



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

**7th AIDA CLIMATE CHANGE WORKING PARTY MEETING
HILA-AIDA SUMMIT – ATHENS 2014**

**09:00hrs-11:00hrs
THURSDAY 8 MAY 2014**

King George Hotel, Athens, Greece

MINUTES OF MEETING

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

- 1.1 The Chairman welcomed everyone to the seventh meeting of the Climate Change Working Party (CCWP). He particularly thanked the host Chapter, the Hellenic Insurance Law Association (HILA) and their President, Ioannis Rokas, who was in attendance, for their kind help in staging the meeting. He introduced in particular the Chair and Vice Chair of the AIDA Motor Insurance Working Party (MIWP), Sara Landini and Peggy Sharon, who had greatly contributed to the last meeting of the CCWP held in Sydney, in conjunction with the MIWP. The first substantive item on the Agenda of this meeting was to be an update on the work done reviewing the impact of Climate Change upon Motor Vehicles and Insurance. The local speaker at today's meeting, George Konstantinopoulos, Greek Supreme Court Lawyer and founding member of the Hellenic Environmental Law Association, would be formally introduced in due course, but he was also particularly welcomed along with a number of other Greek delegates. It was sincerely hoped their first attendance at a CCWP meeting would be the first of many.
- 1.2 A large number of apologies had been received, including those from Dr Ioanna Koufaki, the President of the Hellenic Environmental Law Association, in whose place George Konstantinopoulos was to be speaking. As ever, some of those unable to attend had delivered papers. Most notably a 104-page written report had been submitted by Maria Kavanagh and her hard-working MERCOSUR Group upon "*Life, Health and Pension Insurance in the new Economic Environment*", which along with other presentations to be made would be posted upon the Climate Change Working Party page of the AIDA website. The practice of members of the CCWP who were unable to attend meetings in person was greatly commended and encouraged. New attendees were in turn encouraged to visit the website and 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 Topic: Climate Change, Motor Vehicles and Insurance**
(Tim Hardy, UK and Prof Sara Landini, Italy)

2.1 The Chairman reiterated some of the most salient background points established at the last meeting about Climate Change, Motor Vehicles and Insurance to help put in context some of the matters to be reported upon by Sara Landini.

- 2.2
- a) The proportion of man-made GHG emissions attributable to MVs = **c.16%**;
 - b) **Driving a MV** = regular activity which for average person makes **greatest contribution** to man-made CC
 - c) **Three-quarters of all transport emissions** come from **MVs**
 - d) **MVs** account for **50%** of **all** trips made in **W Europe** – **90%** in the **US**
 - e) **US tops** table for **MV emissions** by considerable margin. **PR China 2nd**, though **EU combined** still ahead of PR China.
 - f) As of **2010** – more than **1bn MVs in use**; doubled by 2020 – growth especially in developing world
 - g) **Manufacturing** of MVs took a hit in global recession, BUT **PR China** accounting for 23% of all 2012 sales with expectation of doubling output every 5 yrs. **OECD** countries still to be responsible for 50-60% of global GHG emissions until at least 2030.
 - h) Global road transport emissions on course to **rise by 75% by 2030** unless measures taken to reduce. Measures include:
 - **emissions reduction targets/offsets**
 - innovations in **MV design/repair/fuel efficiency/fuel + vehicle type**
 - **economic driving practices + simple reduction in road miles travelled**
 - **public transportation/urban design initiatives**
 - **tax/investment/congestion charge schemes/subsidies**

BUT - obvious divergence of **economic interest** between **MV manufacturers, governments, commerce** and the **public** – **insurers' role necessarily dependent on financial interests + incentives.**

2.3 Review and discussion last time about the impact of both the motor vehicle on the environment and of Climate Change upon the motor insurance sector (and responses of both insurers and manufacturers alike) had centred upon answers supplied to a 10-question questionnaire compiled jointly by the Climate Change and Motor Insurance Working Parties.

