. It is really a new ball game, and punitive damages could be much higher than you could contemplate at the signing of a reinsurance agreement. You really have to specify at the outset exactly how each party is going to respond. For example, there is always a problem that if punitive damages are assessed, would the reinsurer be expected to share those damages in the same proportion that it is sharing the basic risk. That is one of the first things you have to settle, and I do not think the reinsurer, even if it wanted to share in punitive damage would assume this to be the case.

MR. GIES: I was surprised to learn that with every claim that we have involving reinsurance, our claims person is talking to the reinsurance claim person on the other side. So I would think that if they came to a situation where there were the potential for punitive damages, and they are communicating and talking to one another, there would be an opportunity for the reinsurer either to say clearly, "I'm not going to follow you on that, here's my side of it, but you go ahead and pursue it" or vice-versa. And if

it is vice-versa, then I would have the expectation that the reinsurer would be in it with us.

MR. WILTON: In all of the discussion, of course, you are following the example, but I would like to make the point that it seems to me that you'd have a much more pertinent problem here if you phrased it in terms of income replacement insurance rather than in life insurance, where denying claims and paying claims is a much more usual part of the procedure than with life insurance where it happens only once on each policy and very seldom.

ISSUE #4: The ceding company reinsures its competitive term product with reinsurer #1. A year later, to meet competition, the ceding company replaces its term plan with a more aggressive version. This plan is sent out for quotes, and the reinsurance is placed with reinsurer #2. Reinsurer #1 demands that the reinsurance of any policies that exchange from the original term plan to its successor stay with them.

The new, more aggressive term plan was priced to reflect the reinsurance rates offered by reinsurer #2. The ceding company understands reinsurer #1's need to keep the reinsurance, but the rates offered on the new plan by reinsurer #1 are higher than the reinsurance costs assumed in development of the product. Also, even if the rate problem were resolved, the ceding company does not know how it could successfully identify such exchanges.

MR. KOLODNEY: Certainly, Reinsurer #2's allowances on which the ceding company's pricing was based assumed select mortality. Exchanges are non-contractual. What are the compensation practices of the ceding company in the event of an "exchange?" Is it ethical for Reinsurer #2 to support an "exchange" program at the expense of Reinsurer #1? Should the ceding company not have anticipated the exchange problem?

The pricing for the more aggressive term plan probably included new issue and underwriting expense factors which do not pertain in an exchange. Also, it would be poor business practice on the part of the ceding company to commission an exchange at the same level as a new issue if the objective for the exchange is to conserve the business and provide the policy holder with the more aggressive term rate. What about liability? Did Reinsurer #2 bargain for non-select exposure?

Identification of change gets into the area of administration. Why would the ceding company not be able to identify the exchange? If reinsurer #1's contract terminates under an exchange program, the ceding company would have to account for it to any reinsurer involved. What does the ceding company's approach say about its perception of the relationship between itself and its reinsurers? Why should Reinsurer #2 want to support an exchange program to the detriment of #1? Couldn't the same scenario emerge to the detriment of #2 in a following year? What about suicide and contestability provisions? What about retrocessions in place on large cases which could not be reconstructed without new underwriting? What are the parameters of the exchange program - standard lives only? If so, what about the tremendous anti-selection against reinsurer #1 were it not participating in the exchange?

Reinsurer #2 should have brought up the exchange issue as part of its quoting process, and certainly the ceding company should have negotiated in

advance with reinsurer #1 before putting them in a position of being presented with a fait accompli.

This question really is one of equity and fairness where the involved parties should be working together closely in exploring potential problems rather than letting events transpire.

MR. GIES: Replacement of existing insurance is a very topical point currently. It has been made important by a number of factors which by now are familiar to all of us. I think the emphasis on current assumption interest sensitive products has created a lot of pressure, as well as pressure on field forces for increase productivity. As environmental pressures on direct companies increase, I do not think there is any question that this will also be passed through and is being passed through to the reinsurance community.

Conceptually, I wonder if we could agree that reinsurance pricing is entitled to no more protection than is the pricing of direct writing companies. What I am suggesting is that the era of protected markets is not entirely gone but it is on the way out, and those who fail to recognize this development risk the loss of inforce business. Now on the other hand, I agree that issues of equity and fair play can be involved and that circumstances are important.

The example at hand is an interesting case, but before commenting on it specifically, I would like to review it from a more general framework. From a direct company perspective, there are three broad categories of reinsurance to consider. First, there is the familar excess over retention limit. I do not think there's a great deal of potential for replacement of reinsurance here. A second major category is shopping of individual policies. Here again my view is that there is little incentive for direct companies to replace business. It is unlikely that a direct company could improve its overall financial position in any event considering the diversity of products and underwriting. Now the third category of reinsurance might be labeled, for lack of a better name, portfolio reinsurance, and this category includes the situation we are evaluating, and involves the direct company's pricing of a term portfolio based on reinsurance prices available at the time of development.

