LIFE INSURANCE (A) COMMITTEE

Reference:
1990 Proc. I p. 437
1989 Proc. II p. 414

Harold C. Yancey, Chair—Utah
Mike Weaver, Vice Chair—Ala.

CONTENTS

AGENDA

1. Adopt March 27 Salt Lake City Minutes
2. Report of Accelerated Benefits Working Group
3. Report of Marketing Practices to Senior Citizens Working Group
4. Report of Graded Death Benefit Policies Working Group
5. Report of Projected Interest Earnings Working Group
6. Report of Product Development Task Force
7. Report of Life and Health Actuarial (Technical) Task Force
8. Any Other Matters Brought Before the Committee

REPORT

The Life Insurance (A) Committee met in the Baltimore A/B Room of the Stouffer Harborplace Hotel in Baltimore, Md., at 2 p.m. on June 6, 1990. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following committee members or their representatives were present: Mike Weaver, Vice Chair (Ala.); Margurite C. Stokes (D.C.); David Lyons (Iowa); Douglas D. Green (La.); George Fabe (Ohio); Gerald Grimes (Okla.); Theodore "Ted" Kulongoski (Ore.); and Steven T. Foster (Va.).

1. Adopt March 27 Salt Lake City Minutes

Upon motion duly made and seconded, the minutes of the March 27 Salt Lake City meeting were adopted (Attachment Four).

2. Report of Accelerated Benefits Working Group

Commissioner Harold Yancey (Utah) delivered the report of the Accelerated Benefits Working Group and pointed out that the group met in Kansas City on May 15 to review recommended revisions to the NAIC Accelerated Benefits Guideline adopted in December 1989. He further stated that the changes considered were primarily recommended by the American Council of Life Insurance (ACLI). He emphasized that the document is still a working draft and will receive further consideration at a meeting to be scheduled in July. Commissioner Yancey announced the appoint-

ment of an advisory committee to assist in finalizing the draft of the guideline. He emphasized the goal of the working group is to have an exposure draft ready for the September meeting which would be considered for final adoption in December.

Commissioner Yancey announced that he is working with Director Susan Gallinger (Ariz.), chair of the Long-Term Care Insurance (B) Task Force, to identify areas where there are overlaps in the regulation of long-term care insurance and accelerated benefits. He stated his opinion that accelerated benefits products are life insurance products and should be maintained as such; however, he emphasized that this joint working group would consider the merit of any suggestions in this area. He acknowledged the need for uniformity in the areas of disclosure and any regulatory standards that may be set.

Carolyn Cobb (ACLI) referred the committee to a revised draft accelerated benefits guideline of the ACLI Subgroup on Accelerated Benefits (Other Than Long-Term Care), the majority of which was presented to the committee at its Salt Lake City meeting (March 1990). The additional suggested revision is found in Section 2B (3) and expands the definition of "qualifying event" to include any condition which has required continuous confinement in an eligible nursing home if the insured is expected to remain for the rest of his life. Ms. Cobb referred to this condition as being in the nature of a terminal illness and further characterized it as constituting a considerable benefit for the policyholder if added to the guideline. Commissioner Yancey thanked Ms. Cobb for her input and stated that this amendment would receive consideration at the next meeting of the working group.

Upon motion duly made and seconded, the minutes of the Accelerated Benefits Working Group of May 15 and the conference call minutes of May 29 were adopted (Attachment One).

3. Report of Marketing Practices to Senior Citizens Working Group and Report of Graded Death Benefit Policies Working Group

Commissioner David Lyons (Iowa) gave the report of the Marketing Practices to Senior Citizens Working Group and the Graded Death Benefit Policies Working Group, which held a joint meeting in Kansas City on May 14. He pointed out that it would be the recommendation of these two groups that due to the similarity of the issues before them that they be combined into one working group. Commissioner Lyons identified the areas under review by this working group as: 1) advertising to senior citizens; 2) disclosure of limited benefit life insurance policy information to consumers, and 3) the level of value to the consumer provided by limited benefit life insurance products.

Commissioner Lyons acknowledged constitutional concerns about free speech and assured the committee that this working group would be careful to avoid any problems in that regard when addressing advertising of life products to senior citizens. He pointed out that James Swenson (Ore.) had prepared a comprehensive document on the NAIC Model Rules Governing the Advertising of Life Insurance and that Mr. Swenson's memorandum is Attachment Two-A1 to the May 14 minutes of the working group's meeting. He noted that this working group would prepare a bulletin to the states which have not adopted the NAIC Rules Governing the Advertising of Life Insurance encouraging them to do so. He also stated that the bulletin would encourage states which have adopted the rules to enforce them.

In addressing the issues of adequate disclosure to consumers on limited benefit life insurance policies, Commissioner Lyons stated that the working group had directed that a chart be developed showing policy items which could be "individualized" for presentation to a consumer. He further stated that an advisory committee had been appointed and had presented for working group approval a spreadsheet format showing on an individualized basis policy years one through 10, the premium amount, the death benefit, the cumulative gain or loss, the cash value and what the premium would be if it had been left to accumulate in a savings account at 5% interest. He commented that this information would explain to the consumer in an easily understood format exactly what the policy provides.

Commissioner Lyons further stated that in light of the recent Washington state regulation and because of expressions of concern from consumer groups that limited benefit life insurance products had little value to consumers, the advisory committee has been asked to provide profitability information. He said the advisory committee intended to contract with an actuarial firm to collect the data, summarize it and provide a report showing the range of profitability. He announced that the NAIC staff would be charged with reviewing the findings of this firm and would report to the working group the rate of return for the average consumer. The report from the actuarial firm is scheduled to be delivered to NAIC staff for review no later than Aug. 13. The results of that study should be available at the September meeting. Commissioner Lyons further stated that all the products of his working group will be in an exposure draft format for the September meeting and considered for final adoption in December.

Upon motion duly made and seconded, the Marketing Practices to Senior Citizens Working Group and the Graded Death Benefit Policies Working Group were combined and the name of the combined working groups was officially changed to the Life Marketing Practices to Senior Citizens (A) Working Group. Upon motion duly made and seconded, the minutes of the June 4 Baltimore meeting were adopted (Attachment Two).

5. Report of Projected Interest Earnings Working Group

Commissioner Mike Weaver (Ala.) reported that this working group held a telephone conference call on April 17 to discuss various approaches to dealing with problems of providing guaranteed interest rate projections. It was the consensus of the group that a bulletin be drafted to address two areas of concern, solvency and disclosure. Commissioner Weaver read aloud the two sections of the bulletin and recommended the adoption of this bulletin as an exposure draft. James Swenson (Ore.) commented that the American Academy of Actuaries Subcommittee is looking at illustrated interest projections and that he will make sure it receives a copy. He further stated that he felt the bulletin approach is appropriate and endorsed the bulletin as presented. Upon motion duly made and seconded, the minutes of the June 4 Baltimore and April 17 conference call were adopted (Attachment Three).

6. Report of Product Development Task Force

Reginald H. Berry (D.C.) presented the report of the Product Development (A) Task Force. He emphasized the main project of this task force is to address concerns raised by the states in response to a recent survey on corporate owned life insurance (COLI). He pointed out that those concerns were mainly in two areas: 1) insurable interest questions and whether COLI is a viable concept within the current legal framework for insurance and 2) actuarial concerns. He added that all actuarial matters will be referred to the Life and Health Actuarial (Technical) Task Force. He further indicated that an advisory committee had been appointed to deal with the legal issues in these questions.

Mr. Berry referred the committee to the summary of the report of the Life and Health Actuarial (Technical) Task Force contained within the Product Development minutes of June 5 and specifically to the six recommendations that were adopted at that meeting. Upon motion duly made and seconded the minutes of the June 5 Baltimore meeting were adopted. (See p. 581 of this volume of the *NAIC Proceedings*.)

7. Report of Life and Health Actuarial (Technical) Task Force

John Montgomery (Calif.) synopsized the projects currently before the task force. A complete text of that synopsis is attached as Attachment One to the minutes of the Life and Health Actuarial (Technical) Task Force of June 2 and 3.