2.4 At the time of our last meeting we had gathered answers or detailed materials from no fewer than 17 countries, including the majority of the world's leading MV manufacturers and emitters (USA, PR China, Japan, Germany). Concentration was placed on 3 key areas: i) availability/features of pay-as-you-drive (PAYD) insurance; ii) incentives for use of "green(er)" cars – by premium/tax or other concessions; and iii) other legal or policy measures regulating green(er) car usage. It is to be hoped that before the next CCWP meeting in Rome that some fuller compilation of answers/findings may be produced for posting/review. Any contribution of information or identification of issues in any countries not yet represented in answers/analysis will still be greatly appreciated.

2.5 Sara Landini was then invited to recap upon the background to her AIDA-backed "Green Car and Insurance" Project and to provide news of some further information gained since our last meeting: from Argentina, Brazil and Uruguay.

2.6 Sara identified the countries which were leading the way with offsets/renewable energy sourcing/educational initiatives (UK, USA, Israel and Sweden); premium discounting (UK, Switzerland, the Netherlands); eco-friendly networking projects for MV repairs (UK, Spain, the Netherlands); and "eco-driving" policies (Italy). Pay-as-you drive (PAYD) insurance or usage-based insurance (UBI) was being marketed in a number of countries now, designed to reduce premiums for those with low mileage and recording good eco-driving practices but where this was dependent upon "black box" telematic or similar devices, some resistance and data privacy concerns were being experienced.

- 2.7 In none of Argentina, Brazil or Uruguay were PAYD insurance products being marketed. Doubt was expressed over whether privacy objections would ever be overcome sufficiently for “black box” technology to be considered feasible for widespread use. Some motor insurers already collect mileage use through self-reporting. In Uruguay the government is introducing more eco-friendly fuel to reduce pollution. In Argentina environmental regulations (which are regional rather than national) over MV manufacture do not extend to any requirement to reduce emissions, although locally manufacturers must comply with specific environmental standards.
- 2.8 A brief discussion ensued over measures in Greece, Israel and elsewhere. A number of issues merited closer examination. These included what account was to be taken in PAYD schemes for authorised drivers, data safeguards etc. In examining incentives were discounts in truth merely for lower capacity engines of lower net worth and should motor insurers be giving effect to reductions not commensurate with a reduction in value at risk? Car pooling and sharing exercises may change the landscape for MV users and insurers as would the more significant developments in MV design/technology such as “driverless” cars of the future.

3. Second Topic: Environmental liability in Greece

The Legal Framework and the role of financial guarantees/insurance products to cover operators' responsibilities under Directive 2004/35

(George Konstantinopoulos, Greek Supreme Court Lawyer and founding member, Hellenic Environmental Law Association)

