

REINSURANCE (E) TASK FORCE

Reinsurance (E) Task Force, Dec. 5, 2009, Minutes

Letter from Stephen W. Schwab, DLA Piper LLP, Dated Nov. 24, 2009, Regarding Update on the Hague Convention on Choice of Court Agreements (Attachment One)

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Draft: 12/11/09

Reinsurance (E) Task Force
San Francisco, CA
December 5, 2009

The Reinsurance (E) Task Force met in San Francisco, CA, Dec. 5, 2009. The following Task Force members participated: Scott H. Richardson, Chair (SC); Jim L. Ridling represented by Richard Ford (AL); Christina Urias represented by Steve Ferguson (AZ); Steve Poizner represented by Al Bottalico (CA); Thomas R. Sullivan represented by Richard Marcks (CT); Gennet Purcell and Philip Barlow (DC); Karen Weldin-Stewart and Linda Sizemore (DE); Kevin M. McCarty represented by Ray Spudeck (FL); Carol Cutter represented by Connie Ridinger (IN); James J. Donelon represented by Stewart Guerin (LA); Joseph G. Murphy (MA); Glenn Wilson represented by Jaki Gardner (MN); John M. Huff and Frederick Heese (MO); Ann Frohman represented by Christy Neighbors (NE); Roger A. Sevigny represented by Paul Kropp (NH); Neil N. Jasey represented by Robert Kasinow (NJ); Scott J. Kipper represented by Brett Barratt (NV); James J. Wrynn represented by Mike Moriarty (NY); Paulette Thabault represented by Dave Provost (VT); Mike Kreidler represented by Jim Odiorne (WA); Sean Dilweg represented by Roger Peterson and Peter Medley (WI); and Jane L. Cline represented by Darlene Parsons (WV).

1. Update on Reinsurance-Related Issues in Congress

Amanda Yanek (NAIC) said the Reinsurance Regulatory Modernization Act of 2009 was approved by the Government Relations (EX) Leadership Council on Sept. 23. NAIC staff was directed to seek sponsorship for the bill in the U.S. Senate, and has discussed the legislation with congressional staff. The Senate is focused primarily on a discussion draft of the Restoring American Financial Stability Act of 2009, which was distributed by Sen. Christopher J. Dodd (D-CT) on Nov. 10. As a result, sponsors have not yet been obtained for the NAIC's proposed legislation. Ms. Yanek noted that S. 1363, the Nonadmitted and Reinsurance Reform Act of 2009, has been included within Sen. Dodd's discussion draft. NAIC staff continue to work with the sponsors of these bills to discuss the provisions related to reinsurance.

2. Update on Hague Convention on Choice of Court Agreements

Stephen W. Schwab (DLA Piper) referred the Task Force to a Nov. 24 letter regarding the Hague Convention on Choice of Court Agreements (Attachment One). He said the NAIC may again be asked to provide input on this matter as progress continues.

Having no further business, the Reinsurance (E) Task Force adjourned.

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November 24, 2009

TO: IAIS
NAIC
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NAMIC
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Re: **Update on the Hague Convention on Choice of Court Agreements**

Dear All:

Each of your organizations has supported the Hague Convention on Choice of Courts Agreements (the "Convention"). I write to update you on the status of the Convention's adoption in the US and around the world.

You will recall that on June 12, 2005, the National Association of Insurance Commissioners (the "NAIC") adopted a resolution for the Hague Convention on Private International Law, finding "the international recognition and enforcement of judgments entered in respect of contracts of insurance and reinsurance to be a matter of the utmost public importance." The NAIC also encouraged support for the adoption of the amendments proposed for Articles 2 and 15 of the Convention. Similarly, the International Association of Insurance Supervisors encouraged adoption of the Convention, explicitly inclusive of contracts of insurance and reinsurance, stating that "a lesser scope could have consequences for the free flow of international insurance and reinsurance transactions and the protection of insurance policyholders, insurance and reinsurance companies and the public." Letters of support were submitted by the American Insurance Association, the National Association of Mutual Insurance Companies, the Property Casualty Insurers Association of America and the Reinsurance Association of America, first individually in May and then collectively in August 2005. With express recognition of the importance of these endorsements, the Hague Conference on Private International Law adopted the Convention on Choice of Court Agreements at the end of June 2005.

The Convention was ratified by Mexico on September 26, 2007 and it was signed by Pres. Bush on January 19, 2009. The European Community (the "E.C.") signed the Convention on April 1, 2009. The individual member states of the E.C. have not signed the Convention; however it will apply to most member states. Such application does not include Denmark.

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Efforts to finalize implementing legislation of the Convention in the United States continue. You may recall that the U.S. Constitution requires that treaties (like the Convention) be ratified by the Senate in order to become law. Accordingly, joint federal-state efforts have been undertaken to adopt the Convention and make it part of American law. In particular, the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the U.S. State Department have been collaborating on the development of enabling legislation for adoption into both state and federal statutory law.

Most recently, a NCCUSL Drafting Committee met in Chicago last month to continue work on a draft Uniform International Choice of Court Agreements Act (the "Act"). My prior appointment as an sanctioned "observer" (on behalf of the International Bar Association) at the Hague now continues as an official observer (again for the IBA) on this drafting committee. In March 2010, the Drafting Committee will meet and continue to align the draft of the Act to the Convention and the proposed language of a draft federal implementing statute in preparation for final consideration at the NCCUSL Annual Meeting next summer. Keith Loken of the State Department's Office of Legal Advisor, advised the Committee in October that the Department will soon decide, by the end of the year, whether a joint state/federal adoption mechanism will be utilized. The federal implementing statute would embody the concept of "cooperative federalism." The NCCUSL Committee assumes that the federal implementing statute will not be completed before summer 2010, when their own Act should be completed.

It still appears that Senate ratification of the Convention and implementation of the Act remain important steps toward ensuring the reliability of international commercial insurance and reinsurance transactions, which are so important to the global economy, and that ratification and implementation will contribute to enhancing prudential regulation of this economic sector. Sometime in this next year I expect that the NCCUSL Committee and the US State Department will enlist reaffirmation of your support.

Thank you for your continued efforts to support and promote the Convention in the United States and in other jurisdictions. If you have any questions in the interim, please do not hesitate to contact me.

Very truly yours,

DLA PIPER LLP (US)

A handwritten signature in black ink, appearing to read 'Stephen W. Schwab'.

Stephen W. Schwab

SWS/ph

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