Upon motion duly made and seconded, the committee adopted the following specific recommendations of the Actuarial Task Force:

1) recommend exposure of the draft Proposed Amendments to the Standard Valuation Law and the Standard Valuation Law including the proposed amendments.

2) recommend approval of the addition of Project 2k Proposed New Group Annuity Table to the Actuarial Task Force's agenda.

3) recommend approval of the merger of Project 5a Actuarial Aspects of Reinsurance Transactions and Project 5b Capital Management for the Life Insurance Industry into one project, Project 5 Reinsurance, a Priority 1 project.

Having no further business, the Life Insurance (A) Committee adjourned at 2:45 p.m.

Harold C. Yancey, Chair, Utah; Mike Weaver, Vice Chair, Ala.; Margurite C. Stokes, D.C.; David J. Lyons, Iowa; Douglas D. Green, La.; George Fabe, Ohio; Gerald Grimes, Okla.; Theodore "Ted" Kulongoski, Ore.; Steven T. Foster, Va.

ATTACHMENT ONE

Conference Call Minutes
Accelerated Benefits (A) Working Group
May 29, 1990

The Accelerated Benefits (A) Working Group held a conference call at 3 p.m. CST on May 29, 1990. A quorum participated and Commissioner Harold Yancey (Utah) chaired the call. The following members also participated: Sheldon Summers (Calif.); Leonard Wood (N.C.); Ann Jewel (Ohio); and Bob Wright (Va.). Also participating were Sam Bolinger and Judy Lee (NAIC/SSO).

Commissioner Harold Yancey (Utah) called the meeting to order and stated the purpose for the conference call was to reach a consensus on whether the Accelerated Benefits Guideline, as redrafted by the working group at its meeting in Kansas City on May 15, was ready to be adopted as an exposure draft.

Sheldon Summers (Calif.) reported to the group that he attended a meeting of the Nonforfeiture Group under the Life and Health Actuarial (Technical) Task Force and asked for their help in determining the present value calculation required by the Guideline. He stated that the group responded that they would not be able to take this issue up for some time. Commissioner Yancey reported that he had received a letter from the American Council of Life Insurance (ACLI) indicating that their legislative committee had approved a proposed actuarial guideline for discounting. Commissioner Yancey reminded the working group that the Life Insurance (A) Committee had charged industry with setting the actuarial standards for the present value calculation. He pointed out that this proposal would be one of the subjects for discussion at a future joint meeting of the working group and the advisory committee.

Leonard Wood (N.C.) discussed proposed federal legislation by Senator Bill Bradley (D-N.J.) concerning the tax exemption of accelerated benefits. After considerable discussion about the merits of this legislation, Commissioner Yancey suggested that no action be taken by this working group to conform the NAIC Guideline to that legislation until it actually is adopted by Congress.

There was considerable discussion by working group members of whether the revised Guideline was ready for adoption as an official exposure draft. Upon motion duly made and seconded, the working group voted unanimously to label the currently revised Guideline as a "Confidential Working Draft" until the meeting in Baltimore, at which time copies would be given to the advisory committee members with specific instructions for further action. A joint meeting of the working group and advisory committee members will be set at a future date to discuss revisions to the Guideline.

Having no further business, the conference call adjourned at 3:35 p.m.

****

Accelerated Benefits Working Group
of the Life Insurance (A) Committee
Kansas City, Missouri
May 15, 1990

The Accelerated Benefits Working Group met at the NAIC office in Kansas City at 9 a.m. on May 15, 1990. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following working group members were present: Sheldon Summers (Calif.); Ann Jewel (Ohio); and Bob Wright (Va.). Also present were Sam Bolinger and Judy Lee (NAIC/SSO).

Commissioner Harold Yancey (Utah) thanked the working group members for their willingness to participate in efforts to appropriately modify the Accelerated Benefits Guideline. He discussed whether it would be appropriate to consider turning the guideline into a rule or model this year. Ann Jewel (Ohio) commented that at the time the guideline is modified into rule form, it would need to deal with overlapping long-term care issues. Commissioner Yancey announced a Joint Accelerated Benefits Working Group/Long Term Care Task Force meeting in Baltimore to address these issues. He further stated that he had asked Dale Hazlett (Ariz.) to provide a letter setting out the accelerated benefits issues in the long-term care insurance area which overlap the life insurance guideline.

For the benefit of new working group members, Commissioner Yancey explained the premise for the development of the Accelerated Benefits Guideline. He suggested that the appropriate manner in which to proceed would be to consider the comments recently submitted by the American Council of Life Insurance (ACLI), discussing the merits of each of their suggestions and determining a working group position.

Following in order through the NAIC Accelerated Benefits Guideline, the following amendments were considered:

Section 2 A(1): The ACLI recommendation to delete the phrase "To a policy owner," was not accepted by the working group. The consensus was to leave the language in because it clarifies who receives the proceeds. Discussion centered around situations where the policyowner and the insured are not the same. Additionally, the working group discussed the living benefits companies and whether they become a policyowner or a beneficiary when they purchase a policy from an insured. The working group consensus was that having the proceeds paid to the policyowner gave control of the policy funds to the policyowner. The working group did agree to accept the recommendation to add the conjunction "and" at the end of this section following the semicolon.

Section 2 A(3): The ACLI suggested deleting the phrase "...at the option of the insured." There was considerable discussion regarding the merits of reducing the cost to the consumer and to the company by allowing policy designs with the periodic payment option only. There was also a suggestion to delete this subsection in its entirety since it is not a crucial part of the definition. Suggested amendatory language also included that at the time the benefit is requested, contracts which have provided a periodic payment provision only may be adjusted at the discretion of the insured to a lump sum payment, allowing companies to recalculate that benefit. The working group expressed concern with agreeing to this provision to allow companies to write periodic payment option policies only and expressed a desire for some assurance that the periodic payment would be an appropriate amount. Ms. Jewel commented that the basic idea of the Guideline is to make sure the consumer has the option on the form of payment. Commissioner Yancey stated that the central issue is how to make a provision to allow the insured a lump sum or periodic payment option at the time the benefit is claimed and how to price that option. The working group consensus was to leave this subsection as it is currently written but allow for future deliberations.

Section 3: The working group deleted language stating that these provisions do not represent morbidity risks. This subject will be discussed in greater detail at future meetings.

Section 5 A: ACLI suggested deleting the phrase "...or in a fixed amount for an indefinite period of time, at the option of the insured." The working group decided that since the option of the insured was not removed from Section 2 A(3), it would not be deleted at this point either. The group did agree to delete the phrase "...or in a fixed amount for an indefinite period of time." A further amendment to this section resulted in deleting Subsection C's title and moving the sentence under Subsection C to the first sentence of Subsection A. ACLI's suggested revision to the second sentence of this subsection, allowing companies to set both percentage and dollar maximums when designing an accelerated benefit policy or rider, was accepted by the working group. Although Virginia and North Carolina continue to support a mandatory ceiling on the amount of the death benefits that could be accelerated, the working group did not take this action and expressed its belief that 1) as much flexibility as possible should be available in the marketplace, 2) the need for the accelerated benefit may override the need for the life benefit later on, 3) the beneficiary does not have a right to the proceeds of the policy until the death of the insured, and 4) individual companies may restrict the benefit as they choose in the marketplace. The final change in this subsection is in the last sentence, the words "shall be" were deleted and "is" was inserted.

Section 6 A: The ACLI suggested deleting the phrase "and the terminology 'accelerated benefit' shall be included in the description." The working group stated that this section was drafted as intended and made no change in it. The following language was added to this section, "Use of the term 'long-term care' cannot be used in describing or marketing this benefit."