- 3.1 In welcoming George Konstantinopoulos, the Chairman noted how AIDA had addressed the topic of Alternative Compensation Schemes for Environmental Liabilities as one of its two major themes at its XI World Congress in New York back in 2002. It was interesting to observe how twelve years on Greece was faring in its adoption of the Legal Framework and the Role of Guarantees/Insurance Products under the 2004 Directive at a time when Climate Change was posing questions around the world of how adequate were public or private financial resources to meet the ever-growing challenges of both natural and man-made damage being sustained often at catastrophe levels.
- 3.2 The Objective of the 2004 Directive was designed to prevent and remedy environmental damage on a polluter pays principle. By Art.12 those affected by environmental damage are entitled to make a request for action. By Art.14 member states were obliged to encourage the development of financial security instruments and markets to enable operators to cover their responsibilities under the Directive by use of guarantees. By 30 April 2010 the effectiveness of the Directive was to be reported upon in terms of the effectiveness of the remediation of environmental damage and in terms of the cost/availability of insurance products/financial guarantees with view to introducing if appropriate a gradual system of harmonised mandatory financial security.
- 3.3 Progress by Greece in implementing the Directive has lagged behind schedule. The Directive was transposed in 2009 rather than 2007 as intended. Any Decision via the Minister of Environment to provide for mandatory financial security required in May 2010 has been postponed and still not adopted. A mandatory insurance regime has been in place for hazardous waste management since 2006, successfully ensuring operators are covered before being licensed to do business. A growing market is in place in the local insurance sector to provide competitive and reliable environmental liability policies at reasonable cost. Problems do however exist in terms of policies, insureds and the administration
- 3.4 In terms of policies there are wide discrepancies in many aspects: deductibles, exclusions and limitations. There are variations in whether gradual pollution is covered; also, regarding the duration of extended reporting periods, additions to coverage and the need for an environmental audit. Insureds in general remain ill-informed about the workings and obligations owed under their environmental liability policies beyond price with many operators failing to comply with duties, viewing insurance as a substitute for compliance.
- 3.5 Shortcomings in the administration see low levels of enforcement of environmental law, few regular inspections and a lack of information generally about the state of the environment in the absence of monitoring systems checking such basic things as river basin water levels/flows.
- 3.6 Open issues and challenges which are presented to parties to the insurance covers include the need for improving understanding of policy obligations, in the assessment and measurement of risk and the insurability of operators, as well as in the design of tailor-made policies for each MS, an improvement in claims management and co-operation with the authorities and in the raising of the ceilings of financial guarantees. As for the administration, in reverse, better co-operation with industry and the insurance sector is required. So, too, an improvement is needed in the monitoring of environmental damage and in the requirement of inspections.

Greater clarity is also desirable in how environmental damage is intended to be restored in conjunction with insurance obligations, whether financial security is to be mandatory or merely optional and a policy decision needs to be made regarding whether priority should be given to tackling the heaviest polluters.

4. Third Topic: Climate Change and Property Insurance and Business Interruption Insurance Contracts
Impact of Climate Change upon Risk Analysis and Risk Coverage in Property and Business Interruption insurance (Tim Hardy, UK)

- 4.1 The Chairman introduced the topic of the impact of Climate Change upon property and business interruption insurance contracts. The recently published IPCC Fifth Assessment reports re-stated as starkly as ever the warnings about how Climate Change was to be a key driver not only of increasingly uncertain and unpredictable weather patterns, but also the increased frequency of extreme weather events. Combining with other factors to trigger or aggravate the scale of potential losses, Climate Change was posing a risk analysis challenge which would stress-test not just the terms of existing property/BI and other covers but in many instances the insurability of many exposures, as well as the financial and other resources, even of governments, to mitigate the effects, as well as to invest in any adaptation measures identified as needed.
- 4.2 The World Economic Forum was among those bodies which had identified Climate Change as the single most important threat to global risks in terms of severity of impact, likelihood and interconnectivity with other major global risks, such as water crises, political and economic migration, mass urbanisation and concentration of asset values. There is also a growing appreciation that a long-term risk factor may be the *failure* of governments and others to implement effective adaptation and mitigation policies. All such factors are of obvious concern to sectors dependent upon long supply chains spread across geographically vulnerable territories.
- 4.3 The three key risks for Europe identified by the IPCC's latest report were: increased water restrictions, economic losses/injury + death from extreme heat events/air quality impairment and flooding/sea level rises. In Greece impact to be felt as for another nations across wide range of sectors: forests, fisheries, tourism, agriculture, transport and economy and health more widely. No commercial organisation or government can afford in 2014 not to have a risk management programme taking specific stock of Climate Change. Need to establish realistic exposure profile and devising proportionate contingency plans common to all; detail of profile/plans diverse depending on nature of business exposed.
- 4.4 Impact of Climate Change on risk coverage equally marked. Greater unpredictability/extremes undermine reliance upon past claims statistics per country, sector, property and unsurprising that perceived increased risk has prompted premium hikes, coverage caps/exclusions and conditions and reliance upon educating and incentivising policyholders about risk reduction, devising new risk modelling and mapping techniques, reviews of the viability of certain categories of business and calls for Government or external financial support to cater for otherwise uninsurable exposures. The peril of "Climate Change" is less a discrete risk than an aggravation of other more familiar ones, not easily distinguished in any chain of causation where excluded and included perils interplay. Proving – scientifically - the cause of Climate Change and – legally - the precise cause of any loss are quite separate, but equally challenging tasks.
- 4.5 Illustrations of the challenges presented can be more informative than abstract concerns. Contingency business insurance has proved a valuable tool for various businesses to protect themselves against economic losses when spared the direct effect of physical damage. Coverage of supply chain interruption, utility providers, vicinity damage and loss from intervention by authorities had been severely tested by some recent major disasters as a foretaste of challenges which the impact of Climate Change may be expected to bring. The Thai Floods of 2010 and the Japanese Earthquake and Tsunami of 2011 had each illustrated how motor manufacturers and the global technology sector could each be especially vulnerable to the physical impact upon essential component suppliers, but insurance recoveries tested the adequacy and extent of coverage limits and terms as rarely before.
- 4.6 The concept of Wide Area Damage in the context of BI losses was something likely to be tested by the impact of Climate Change-triggered events. Hurricane Katrina had given rise to two notable cases discussed – one in the US, one in the UK – highlighting difficulties which may be encountered in giving effect to policy intention in context of which precisely types of peril and loss were covered and which excluded and how loss was to be measured where valuations affected by blighting and wider impact issues than those directly impacting upon the insured property itself. New Zealand was presently providing a master class in insurance policy interpretation issues in the wake of the Christchurch earthquake of 2011 with the battleground over reinstatement terms following widespread instances of underinsurance. The Queensland floods of the same year similarly provided many illustrations of how peril definition and loss provisions were being subjected to the fiercest legal scrutiny given the critical financial stakes involved for many parties.

