

# Department of Justice

89-6

FOR IMMEDIATE RELEASE  
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AT  
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(TDD) 202-786-5731

The Department of Justice announced today that it does not intend to challenge under the antitrust laws proposed efforts by the Reinsurance/Hazardous Waste Study Group to encourage the use of a model environmental claims reporting form when primary insurers report environmental insurance claims to their reinsurers.

The Department's position was stated in a business review letter dated July 21, 1989, from James F. Rill, Assistant Attorney General in charge of the Antitrust Division, to James R. Weiss, counsel for the Study Group.

The model form was prepared by the Study Group, whose members provide reinsurance to primary insurers. The form would be used by the primary insurers to provide information about claims under their policies that might trigger reinsurance liability. The proposed form requests information regarding the insurance policy period, type of policy, names of other primary insurers (if known), their current financial reserves, information about the site, nature of the environmental claim, dates when the contamination was discovered, private third-party claims, the status of the litigation, legal defense costs and the types of legal defense asserted.

(MORE)



The members of the Study Group propose to encourage primary insurers and reinsurers to use this standardized form to report environmental claims. However, use of this form would be voluntary, and the Study Group will make no attempt to mandate or force its use. Primary insurers and reinsurers would be free to use other means to report claims and to make changes to the model claims form.

Rill said, "Use of the proposed model claims form would not appear to have any effect on the price or other terms at which reinsurance is or was offered, nor would it be likely to reduce the amount or type of insurance or reinsurance made available."

In accordance with normal practice, the letter stated that the Department reserves the right to institute an enforcement action in the future if use of the proposed model form should prove anticompetitive in purpose or effect.

Under the Department's business review procedure, a person or organization may submit a proposed course of action to the Antitrust Division and receive a statement as to whether the Division would challenge that action under the federal antitrust laws.

A file containing the business review request and the Department's response may be examined in the Legal Procedure Unit of the Antitrust Division, Room 3233, Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file.

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U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 21 1989

James R. Weiss, Esquire  
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Dear Mr. Weiss:

This letter responds to your December 14, 1988 letter requesting, on behalf of your client, the Reinsurance/Hazardous Waste Study Group ("Study Group"), a statement by the Department of Justice ("Department"), pursuant to the Business Review Procedure, 28 C.F.R. §506, of its enforcement intentions with respect to the proposed model environmental claims form to be promoted by reinsurers of environmental insurance risk. The model environmental claims form was prepared by the seven reinsurance companies that comprise the Study Group.<sup>1/</sup>

Each of the member companies of the Study Group currently offers or has issued reinsurance on environmental or hazardous waste insurance risk. These reinsurers provide reinsurance to primary insurers who, in turn, provide environmental insurance directly to the customer. This two-tiered insurance system results in the primary insurer indemnifying a customer and the reinsurer indemnifying the primary insurer. The nature of the reinsurance business makes it very difficult for a reinsurer to have independent knowledge of its potential liability. For the most part, reinsurers do not deal directly with insureds. Reinsurers may be unaware of the identities of the majority of these insureds until a notice of potential loss or a request for

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<sup>1/</sup> The Study Group was formed in 1986 for the stated purpose of addressing issues related to the growing number of environmental claims. The Study Group members are: Allstate Insurance Company; Gerling Global Reinsurance Corporation; HIR Management Corporation; Philadelphia Reinsurance Corporation; Reinsurance Corporation of New York; St. Paul Reinsurance Management Corporation; and Walton Insurance Limited. The Nordic Information Office on Asbestos Claims, a corporation of Scandinavian reinsurers, is also a member of the Study Group.

indemnification is received from the primary insurer. The model environmental claims form was developed by the Study Group to facilitate the reporting by the primary insurance company to the reinsurance company on claims that may potentially trigger reinsurance liability.

The proposed form consists of three pages and requests information regarding the insurance policy period, type of policy, names of the primary insurers, if known, and their current financial reserves, information about the site, nature of the environmental claim, dates when the contamination was discovered, private third-party claims, the status of the litigation, legal defense costs, and the types of legal defenses asserted. While the members of the Study Group propose to jointly promote the model claims form, use of this form will be voluntary by the reinsurers and primary insurers, and the Study Group will make no attempt to mandate or force its use. Primary insurers and reinsurers would be free to use other means to report claims and to make changes to the model claims form.