Section 6 B: The ACLI suggested revising this paragraph by deleting the phrase "Clear disclosure...of the potential tax implications of receiving this payout" because it was unclear. The working group decided to amend the paragraph by deleting the requirement for a "Clear disclosure," substituting language requiring "A disclosure statement." ACLI's suggested addition of the words "or rider" was accepted. Further the working group deleted the following language "of the potential tax implications of receiving this payout. The disclosure statement shall indicate." The final sentence of that paragraph was amended by deleting the word "such" and adding language to read "The disclosure statement shall...". Bob Wright (Va.) expressed a strong preference that specific policy or rider language be included in the Guideline in order to standardize this provision. This topic will be readdressed when a change from the Guideline format to a rule is considered.

Section 6 C(1): ACLI suggested deleting the requirement that the insurer provide a numerical illustration to the applicant and instead provide a brief written description of the accelerated benefit. The working group decided to leave this subsection as currently written with the exception of additional language in the last sentence. This sentence now reads "the disclosure shall be made 'at time of solicitation or' upon acceptance of the application." Considerable discussion ensued about this particular subsection and it was the consensus of the working group that if an advisory committee could come up with an easily understandable written description of the effect of this benefit, such submission would be considered by the group.

Section 6 C(2): ACLI suggested deleting this subsection if the written disclosure of the accelerated benefit had been accepted in the previous subsection. Further, ACLI wanted to delete the requirement that the description be signed by all parties to avoid the implication that the disclosure document could replace or amend the contract. The subsection was left as currently written.

Section 6 C(3): This language was Section 10 A in the Guideline adopted in December 1989. It has been moved to the solicitation section of the Guideline with non-substantive language changes.

Section 6 C(4): This is a new subsection suggested by ACLI and concurred in by the working group. This new subsection requires the disclosure of any administrative expense charge to the policyowner.

Section 6 D: The ACLI suggested deleting this subsection because they felt the relevant disclosure should be made prior to or at the time of application. The working group did not accept that suggestion and the language remains as currently written.

Section 6 E: This language was Section 10 B(2) in the original Guideline adopted in December 1989. The working group re-titled this section "Effect of the Benefit Payment." The ACLI suggested language has been accepted with the addition of a second sentence added to the paragraph which reads "Each time an accelerated benefit payment is paid, the company is required to send a statement to the policyowner showing the numerical expression stated above."

Section 6 F: This is a new section added by the working group entitled "Effect on Medicaid Payment." The language reads as follows "This rider may affect Medicaid eligibility. If you have this rider on your policy, you may be required to receive and spend all the available funds in your policy prior to becoming eligible for Medicaid or other governmental assistance programs. Contact your local Medicaid office for clarification. Such disclosure shall be prominently displayed on the first page of any solicitation."

Section 7: The working group approved adding the word "provision" to clarify that it is a term of the contract that must be effective on the effective date of the policy or rider.

Section 8: The working group agreed to delete the phrase "or may not." The group also agreed to replace the word "company" with the word "insurer" to conform with the rest of the Guideline.

Section 10: The ACLI suggested changing the title of Section 10 to "Actuarial Standards." The working group concurred.

Section 10 A: The language in this section was relocated to Section 6 C(3).

Section 10 B: The language in this paragraph was deleted and the ACLI's suggestion for a separate paragraph for each of the topics addressed in Section 10 was accepted by the working group.

Section 10 A: This is a new Section A entitled "Financing Options." Subsection A(1) and A(2) contain grammatical revisions. Additionally, the working group added a sentence to Section A(2) to read "The interest calculation shall be no greater than one percent above the amount paid by the company on funds left on deposit with the company at interest."

Section 10 A(3): The ACLI suggested a new financing option, an interest-bearing lien for the amount of the benefits accelerated. The working group adopted this language but made one minor change in the ACLI suggested language.

Section 10 B(1): This is the language shown in the original Guideline as Section 10 3(A).

Section 10 B(2): This is the language which was formerly Section 10 B(3)(b). The ACLI suggested adding the phrase "and any accrued interest" and deleting the phrase "non-interest bearing" to accommodate the new financing option. The working group concurred in those changes and further relocated the second sentence of that subsection to Section 10 C(2). There will be additional input from the working group regarding Subsections 10 B(1) and (2) in the future.

Section 10 C: This is a new paragraph on the effect of outstanding policy loans as a technical clarification suggested by ACLI and concurred in by the working group.

Section 10 C(2): This is language that was relocated from the original Guideline Section 10 B(3)(b).

Section 10 D: The ACLI suggestion deleting the word "paid" and relocating the modifier "accelerated" to clarify that the relevant amount is the benefit actually accelerated was not accepted by the working group. The only change the working group made in this section was a minor grammatical change at the beginning.

Commissioner Yancey suggested appointing an advisory committee to provide assistance on the redrafting of the Guideline. The working group concurred and Commissioner Yancey volunteered to draft a list of potential advisory committee members and send it to the working group members for their approval.

Commissioner Yancey further discussed a letter he received from American Life Resources Corporation regarding the need for regulation of the "living benefits" industry. The working group requested Commissioner Yancey to respond to the letter saying that at this point in time, there was no compelling reason for the design of regulatory guidelines for this industry.

Having no further business, the working group adjourned at 2 p.m.

****

Life Insurance Committee

ATTACHMENT TWO

Life Marketing Practices to Senior Citizens (A) Working Group
of the Life Insurance (A) Committee
June 4, 1990
Baltimore, Maryland

The Life Marketing Practices to Senior Citizens (A) Working Group of the Life Insurance (A) Committee met in the Federal Room of the Stouffer Harborplace Hotel in Baltimore, Md., at 8 a.m. on June 4. A quorum of the working group was present and David J. Lyons (Iowa) chaired the meeting. The following working group members were present: Roger Strauss (Iowa); Dean Gallaher (Okla.); Jim Swenson (Ore.); Robert Wright, III (Va.) and David Rogers (Wash.).

Upon motion duly made and seconded, the minutes of the Kansas City meeting of May 14, 1990, were adopted (Attachment Two-A).

Commissioner David Lyons (Iowa) reported that the working group had put forth an aggressive agenda during its meeting in Kansas City in an attempt to determine whether there was any value to the limited benefit life insurance products and if these products should remain on the market. He further stated that if the products are of value, the working group wants to determine how best to ensure that the consumers are buying what they need and are knowledgeable about the products they purchase. He stated the working group is most concerned with consumer disclosure issues at this time, pending the results of the value/profitability review to be completed this summer.

Robert M. Eubanks, advisory committee chair (Mitchell Williams), pointed out that the advisory committee had been charged with developing a chart showing which policy items could be "individualized" for presentation to a consumer. A spread sheet format was used showing, on an individualized basis, policy years one through 10, the premium amount, the death benefit, the cumulative gain or loss, the cash value and what the premium would be if left to accumulate in a savings account at 5%. He stated there is dissension in the advisory committee on the exact timing of providing this information to the consumer, at point of issue or at point of sale. The majority favor providing the information at point of issue; however, the American Association of Retired Persons (AARP) favors providing it at point of sale. Robin Talbot (AARP) stated the earlier this information could be provided to the consumer, the better choice the consumer could make. Commissioner Lyons clarified that the intent of the working group was that once a person responds and the company has gathered enough information to individualize, this information should be provided. He further stated that at this time it appears the information will more often than not be provided at the point of issue until an appropriate earlier date can be determined. Jim Swenson (Ore.) agreed that the information should be provided as soon as practicable.

Commissioner Lyons asked the NAIC staff to draft a regulation stating that this information shall be individualized at the earliest point that the required information is available to the company. Representatives of the direct marketing insurance companies discussed the impact of this issue on their marketing practices. Commissioner Lyons reiterated that it would be the intent of this group to hold the companies responsible for individualizing the information as quickly as possible.

Mr. Eubanks stated that the advisory committee had been asked to furnish a written report on profitability. The advisory committee is considering contracting with an actuarial firm to collect this data, summarize it and provide a report showing the range of profitability. Commissioner Lyons responded that the working group wanted some basis of information on profitability, ratified by the NAIC. He agreed that the advisory committee could consider using an outside actuarial firm, but the NAIC staff should review the findings and report to the working group the rate of return for the average consumer. Mr. Eubanks discussed the advisory committee's interpretation of the term "value" as used by the working group. Bob Wright (Va.) responded that the term referred to the value to the consumer.

