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State Variations and Their Impacts on Valuation

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Summary: Panelists discuss the impacts of preparing reserves and an Actuarial Opinion and Memorandum caused by differing reserve requirements in each state. This session addresses compiling, analyzing, and opining on 50 sets of valuation laws, regulations, and procedures. The perspectives presented include those of an industry practitioner, a regulator, and a member of the AAA who will focus on professionalism.

Mr. R. Thomas Herget: You will be hearing perspectives from a company practitioner, a state regulator, and someone in professional practice.

I am an appointed actuary for several companies and do experience the joy of trying to accommodate all regulations and follow prescribed principles and practices. I've been practicing for 25 years and am a principal at my firm, PolySystems, in Chicago. I am on the Life Insurance Company Financial Reporting Section Council, and I have been newsletter editor for the section for a few years.

It is a daunting task to prepare reserves, and with that I would like to introduce our first speaker, Ken Klinger, who is responsible for the compilation of all the reserves at his multiline company. Ken is vice president and actuary at CNA Insurance in Chicago. He has worked in valuation, financial reporting, and analysis

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for the past 16 years. He has been on the AAA Committee on Life Insurance Financial Reporting and the Society of Actuaries Long-Term-Care Experience Committee.

Mr. Kenneth A. Klinger: As Tom said, I'm speaking as an industry actuary, trying to cope with the multitude of state valuation requirements. In a sense, my portion of the talk is probably the least interesting, because it concentrates on the present situation. Other speakers on the panel will talk about possible future remedies, so I intend to leave plenty of time for them.

First, as you're aware, the subject for discussion is the impact of the state-by-state adoption of the 1990 Standard Valuation Law (SVL) and actuarial opinion and memorandum requirement. This now mandates that the appointed actuary certify that the insurer's reserves meet, in aggregate, the minimum standards of each state in which the annual statement is filed. This is a significant change from earlier years when generally only one or two states had significantly different reserve requirements than the insurer's state of domicile.

Incidently, some good background reading on this topic is Shirley Shao's article in the November 1995 issue of the *Financial Reporter.* Aside from being a good article in its own right, I found the article very useful in convincing some of the nonactuarial management in my company that this truly was a serious issue.

From the industry perspective, this new requirement causes a significant amount of additional work. First of all, it's a definite challenge just to learn the minimum standards of each state and keep current on them.

The ACLI offers four different subscription services we've found very useful. These are the Advance Regulation Service, the Proposed Regulation Service, the Advance Law Service, and the Valuation and Policy Form Compliance Service. Obviously, they are all life and annuity oriented. The first two cover regulations; the third one covers laws. All are very useful. The Advance Regulation Service covers attorney general opinions, as well.

Via the National Electronic Information Corporation (NEIC), we subscribe to the Model Laws and Regulations and the Life and Health Actuarial Subscription. The first is a four-volume set of model laws and regulations, and after each model law it lists the states that have adopted the regulation and the year which they adopted it. It's published at least twice a year.

The Health Insurance Association of America (HIAA) offers three different services: Legislative Bulletins, State Bulletins, and Legal Bulletins. The Legislative Bulletin

contains brief state-by-state summaries of new bills and a section on their current status. The State Bulletin includes actual and proposed administrative rules, which is helpful. The Legal Bulletin contains a summary of any significant court decisions that affect health insurance. In general, these are not published as often as the ACLI material, but they're very useful.

Typically, we use these bulletins to keep up to date with what's happening. To get the details, you would go to things like *The National Insurance Law Service*, which publishes a series of red binders. That is typically the kind of publication you find in your company's law library. It has detailed state insurance laws, regulations, attorney general opinions, and so on. It is very complete, but does not have any proposed items.

The AAA, of course, has the Valuation Law Manual. The last edition I'm familiar with is January 1996. It's not complete, but it is obviously a nice, concise reference. Other areas you can turn to for information are trade publications, like *The Financial Reporter* and *Contingencies*. Another source I didn't list would be Actuaries Online. That might be most useful if you had a very specific question you wanted to throw out for comments or suggestions. If anyone in the audience knows of other good sources of information, I'm sure everyone would like to hear about them.

Obviously, keeping up to date is a challenge. After you've kept up to date, implementation presents its own logistical problems. Most valuation systems I'm familiar with allow only a handful of different reserve bases at one time. Also, most cannot calculate different reserves by state. Keep in mind that even if your company is complying in aggregate, you may have, for example, a reinsurance client, who might need you to calculate reserves for their state of domicile, so you may need to accommodate them.

Another logistical issue is that these different reserve bases often flow into other schedules and exhibits required by various states. Some states require a detailed plan code level, three-year reserve comparison, for example. Other states require plan code, issue-year breakdowns of reserves. So you have to be sure that the reserves shown in those exhibits are the reserves appropriate for that state. Also, do you file different blue books in each state? Typically, we file our state of domicile blue book and then attach a supplementary adjustment page, or pages, at the front which address any of the variations. The appointed actuary will also need to make decisions on how to treat some state variations. Can the company afford to hold the strictest reserve necessary in all states, or is it necessary to do multiple valuations?

Here you need to consider the trade-off between use of surplus and additional work effort and available time.

Other logistical problems, even after you've calculated different reserves, are that different states require different wording of the actuarial opinion and memorandum. So, you need to be sure that you're using the correct language in each state. Another challenge we face is that some states adopt items on effective dates other than January 1. For example, one state made their change of valuation interest rate, from 3.5 to 4, effective June 23, 1976. These kinds of things are difficult to handle in most valuation systems without introducing additional plan codes specific to that state and without going through a lot of extra effort.

So, in closing, let me just emphasize you should not underestimate how time-consuming keeping up to date with valuation requirements can be. Here are two other small examples.

One state published a document indicating that this was their revised valuation law, but provided no indication of what had changed. This required a detailed reading and comparison of the old and new laws. It turned out the changes were fairly inconsequential.

Another example occurred when a state revised the numbering system of their law, but the body of the document still referenced the law's old numbering system. As mundane as these things sound, all of them require additional time and effort to keep informed and to keep your reserving up to date.

Mr. Robert E. Wilcox: I think that it's important to understand not only the nature of the differences in the requirements from state to state, but also the reasons we have the differences from state to state. This is a rather fiercely independent nation, and of all professions, none would be able to relate to that better than this actuarial profession, which is made up of very fiercely independent individuals.

We have a nation which is in this constant struggle between state sovereignty and national sovereignty, and here we are in the South, a part of the country which once decided to leave the Union and assert its independence and sovereignty; in fact, the State of South Carolina did it twice. I think it's important for us to understand how this independence asserts itself in this wonderful area of insurance regulation. Insurance is the only major financial institution operating not just in interstate commerce, but in international commerce, regulated by the 50 states, the District of Columbia, and the independent territories. Let's discuss some of the various forces that come to bear, that bring about these kinds of differences.

