



Association Internationale de Droit des Assurances
International Association for Insurance Law
Associazione Internazionale di Diritto delle Assicurazioni
Internationale Vereinigung Versicherungsrecht
Asociacion Internacional de Derecho de Seguros

**2nd AIDA CLIMATE CHANGE WORKING PARTY MEETING
AIDA PRESIDENTIAL COUNCIL MEETING – TEL AVIV**

**18:20hrs-20:20hrs
WEDNESDAY 7 SEPTEMBER 2011**

**Hilton Hotel
Independence Park Tel Aviv, 63405, Israel**

MINUTES OF MEETING

1. Welcome and introduction and apologies for absence

- 1.1 The Chairman welcomed everyone to the second meeting of the Climate Change Working Party. He thanked AIDA Israel for the splendid arrangements and the sponsors of the event for their support.
- 1.2 Apologies from a number of active WP members had been received. Ill health had sadly prevented Prof Marco Frigessi, the WP Vice Chairman, from travelling at short notice. His AIDA Italian Chapter colleague, Prof Sara Landini, would make their presentation alone. She was asked to relay the meeting's good wishes for a speedy recovery to Prof Frigessi.
- 1.3 A particular welcome was extended to Prof Marcel Fontaine. His work upon the Climate Change theme at the AIDA World Congress in Paris in May 2010, and as the author of the General Report upon the findings gathered, had served as an invaluable catalyst to the creation of the WP last November.
- 1.4 Those attending the WP meeting for the first time were encouraged to visit the Climate Change WP page of the AIDA website with its growing resource of materials already gathered by the WP. Copies of this meeting's presentations would be posted both there and on the AIDA Israel website.
- 1.5 It was timely to alert all present that the WP had resolved to concentrate its energies upon four main working areas where both legal and insurance issues were most pertinent: (1) The Impact of Climate Change and responses around the world; (2) Climate Change Liability and Litigation issues; (3) Carbon Insurance and "new" Insurance Products; and (4)

Reinsurance and ART. These embraced issues such as funding schemes for weather and carbon market risks and the regulatory treatment of them.

- 1.6 This afforded a natural framework within which the WP might monitor developments of interest such as would be learnt about at this meeting. If time allowed at the end there would be a brief resume of what future activities for the WP were in prospect.

2. Consideration/update of impact of CC-related measures and liability/causation/litigation issues around the world

Presentation:

- **ISRAEL: *Environmental Exposure - The Insurance aspects from the Israeli point of view* (Adv Sharon Shefer)**

- 2.1 The Chairman said a perspective from Israel was of interest for many reasons. Despite its significant GNP and emissions levels, Israel was not an Annex 1 developed country under the Kyoto Protocol. No stranger to innovative management of natural resources, it has nonetheless taken measures to curb its own emissions and explore how by exporting both ideas and technology the world's emissions may be reduced. Recent developments in mass tort and class actions fuelled interest in the prospects for future climate change litigation.
- 2.2 Sharon Shefer outlined the principal potential environmental exposures faced in Israel and the forms that claims or actions might take. She cited Israeli case law involving mass tort claims and identified the perceived need for legislation to relieve mass claimants of otherwise needing to show a sufficient causal connection between their own injury and pollution to establish liability.
- 2.3 Class action legislation had been passed in 2006. A marked increase in environmental class actions was evident. Indictments against polluters often preceded class actions. The Government had powers to order clean-up or impose liability for clean-up costs. Regulation had markedly increased in the environmental field between 2008 and 2011. More measures were scheduled.
- 2.4 She profiled Israel's position in respect of the UN Framework Convention and its projected emissions, based on research projects identifying emissions if unchecked and expected reductions. Also, the powers to require banks to include environmental risks in the risk profile of businesses.
- 2.5 She concluded by explaining how various liability policies, including D&O and specific environmental policies, might cover, alternatively exclude, such increased potential exposures.

3. **Variable impact of Climate Change/extreme weather events upon existing covers in different countries/regions + measures adopted by insurers and others in response**

Presentation:

- **ARGENTINA/CHILE: *Volcano Eruption Puyehue - June 2011* (Dra Maria Silvia Moron Kavanagh)**

- 3.1 The Chairman explained that Maria Kavanagh from Argentina was prevented from attending the meeting, but had kindly prepared both a presentation and a supporting paper (in both English and Spanish) - all to be posted on the website – about the effects of the major volcanic eruption in Chile in June.
- 3.2 He briefly showed from her presentational slides evidence of the scale of losses involved arising from airline and tourist disruption and wider economic loss sums. He expressed thanks for her contribution.