John Bonafair (Forethought Life Ins. Co.) proposed that to gather the data a spreadsheet be prepared including data such as premium collected, company expenses, actual mortality experience through a 20-year duration for several products at several specified ages. He said that this data would be shown without considering discount rates or return on investment income. Commissioner Lyons responded that he wanted AARP to be involved in these discussions. Mr. Swenson stressed the importance of including investment return in these products because a large percentage of the premium which is being collected up front will be accumulating an investment return.

Commissioner Lyons spoke to the advertising issues concerning celebrity spokespersons and noted that this working group would prepare a bulletin to be sent to states which have not adopted the NAIC Rules Governing the Advertising of Life Insurance encouraging them to do so. He said the bulletin would also encourage states which have adopted the rules to enforce them. Commissioner Lyons noted with appreciation that Mr. Swenson had summerized this Rule and that Mr. Swenson's memorandum had been included as Attachment Two-A1 to the May 14, 1990 minutes.

Roger Strauss (Iowa) requested that the individualized chart show the cumulative premium before the death benefit so that this calculation takes the 5% accumulation into account. The working group concurred that the 5% figure is implicit that it is after tax dollars.

Commissioner Lyons reiterated that a regulation which states that these information sheets must be individualized with minimum information was needed and any additions to that information would need to receive approval from an individual state insurance department. He then requested that the advisory committee forward their information on profitability to the NAIC for review by August 13. He further requested that NAIC staff, after appropriate analysis, forward the information to working group members and set up a conference call to take necessary action prior to the September Midwestern Zone meeting.

The working group concurred that the formal draft on disclosure, the profitability/value review, and the Bulletin on Advertising would be ready for parent committee review and action at the September meeting.

Having no further business, the working group adjourned at 8:50 a.m.

****

ATTACHMENT TWO-A

Combined Meeting of the Marketing Practices to Senior Citizens Working Group
and the Graded Death Benefit Policies Working Group
of the Life Insurance (A) Committee
Kansas City, Missouri
May 14, 1990

The combined Marketing Practices to Senior Citizens and Graded Death Benefit Policies Working Groups met in the NAIC office in Kansas City at 9 a.m. on May 14, 1990. A quorum of the working groups was present and David J. Lyons (Iowa) chaired the meeting. The following working group members were present: Roger Strauss (Iowa); Dean Gallaher (Okla.); Jim Swenson (Ore.); Bob Wright (Va.); and David Rodgers (Wash.). Also present were Sam Bolinger and Judy Lee (NAIC/SSO).

David Lyons (Iowa) opened the meeting with a statement that the NAIC should be prepared to act quickly on the question of whether state regulation is adequate in the area of advertising and marketing of life insurance products to senior citizens and concerns with graded death benefit products. He briefly discussed several alternatives to addressing these issues and asked the working group members to express their preferences in this regard.

David Rodgers (Wash.) explained the recent action in the State of Washington. While Washington has no authority to regulate life insurance rates, Mr. Rodgers stated that their rule does cap these rates, and they rely upon the Unfair Trade Practices Act for enforcement authority. He said they began with limited pay whole life and set standards for approval of those policies. Further, he said, on level premium whole life policies if the face amount does not exceed the premium accumulated at 5% for 10 years the policy will not be approved in Washington. He further stated that their rule applies only to policies with a face amount under $25,000. Mr. Rodgers said their rule has been challenged, appealed, and will be argued before the Supreme Court within the next week. He further stated that in their deliberations they looked at requiring disclosure but, because of limited department resources, did not pursue this issue. Considerable discussion ensued regarding new products that have been developed by companies in Washington in order to comply with the rule.

Mr. Lyons asked the working group to enumerate the main issues of concern regarding advertising. The issues identified for further consideration by the working group were 1) substandard rates, 2) face value, and 3) benefit limitations in the early years of the policy.

There was considerable discussion among working group members of celebrity endorsements and a celebrity's impact on the sales of the product. Dean Gallaher (Okla.) stated that in his dealings with senior citizens he found that the celebrity is a major concern in sales of this type of product. Mr. Lyons stated that he believes the celebrities doing these advertisements need to be held to every allowable rule, but that the product itself is the problem. The consensus of the working group was to concentrate its initial efforts on the product being marketed.

Mr. Lyons instructed the NAIC staff to monitor the activities of the states which have taken action against the celebrities and notify the working group if there are substantial changes in this area of state regulation. He further noted that states which have not adopted the NAIC Rules Governing the Advertising of Life Insurance need to do so in order to appropriately regulate the commercial endorser issues.

In the area of substandard rates, the working group agreed that appropriate descriptive language, easily understood by the consumer, should be required in advertising, i.e., describing substandard rates by use of the phrase "higher than normal rates." Further, the group decided that the term "substandard" should be prominently defined if used on the policy and in the advertising. The relationship should be clearly stated between the term "substandard" and the phrase "higher than normal rates." It should be required in the ad that it be noted that substandard rates or rates higher than normal language be used and require a prominently defined and uniform definition be used.

In discussing individualization of policies, the working group reached a consensus that in describing the face value of the policy in television advertising, the language "the amount of insurance will vary by age" be used. Further, they decided that in written materials language uniformity should be required, prominently displaying any variation thereof. The working group further discussed using individualized examples versus global examples and decided that for the time being the individual policy examples would be sufficient. Mr. Lyons further stated that at some point he would like to address the value of these policies, requiring companies to disclose the amount of money going to administrative expenses of policies versus the amount of money paid out in claims and the minimum value to consumers of these policies.

Bob Wright (Va.) discussed requiring an individual analysis of the face value of these policies and the working group concurred that this is the approach they favored. The decision was to put the burden on the insurance companies for giving accurate information on the individualized charts. Further discussions centered around requiring the policy purchaser to sign off on the receipt of the charts but the group decided not to require a sign off at this time. The working group also discussed drafting a checklist for the policy purchaser enumerating items for his consideration before purchasing a policy.

No further action was taken on this proposal at this time. The working group decided that benefit limitations in the policy's early years should also be shown on an individualized chart. Additional discussion centered on having the individualized charts show policy years one through 10, how the premium would have accumulated if left in a savings account at 5% interest, the death benefit, the cash surrender value and the cumulative gain or loss over that period. In addition, all information on the chart should be generic and based on death from natural causes.

Graded death benefit issues discussed by the working groups included those of suitability, replacement and stacking. The consensus of the working group was that it was premature to consider these issues at the present time.

Mr. Lyons requested that NAIC staff prepare a working group action plan for attachment to the minutes of this meeting (Attachment Two-A2). He further requested Jim Swenson (Ore.) to identify issues that the advertising rules do not address, defining what additional items are important for consideration (Attachment Two-A1). Mr. Lyons also requested that the NAIC Rules Governing the Advertising of Life Insurance State Pages be Attachment Two-A3. And finally, he directed that a memo from NAIC staff addressing state regulation of life insurance advertising be Attachment Two-A4.

The working group discussed the need for industry input on a variety of issues and the appointment of an advisory committee. Specifically, the working group wanted the advisory committee in a short timeframe to address the individualization of a 10 year chart. Other issues they should address would include the benefit to the policyholder during the graded period and the policy loss ratio.

The working group discussed the appointment of an advisory committee and the consensus was that Iowa would coordinate this effort, including a consumer representative from AARP. Mr. Lyons clarified what information would be required from the advisory committee, including a review of the industry; what policy information can be individualized; submission for review by NAIC staff of a report on the profitability of these lines of insurance, including a breakdown of the percentages expended toward claims cost, expenses and profits. He said that review of this information may ultimately lead to looking into commission caps and minimum loss ratios. He noted that the advisory committee will be directed to deliver its written report into the hands of NAIC staff for review no later than May 30. Finally, the advisory committee is asked to provide an outline of a phase-in plan delineating the time period under which the items set forth here can be accomplished.