Ultimately, laws are made by the state legislatures. They don't do that entirely in a vacuum. They are subject, in every instance that I'm aware of, to veto by the governor, so the executive branch plays a role in it as well. Most insurance legislation in my state starts in the insurance department, but not all of it. There are bills which will originate with special interest groups, industry groups, consumer groups, and agents that come before the legislature. Two organizations, the National Conference of State Legislators (NCSL) and the National Conference of Insurance Legislation (NCOIL) also provide a good deal of input into the process on a national basis, along with the Association of Life Insurance Counsel (ALIC).

The state insurance commissioners are the primary regulatory executive in each jurisdiction. Some are called commissioners in the general sense, some are directors, and some are superintendents, but we'll use the generic term commissioners. Trying to bring some semblance of order to that is the ongoing effort of the NAIC. We'll talk about that in some detail. There is also input from the industry and consumers that all comes to bear in 55 different jurisdictions to create the legal framework in which we all operate. And it is not nearly as easy, from our end, as we would like it to be, just as Ken indicated that it's not that easy from his end to keep track of it and interpret it.

Let's identify some of the reasons for the independent state action. There are regulations that are proposed by the commissioner and staff that originate at that level. There are statutes that are proposed by the individual commissioners. There are statutes proposed by legislators who have a particular interest that they would like to accomplish, and statutes that are initiated by industry. Sometimes this will be a broad national agenda; oftentimes it will originate with one or two or a handful of companies domiciled in a given state, that see that they would like to have some particular issue legislated to advantage themselves or control their competitors.

There are statutes that are initiated by consumers to bring about particular interests that they may have. Some are initiated by providers of services. This will not show up as often in life as it does in health, as you might guess, but it often shows up in other areas, like body shops, for example, that are looking for some particular statutory treatment on automobile insurance. But a constant effort is involved in the tug of war between the various health insurance providers that we deal with.

There are statutes that are initiated by agents. Let's face it: there's a significant part of the insurance code in every state that was, if you went back to its beginnings, started as protection for insurance agents, to make sure that their particular turf had adequate protection. And then there are statutes initiated by others. An example of that: we had a bill a couple of years ago brought forth by one of the viatical companies. They brought this bill into the Utah legislature and were saying that this

was basic American motherhood and apple pie. It was property rights and the ability to own and transfer property, a difficult concept in this country to argue with.

Before they came in, Utah had one of the strongest, if not *the* strongest, statutes dealing with viatical settlements in the country. It just simply said that you couldn't transfer interest on an insurance policy without an insurable interest, which was an absolute preclusion on the viatical contract. The particular advocate of this bill that came into our legislature, as I say, preaching this on the basis of property rights, is an organization that I won't mention by name. But you might have seen the name published in some national newspapers and other places because of some other activities.

And this was a company for which a strong case could be made that it was actually in business as much to defraud the insurance company as to facilitate our policy-holders receiving benefits. It was successful. It turned out that no one from the insurance industry was there to stop this bill from going through, so it was basically the insurance commissioner against some well-paid lobbyists. The well-paid lobbyists won. We went from being the most restrictive to the most liberal state on viatical settlements in one session of the legislature.

With regard to laws and regulations, model laws and regulations are developed by the NAIC. They can be broadly supported by members of the NAIC and others outside the membership of the NAIC. Sometimes they fit specific specialized needs, if there are one or two or a handful of states, perhaps more, that have a particular requirement. They ask for assistance from the NAIC to prepare a model law that, from the outset, is not expected to be broadly adopted but does meet the needs of a limited number of states. Sometimes, we develop alternative models. We will, on a particular issue, develop models A, B, C, and D, and pick them, based on the particular needs of the state. So a model law does not stand as a paradigm of virtue that everyone should automatically adopt.

It's important for you to understand the arcane structure of the NAIC. I'll be leaving this meeting to go up to New York City for one of our quarterly NAIC meetings. Every quarter this group gets together. It is attended by a good number of regulators, a few legislators (very few), and a relatively large number of industry representatives who are there to make sure that their particular concerns and interests are looked after.

The meeting is held every quarter; it consists of more than 100 separate sessions of various working groups and task forces and committees. The NAIC consists of 55 members from the 50 states, the District of Columbia, and the four territories

(Puerto Rico, the Virgin Islands, American Samoa, and Guam). These members determine its future.

They are divided into four zones: western, midwestern, southeastern, and northeastern (Table 1). Under the NAIC members, which you could consider the governing board, there is an executive committee. The executive committee consists of the officers, the elected officers of the NAIC, the elected officers of each of the zones, and the past presidents of the NAIC who are still sitting. Under that executive committee, you have committees, special committees, subcommittees, task forces, boards, and some joint committees that we'll talk about next.

TABLE 1
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

NAIC	
Zones	**Executive Council**
Western Midwestern Southeastern Northeastern	Committees Special Committees Subcommittees Task Forces Boards

Table 2 shows the next level. Under the committees you'll see the Life (A) Committee, which is an important one for those who are involved in the life insurance business, and the A&H (B) Committee on health insurance. But another very important one is the (EX4) subcommittee, the fourth one under the subcommittees. As you look at that you can probably get an idea of why it is sometimes difficult for those who are not directly involved on a day-by-day, consistent basis to keep up with what is going on within the NAIC.

Also, under the Task Force heading, you will see a Casualty Actuarial Task Force and a Life & Health Actuarial Task Force. Both are considered technical task forces that will always report their results through some other committee, subcommittee, or special committee.

Now, I'm going to take just one of those, the EX4 subcommittee, which happens to be a subcommittee that I chair. We'll break that down to another level (Table 3). Under EX4, there are four working groups that answer directly to the subcommittee. Under these working groups are five task forces: Accounting Practices & Procedures, Blanks, the Examination Oversight, Risk-Based Capital, and Valuation of Securities. You have these five task forces that are a part of the EX4 subcommittee. Under each task force, those you see a series of as many as seven technical groups or working groups, each having a particular responsibility. Now, I don't expect you

to remember all of those details, this is given more as an example than anything else.