4. **Carbon Insurance and evolution of other “new” insurance products**

Presentation:

- ***Insurance and Environmental Securities* (Prof Marco Frigessi and Prof Sara Landini)**

- 4.1 Sara Landini was introduced to outline some of the insurance and other financial products or preventive or other measures designed to respond to the major challenges of environmental degradation, effective pollution control and new technologies. Marco Frigessi had volunteered at our first meeting how the regulation of new products should be of particular interest to the WP.
- 4.2 She identified both the benefits and the limits of the role insurance could play in deterring damage and compensating loss. This led to consideration of the scale and stability of funds required and the role which might be played by government-backed funds or schemes and instruments such as option contracts.
- 4.3 She provided some examples of how put options financing ecotechnologies and combining insurance and other forms of security might permit emissions targets more easily to be met.
- 4.4 The Chairman noted that a shortage of freely available capital and some obvious loss of confidence following the global downturn were necessarily slowing down the pace, and reducing the volume, of many new initiatives in this area. It was plainly still an area the WP should continue actively to monitor and to inform ourselves about any specific examples of important new initiatives or products coming to our notice.

5. Future for Climate Change? Is there serious cooling on the idea of global warming?

Presentation:

- ***Climate Change or Global Warming? (Prof Marcel Fontaine)***

- 5.1 In his brief oral presentation Prof Fontaine explained that he had recently had published - in a respected Belgian insurance law periodical - a paper describing the contents of his AIDA General Report "*Climate Change and Insurance Law*". AIDA had been congratulated for devoting time to the study, but taken to task by the editor for questioning neither the legitimacy, nor the significance, of the science upon which so much climate change activity has been based.
- 5.2 Professor Fontaine admitted that the General report and Paris session had been based on the assumption of climate warming, without any questioning. While he himself was persuaded that global warming was the most likely scenario, he suggested that from a scientific and methodological point of view, a Working Party like ours should always remember that it is working on an assumption which is still not unanimously accepted. Also, even if global warming is verified, the relative influence of human factors is to be evaluated in relation to other, natural causes. One should finally keep in mind that a general trend towards global warming does not exclude temporary and/or local exceptions, with cooling temperatures in certain areas.
- 5.3 Consequently, our Working Party should constantly follow the evolution of the research being conducted on climate change in general and be attentive to new developments. We should also be prepared to examine occasional situations of lowering temperatures. For the insurance industry, as well as for a group like ours interested in the developments of insurance law, the challenges are anyway similar, the sector having to cope with aggravated types of losses which were not forecast on the basis of past experience.
- 5.4 Prof Fontaine referred to a report identified by the Chairman in the past week warning that some scientists who contested the phenomenon of Climate Change were publishing papers in non-specialist journals and so avoiding customary levels of academic peer review. Such papers in turn were then often attracting significant press coverage to fuel controversy.
- 5.5 In the discussion which ensued, it was observed that as lawyers and/or insurers, rather than scientists, members of the WP were plainly not equipped themselves to pass any judgment upon the science itself or what account might, or should, be taken of it. It was essential however for the WP to keep abreast of how such controversies may gain strength or influence activities and policy decisions taken in different parts of the world. Also, how they may impact upon the speed with which various adaptation and mitigation measures come to be adopted. Lastly, the effect, if any, on any legal attribution issues which may be tested in liability suits various kinds.

6. Future Business of the Working Party

6.1 The Chairman advised that there remained time only to draw attention very briefly to a number of items listed on the agenda. These represented a number of projects or prioritised tasks which it was considered that the WP should concentrate upon over the coming months:

- *Columbia Law School* Database of CC Litigation – US and non-US
- Legislation/Protocol and regulatory measures databases
- Liability/causation issue “think tank”/liaison with other groups
- Settled project topics, targets and timetables
- Recruitment of members/appointment of sub-work group leaders
- Collaboration with other groups/activities/events (inc. of other AIDA WPs)
- Use of AIDA website
- Next meeting: Istanbul , 3-5 May 2012

6.2 The interval between our first meeting in May and the present meeting had been very short. It had also been interrupted by the holiday season for many. The much longer interval before our next scheduled WP meeting in Istanbul on 3 May 2012 afforded us a valuable opportunity to lay the foundations for much serious and informative collaborative work.

6.3 We had already been promised a number of presentations or papers in advance of the Istanbul meeting, including the re-visiting or establishment of some of the longer-term insurance implications of the major disasters which had troubled Australia and Japan among other countries earlier this year.

6.4 The future success of the WP depended upon the generation of interest among as wide a group as possible spanning as many countries and regions as possible. For this reason it had been particularly gratifying to see such a large number of new faces at the present meeting both from Israel, from the AIDA Presidential Council, but also from further afield. Business cards were being collected from all who were attending in the hope that they may be included in our email listing for giving notice of future WP initiatives.

7. Any other business

With their being no further business, the Chairman expressed the meeting’s thanks once again for the valuable contributions of all who had made presentations or contributed to the discussions and/or to WP’s accumulated materials. Also, to all within AIDA Israel for their generous hosting of the event, wishing them every success with the remainder of their Conference.

The meeting closed at 20:20hrs.

NB The meeting was attended by between 20 and 30 delegates. A separate listing of those who had registered their attendance or their apologies accompanies these Minutes.