The working group voted unanimously to officially combine their efforts and recommend to the Life Insurance (A) Committee that their names be changed to the Life Insurance Marketing Practices to Senior Citizens Working Group.

Mr. Lyons further outlined the timetable for the completion of the items before the working group.

Before June Meeting -	Working group meets in Kansas City to identify issues and determine action plan.
At June Meeting -	a. Hold a joint working group/advisory committee meeting (Monday, June 4, 8:00 a.m.). b. Report by advisory committee on responsibilities. c. Working group considerations and recommendations for action. d. Report to parent committee.
After June Meeting -	a. Schedule next working group meeting (probably July). b. If necessary, prepare bulletin/rule/model in draft form for September NAIC meeting.
Final Action -	a. All steps completed by June 1, 1991, and recommend disbanding of working group. b. Reconvene working group June 1, 1992, to receive report from NAIC staff and consider whether any additional follow-up activity by NAIC is necessary.

Having no further business the meeting was adjourned at 11:45 a.m.

****

ATTACHMENT TWO-A1

Department of Insurance and Finance
21 Labor and Industries Building
Salem, OR 97310

TO: Life Insurance Marketing Practices to Senior Citizens Working Group
David Lyons (A) Chair Bob Wright (Va.)
Roger Strauss (Iowa) David Rodgers (Wash.)
Dean Gallaher (Okla.)
FROM: Jim Swenson (Ore.)
DATE: May 29, 1990
SUBJECT: Applicability of NAIC Model Rules Governing Advertising of Life Insurance to Concerns of Working Group

As indicated during our working group's meeting of May 14, 1990, the model life insurance advertising rules address a number of concerns related to marketing of life insurance to senior citizens. We agreed states should be encouraged to adopt and enforce the rules.

The rules are designed to cover all forms of life insurance advertising. There are several provisions which I believe are particularly important from the perspective of the senior consumer. Following is an edited summary of those provisions:

o Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception.

o The information required to be disclosed by these rules shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

o In the event an advertisement uses "Non-Medical," "No Medical Examination Required," or similar terms where issue is not guaranteed, further disclosure of equal prominence is required if issuance depends upon the answers to the health questions set forth in the application.

o An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits.

o An advertisement shall not use the words "inexpensive," "low cost," or words of similar import when such policies are being marketed to persons who are 50 years of age or older, where the policy is guaranteed issue.

o Testimonials must be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective insureds.

o If the individual making a testimonial, or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact shall be prominently disclosed in the advertisement.

o An advertisement for the solicitation or sale of a preneed funeral contract to be funded by a life insurance policy or annuity contract shall adequately disclose the fact that a life insurance policy or annuity contract is involved, and the nature of the relationship among the soliciting agent or agents, the provider of the funeral, the administrator and any other person.

o The name of the insurer shall be clearly identified in all advertisements.

o No advertisement shall use any combination of words, symbols or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program or agency.

Our working group identified areas where the rules may be further strengthened. For example, where substandard rates are employed, we agreed the phrase, "higher than normal rates," should be required in advertisements. The current rules would merely prevent use of words such as "inexpensive" or "low cost."

In addition, we agreed that if the amount of insurance to be issued for a quoted premium varies by age, that fact should be prominently described. One celebrity endorsement quotes a premium of $6.95 per month but does not adequately describe the amount of insurance to be purchased. The implication many viewers may receive is that the quoted premium purchases $1,000 of life insurance. While the advertisement probably already violated the first summarized rule, it may be advisable to clarify the overall rules.

****

ATTACHMENT TWO-A2

LIFE INSURANCE MARKETING PRACTICES FOR SENIOR CITIZENS WORKING GROUP
ACTION PLAN

1. Send a bulletin to states which have not adopted the NAIC Rules Governing the Advertising of Life Insurance encouraging them to do so and encourage states which have adopted the Rules to enforce them.

2. Major issues to be addressed by the working group:

a. Substandard Rates - In advertising, use of language such as "higher than normal rates" is required. In written policy materials, require that substandard rates be prominently defined and that a uniform definition be used.

b. Individualization

(1) Face Value - In advertising, require the use of language "the amount of insurance will vary by age." In written materials, require language uniformity and prominently display any variation.

(2) Compare Benefits - Require companies to provide charts on individualized basis showing years 1 through 10, premium if left in savings account accumulated at 5%, death benefit, cash surrender value and cumulative gain or loss. The chart should be based upon death from natural causes.

c. Suitability, Replacement, Duplication and Stacking - These issues will be monitored and re-evaluated at a future time.

3. Advisory committee responsibilities

a. Provide the working group a review of the industry including which policy items can be individualized.

b. Furnish for review by NAIC staff a written report on the profitability of these lines of insurance, including a breakdown showing the percentages expended toward claims costs, expenses and profit.

c. Deliver no later than May 30 a written report to NAIC staff for review to determine that companies are following generally accepted accounting procedures for profitability.

d. Outline a phase-in plan delineating a time period under which all requirements can be accomplished.

****

ATTACHMENT TWO-A3

Model Regulation Service - July 1990
RULES GOVERNING THE ADVERTISING
OF LIFE INSURANCE

The date in parentheses is the effective date of the legislation or regulation, with latest amendments.

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Alabama	ALA. INS. DEPT. REG. 69 (1981) (Many additional provisions).	
Alaska	NO ACTION TO DATE	
Arizona		ARIZ. ADMIN. COMP. R4-14-202 (1969).
Arkansas		ARK. INS. RULE & REG. 17 Secs. 1, 7-9 (1974).
California	CAL. ADMIN. CODE tit. 10 R. 2547 to 2547.11 (1975).	
Colorado		COLO. ADMIN. INS. REG. 74-5 (1974).
Connecticut	CONN. ADMIN. CODE tit. 38 Secs. 64-22 to 64-31 (1976/1987).	
Delaware	NO ACTION TO DATE	
D.C.	NO ACTION TO DATE	
Florida	FLA. ADMIN. CODE Secs. 4-35.001 to 4-35.020 (1973/1988).	
Georgia	GA. ADMIN. COMP. ch. 120-2-11 (1980) (Some extra provisions).	
Guam	NO ACTION TO DATE	
Hawaii	NO ACTION TO DATE	
Idaho	NO ACTION TO DATE	
Illinois	ILL. ADMIN. REG. tit. 50 Secs. 909.10 to 909.110 (1976).	

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Indiana	NO ACTION TO DATE	
Iowa	IOWA ADMIN. CODE. Secs. 191-15.40 to 191-15.49 (1976/1989).	
Kansas	KAN. ADMIN. REGS. Secs. 40—9-118 (1977/1988) (1976 model adopted by reference with exceptions).	
Kentucky		806 KY. ADMIN. REGS. 12:010 to 12:020 (1975).
Louisiana	NO ACTION TO DATE	
Maine	NO ACTION TO DATE	
Maryland		MD. ADMIN. CODE tit. 9 subtit. 30 ch. 25 Sec. 01 to 10 (1970).
Massachusetts	NO ACTION TO DATE	
Michigan	MICH. ADMIN. CODE R. 500.1371 to 500.1387 (1984).	
Minnesota		MINN. INS. REGS. Secs. 2790.0100 to 2790.2200 (1971/1989).
Mississippi	NO ACTION TO DATE	
Missouri	MO. ADMIN. CODE tit. 4 Sec. 190-13.020 (1976/1977).	
Montana	NO ACTION TO DATE	
Nebraska	NEB. ADMIN. R. tit. 210 ch. 50 (1990).	
Nevada	NO ACTION TO DATE	
New Hampshire	NO ACTION TO DATE	
New Jersey	N.J. ADMIN. CODE Secs. 11:2-23.1 to 11:2-23.10 (1985/1989).	
New Mexico	NO ACTION TO DATE	
New York	N.Y. ADMIN CODE tit. 11 Secs. 219.1 to 219.7 (1980) (Regulation 34-A).	
North Carolina	N.C. ADMIN. CODE tit. 11 ch. 12 Secs. 0424 to 0433 (1978/1989).	
North Dakota	NO ACTION TO DATE	
Ohio		OHIO INS. REGS. RULE 3901-1-06 (1972).
Oklahoma	NO ACTION TO DATE	
Oregon	NO ACTION TO DATE	
Pennsylvania	NO ACTION TO DATE	
Puerto Rico		P.R.R. RULE XVI (1957).