Although your business review request states that there will be no express agreement among reinsurers or among primary insurers to use the proposed form, the Department cannot foreclose the possibility that joint action to adopt and promote the form would result in widespread adoption of the proposed form. We believe, however, that such a result would not be anticompetitive and therefore would not be a basis for challenging the underlying agreement.

According to your representations, the purposes of the model claims form are to enable the reinsurer to evaluate a claim, estimate its own exposure and set aside adequate financial reserves to pay the primary insurer claim, and to acquire sufficient relevant information in a timely manner to reduce time consuming and costly follow-up inquiries for additional information. It is further claimed that use of a standard form would also reduce processing costs because the primary insurers would file the same type of information with their reinsurers and they would be providing this information in a format that would be amenable to computerization. Based on our experience and a review of the proposed model form, the Department has no reason to doubt that use of the proposed form could have the beneficial effects that you assert.<sup>2/</sup>

Of greater import is our conclusion that voluntary adoption of the proposed model claims form would not appear to raise any

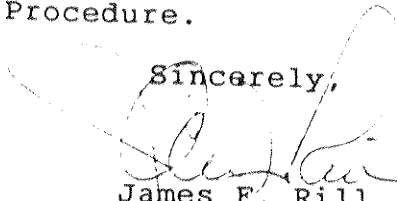
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<sup>2/</sup> We recognize that in this case, as in any effort to achieve standardization, there may be proponents of different standard forms. The Department expresses no view as to the relative merits of alternative forms that might be proposed.

risks to competition. The Department would be concerned with a standard form written by an association of reinsurers, such as the Study Group, who offer reinsurance on environmental risk, if the model form had the purpose or effect of collectively fixing or raising the prices for such services, reducing the availability of insurance or reinsurance or otherwise restricting permissible competition from other primary insurers or reinsurers. Based on the materials and other information that you provided, however, it appears that promulgation and promotion of the proposed model form would not cause any of these types of competitive problems. Use of the proposed model claims form would not appear to have any effect on the price or other terms at which reinsurance or insurance was offered nor would it be likely to reduce the amount or type of insurance or reinsurance made available. As a result, the Department has no current intention to challenge the promulgation or joint promotion of the proposed model claims form. In accordance with our normal practice, the Department reserves the right to bring an enforcement action if the model claims form proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intention is made in accordance with the Department's Business Review Procedure, 28 C.F.R. §50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this response will be made publicly available on the date of this letter. Thirty days from the date of this letter any materials you submitted in support of the business review also will be made publicly available, unless you request that any of the materials be withheld in accordance with subparagraph 10(c) of the Business Review Procedure.

Sincerely,



James F. Rill

Assistant Attorney General

C+H

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Charles F. Rule, Esq.  
Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
Washington, D.C. 20530

Re: Model Environmental Claims Forms

Dear Mr. Rule:

Pursuant to 28 C.F.R. § 50.6, this letter requests a business review from the Antitrust Division in which the Division states its enforcement intentions with respect to a model environmental claims form to be adopted by insurers of environmental liabilities and their reinsurers. The form is attached to this letter. Its purpose is to standardize the format in which insurers advise reinsurers and reinsurance brokers of pending environmental claims. The form will facilitate reporting and processing of such claims, reducing the overall costs of providing reinsurance coverage.

The form was developed by the Reinsurance/Hazardous Waste Study Group. This group formed in 1986 to retain counsel for the purpose of educating member companies on the growing number of environmental claims and the implications of that phenomenon for reinsurers. Currently, there are seven member companies in the group: Allstate Insurance Co. - Reinsurance Division; Gerling Global Reinsurance Corp.; HIR Management Corp.; Philadelphia Reinsurance Corp.; Reinsurance Corporation of New York; St. Paul Reinsurance Management Corp.; and Walton Insurance Ltd. The Nordic Information Office on Asbestos Claims, a consortium of Scandinavian reinsurers, is also a member of the Study Group.

