

**Association Internationale de Droit des Assurances**

International Insurance Law Association

Associazione Internazionale di Diritto delle Assicurazioni

Internationale Vereinigung Versicherungsrecht

Asociacion Internacional de Derecho de Seguros

**4th AIDA CLIMATE CHANGE WORKING PARTY MEETING**

**IVth AIDA EUROPE CONFERENCE – LONDON**

**12:30hrs-15:00hrs**

**THURSDAY 13 SEPTEMBER 2012**

**Grange Tower Bridge Hotel - London**

**45 Prescot Street London E1 8GP**

**MINUTES OF MEETING**

**1. Welcome, introduction, apologies for absence, matters arising from last meeting**

* 1. The Chairman welcomed everyone to the fourth (and to date largest) meeting of the Climate Change Working Party (CCWP), especially newcomers and those from as far as Australia and Brazil.
  2. With a full programme in prospect preliminaries were confined to introducing the other CCWP officers present (Vice Chair, **Marco Frigessi di Rattalma** and Secretary, **Stijn Franken**), to acknowledging apologies received from many (including **Prof Marcel Fontaine**), and to encouraging everyone to visit the CCWP page of the AIDA website.
  3. The session’s materials would all be posted there, together with a 166-page Report delivered by **Maria Kavanagh** from Argentina, who also sent apologies, on behalf of the Mercosur group assembled to consider Climate Change issues. This was a perfect illustration of the valuable contributions which might be made by all members of the CCWP even when unable to attend every meeting and a practice to be encouraged.
  4. New attendees were encouraged to leave business cards/email contact details to allow them to be added to the CCWP circulation/contact list to help with information exchanges/planning/work being advanced between meetings.

**2. First Presentation: New Zealand Earthquakes - Legal and Insurance Issues and the Aftermath for Christchurch and the insurance market in an age of Climate Change**

2.1 **Craig Langstone** (President, New Zealand Insurance Law Association and Partner, Jones Fee, Auckland) delivered the first presentation. There was little dispute he said that earthquakes could contribute to climate change, but whether climate change gave rise to more frequent/extreme earthquakes remained more controversial.

2.2 He outlined the NZ Government response to the unprecedented earthquake damage suffered in Christchurch and elsewhere, addressing the question of who held the power in the wake of immediate payments made and the prospective claims: the government or insurers?

2.3 Tensions had emerged between insurer policy obligations and provisions being upheld and the future well-being of Christchurch residents. Demands for more resilience in building standards raised concerns over the future insurability of risks. Land acquisition measures in the wake of the damage brought many disputes about appropriate values to be compensated and by whom.

2.4 Even if the cause of the earthquakes could probably not be attributed to climate change, issues emerging might be seen to foreshadow large-scale Government and insurer responses to wider climate change issues and so their unfolding merits continued attention.

**3. Second Presentation: Catastrophic Events in Italy: Insurance Coverage and State Intervention**

3.1 **Professor Sara Landini** (Associate Professor of civil law and insurance law at University of Florence - Scientific Secretary of CISA - Interuniversity Center of Actuarial Science and Risk Management) continued the theme of the interplaying roles of government and insurers in the context of major catastrophe events with reference to recent losses and initiatives in Italy.

3.2 Increasing losses from catastrophic events – worldwide as well as in Italy - particularly over the last 20 years posed concerns to insurers and governments alike. Many studies were being conducted to assess whether these were attributable to climate change, a failure to take preventive action or fraud - or a combination of the three.

3.3 Work was being done to strengthen compliance with policy requirements demanding preventive action, aided by subrogation actions. With losses still rising concerns were turning to how affordable might be the premium increases needed to offset higher claims.

3.4 Italian state involvement in agricultural insurance plans of 2012 served as one important example of issues to be addressed. Since legislation passed in 2004 the Italian state has contributed to premiums required to protect agricultural interests covered by its agricultural insurance plan, on the basis that it is not to intervene with compensation for losses sustained. From 2012 the Plan was expected to extend to include many more events on a multi-risk basis, leading to increased take-up of cover and financial support, only to be cancelled at a late stage owing to financing problems.

3.5 Solutions are presently being debated. Options include: insuring public finance against natural disaster; the creation of a public fund/insurer of last resort; and/or the development of a public reinsurer. The novelty of the Italian civil protection scheme is that it proposes to increase preventive measures, extend emergency plans and co-ordinate efforts by empowering local authorities to direct responses. The challenge to insurers is to help address the crisis of indemnification under public law. Interest is greater than ever in the possibility of taking out not just greater levels of property coverage, but also personal injury/health cover against catastrophic event and for meeting the cost of emergency aid being delivered in the wake of a catastrophe.

**4. Third Presentation: US Climate Change Litigation and Liability Issues from a US perspective**

4.1 **Peter Kochenburger** (Executive Director, Insurance Law Center, University of Connecticut School of Law) identified in election year that public opinion across all parties favoured climate change being addressed as a priority, but that Republican candidates no longer expressed any affirmative statements about climate change, indicative of the weakest support being among their followers.

4.2 He reviewed the developments this year in the *AES Corpn v Steadfast Ins Co* litigation and the aftermath, observing that the case had generated much interest, but little action. The major issues continued to centre upon the applicability of absolute pollution exclusions in Climate Change claims and the effect of other exclusions and state regulatory review.

4.3 In the context of professional liability exposure despite considerable evidence that this would rise, not just in the case of engineers and architects and other professionals, but across all directors and officers, few US insurers were presently able to articulate any coherent plan to address increased risks or opportunities, leaving insurers elsewhere to take the lead.