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Rhode Island	NO ACTION TO DATE	
South Carolina	NO ACTION TO DATE	
South Dakota		S.D. ADMIN. R. 20:06:10 (1973/1989) (Regulation based on model at page 40-1).
Tennessee	TENN. INS. RULES Secs. 0780-1-33-.01 to 0780-1-33-.13 (1976).	
Texas		TEX. ADMIN. CODE Secs. 21.101 to 21.112, 21.114 (1981).
Utah		UTAH INS. R540-130 (1989) (Based on accident and health insurance advertising model at 40-1).
Vermont	NO ACTION TO DATE	
Virgin Islands	NO ACTION TO DATE	
Virginia	VA. INS. REG. 23 (Case No. INS810107) (1982) (More comprehensive than model).	
Washington	WASH. ADMIN. CODE R. Secs. 284-23-010 to 284-23-550 (1975/1989).	
West Virginia	NO ACTION TO DATE	
Wisconsin		WIS. ADMIN. CODE Sec. INS. 2.16 (1984/1989).
Wyoming	NO ACTION TO DATE	

****

ATTACHMENT TWO-A4

TO: David B. Simmons, NAIC General Counsel
FROM: Samuel L. Bolinger, Associate Counsel
Melanie S. Schneweis, Paralegal
DATE: May 25, 1990
RE: Constitutional Considerations on Life Insurance Advertising to Senior Citizens

I. INTRODUCTION

This memorandum will address the constitutional factors that state insurance regulators need to be aware of in attempting to regulate television advertisements that use celebrities to sell senior citizens life insurance products.

II. ISSUES PRESENTED

The constitutional issues presented in such a scenario are:

1. All advertisement cannot be banned in most instances.

2. Disclosure requirement to be in the advertisement cannot be so onerous as to have the affect of banning the advertisement. (Within those limitations, regulations relating to the character, form and substance of advertisement may be reasonably expected to pass a first amendment challenge).

III. ANALYSIS

A. Commercial Speech

"Commercial speech" has never been explicitly defined, but has been viewed by the United States Supreme Court as advertising and soliciting of products or services for the purposes of inducing a perspective customer to participate in a commercial transaction, if it functions to apprise the consumers about who is producing and selling what product for what reason and at what price. *Pittsburgh Press Co. v. Human Relation Commission,* 413 U.S. 376 (1973). *See Virginia Pharmacy Board v. Virginia Consumer Council,* 425 U.S. 748 (1976).

B. First Amendment As Applied

The First Amendment of the United States Constitution provides in part:

> "Congress shall make no law .... abridging the freedom of speech..."

The First Amendment is applicable to the state through the Fourteenth Amendment. *Near v. Minn.,* 283 U.S. 697 (1931).

C. Determining of the Value of Commercial Speech

In analyzing the value of a particular type of commercial speech a court will consider who, when, how and what impact the speech will have. In addition, there are five situations that the Court will consider sufficiently compelling to justify a state prohibition for limitation of commercial speech: 1) communication as it infringes upon the rights of others, 2) illegal speech, 3) untruthful speech, 4) speech, on its face that acts to deceive or over reach, and 5) speech very likely to preclude a true evaluation of the information. Thus, a state's interest in prohibiting or limiting speech that adversely affects others is very strong and will likely outweigh the societal value of the commercial communication. A state must allege via its police power, or guaranteed it by the Tenth Amendment of the United States Constitution, that there is a sufficiently compelling reason to justify complete proscription of solicitations without showing of actual injury.

The state's interest is thus strengthened if the speaker is somewhat generally looked to for advice. Factors such as the target group's age, education level, mental capacity or physical or psychological affirmity would tend to legitimize the state's interest. In addition, the state has a legitimate interest in regulating commercial speakers who knowingly select times and locations that render the consumer particularly susceptible to cohesion or undue influence. Courts have uniformly held that if the solicitation is done in a manner that is difficult to monitor the state's interest increases and the legitimacy of the regulation also increases.

D. Central Hudson Gas

The Public Service Commission of the state of New York in *Central Hudson Gas and Electric Corp. v. Public Service Comm'n of New York,* 447 U.S. 557 (1980), ordered electric utilities in the state to cease all advertising promoting the use of electricity because the state's interconnected utility system did not have sufficient fuel stocks or sources of supply to meet all its customer demands for the winter. After the fuel shortage had subsided the commission proposed to continue the ban on advertising and sought comments from the public. The commission continued the prohibition against "promotional" advertising (ads which intended to stimulate the purchase of utility services), on the basis of the state's interests in conserving energy and ensuring fair and effective rates for electricity. The utility challenged this regulation in the New York state courts on the basis that the commission had restrained commercial speech in violation of the First and Fourteenth Amendments. The New York Court of Appeals upheld the prohibition and noted that the governmental interests in the commission's prohibition outweighed the limited constitutional value of the speech at issue.

The United States Supreme Court, in a 5-to-4 decision, held that the ban on promotional advertising by electric utilities violated the First Amendment, as applied to the states through the Fourteenth Amendment. This decision was based on the substantial nature of the state's asserted interests in prohibiting such advertising. These advertisements were neither inaccurate nor related to unlawful activity and as such, were a species of speech protected by the First Amendment. The Court noted that the link between the advertising prohibition and the state's interest in ensuring fair and efficient rates was too tenuous and speculative to justify the ban. In addition, the Court went on the point out that the prohibition, even though directly related to the substantial state interest in conserving energy, was more extensive than necessary to further the state's interest.

The Court went on to point out that, although the Constitution accords a lesser protection to commercial speech than to other constitutionally guaranteed expression, the First Amendment protects commercial speech from unwarranted government regulation.

For commercial speech to come within the First Amendment protection, it must concern lawful activity and not be misleading. Next, it must be determined whether the asserted governmental interest to be served by the restriction on commercial speech is substantial. If both inquiries yield positive answers, it must then be decided whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest. *See, Central Hudson, Id.*

Thus, the above cited standards must be used if a state is going to regulate television advertisement that uses celebrities to sell senior citizens life insurance products.

E. By Its Content

In past cases, the Supreme Court has taken a careful look at cases where specific assertions are made concerning products and services. When faced with such advertising, the Court tends to emphasize the fact that commercial speech should not be misleading or untruthful, since truthfulness seems to affect the degree of protection granted.

F. False Advertising

Since *Virginia,* the Court has found that the First Amendment opposes no restrictions on the government's bar to regulate false and misleading speech. In *Zauderer v. The Office of Disciplinary Counsel,* 471 U.S. 626 (1985), the United States Supreme Court held that disclosure requirements are not offensive in the context of commercial speech when they are reasonably related to the state's interest in preventing deception of consumers. Thus, certain disclosure requirements might be valid so long as they are not burdensome. The *Zauderer* decision is important also for the reason that if there is an implied misrepresentation in the advertisement that it is not self evident, the regulating body may be required to introduce evidence of consumer deception in order to regulate this supposedly false and misleading commercial speech without offending the First Amendment. To date, lower courts have not had to deal with this issue. Generally, these courts have rejected challenges to proposed or remedial schemes by noting that false and misleading commercial speech is accorded no protection by the First Amendment. Therefore, commercial advertising that contains explicit descriptions (advertisements that state a product can provide certain attributes, when in fact they cannot) poses the fewest analytical problems for a court.

G. Truth of the Ad

The ad must be true in order to fall within the protection of the First Amendment. In such a situation, the form of the advertisement is evaluated over the function.

It must be noted that no case has been found where a court has considered advertisements promoting images. This is the style of advertisement that is dominant today.