In this example, the inter-company insurer-reinsurer relationship is one of partnership in providing a product which presumably meets a market need. Both companies perceive benefits to the relationship and both recognize the potential for cost as well. The environmental factor to which both companies are hostage is the demand for a competitive product and the delivery of value. It follows that, unlike the prior two situations, replacement of business is a possibility. If either company fails to meet this structural requirement, it risks the judgment of the market and a potential for loss of inforce business.

Circumstances are important. The term portfolio situation involved a short period of time, one year between issue and reissue of the business. On the one hand, this puts pressure on the direct company to honor its commitment to the original reinsurer. On the other hand, if the portfolio had been worked up and underwritten by the direct company with the reinsurer essentially relying on direct company selection, then there is less of a

claim that expenses have been incurred and that the reinsurer is the "owner" of the block of business. On this point, it is of interest to note that although direct companies wish to view themselves as owners of blocks of business they purchased from their sales forces, the reality is quite different. In fact it is my observation that most agents in what are to termed to be quality, career agency companies would take just the opposite view, that they own the business.

Loyalty of a career agency force, if not entirely a thing of the past, is certainly not an effective basis for motivating persistency on inforce blocks of business. Rather the emphasis must be placed on the existing contracts continuing value to the consumer and our ability to provide value. This cycle goes back to a recurring theme, and that is that the market shapes actions, and it is not the direct company nor the reinsurer that controls the marketplace. I do not agree that the reinsurer has a basis for demanding that reinsurance coverage remain in force. The circumstances of this case are unfortunate, and one would hope that an accommmodation could be made. For one thing, a significant difference in reinsurance cost would presumably be the motivation for new policy pricing so soon after a rate revision. Otherwise, the changed pricing is not worth the effort, and the incentive for replacement would be quite small. But if the price differential is large, then the original reinsurer probably misjudged the market. These are environmental pressures that direct companies deal with everyday, and so too must reinsurers.

MR. LORING: The issue in the case is by far the most important one that we will discuss, and is possibly the single most important reinsurance issue of the next few years. I would like to take gentle but firm exception to the notions of protected market, failing to meet the structural demands of the market, or the environmental conditions of the day. I have yet to see someone present an effective refutation of Mr. Kolodney's comment that this is a contractual change. I am assuming, in this case, that the conversion from one plan to another is done with less than full underwriting where the holding of the initial policy is a condition precedent in allowing the conversion. It is therefore a policy change covered by the policy change clause in the reinsurance contract which specifies that changes will remain with the original reinsurer. If that can be refuted, I would like to hear it.

MR. GIES: I wish that I could approach my field agents with the same sense of rightness. The reality is that we do not own those blocks of business.

MR. YOUNG: I echo what Dennis said when he used the word policy change. Many of you are getting nauseous hearing me state this, but we keep talking about rewrites and reversions and all other things, but basically what we are talking about is policy changes. I used to be an actuary and I used to be an actuary for primary companies, actually 7 or 8. In every one of those companies I had a manual in my left hand desk drawer that was called the policy change manual. There is nothing manditory about how these things should be treated. I have 40 years worth of precedent sitting in that drawer that says this is the way policy changes are treated for reinsurance purposes. That has set a standard precedent for how they should be treated and that they should be treated by calling the existing reinsurer who is the reinsurer of record of that risk. Now there is a financial problem involved perhaps, because you cannot afford to pay the premium that you were paying

before, and that requires perhaps some conversation with that existing reinsurer, and perhaps he is willing to make a concession. There is clear precedent that the case belongs to that reinsurer, and he has probably paid for it someway or another up front.

I would like to say one other thing. When these problems first started arising, and they go back 6 or 8 years, companies were coming out with new term rate books that were much more aggressive than were old ones and were calling all their reinsurers in to ask what they would do about the change. The basic assumption was that we were going to lose all this business and lose a lot of money if we did not allow the old policy holders the new rates. This example is a corollary to that and I believe that what we did in that case is the right thing to do. We have done it many time since in that we helped our clients do model offices of the block of business involved, and we used those model offices to help make the decisions as to whether or not it made sense, dollar and cents, to allow for change.

If you went to your reinsurer before the decision was made, when the products were being developed, that is the time to handle this problem. Go to the reinsurer, and say we would like to do this for this and such reason and typically, most reinsurers would sit down with you at that time and make a decision along with you that would make sense for both of you. I do believe that clearly a precedent says that the case belongs to the reinsurer of record.

MR. GIES: I do not disagree with everything you said. As a matter of fact, I probably agree with most of it. One point of clarification, I am not in any way putting a blessing on replacement. We hate it, we wish it would go away. But it is something we have to deal with. The reinsurer and insurer really have to talk with one another, and if there is good communcation then probably there are ways to shortcut these kinds of situations. What we do not want to do is spring surprises on one another. This is a hypothetical case. Was reinsurer #1 aware of or was he participating in the pricing on the new product? We do not have an answer to that.