TABLE 2
NAIC EXECUTIVE COMMITTEE STRUCTURE
EXECUTIVE COMMITTEE

Executive Committees				
Committees	**Special Committees**	**Subcommit-tees**	**Task Forces**	**Joint Committees & Boards**
Life (A) Committee	Antifraud	(EX1) Internal Administration	Casualty Actuarial (Technical)	NAIC/AAA/ ASB/ABCD Joint Committee
A&H (B) Committee	Blue Cross	(EX2) Zone Coordination	Life & Health Actuarial (Technical)	NAIC/Journal of Insur-ance Regulation Board
Personal Lines (C) Committee	Health Insurance	(EX3) Market Conduct & Con-sumer Affairs		NAIC/State Legislative Liaison Committee
Commercial Lines (D) Committee	Information Systems	(EX4) Financial Condition		Consumer Participa-tion Board of Trustees
Special Issues (E) Committee	Regulatory Re-engineer-ing	(EX5) Insolvency		
	Statistical Information	(EX6) Fin. Reg. & Accreditation		

If you are going to develop a model regulation law, you start with a working group. The working group develops a draft with input from industry technical advisors from many sources such as the AAA, consumer advocates, and others who may have a concern with the issue. In most instances, the working groups will consist of members of the NAIC or members of their staffs who actually put in the effort to develop the models. And so, oftentimes, those working groups will meet for some extended period of time. An example of that was the working group that developed the model regulation for life illustrations. There were a number of days of effort that went into developing that model. We obtained an initial report from the AAA for the work that's going on for health organization risk-based capital.

TABLE 3
(EX4) FINANCIAL CONDITION SUBCOMMITTEE STRUCTURE

Investments in Affiliates & Subsidiaries Working Group NAIC/AICPA Working Group			**Liability-Based Restructuring Working Group Surplus Notes & Capital Notes Working Group**	
Accounting Practices & Procedures Task Force	**Blanks Task Force**	**Examination Oversight Task Force**	**Risk-Based Capital Task Force**	**Valuation of Securities Task Force**
P&C Reinsurance Study Group Codification of Statutory Accounting Working Group Emerging Accounting Issues Working Group Separate Accounts Working Group	Annual Statement Instructions Working Group Health Insurance Working Group	Financial Examiners Sched. & Planning Tech. Group Financial Examiners Handbook Tech Group Audit Software Working Group Examination Tracking System Working Group Financial Analysis Handbook Working Group Financial Analysis R&D Working Group Financial Analysis Working Group	Life Risk-Based Capital Working Group P&C Risk-Based Capital Working Group Health Organizations Risk-Based Cap. Working Group	IMR/AVR Working Group Invested Assets Working Group Prudent Person Investment Law Working Group

That showed an excess of 1,500 volunteer hours that went into the development of their initial report. Plus, a good deal of follow-on work that has occurred since that time to get it to the point where it's ready to become, finally, a draft model.

Once you get through that process, the working group's model must be adopted by the parent task force. The task force's draft has to be adopted by the parent subcommittee. The subcommittee's draft has to be adopted by the executive committee. And then the executive committee's adopted draft must be finally adopted by the plenary. The plenary is the full 55 members of the NAIC assembled together.

Then, after you've done all that, it goes back to the 55 jurisdictions because there is nothing that the NAIC does that is a matter of law, anyway. So now the 55

jurisdictions each act independently. Now you have a whole new range of forces that come into play. Sometimes it's the adoption of a regulation under the administrative procedures, sometimes it's a legislative process.

Something that you might find interesting is that in some states it is more difficult to adopt a regulation than a statute. For example, the life illustrations model is a regulation, not a statute, in the model form. But, there are some states in which it is so difficult to adopt a regulation, it will submit it to the legislature and have the legislature pass it into law instead, because it's easier. That is surprising.

Within the legislative process, many other kinds of dynamics come into play. There are insurance committees that will want to assert their authority. Sometimes they work very cooperatively with the NAIC and are grateful for the thought and work that has gone into an NAIC model, and sometimes they're offended by it. A state simply might not pass the NAIC model because it doesn't like the idea that anyone should tell it what to do. And, so, you have those dynamics.

Sometimes there are things called Rules Committees. I suspect the name changes from state to state, but a Rules Committee has much to do with what actually comes forward to be voted upon. In most legislatures, there will be a substantial multiple of the number of bills passed, actually submitted for consideration, during a session of the legislature. And bodies called Rules Committees, or something like that, will decide which ones even get put up on the board to be voted upon.

You've probably heard the analogy before that making legislation is sort of like making sausage. You shouldn't watch either one of them actually being done. There's a lot of truth to that, but I would maintain that you can't watch either one of them being done. Actually, you stand a better chance of watching the sausage being made, as legislation is an awful lot like a black box. Things get put in, a crank gets turned, and some things come out the other end. You have no idea why certain things come out and others don't.

I'm sure that's true in every legislative body in the country. Partisan politics can enter in. If the insurance commissioner is in one party and the other party controls the legislature, it may be that the other party will refuse to pass anything that the insurance commissioner would like to see passed, just because of simple partisan politics.

Also, in some states, maybe the insurance commissioner is planning to be a candidate for governor in the next general election. That presents a different set of problems in getting these things through. As you can see, it's not an easy process that goes on at the state level that creates these kind of differences.

Now, what are some of the forces on the other side that can help us, or perhaps get in the way? Many of you are familiar with accreditation. When Tom made the introduction, he indicated that the state of Utah is an accredited state. That means that we have gone through a rigorous examination of our processes, of our legal structure, of the statutes we have in place, and of the regulations we have in place, to make sure that we're in a position to monitor those companies that we are responsible for examining, and to determine whether or not they are hazardous from a financial viewpoint.

This is a process that started a little over five years ago. Every five years, by the way, you have to go in for a reaccreditation process. The first states are now hitting the reaccreditation issue. Utah will be up for reaccreditation in 1997, so that's an issue we're concerned about.

All of this work has been built around having laws and regulations that were substantially similar to the models that were picked out by the accreditation subcommittee as being the appropriate ones to be the basis for determining whether or not you had the right legal environment. This is before you get to having enough examiners and whether or not your examiners are competent and all that sort of thing.

Over the last year-and-a-half or two years there has been a significant effort within the NAIC to get us to look at that from a different viewpoint. Instead of saying that each state should have laws and regulations that are substantially similar to the standard, there has been an effort to look at a results-oriented approach. That is to say, it doesn't matter as much which laws and regulations you have in place if they produce the effective result.

Now, of course, that moves us away from, what I think, the people at this session would desire: a consistent, understandable standard that would apply in all of the states. This would say that each state could adopt whatever standards it thought was appropriate, as long as it could demonstrate that it was effective in solvency regulation. So, even within the ranks of the NAIC, you can see this kind of divisive element showing up from time to time because the insurance commissioners themselves are rather fiercely independent.

An example of that has come up recently with regard to the illustration model that I've referred to several times, which is moving forward across the country on a very broad basis. It has been adopted in some states, is under consideration in other states, and will be adopted by a number of states before the intended effective date of January 1, 1997.