IV. POTENTIAL OUTCOMES

A careful application of the *Central Hudson* tests is essential if the states are to successfully regulate television advertisements that use celebrities to sell senior citizens life insurance products. The government interest asserted in favor of regulation must be substantial and the regulation must directly advance the interest. In addition, the regulation can be only as extensive as needed.

****

ATTACHMENT THREE

Projected Interest Earnings (A) Working Group
Baltimore, Maryland
June 4, 1990

The Projected Interest Earnings (A) Working Group met in the Homeland Room of the Stouffer Harborplace Hotel in Baltimore, Md., at 10:30 a.m. on June 4, 1990. A quorum participated and Commissioner Mike Weaver (Ala.) chaired the meeting. The following members or their representatives also participated: Commissioner Doug Green (La.) and Director George Fabe (Ohio).

1. Adoption of Previous Minutes

Upon motion duly made and seconded, the minutes of the telephone conference call on April 17, 1990 were adopted (Attachment Three-B).

2. Consideration of Bulletin on Illustrated Interest Projections

Upon motion duly made and seconded, the working group voted unanimously to recommend that the draft bulletin on Illustrated Interest Projections be exposed for comment (Attachment Three-A). The working group plans to present this bulletin for adoption at the December Winter National Meeting.

Having no further business, the working group adjourned at 10:45 a.m.

****

ATTACHMENT THREE-A

BULLETIN ON ILLUSTRATED INTEREST PROJECTIONS
(Effective Date)

EXPOSURE DRAFT 6/4/90

SUBJECT:

(Recital of applicable authority if needed and purpose of bulletin. Issuance of bulletin is to assist insurers in conforming with the Rules Governing the Advertising of Life Insurance adopted by the NAIC in 1975, the Life Insurance Disclosure Regulation adopted by the NAIC in 1975 and the Unfair Trade Practices Act adopted by the NAIC in 1947.)

I. Propositions Regarding Projected Interest Earnings

A. An insurance company cannot advertise any interest rate for a product unless the rate actually then being paid by the company for that product is at least as high as the rate advertised;

B. A policy must clearly state for each interest rate advertised whether that rate is or is not guaranteed; and

C. If an advertised rate is not guaranteed, the policy must state specifically under what condition(s) the insurance company may use a rate different than the one advertised.

II. Failure to Comply

Any agent or insurance company engaged in practices that do not comply with the above stated provisions, shall cease such practices immediately. Any agent or insurance company engaged in practices that do not comply with the above stated provisions shall be subject to immediate disciplinary action on the part of the Department of Insurance pursuant to the Unfair Trade Practices Act.

****

ATTACHMENT THREE-B

Projected Interest Earnings (A) Working Group
April 17, 1990

The Projected Interest Earnings (A) Working Group held a conference call at 9:30 a.m. CST on April 17, 1990. A quorum participated and Commissioner Mike Weaver (Ala.) chaired the call. The following members also participated: Commissioner Doug Green (La.) and Director George Fabe (Ohio). Also participating were: Neil Rector (Ohio), and Sam Bolinger and Judy Lee (NAIC/SSO).

Commissioner Mike Weaver (Ala.) began the meeting by stating that insurers need to be reminded of the requirement to provide guaranteed interest rate projections as well as the rate currently being paid on life insurance policies. He stated that some companies are paying out more in interest than they are earning just to be competitive and that this has direct implications on company solvency. Several approaches to dealing with the failure to provide guaranteed interest rate projections for consumers were discussed by the working group members.

Neil Rector (Ohio) commented that violations of the Rules Governing the Advertising of Life Insurance, regarding giving equal prominence to guaranteed interest rate projections, would be a violation of the Unfair Trade Practices Act in Ohio. Director George Fabe (Ohio) suggested the preparation of a bulletin, putting insurers and agents on notice of such violations.

Commissioner Doug Green (La.) concurred regarding the bulletin, but felt it would not address the solvency issue. He recommended that the bulletin be followed by a recommendation from the working group for all states which had not done so to adopt both the NAIC Rules Governing the Advertising of Life Insurance and the Model Unfair Trade Practices Act. Mr. Rector noted that the bulletin should address both disclosure requirements and the associated solvency concerns. He further commented that the Life & Health Actuarial (Technical) Task Force is currently addressing the need for the matching of assets in an insurer's portfolio with the liabilities they have incurred. He suggested the need for coordination with that Task Force to get the maximum protection for consumers who purchase these types of products.

Commissioner Weaver requested that NAIC staff draft bulletin language for the working group's consideration prior to the Baltimore meeting. Mr. Rector expressed the opinion that the bulletin should require more disclosure by insurers to consumers regarding higher interest rates. Commissioner Green noted the need to address the marketing of these products.

Having no further business, the conference call adjourned at 9:55 a.m.

****

ATTACHMENT FOUR

Life Insurance (A) Committee
Salt Lake City, Utah
March 27, 1990

The Life Insurance (A) Committee met in the Arizona Room of the Little America Hotel in Salt Lake City, Utah, at 2:30 p.m. on March 27, 1990. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following committee members or their representatives were present: Mike Weaver, Vice Chair (Ala.); Margurite C. Stokes (D.C.); William D. Hager (Iowa); Douglas D. Green (La.); Gerald Grimes (Okla.); Theodore "Ted" Kulongoski (Ore.); and Steven T. Foster (Va.).

1. Review 1990 Mission Statement and Charges

Commissioner Harold C. Yancey (Utah) discussed the four charges to the Life Insurance (A) Committee for 1990:

a. Prepare model regulation based on NAIC Accelerated Benefits Guideline and/or continue to refine concept;

b. Examine life marketing practices to senior citizens;

c. Examine marketing practices of graded death benefit policies; and

d. Examine marketing abuses in projected interest earnings.

Commissioner Yancey stated that he anticipated the Committee would do something definitive in each area by the end of the year.

2. Discuss Procedure for Addressing 1990 Charges

Commissioner Yancey announced the establishment of four working groups to address the charges to the Committee.

a. Accelerated Benefits Guideline

The Accelerated Benefits Working Group will be chaired by Commissioner Yancey and the members of that group are Ohio, Virginia and the District of Columbia. Sheldon Summers (Calif.) and Leonard Wood (N.C.) will serve as ex officio members of this working group.

b. Marketing Practices to Senior Citizens

The Marketing Practices to Senior Citizens Working Group will be chaired by Commissioner Theodore R. Kulongoski (Ore.) and members will be Oklahoma and Iowa. Washington will serve as an ex officio member of this working group.

c. Marketing Practices of Graded Death Benefit Policies

The Graded Death Benefit Policies Working Group will be chaired by Commissioner Bill Hager (Iowa) with the District of Columbia and Virginia serving as members of that working group.

d. Marketing Abuses in Projected Interest Earnings

The Projected Interest Earnings Working Group will be chaired by Commissioner Mike Weaver (Ala.) and members of the working group will be Louisiana and Ohio.

Commissioner Yancey requested that the chairs of the working groups identify the critical items for consideration and have preliminary reports ready for the June meeting in Baltimore. He suggested that interim meetings be held to assure that work is under way on each of these topics.

3. Report of Product Development Task Force

Reginald Berry (D.C.) presented the report of the Product Development (A) Task Force. He stated that NAIC staff had been directed to survey the states concerning corporate owned life insurance products and to have the survey results available prior to the June meeting. He further reported that the Modified Guaranteed Annuity Regulation is under review for technical amendments by the Life and Health Actuarial (Technical) Task Force.

Upon motion duly made and seconded, the task force report was received.

4. Any Other Matters Brought Before the Committee

Commissioner Yancey called upon Carolyn Cobb, Senior Counsel, American Council of Life Insurers (ACLI), for comments on the NAIC Guideline on Accelerated Benefits. She discussed suggested revisions to the Guideline which have been proposed by the ACLI's Subgroup on Accelerated Benefits (Other Than Long-Term Care), some of which were characterized as typographical corrections or clarifications, and some of which are substantive in nature.