Each of the member companies currently offers or has issued reinsurance on either a "treaty" or a "facultative" basis, or both. Treaties are reinsurance contracts that cover entire classes of an insurance company's business (e.g., general liability, automobile, workers compensation, etc.) and, frequently, coverage on a treaty is divided among a large number

Charles F. Rule, Esq.  
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of reinsurance companies. Facultative reinsurance, on the other hand, provides reinsurance coverage for a single insurance policy. It also is frequently shared among several reinsurers. Each of the member companies participate in treaties or facultative certificates where their share of the coverage is less than 100%. This permits them to help underwrite numerous risks, while providing only a percentage of the coverage in each.

All of the companies in the Reinsurers/Hazardous Waste Study Group participate in the brokered market -- that is, they sell reinsurance through brokers or intermediaries. These intermediaries are frequently able to place reinsurance with a number of reinsurers, each of whom takes only a percentage of the applicable coverage layer, as described above. This has the effect of expanding reinsurance capacity, since the entirety of the reinsurance layer may well be outside the ability of any one reinsurer to cover. Taken together, the seven companies account for a small percentage of the reinsurance sold in the United States, where the reinsurance covers policies under which environmental claims are likely to arise.

Recently the Study Group has been developing a model environmental claims reporting form. "Claims reporting" simply refers to the process by which a primary insurance company ("cedant") notifies its reinsurer(s) of the existence of a claim or claims that may potentially trigger reinsurance coverage. Most reinsurance contracts require notification of potential claims. Such notification, among other things, enables the reinsurer properly to evaluate the claim, estimate its own exposure, and set aside adequate reserves.

The sheer number and complexity of environmental claims make efficient review and evaluation of such claims very difficult for many reinsurers. Dozens of companies may be responsible for reinsuring claims arising from any given incident, and each needs essentially the same information to prepare for and process the claims it receives. At present, there is no set format, and the numerous environmental loss reports received by reinsurers frequently fail to provide enough information for an assessment

of potential reinsurance exposure. Follow-up inquiries to cedants require the expenditure of considerable time and effort.<sup>1</sup>

While most reinsurance contracts allow reinsurers to audit cedants' files, that alternative is extremely time-consuming and costly. Such a process is especially impractical for reinsurers who hold only a share of a great many different contracts.<sup>2</sup>

The model claims form project is an effort by reinsurers to reduce claims processing costs by standardizing the claims form. A standard form will enable cedants to file the same information with all of their reinsurers at an early date, substantially reducing the need for call-backs for additional information. The forms will also reduce processing costs because the cedants, who

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<sup>1</sup> In fact, due to the indemnification nature and claims reporting practices of the industry, a reinsurer may actually wait twice as long as the primary insurer to hear of a loss. A study of loss development patterns conducted by the Reinsurance Association of America in 1983 showed that on average a primary insurer knew 85% of its general liability losses after four years, whereas a reinsurer knew of only 40% of its ultimate losses after the same interval. See "Insurance Issues and Superfund: Hearing Before the Senate Comm. on Environment and Public Works, 99th Cong., 1st Sess. 379-80 (1975).

<sup>2</sup> Gathering information on environmental losses presents less of a problem for large direct writing reinsurers. Rather than sharing risks through the brokered market, such companies sell reinsurance directly to their cedants. Such "direct writers" tend to assume whole risks from a smaller number of customers. The more manageable number of contracts makes it easier for a direct writer of reinsurance to inspect the underlying claims for itself, or to use its leverage as the sole reinsurer on a particular contract to insist that the cedant fulfill its obligation to report claims information on a timely basis. Smaller reinsurers who participate in the brokered market, and who have only a percentage share of coverage on many contracts, are at a distinct disadvantage in collecting relevant loss data and thus are at a disadvantage in claims management and evaluation, unless they can induce better reporting practices by offering their cedants an improved, more efficient means of reporting environmental claims information.

have the best information about a claim,<sup>3</sup> will be providing the claims information, and they will be providing it in a format that will be amenable to computerization of the data.