However, we have one state, that being Texas, which has indicated that it thinks it has a better way. And, after all, Texas is like a whole other country. The people in Texas have their own way of doing things, and they're convinced that their model is better than the one that has been produced after hundreds and thousands of hours of work to develop a broad compromise. Everyone gave into something, and everyone feels like it's something that they can work with.

We looked at the interests of the small companies and the interests of the large companies, and the systems concerns, and how to work with those. And now, a state comes along and says, "We don't care how well thought-out this was and what kind of compromises have been made. We think there's a better way, so we're going to do it another way." Texas consumers may benefit from that. Texas consumers may also pay for that, because it will have a significant cost spread throughout the industry as the companies, if it goes in that particular direction, will have to develop not one illustration system, but a couple of illustration systems—one for Texas, and one for the rest of the country.

So that sort of thing is a concern. I'm very concerned about that. I'm concerned about the cost that it will add to the industry and the cost that will then be passed on to the consumer. I will fight to the death for Texas' right to do it. So, you see, again, there's a conflict coming to bear in that regard.

Another issue that Tom alluded to me talking about: statutory accounting. We've lived with statutory accounting during all of our careers. I don't think there's anyone here who predates statutory accounting. And, we're used to the differences between statutory accounting, GAAP accounting, and what they mean and don't mean. Then the accountants, another public that we have to deal with, came up with a new issue.

As you are probably aware, we require every company to produce a financial audit by a certified public accountant and submit that audit annually to the regulatory authorities. That audit must meet the standards that are set through the AICPA and their standards for auditing. They're saying that this vague, less-than-clearly-defined thing that we call statutory accounting, no longer is acceptable as a basis to which the auditors can opine. If we can't provide them with something more consistent than that, they will only be able to opine on GAAP.

Because that will not meet the requirements of the regulators, we now have a project underway to codify what we mean by statutory accounting. That is a very, very large effort. It has been going on now for over a year-and-a-half. Much progress has been made and continues to be made to take all of the issues that go into the standards of accounting and determine one, clearly defined standard on

each issue that an accountant can look to and say, this is what statutory accounting means. It would mean the same thing in Utah, as in Illinois, as in Florida, as in New York, and as in California.

It's important to keep other comprehensive basis of accounting (OCBA) in mind. It is possible for CPAs to opine not only on GAAP, but on another comprehensive basis of accounting, an OCBA. It is our intent, through the codification process, to define statutory accounting with sufficient clarity so that it will become an OCBA. This has some positives and some negatives.

On the negative side, it means that if your company has a particular permitted practice that gives you the ability to set reserves at a different level than the codified statutory accounting means, then your accountant, in his or her opinion, will give you a qualified opinion and say that this meets the standards of statutory accounting, except for this permitted practice in a given state.

This is just like a qualified opinion under GAAP, only it will be a qualified opinion under statutory accounting. It doesn't mean that you can't do it. You can still follow that practice, but it will also mean that the whole world will be aware of that, and you will not have the unqualified opinion that you would like to have.

And so it takes away from the states a certain measure of the independence that we've talked about. Perhaps that's the positive side. Instead of having the industry in a given state lobbying their regulators for the ability to have certain permitted practices, they will then be in a position to say we would like you to do away with the permitted practices, because we don't want to have qualified opinions. We want to submit our financial statements on a basis that will be without qualification and get those clean opinions.

We think that may be an area where additional forces will be brought to bear to bring us to a more consistent standard throughout the states.

I haven't talked much about the reserving standards themselves, but more about the process to help you understand why these differences occur. Later, in the questions and answers, we can get into those specific differences that you'd like to talk about. But, I hope this gives you a better understanding of why the differences are there.

As a final comment, and as you look at these differences, sometimes it's tempting to say, wouldn't it be better if we had one big gorilla instead of 55 monkeys? Sometimes that's tempting. Would it be better to have our rules set in Washington? Well, I've learned about the regulatory process in Washington over the years. It is not the open process that you find in the states and in the NAIC. It's not a situation

where we sit down for meeting after meeting after meeting with industry folks, consumer folks, special interest folks and talk over the issues until we make sure there's an understanding. We make compromises where we can and come as close to a consensus as we can before we bring these things forward.

When regulations are made in Washington, first of all, you don't have nearly as much access to the voting members of Congress as you probably do to the voting members of your state legislature. Once they make a pronouncement into law the various federal agencies take over that process. Those of you who have been involved in a pension practice have seen them take one sentence from Congress and expand it into 286 pages of regulation.

During the period that regulation is being developed, it's being developed behind closed doors. Neither you, nor I, nor anyone else really has the opportunity to interface and point out the problems until that comes out as a draft. It is perhaps even more difficult to change it from that point forward. We're finding that in areas like the illustrations for variable life insurance.

So, one big gorilla may not necessarily be a better answer. There are those who think it is, and those who think it's not. And that's a debate that will continue to go on for some time.

Mr. Herget: The next speaker to address aspects of the jungle in which we practice is Lauren Bloom. Lauren is the general counsel of the AAA, a position that she has held for four years. She is a graduate of Yale and received her J.D. from the Columbus School of Law at Catholic University, where she was the valedictorian of her law class. She also holds an advanced degree in labor law, with distinction, from Georgetown.

Lauren began her legal career as a trial attorney with the U.S. Department of Justice. She then spent four years in private practice before joining the Academy. Lauren's litigation experience focused on the application of standards and due process, within the context of an accreditation system, and unemployment discrimination issues. As general counsel of the Academy, Lauren also provides legal advice to the Actuarial Standards Board (ASB) and the Actuarial Board for Counseling and Discipline (ABCD).

Ms. Lauren M. Bloom: It's a pleasure to be able to talk about professionalism and the legal aspects of trying to deal with the 50 states, the District of Columbia, which is a state unto itself, and the four territories. The good news is that you don't necessarily have to comply with or be familiar with the laws of all of those states.

The bad news is that you *do* have to comply with and be familiar with the legal requirements of the states where you're doing business.

We've all heard the expression, "close enough for government work." When you are faced with a jigsaw puzzle of different state governments and different state requirements and different state regulators, it's very tempting to do the domicile state and take a good guess at who's toughest (probably New York, although that may not be true anymore with Governor Pataki in office) and say, "Close enough for government work." I'm here to tell you why "close enough for government work" probably isn't going to be close enough, and what you can do to bring yourself into closer compliance.

As Ken already mentioned, both the model standard law and the actuarial opinion regulation require the actuary to certify in the annual statement opinion that the opinion meets the requirements of the state of domicile, and to set reserves that are at least as high as the minimum required by the state in which the opinion is being filed.