MR. GORD GIBBINS: I am really re-addressing the same question of where there is policy change versus replacement. I wanted to ask a few "what if" questions to Dennis, Mel and Joe. From the various sessions we have had on term insurance at the meeting, it is obvious a lot of people are getting out of "select and ultimate". If you get out of "select and ultimate" and go back to a single rate type of renewable term, and therefore change your pricing basis and the pricing basis that you need from your reinsurers, since you now no longer have the re-entry with the higher allowances or the lower YRT rates at renewal, how far does the company have to go before a so-called policy change becomes a replacement?

MR. KOLODNEY: I would suspect they would have to go all the way to get a new application and brand new underwriting and incurring total new issue expenses and administrative expenses.

MR. GIBBONS: Speaking for my own company, if the app is high enough and if we are talking about not shopped business but excess capacity, if you generally are in a new underwriting situation, as least to the extent that you are at the medical exam level, you may not repeat ECG stress tests and so on.

MR. KOLODNEY: This is a very sensitive issue, and I fully agree with Mel on our position. What people tend to refer to as a replacement under a general scenario is in fact a policy change. You might be able to argue that you have gone through your brand new complete issue and underwriting process as you would a brand new contract and have issued a new policy with new suicide and new contestability provisions in it, and you regard that as not part of the current block. But it seems to me that most of the companies today do what you have said. If at any time a requirement is waived that otherwise would have been obtained, that just diminishes the ceding company's case that they are involved in a replacement.

MR. GIBBONS: I agree, but what do you do when you have the reinsurance pricing on a basis which is no longer applicable to the so called policy change plan.

MR. KOLODNEY: As Ja k astutely pointed out, that is something that should be communicated during the developmental process, and as I indicated in my remarks, I think many reinsurers have been presented with "too bad, we've got a quote, live or die by it", and I think there are going to be an awful lot of potential problems coming down the road.

MR. GIBBONS: Is it fair enough if the original reinsurer is given a chance to match?

MR. KOLODNEY: I think the ceding company has a higher obligation to that original reinsurer then just to say, "match the best we have now, otherwise loose your inforce block of business". I think that both direct companies and reinsurers do influence the marketplace. They are not victims of it, but they influence it. How many ceding companies always pitch the argument to the reinsurers, "give us the best allowances you have, as much as you can upfront because we have great persistency, we have great underwriting, our agency force is well controlled", and as a result, perhaps the reinsurers have given in in the past too willingly. They have put themselves in a position of being in a no win situation. If the ceding company is making representations and inducements to the reinsurer to help the ceding company in its marketplace, then the ceding company has an exceptionally high duty to make sure the reinsurer stays as whole as possible if there are any changes in the future.

I feel increasingly uncomfortable about what I perceive to be a developing adversary position between ceding companies and reinsurers in too many areas. I think that the industry has to take stock of itself and get back to the basics. It is a partnership arrangement.

MR. HENRY CIAPAS: First, I would like to congratulate the ceding company on finding a reinsurer that would give you a better co-insurance allowance than the original one, because we are not successful in finding anyone who would give us that nowadays. Second, I would like to address the question on exchanges. For equal premium and a higher face amount, should not the reinsurer be bound for the increased amount since the ceding company presumably would not have issued at that rating class for the original policy. And if so, is it necessary to have any sort of contractual agreement before the fact to cover this type of situation?

MR. GIES: To the extent that you have a higher amount on the policy that gets rolled over, it begins to look more and more like a new business transaction. You begin to get away from this replacement angle.

MR. MARTIN: In our company, we get back to what Joe and Mel have said on what constitutes a new issue. Are you really going through all the steps you would in a new issue situation. In the case where there is a higher face amount, which can be common in Universal Life situations that we have seen, it is our position as a reinsurer that we have a right to remain on that risk for the amount that we were on before and not the increased amount.

MR. CIAPAS: If I understand what you are saying correctly, it is not a clear cut position, and it is open to debate whether or not the ceding company could then look for a new reinsurer if the original had refused to go along with the increase in face amount, especially since most treaties do not cover situations of this sort.

MR. MARTIN: I'd echo what Joe said that if issuing the replacement policy is done on a basis other then how you would handle a new policy coming in, we feel that is a continuation of coverage for the amount that was inforce before. And you are right, reinsurance treaties are not particularly clear on this and many of the issues, and that is one of the purposes in having these kind of discussions. Things in the past were a lot simpler, and I think the term "gentleman's agreement" also implied a way of doing business. I do not think we want to get away from that. At the same time, the complexities and the fast change in the marketplace make it necessary that we do tie down some of these issues more clearly in today's treaties so that the potential for conflict does not come up as often. I do not think anybody really wants it.