4.4 As for regulatory responses, progress is limited. In light of industry opposition in 2010 the NAIC backed down from its call for a mandatory climate-risk disclosure survey being conducted. Only three states (California, New York and Washington) mandate reporting with company filings made public.

4.5 Peter had prepared additional material commenting upon fracking and the different regulatory responses to the practice apparent in different US states and the insurance coverage issues to which they gave rise. Time did not allow this to be discussed, but his materials were to be posted on the website for review.

**5. Fourth Presentation: Some Climate Change Liability Issues from a London perspective**

5.1 In a wide-ranging presentation **Richard Lord QC** (London barrister, Brick Court Chambers and contributor/co-editor of "*Climate Change Liability - Transnational Law and Practice*" 2012, Cambridge University Press) considered first the very broad concept of liability in this context: essentially legal rights and obligations, beyond those expressly contractually assumed, for past and future activities. These were not to be established in any “Climate Change” law, but across a range of public and private fields of law, nor even limited to the confines of “hard” law.

5.2 Potential legal liability had to be distinguished simply from UNFCCC liability, but could not be understood without close reference to such obligations. The ultimate cross-cutting issue, Climate Change involved the widest possible range of political, economic and legal issues concerning many of the most critical issues facing the world, such as food security, energy supplies, economic power and the like.

5.3 Identifying that the importance of potential liability issues varied depending upon whether Climate Change effects were to be major and/or relevant regulation was to prove effective, he traced the recent history of regulatory efforts around the world and noted the departure from the initial UNFCCC aims at mitigation to ones now more concerned with adaptation and compensation. However much effective regulation might be challenged it was still likely to deter many otherwise bad practices, with business responses and initiatives in his view often likely to prove better directed than Government –directed efforts.

5.4 From an insurance perspective it was obvious that insurers had a key role to play in managing property and liability risks, facing the potential costs of exercising a duty to defend and any number of potential of secondary liability exposures to be faced among the professions and public authority fields. The ways in which early “Climate Change” litigation had manifested itself were already quite diverse. Business interests were fighting regulation; individuals and countries alike were seeking recognition of Treaty rights; and negligence or nuisance actions abounded as the tools of environmentalists.

5.5 Liability issues have already extended to rights to information, breaches of obligations to disclose, rights–based actions and the exercising of legal challenges by developing countries to defend their interests. This was all in the wider context of a search for equity between countries with markedly divergent interests (those which are/were heavy carbon emitters, those (to be) most impacted by the effects of Climate Change, those early or late in the cycle of industrialised development), as well as a search for equity between the generations in terms of both impact and cost.

**6. Fifth Presentation: The Involvement of Insurance Companies in Climate Finance: Tackling a Global Challenge by Investing in Local Solutions**

6.1 **Professor Francesca Romanin Jacur** (International environmental law research professor at the University of Milan/New York University) provided the concluding presentation. She identified the features of the International Regulatory Framework and of Climate Finance in the context of a debate which had moved from whether Climate Change was happening to how best to finance appropriate remedies. There was an increasing dependence on the private sector affording opportunities to insurers and reinsurers.

6.2 Tracing the history from the 1992 UNFCCC targeting of GHG emissions via the 1997 Kyoto Protocol to 2012 and the date of the initial emissions targets, she identified the financial pledges which had previously been made. Also, the various Funds created by the 2001 Convention to help adaptation projects and the implementation in the least developed countries of national adaptation programmes (and the governance of those Funds). The channelling of public resources to developing countries for mitigation and adaption involved no fewer than 50 international public funds, 6,000 private equity funds, as well as carbon markets, taxes, the CDM etc now facing major challenges and uncertainties in the context of any post-2012 framework.

6.3 Perhaps the biggest challenge was reconciling the needs of developing countries and those of the private sector. The financial crisis had quite obviously impacted the ability of private financial markets and governments alike to provide consistent funding in the absence of secure returns or any integrated programme making environmental sense or addressing regional or country poverty reduction.

6.4 Current efforts were directed at generating new finance which afforded a reduction in the vulnerability of individuals and communities to Climate Change, combined with necessary risk management tools. This involved drawing on capital markets to provide climate bonds, direct lines to local finance institutions and/or innovative means such as microfinance. These efforts afforded insurers opportunities, particularly in countries currently with limited insurance penetration, to provide insurance and the means for risk reduction, protecting against catastrophic loss, affording emergency responses and imposing precautionary measures. Also technical assistance where finance was needed for low carbon energy initiatives.

6.5 Climate risk management services were being made available by way of public-private partnerships with the likes of the World Bank, index-based insurance solutions and the examination by case study and modelling of how better to deploy and protect finance invested in these schemes.

**7. Future business of the Working Party and any other business**

7.1 Time only permitted a few points to be raised by the Chairman in closing, apart from thanking the speakers and (approximately 35) attendees for such a fruitful meeting.

7.2 The next CCWP meeting was scheduled to be held in 2013 during the CILA Conference at the Gulbenkian Foundation in Lisbon between 8 and 10 May. An invitation had been received from the Civil Liability WP for the CCWP to join forces with them upon a joint meeting (as we had proposed of them to join us in London). Having just addressed liability issues ourselves quite extensively it was felt that this may not be an invitation we could accept on this occasion, but the issue would be considered further.

7.3 The second 2013 meeting was expected to be held in Sydney on the occasion of the AILA Conference at which the AIDA Presidential Council and AIDA Working Parties had been invited to stage meetings.

7.4 The website would be updated in due course and an email would be sent with comments and proposals regarding future activity upon which comments were always to be welcomed.

7.5 At 15:00hrs the meeting closed.