That sounds relatively easy, except that, unless you have a fairly good idea of what the requirements are in the state of filing, you can't make that certification with any certainty. And I should add, that is one provision in the model law and the model regulation that the states have adopted pretty consistently. You can't count on elimination of that provision being one of the variations that might get you out of trouble.

The reason that your certification is so important is that it is not boilerplate. This is not something that you can just toss into your opinion and memorandum without thinking about it because the regulations says you have to have it, the law says you have to have it, and therefore, you stick your name on it. You have to be able to make that certification truthfully. As the appointed actuary, you are personally responsible for your opinion. You are legally and professionally responsible.

Legally, if the states have adopted the limitation on liability provisions of the model, your negligence liability may be limited to two parties: your company and the insurance commissioner. But, those are two very important parties, and if you make a false certification in your opinion, I would not be at all surprised to see a court decide that wasn't negligence on your part; rather, it might decide it was willful misconduct.

You could have third-party liability as well. If someone relies on your certification to his or her material detriment, you're going to be looking at a lawsuit. It doesn't mean you'll lose, but it means you're going to be looking at a lawsuit. Lawsuits are

expensive and emotionally painful. I should also point out that, under the model, the commissioner is expressly authorized to develop procedures to discipline an actuary who makes a false certification. And I suspect that is another one of those provisions that doesn't often get "varied away."

I should also tell you that those certifications are taken very seriously by a professional body very close to your heart, and that is the ABCD. Now, I've been with the Academy for almost four-and-a-half years. In that time, I have worked closely with the ABCD. I can't think of much that upsets them more than learning that an actuary made a certification to a state insurance department without having done the work to back it up, or worse, that an actuary deliberately lied to an insurance department. It is one of the things that sends their blood pressure straight off the chart. So it is very important that the certifications that you make in your opinion are accurate, and the only way they can be accurate is if, in fact, you know you are meeting the minimum standards of the state of filing as well as the state of domicile.

There are a couple of problems with that. The first being that, although actuaries are collectively the brightest group of people I've ever met anywhere, you are actuaries, not attorneys. Although you can look at a law or a regulation and see the words on the paper and come up with a pretty good idea of what those things mean, that doesn't necessarily mean that you understand how they are going to work in conjunction with other laws, how variations from state to state will play out in the courts, or how conflicts between laws in different jurisdictions can best be resolved. So, when you try to understand the law, it's a very good idea to develop and maintain a good working relationship with your company attorney. I will say more about that later.

The other difficulty that you face, of course, is the current environment in which you work. You understand the importance of care. I understand the importance of care. But company management may not always appreciate that an actuary's expression of concern about care is not necessarily exaggerated. Put another way, we are all being asked these days to do more with less. And, as our speaker at the opening session indicated, that's going to get worse. It's not going to get better. How many actuaries do you know of who complained recently that they were laid off because they were seen as not doing work that added value to their companies? The companies that you work for may not appreciate that your efforts to ensure compliance add tremendous value to your opinions. Frankly, your employers simply may not understand you. They may not really understand what you do, and they may not understand why something that is terribly important to you isn't simply procedural junk. So those are the kinds of concerns that you are going to be facing.

It is also important to remember that the law comes in a number of layers. Bob's table gave you some idea of that. Lawyers, regulators, commissioners, and so forth tend to use the words *law* and *statute* interchangeably. But they are not quite the same thing. There are many kinds of laws. Statutes are one kind of law. A statute is any codified rule, if you will, that is written down by a legislature, whether it's Congress or a legislature in your home state. That's a statute, otherwise often referred to as a law.

When the NAIC passes model laws, they are writing a model of a statute that the state legislature then looks at. Unfortunately, the legislators usually pick it up, get out their pencils, and edit the model before they ultimately pass it.

A regulation is a group of rules that are written by an agency, usually the state insurance agency when you're talking about insurance, to implement a law that has been written by the state legislature. And, as Bob indicated, they can be a lot longer and complicated than the statute that they're supposed to implement. Theoretically, agencies are not supposed to write or pass regulations unless there is a statute to support them. But sometimes the nexus between the two can get a little complicated.

Another thing that regulatory bodies sometimes do is issue other kinds of rules and laws besides regulations. The form that they take varies enormously from state to state. Sometimes they're letters of opinion where a commissioner will issue a letter saying, "In my view, I believe that this regulation means the following." Or, "I believe that this statute ought to be applied as follows." Depending on whether it's a private letter ruling or a public letter ruling, it may be binding upon you or it may not.

Some states send out memorandums clarifying their regulations. Maybe those memorandums have the force of law, and maybe they don't. They might be binding and they might not. And then there is the fact that these things change all the time. Every time your legislature meets, there are new laws. Every time the regulators pick up a pencil there are new regulations, there are new memorandums, there are new letters of opinion, and then there is the culture that builds up around things.

Did you know, for example, that *Roe v. Wade*, arguably the most famous Supreme Court decision ever written, does not say that a woman has a constitutional right to an abortion? If you read the opinion carefully, that's really not what it says. But everyone has said that's what it says for so long that now that's what it has come to mean for all intents and purposes. Even the Supreme Court treats it that way now. You'll find that isn't what the opinion says if you go back and read it.

And then, of course, there are practices. Things that insurance regulators like to see. Things that aren't written down anywhere, but if you don't do it that way you're going to get a call from the insurance department saying, "Wait a minute, why didn't you do thus and such?"

Then there are the laws that have fallen into disuse. For example, I understand that one of the new folks at the Florida department discovered that there is an insurance statute in the state that hasn't been enforced in a while, so no one has been following it, but it's still on the books and it's still good law. I also understand that California recently issued another bulletin clarifying Bulletin 74-11, which has been in effect since 1974, but had fallen out of use. Nobody was following it anymore; everybody was doing something different. Then, the department issued a letter reminding insurers that they had to follow Bulletin 74-11. And you know what? They have every right to do that.

Here you are faced with all of this. Now you have to pick up your pencil and start doing an annual statement opinion that theoretically is going to comply with the laws in all the states in which it is filed. It is no wonder that one of the regulators from California, in a recent letter to Frank Dino, described the current situation as "a horrendous problem." It becomes even more difficult if you are working as a sole practitioner, or with a small insurance company, or small consulting firm and your resources are limited. It becomes very difficult to keep up with everything that you have to keep up with to do a good job. So what do you do?

What you don't do is give up and go with the NAIC models. As I said, "close enough for government work" is not going to be close enough. What you're going to end up with is numerous insurance departments complaining at you for various reasons. You have to make a good faith effort to comply with the requirements of each state. Your best ally in doing this, believe it or not, is going to be your company attorney, if you educate the attorney properly.