The Study Group members will not be able to achieve these cost savings by themselves, however. To do so they will have to gain broad acceptance of the form by cedants and other reinsurers. Cedants will likely agree to undertake the additional burden of filling out the form only if they can file the same form with a substantial number of reinsurers and reinsurance brokers. If they have to continue to fill out numerous forms, most cedants will opt for the status quo. Conversely, the form will only be attractive to reinsurers if a substantial number of cedants agree to use it. Thus, Study Group members will have to become advocates for the form, promoting it to reinsurance competitors and customers alike.

The form itself does not raise any significant questions under the antitrust laws. It calls only for information about applicable insurance and reinsurance policies, the status of the claims against the insured, and detail about the waste site where the claim arose. It does not ask for the identity of other reinsurers on the claim or for any other potentially competitively-sensitive information. Thus, there will not be any information exchange that will facilitate collusion between users on coverage or rates.

Only the contemplated industry-wide adoption of the form raises any antitrust questions. Although there is no agreement to use it -- in fact it will be made clear that use of the form will be voluntary, and reinsurers and cedants are left to resolve through negotiation the extent to which the form is utilized

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<sup>3</sup> The nature of the reinsurance business makes it impossible for a reinsurer to have independent knowledge of its potential liability. For the most part, reinsurers do not deal directly with insureds. Complicating matters further is the fact that if reinsurance is provided under a treaty, a reinsurance claim could involve any of a number of companies insured by the ceding company under policies within the classes of business reinsured under the treaty. Treaty reinsurers may well be unaware of the identities of the majority of these insureds until a notice of potential loss or a request for indemnification is received. Under such circumstances, reinsurers have great difficulty in making timely assessments of the scope of environmental liabilities likely to be experienced by these presently unknown insureds.

**PART B: STATUS OF THE INSURED**

INSURED: \_\_\_\_\_ SITE: \_\_\_\_\_

- GENERATOR     Owned Site     Non-Owned Site

Type of Business: \_\_\_\_\_

Date (s) When Site Allegedly Received Insured's Waste: \_\_\_\_\_

TRANSPORTER    Date (s) of Transport Alleged: \_\_\_\_\_

SITE OWNER/OPERATOR    Dates of Ownership/Operation Alleged: \_\_\_\_\_

Hazardous Substances Allegedly Contributed By Insured: \_\_\_\_\_

Insured's Share of Total Waste (by volume): \_\_\_\_\_

Status Of Clean-Up Claims Against Insured	Status Of Third-Party Claims Against Insured
1. Court: _____  2. Portion, if any, of amounts in Part A that are claimed solely against insured: _____  3. Status of negotiation/litigation: _____	1. Court: _____  2. Portion, if any, of amounts in Part A that are claimed solely against insured: _____  3. Status of negotiation/litigation: _____

**Handling of Claims:**

- Date when insured gave notice: \_\_\_\_\_
- Identify carriers participating in defense of insured: \_\_\_\_\_

Your defense costs: Paid \$ \_\_\_\_\_ Outstanding \$ \_\_\_\_\_

3. D.J. action brought: YES  NO  By whom: \_\_\_\_\_ Court: \_\_\_\_\_

Your D.J. costs: Paid \$ \_\_\_\_\_ Outstanding \$ \_\_\_\_\_

4. Coverage defenses asserted/reserved: *(You may attach a copy of written reservation of rights or disclaimer)*

<input type="checkbox"/> Late Notice	<input type="checkbox"/> Owned Property Exclusion
<input type="checkbox"/> Trigger of Coverage	<input type="checkbox"/> Pollution Exclusion
<input type="checkbox"/> Exhaustion of Limits	<input type="checkbox"/> Misrepresentation
<input type="checkbox"/> Application of Deductibles	<input type="checkbox"/> Number of Occurrences
<input type="checkbox"/> Clean-Up Costs Not Covered	<input type="checkbox"/> Other (specify): _____

5. Status of negotiation/litigation: \_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_\_\_