4.7 Time would not allow for further illustrations to be considered but slides were prepared and would be loaded highlighting the most significant features learnt from the latest round of serious UK winter flooding over 2013/4 and the measures already being taken by the UK Govt in the face of worsening flooding predicted in future. Also, a review of the differing EU regimes in place addressing natural disaster relief and prospects for the future as the impact of Climate Change exacerbated the threats posed to properties and businesses alike. In short, the impact of Climate Change on both risk analysis and coverage for property and BI insurance was to be, and indeed already is, extensive and the shifting, but increasing financial burdens to be assumed by policyholders, insurers and governments would put all risk management and insurance programme provisions under closer corporate management, legal and regulatory scrutiny than ever before in uncertain political and economic circumstances.

5. **Fourth Topic: Impact of Climate Change on Life & Health Insurance**
“Life, Health and Pension Insurance in the new Economic Environment”

5.1 There was no time to discuss, but simply to note and commend with thanks, the lengthy Paper delivered by the MERCOSUR GROUP co-ordinated by Dr Maria Kavanagh, Argentina - with external collaboration from Dr Ana Rita Petraroli, Brazil - addressing challenges to these classes in Argentina, Brazil, Chile, Peru and Uruguay.

6. **Next meeting in Rome at XIV AIDA World Congress – Mon 29 September 2014 - 16:00hrs - 18:00hrs**

6.1 Again, there was no time left to discuss the proposed topics identified for consideration at the next meeting scheduled for Rome. The Chairman did, however, report that he was greatly encouraged by the fact that a number of members of the Working Party, as well as some new to the Working Party, had already expressed an interest in making submissions on each of the three topics chosen: fracking (and mining), flooding and agricultural insurance.

6.2 The Chairman reported that among those new to the Working Party who are keen to speak in Rome (on fracking) is Joseph MacDougald of the University of Connecticut School of Law, who was about to publish on the subject together with Peter Kochenburger, who had addressed us in London. Should anyone at the meeting or in receipt of details of the next meeting wish to make any submission or have interest in presenting they were encouraged to make contact with the Chairman.

With final thanks expressed to all who had contributed and attended the meeting was closed.