I say if because as an attorney, I am mathematically challenged. Many of us are. We went to law school because we weren't good enough at math to pass the actuarial exams. We don't necessarily know what you do or exactly how you do it. But most of us, were bright enough to get through law school and pass the bar. If you explain it to us, we can usually pick it up. What the attorney can do for you is help you untangle this morass of statutes and regulations and customs and bulletins and opinion letters into a course of action.

I'm not going to tell you it's going to be easy, but attorneys can help you do that because we are trained to look at requirements and read them together into something that resembles a path of common logic. The attorney can help you figure out

what you actually need to do; how one law differs from another, and what steps you need to take to transform a work product that works in one jurisdiction so that it will also work in another.

The attorneys can also be very helpful when you have to start negotiations with regulators and other parties. They can talk to state legislatures for you, they can talk to the insurance commissioner for you, and they can help you work out difficulties that come up as you are trying to comply with the differences in the various laws. They also can help you with a very critical aspect of compliance, which is disclosure and documentation.

They can help you with your next step, which is persuading your company's management that you need to do the background work, the analysis, the documentation, and the disclosure to prove your compliance with the laws of the various states. If you go in alone to say "I have to do the following," you can become a cost to be controlled. If your company attorney comes in with you, you can speak with more authority. Not that what you're saying is necessarily any different, but it helps to have that second person standing there saying, "Yes, if you get sued there, I don't know what's going to happen if we haven't done what the actuary says we need." It's good to work cooperatively with the company attorney.

You also need to get your management's pledge to support you in doing what you need to do to comply with the insurance laws. Oftentimes it's a matter of persuading them that the short-term costs are going to be lower than the long- term costs if you're out of compliance. And you need to make sure that you use the tools that are available to you outside and inside the profession, and to inform yourself about what you have to do. The list that Ken discussed is absolutely terrific. It gives you many places that you can go to get information. Don't forget the Actuarial Standard of Practice (ASP). They can tell you how to do valuations, what kinds of things you need to consider, and what kinds of factors go into your work. This becomes important because, if you are ever sued for negligence, malpractice, or something else, it is very helpful to be able to demonstrate that you complied with the standards of your profession, which are the ASPs.

Let me call particular attention to two standards that you may not have noticed, but are very important when you're doing annual statement work. One is the new standard on data quality, *ASP Number 23*. It is an unusual standard in that it is not specific to any one practice area. Is there anyone in this room who has ever seen perfect data? Barry Watson says he has. He's our vice president for professionalism at the Academy. When I asked him about it, it was data on a one-person pension plan that terminated after a single year. It is the only instance I know of where an actuary has ever received perfect data. The data quality standard will tell you what

to do with the flawed data that you will have to work with, because that's what exists.

The other document that you need to be aware of, and you will find this in your standards binder as well, *is Interpretative Opinion Number 3*. This has been incorporated by reference in several of the standards. What it does is give you guidelines on the kind of documentation that you, as a professional, must maintain to be in compliance with the standards of practice. If you are not in compliance with the standards, you are not in compliance with the Code of Professional Conduct. If you are not in compliance with the Code of Professional Conduct, you are at risk of receiving a call from the ABCD.

Make sure that you go back to your offices, take a look at those documents, in addition to the standard on life valuations, and use them when you're practicing. If, for some reason, you find that you have misplaced your copies, call the Academy office and ask us for replacements. We will mail them to you because we want to make sure that you have them.

If it turns out that you don't have a standard that you need, don't hesitate to call the Academy office, so that we can provide it to you free of charge. If you need the whole set, that's a little more money but nevertheless, we'll be happy to provide it to you. Please also feel very free to call upon us for copies of the Life Practice Notes. These are not binding like the Standards of Practice. In fact, we've worked very hard to make sure that they wouldn't be. But, what they will do is give you some guidance about what other practitioners are doing to comply with the law in this area. They can be very helpful.

You also may want to take advantage of Actuaries Online, which I think has already been mentioned, and the *Academy Alert* publications. If you're not a subscriber, you might want to rethink that. The *Alerts* will give you access to up-to-date information on changes in the law as we become aware of them.

By the same token, if you learn about something, please pick up the phone and give us a call. That makes it easier for us to give you the information that we need so that information goes back and forth, and everybody stays informed.

It is also important to come to sessions like this. Talk to your colleagues, and compare notes. Don't compare pricing notes, but do compare notes about what the laws are, and what you're doing. Don't give away anything proprietary, and don't commit an antitrust violation, but do take advantage of sessions like this to learn about ways to deal with the variations in the state laws and the problems that have

come up for your colleagues. In the process, you can get the continuing education that you need to keep your skills fresh under the qualification standards.

Having done all those things, you need, of course, to make a good faith effort to comply, and recognize that your good faith compliance stuff will happen because stuff does. There will be mistakes; humanity isn't perfect. Interestingly enough, the law doesn't expect you to be. But you do need to make that good faith effort. In the process of doing so, there are two things that you must do: one, disclose what you have done, and two, document what you have done. If your work is ever questioned, it will become far less important what you think you did than what you can prove that you did.

Documentation becomes absolutely critical. Again, work with your company attorney, because the laws for the different states are different, and different attorneys have different points of view about this. My own feeling tends to be that it is a good idea to have the documents so that if you are ever questioned, you can go to your file, pull something out and say, "Look, this is what I did." You can then end up arguing with whoever is questioning you about whether what you did was right or not, but at least you don't spend time and lawyer's fees arguing about what happened.

Take a look at the ASP and *Interpretative Opinion Number 3*. They will give you some guidance about what kind of documentation you should have on hand. Again, talk to your company attorney, because the laws do differ. For whatever it's worth, every piece of paper that you currently have in your possession and control, whether it's in your office, your home, your car, or wherever, is subject to discovery today, in civil litigation, whether you, or your company, are a party to the lawsuit or not. Every single piece of paper that you own and every computer record—anything—is subject to discovery, because the American discovery rules are very broad.

That means that you want to take a thoughtful approach to what documentation you generate, what you keep, and what you throw away. It is unlawful to throw away documentation in anticipation of litigation. In other words, Richard Nixon was right not to burn the tapes. It is not unlawful to maintain an ongoing document retention policy and keep documents or throw them away in accordance with that policy.

Generally, I think it's a good idea to keep at least the final copy of your opinion and your memorandum; keep a copy of each. Keep all the workpapers that would be necessary to let one of your colleagues that was similarly qualified review your work. Look at *Interpretative Opinion Number 3*; you need to do that anyway. A written record of the steps that you took to address questions and concerns, whether that record shows up in the form of a memo to the file, a letter that you sent to

somebody, or what have you, and checklists of the tasks that you've completed, so long as there are no gaping holes in those lists. Generally, it is a good idea to get rid of earlier drafts of documents once you have them in final form.