MR. JIM PILGRIM: I think this case and the preceding case just indicate that we really have to have a lot of communication between the companies. I think it was two or three years ago at the Canadian Reinsurance Conference meeting, we talked about the problems with exchanges and roll-overs. Peter Patterson could say this better than I, but I think in the new guidelines the Canadian Reinsurance Conference developed, they addressed just this type of problem and some potential solutions. The existing reinsurer is given the opportunity to look at this situation and identify right up front with the ceding company as to what is going on.

Let me take the flip side of this particular situation and say that there was no communication that went on between the existing reinsurer and the ceding company with regard to exchanges, and the ceding company went out for bids to a number of reinsurers. Reinsurers bid, and the ceding company selected the new reinsurer and then said when they accepted the offer, "oh, by the way, you will get all the exchanges which we are not going to underwrite". It could very well be that the new reinsurer has reflected new select mortality and the benefit of obtaining all new evidence and probably had not accounted for the exchanges. Now at that point they have got a choice. They could swallow hard and say "ok", or say "Wait a minute, that's not what we put in our pricing".

This kind of situation just points out that the communication that Mel referred to that he had with ceding companies and that others have referred to should take place. As opposed to what I hear coming through, a kind of

adversarial relationship between ceding companies and reinsurers, in this situation it is really a partnership. The ceding company is interested in keeping the business in force, as is the existing reinsurer. When everything is identified, if the existing reinsurer says "no, we'll sign off, you can take it where you want to", ok, but they have been given the opportunity to keep it inforce.

MS. HEINZ BRIEGEL: I would like to get back to the case as I understand it. The reinsurer #1, in my opinion, ought to be retained as the primary reinsurer. However, the problem as it is stated indicates that under the new rate scale the direct company would charge less to the insured than it would have paid to the reinsurance company. If after consultation with the first reinsurance company there is no agreement in reducing the rates that the reinsurance company wants to charge, the direct company is in a position of suffering a financial loss in keeping that policy reinsured with the first company. It seems to me that in that particular situation, if the reinsurer is unwilling to make a concession, that the direct company ought to be permitted to move that particular case.

MR. KOLODNEY: The fact says that the ceding company understands reinsurer #1's need to keep the reinsurance, but the rates offered on the new plan by reinsurer #1 are higher than the reinsurance costs assumed in the development of the product. We do not know what the premium is. All we know is that reinsurer #1's charges are higher than the reinsurance costs assumed and I go back to my thesis. That doesn't say they are not affordable, all it says is higher. So instead of saying the second year allowance is 40%, maybe it is 25%, and maybe the ceding company is only paying 10% to the agent, but the equity involved is for the ceding company to recognize that reinsurer #1 is entitled to keep its business, and the marginal profit in moving the business for an extra 15 points in commission should be foregone in the sense of equity and long term relationships. Otherwise we are just in a price cutting battle. I would tend to agree if, in fact, the reinsurer #1 were charging a rate that was higher than a premium that the writing carrier was collecting, but this is not the fact in this case.

MR. BILL TYLER: The Model Treaty Provisions Committee was formed by the Reinsurance Section about 15 months ago or so. Initially, the concept of the committee was that it would look at reinsurance treaties and develop a document somewhat similar to the Canadian Guideline that subsequently was published last year. This would identify the types of terms and provisions that should be included in reinsurance treaties and in particular areas, where there were problems that were starting to arise, alternative solutions would be presented for consideration by ceding companies and reinsurers alike.

Initial effort in the Model Treaty Provision Committee was to sponsor the conferences this spring. Also, you could say this meeting has served a similar purpose as the conferences to raise the consciousness and the awareness of ceding company and reinsurance actuaries alike of the potential problems of lack of clarity, and lack of attention given to certain areas, that were starting to cause some problems and friction between participants in a reinsurance treaty. Some work needs to begin on that basis.

We have a committee which consists of 30 or 40 members of the reinsurance section, and the next step is for me to submit something to those committee

members and get their reactions as to how they would like to proceed. One important thing that I think is somewhat obvious from listening to the discussion here today is that this is not really primarily an actuarial question. Legal advise, legal input, underwriting input, claims processing input as well as administrative input into this process is going to be necessary for the end result of the committee's work to be of much value to companies at large. So one of the matters that the committee will need to address is how to get that input from these various people who have expertise to apply to this problem. A second point is how can we develop the awareness of the problem and get our message across to the underwriting community, claims community, legal profession and so forth? Then we will have basis for providing some guidance to anybody who is interested in becoming a party to a reinsurance agreement that is least likely to develop into an adversarial relationship at some time down the road. Our plan for 1985 is to begin this evaluation effort on whether the development of this documentation is appropriate. And, assuming it is, we will proceed to organize toward that end.