About cute notes in the margins of documents: I have seen them in litigation and they are never good. Get rid of them. If you have to write them, do them on sticky notes and then throw them out. It's also probably not a good idea—if, in fact, you did neglect to do something—to leave something in your file that proves you neglected to do it. It is better to have done the work, but it is also probably not a good idea to keep the proof that you didn't, if you didn't. How long you keep a particular set of records is going to depend on the statute of limitations, and those again vary from state to state. Talk to your attorney.

Another question that comes up sometimes is whether the actuary should keep personal copies. Do you keep a file box in your garage with copies of everything you have at the office? Again, talk to your lawyer about that. My own sense is that's not a bad idea because people's careers do shift. People move from company to company, or state to state. You never know what you're going to need five years from now, because, particularly when you start talking breach of contract suits and things, the statute of limitations can be five or seven years, and it may not start running until somebody realizes there's a problem. But, if you're going to do that, be open with your company about it, and get permission to keep the documents. What you don't want to do is walk away with documents that your company thinks belong to the company, because you're going to end up in trouble over that, too. Straighten that out up front, and work with your company to come up with a solution that you both can live with.

It is also probably a good idea to set up a peer review process in your company, both substantive and procedural. Have one of your peers look at your work for the substance. Does it make sense? Is this actuarially sound? When you did this, did you follow the steps that you needed to follow to get to a good result? What kind of peer review you have is going to depend on the company you're working for and how much you're willing to devote by way of resources. The Academy will, later this year, be publishing a white paper on peer review to make it easier for folks to set up a peer review process.

My own sense about it is that two heads are better than one. One set of eyes may see what another set missed. Best of all, you are likely to end up with a better work product, because you will have had input from another qualified professional.

Finally, remember my saying that stuff happens? Stuff does happen. No matter how careful you are, you will make mistakes. Things will come up and someone will

read a sentence that looks perfectly clear to you and misunderstand it. Sooner or later somebody will call you. Or sooner or later the insurance department will decide it doesn't like one of your annual statement findings. Sooner or later some legislator in a particular state will come up with a proposal that you can't live with. When these things happen, don't panic. Remember that in most instances, when someone is calling you to ask you a question or to complain about something, it's not because they're trying to give you a hard time. It is because they want you to help them solve their problem.

If the insurance department says, "From now on, we are going to enforce Opinion 52.xyz," which hasn't been enforced for 40 years, and if you call the insurance department and say, "Oh no you aren't," you can pretty much figure they're going to dig in and say, "Oh yes we are." And off we go. It's better to try to approach things with a win/win mind-set.

Again, let your company attorney help you. When legislative proposals come up that look like you can't live with them, first of all, your attorney, or whoever is watching the state legislatures, needs to know what you do well enough to let you know when something comes up that's of interest. And then you need to be able to explain to them why something isn't tolerable, so that they can go talk to the legislators and maybe derail the process before it's too late.

So it's important that you and your company, and your company's legal representatives, and lobbyists, if you have them, talk to each other. Understand each other and recognize that you're all working for the same team.

Now, with all of this, it's a large amount of work to stay in compliance with multiple jurisdiction requirements. The Academy recognizes that and is trying to do something about it. I am going to turn the discussion over to Tom Herget, who will tell you about our task force that has been set up to try to deal with this through the NAIC.

Mr. Herget: I will spend a few minutes with you on the Academy Task Force and then we'll answer questions.

In January of this year, a task force was created by the Academy. The task force is called State Variations in Standard Valuation Law. There are about ten people on the task force. Our short-term goal is to develop a framework that will allow states to accept actuarial opinions based on the valuation requirements of an insured's state of domicile. Also, we are to study the current exemptions for small companies. Those are our two short-term objectives. Our longer-term goal is to develop a

framework for achieving more unified formula reserves standards and/or placing more emphasis on the valuation actuary concept.

We have moved quickly. We had three conference calls, which were well participated in, and we prepared a report that states our recommendations. If any of you would like a copy of it, it was circulated in the most recent NAIC monthly mailing.

Our recommendations are being discussed at the NAIC June 1996 meeting. The Life and Health Actuarial Task Force (LHATF) is meeting to discuss these issues.

We recommended that we delete a section of the *Actuarial Opinion Memorandum* (AOM) that says that the reserves are at least as great as the minimum aggregate amounts required by the state in which the statement is filed. We have recommended that we comply with the regulations of the state of domicile. We have also suggested adding a paragraph that states, in the event that a foreign or alien company files an opinion based on the requirements of a state other than those of the state of filing, and the commissioner determines that the requirements did not reasonably meet the requirements of the state of filing, the commissioner may require the company to file an opinion based on the aggregate requirements of the state of filing.

Second, we were asked at the very beginning to consider the disparity between opinions promulgated by a small company and by a large company. A small company opinion doesn't say anything about reserves being adequate, or reserves being good and sufficient. Several of the regulators were a bit concerned about that. Since this has been in place for five or so years, they asked us to look at the continuing propriety of that concept.

Also, we were asked to consider the propriety of the exemption from asset adequacy analysis. We looked at that and assumed a fairly strong stance. We recommended that *Section 7 Opinion* be deleted entirely. This means that every company would now have to have an opinion in which the actuary states whether the reserves are adequate. Some type of asset adequacy analysis has to have been performed.

The third item we looked at was disclosure of the financial impacts of using reserve methods that are not necessarily prescribed, but are permitted. This is where a company has a special exception or special occasion to hold reserve standards on a basis other than what is written. This also was a tough issue. However, our analysis did find an existing safe harbor. There is an existing AICPA guideline which states that this disclosure should already be made in the course of an audit.

We made a copy of that accounting pronouncement and attached it to our report. We said that is the best way to continue to handle it.

What we'll be doing next is meeting at the NAIC office in Kansas City to discuss the feasibility of establishing a central repository system. This repository would contain the laws and regulations with which we are supposed to comply. This also is a challenging endeavor.

Mr. David K. Sandberg: This is for Tom and for Bob Wilcox regarding these recommendations that you said are being addressed at the NAIC. Which of the myriad levels of committees have you recommended it to, and will it be a few months or a few years before that may work itself through?

Mr. Herget: Per the chair of the Life and Health Actuarial Task Force, expect no results (implementation) this year. Based on anything that we have proposed, now being June, it would take a while to wind through all of those committees on Bob's charts and to all the states. We wouldn't expect anything this year-end. Perhaps, maybe a little bit optimistically, it might happen by next year-end.

Mr. Wilcox: I think that's reasonable, Tom.

Mr. Herget: I know that Ken's company operates in 50 states. I wonder if Ken could comment on the size of the staff he feels he needs to have to help him comply with all the regulations.

Mr. Klinger: It's a little difficult to answer. On the actuarial side, we have three to four people who work almost full time on compliance issues. That includes some tax reserve issues as well, so it's not restricted to statutory work. Of course, our company has a fairly extensive law department that we also make use of. Legal subscribes to a document imaging service, Watermark, which facilitates obtaining copies of regulations and things of that nature. That's about the best answer I can give you; it's a little open ended.

Mr. Armand M. de Palo: *Guideline XXX* and *New York's Regulation 147* are probably important regulations, and as you know, there is a very diverse difference of opinion. Let's say New York State adopted 147. Obviously, that could reduce the deficiency reserves a New York company would otherwise hold because New York State always required Circular Letter 4, or Actuarial Opinion Number 4. Without the other states adopting XXX in every single state, the company is pretty much precluded from taking full advantage of 147. And this has now basically become a consumer issue. Instead of dealing with actual fact, people have been lobbying the states not to adopt versions of XXX because it's good for the consumer

not to have such a law. This has caused, at best, complete chaos in the market and doesn't appear to be even close to resolution. I'd like to have your opinion on this.

Mr. Wilcox: I'd be happy to give an opinion on that. There are not very many actuaries among the commissioners, but Commissioner Bartlett from Maryland has been actively championing the cause of XXX, and so I think you can expect in the very near term to have XXX adopted in Maryland, Utah, and several other states to give that additional breadth. One clarification is the Academy has taken a position on XXX and indicated that XXX is in accordance with Commissioners Reserve Valuation Method (CRVM) and that it is an appropriate method for reserving. So the Academy has gone on record as supporting XXX. But that is an example of those who have been lobbying the hardest on this particular issue. There's one individual who has sent multiple letters to every insurance commissioner and every governor in the country on this issue, but these types of people are primarily marketing people earning their living marketing these products, as opposed to those who are concerned about the ongoing financial viability of the companies. Hopefully, that problem that you're looking at with XXX will soon be in the past.

Mr. de Palo: Well, as I said, my concern is that even if it's adopted in seven or eight states, it doesn't solve any problem until it's adopted in all 50 states, which is the main problem that I'm facing. And, one of the things that I've done since the beginning of XXX is at every valuation actuary symposium, I get up and I state for the record that every actuary in the room who didn't get involved has to live with the consequences of what was adopted. Probably not many actuaries have paid attention to that. We got what we got in XXX because of a lack of involvement of actuaries. We could've done it much simpler, but instead we have ended up with a very awkward law and a law that's still politically being fought.

Mr. Wilcox: I could not agree more strongly with what you've said. That is such a problem right now. People are becoming aware of the issues after the fact rather than becoming involved in the development and the decision-making process. If you decide to wait and see what you get, you get what you deserve, I'm afraid. So I encourage everyone here to be involved. Much of the problem comes from the thing that was referred to earlier, in terms of downsizing and rightsizing and value added for what we do. We don't have nearly enough actuaries who are involved in the developmental process itself. We're not attending meetings like this; we're not participating in the meetings; we're not making these sessions developmental sessions, and that's our loss when that occurs. We're really hurting because of not having enough of the right people involved in the developmental part of the process.

Mr. de Palo: I'd just like to add to that. Guardian is in New York State, and I'm the chairperson for Life Insurance Council of New York's (LICONY) subcommittee on reserves. I'm personally involved in all the reserve regulations that go up to Albany. At best, I get four other companies to come with me. The lack of involvement, even in a large state such as New York, because of the commitments that actuaries are being put under by their companies to just do company work and not get involved in things outside their day-to-day activities, has limited the amount of involvement actuaries have to the point where they're just not there anymore. The Bob Johansen's of the world, from Metropolitan, who are major additions to this industry are not coming from the big companies anymore. There are just a handful of people involved who are trying to keep this thing on an even keel.

Ms. Bloom: I should add, by the way, that the Academy has come out with some of the states in active support of adoption of XXX. It is not necessarily because it is our dream regulation, but because the Academy does recognize that it's very difficult for you to deal with this patchwork of different, and sometimes conflicting, requirements. I do want to emphasize that it's important to get involved and to get your companies involved in these processes. In many ways, you're going to have a much easier time at the state levels than you will at the federal level, because, as Bob said, it's much easier to get hold of a state legislator or a state insurance commissioner or someone at the insurance department, than it is to get hold of the president of the U.S., a major senator, or the head of a federal agency. Take advantage of the local nature of state government and get involved.

Mr. Jeffrey T. Robinson: I have a question with regard to opinions. There are at least three types of opinions out there. New York has a specific one, there are the states with the regulation, and the states without the regulation. I have one small client in 11 states, and we file three different opinions. Is that what most people are doing? Are they customizing their opinion for a particular state, or are they just filing the state of domicile opinion?

Mr. Klinger: We're customizing our opinions.

Mr. Robinson: You send out 50 different ones?

Mr. Klinger: Well, we don't need, at this point, 50, but you do need more than 3 in our cases. We have 2 life companies in our group, 1 in all 50 states and 1 in 49 states, so we do have multiple opinions. That was one of the items I brought up—the need to keep track of the varying language that you need in the various states.

Mr. Robinson: Mr. Wilcox, when you receive an opinion that isn't the one that you normally expect, but it refers to the state of domicile, do you get upset with that? Do you ask them to refile it?

Mr. Wilcox: Generally, we don't. I think that we're probably one of the more practical departments on some of those kinds of things. If the necessary elements are there, in accordance with the appropriate statement of opinion under the instructions, we're not going to get upset. But I know that there are states that will; they are generally the states that have more than one department actuary. When I became commissioner, there were no actuaries in the Utah Insurance Department. Since then, I have hired one, but this still limits our ability to look at a large number of statements. We focus most of our attention on the domiciliary companies, making sure they're in compliance. We will look at others based on our financial analysis. If the financial analysis indicates that we may have a problem, then we'll go to the actuarial statement to see if there are any caveats there that we need to be aware of.

Mr. Robinson: I have one other thing that I disagree on with Armand. On Actuaries Online, there are very good comments with regard to regulation. From what I've seen, it's an excellent vehicle for actuaries to discuss the whole regulatory process in individual states. If that stuff could get written about, or summarized, I think it would be quite helpful. There are several regulators that are on Actuaries Online, and I think to be able to have a dialogue with them would be very positive and good for the industry. I encourage everybody who isn't online to get online, particularly for this particular issue.

Mr. Wilcox: By the way, I'm not on there as often as I'd like to be, simply because of all of the other time demands. But my department actuary, Troy Pritchett, is on there quite a bit. If you need to call something to my attention through Actuaries Online, make sure that you bring it to his attention and he'll bring it to me.