Jim Swenson (Ore.) asked Ms. Cobb for a brief summary of the key points in the ACLI draft. Ms. Cobb responded by pointing out the following sections: Section 2A (3), which removes the option of the insured to determine method of payment; Section 5A, which establishes a percentage and dollar maximum on payouts; Section 6C (1), which removes the requirement for an illustration numerically demonstrating the effect of the payment of the benefit and substitutes language requiring "a brief written description"; Section 6E (3) is a new section which calls for disclosure of administrative expense charges; and Section 10C which is a restatement or clarification of what the ACLI thought was intended to be adopted by the Committee in December. Ms. Cobb commented that existing wording was also relocated from other sections of the Guideline.

Commissioner Bill Hager (Iowa) asked Ms. Cobb whether she would characterize the proposed changes as being in the public interest. He further stated that since these changes had not been submitted to the Committee previously, he would request that the ACLI indicate the rationale behind each revision and, further, indicate the public interest of each. Commissioner Yancey concurred and reiterated that the ACLI should submit in writing a clarification of each suggested change in the NAIC Guideline on Accelerated Benefits as well as the public interest perception of each. Ms. Cobb responded that she would prepare this document and would direct it to Commissioner Yancey as chair of the Accelerated Benefits Working Group. Commissioner Yancey requested that the background behind the establishment of minimums and maximums on the face amount of contracts for which the accelerated benefits shall be offered be addressed in the document Ms. Cobb would be preparing for the Committee's review. Mr. Berry inquired whether in ACLI's opinion it was a wise decision for the Committee last year to remove the limit of fifty percent on the payout of the face amount of a policy that had originally been in the Accelerated Benefits draft. He requested that this issue be addressed in the ACLI's written comments.

Commissioner Yancey stated that as chair of the Life Insurance (A) Committee, he would be serving as liaison with the Long-Term Care Task Force to coordinate actions proposed in the accelerated benefits area. Director Susan Gallinger (Ariz.), chair of the Long-Term Care Task Force, expressed her appreciation to Commissioner Yancey for agreeing to facilitate this interaction and her belief that it would be to the benefit of all to delineate how these accelerated benefits issues should be dealt with.

Upon motion duly made and seconded, the Life Insurance (A) Committee adjourned at 3 p.m.

PRODUCT DEVELOPMENT (A) TASK FORCE

Reference:
1990 Proc. I p. 450
1989 Proc. II p. 428

Margurite C. Stokes, Chair—D.C.
Roxani Gillespie, Vice Chair—Calif.

CONTENTS

AGENDA

1. Adopt March 26 Salt Lake City Minutes
2. Discuss Results of State Survey on Corporate Owned Life Insurance
3. Report of the Life & Health Actuarial (Technical) Task Force
4. Any Other Matters Brought Before the Task Force

REPORT

The Product Development (A) Task Force met in the Baltimore A/B Room of the Stouffer Harborplace Hotel in Baltimore, Md., at 10 a.m. on June 5, 1990. A quorum was present and Margurite C. Stokes (D.C.) chaired the meeting. The following task force members or their representatives were present: Roxani Gillespie, Vice Chair (Calif.); David Lyons (Iowa); Zack Stamp (Ill.); and Theodore "Ted" Kulongoski (Ore.).

1. Adopt March 26 Salt Lake City Minutes

Upon motion duly made and seconded, the minutes of the March 26 Salt Lake City task force meeting were adopted (Attachment Three).

2. Discuss Results of State Survey on Corporate Owned Life Insurance (COLI)

Reginald Berry (D.C.) discussed the principal concerns raised by the states in response to the task force's recent survey (Attachment One). For the benefit of the audience, he reiterated the questions contained in that survey which were: 1) Is COLI a viable concept generally within the current legal framework for insurance? 2) Is COLI permitted under current state statutes? and 3) If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation? Mr. Berry pointed out that states expressed concerns about the doctrine of insurable interest as it applies to COLI. He reminded the task force members of a statement in Asutosh Chakrabarti's (N.J.) memo of June 1, 1989, in which Mr. Chakrabarti states, "Under COLI, the corporation does not suffer a pecuniary loss from the death of an employee." Mr. Berry commented that the insurable interest concept would be a significant part of the discussion on the appropriate manner in which to address corporate owned life insurance. Mr. Berry brought to the attention of the task force a memorandum prepared by NAIC Associate Counsel Sam Bolinger addressing the legal issues of employee insurance contracts (Attachment Two). Upon motion duly made and seconded, the survey results and the legal memorandum were received by the task force for further consideration.

Jim Swenson (Ore.) commented on the excellent response to the state survey and noted that state reactions to corporate owned life insurance vary greatly. He said he was impressed with the response from the Maryland Insurance Department and would like industry input as to whether the Maryland approach would be a reasonable one for adoption by this task force. He further commented that he believed it would be appropriate to determine the status of federal tax concerns since any amendments have an impact on corporate owned life insurance. Mr. Swenson indicated he would like a report on the status of the federal legislation. He further encouraged the formation of an advisory committee to address the legal issues pertaining to corporate owned life insurance such as insurable interest, federal tax implications and whether the standards recently adopted

by the Maryland Insurance Department would be a reasonable standard for consideration by this task force. The task force members concurred in this recommendation.

3. Report of the Life & Health Actuarial (Technical) Task Force

John Montgomery (Calif.) delivered the report of the Life & Health Actuarial (Technical) Task Force, describing the eleven projects currently before that task force. A complete copy of Mr. Montgomery's report is attached to the Life and Health Actuarial (Technical) Task Force minutes of June 2 and 3 as Attachment Two.

Mr. Montgomery requested that the task force give special attention to Project No. 4t "Special Plans - Two-Tier Deferred Annuities (Potential Project)." He stated that a letter had been issued by the California Department to life insurers licensed in California and other interested parties after it was learned that misinformation had been disseminated recently regarding the department's position on two-tiered annuities. He said the department is considering possible rule-making or other regulatory measures regarding various aspects of two-tiered annuities, including reserves, calculations of nonforfeiture values and disclosure to buyers. He noted that the substance of these regulatory measures may follow guidelines or model regulations to be developed by the NAIC Life and Health Actuarial Task Force; however, neither the task force nor the California Department has adopted definitive proposals.

Upon motion duly made and seconded, the task force adopted the following recommendations made by the Actuarial Task Force:

1. Recommend adoption of the "Modified Guaranteed Annuity Regulation" with amendments.

2. Recommend to the Life Insurance (A) Committee that it approve the actuarial task force request to downgrade Project 4-m "Reserves for Certain Life Plans with Guaranteed Increasing Death Benefits" to a Priority 2 Project.

3. Recommend to the Life Insurance (A) Committee that Project 4p be retitled from "Use of Life Insurance Contracts to Provide for Non-Life Insurance Benefits" to "Use of Life Insurance Contracts to Provide for Long-Term Care Benefits."

4. Recommend to the Life Insurance (A) Committee that it approve the actuarial task force request to downgrade Project 4q "Reverse Mortgages" to a Priority 3 Project.

5. Recommend to the Life Insurance (A) Committee that it approve the actuarial task force request to add Project 4t "Two-Tier Deferred Annuities" to its agenda as a Priority 2 Project.

6. Recommend to the Life Insurance (A) Committee that it approve the actuarial task force request to add Project 4u "Update of Actuarial Guideline XVII" to its agenda as a Priority 2 Project.

Having no further business, the Product Development (A) Task Force adjourned at 10:30 a.m.

Margurite C. Stokes, Chair, D.C.; Roxani Gillespie, Vice Chair, Calif.; Zack Stamp, Ill.; David J. Lyons, Iowa; Timothy H. Gailey, Mass.; Thomas H. Borman, Minn.; Theodore "Ted" Kulongoski, Ore.

ATTACHMENT ONE

Results of State Survey on Corporate Owned Life Insurance

State	Is COLI a viable concept within current legal framework for insurance?	Is COLI permitted under current state statutes? Applicable authority?	If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation?
AZ	Could be if there is some guarantee there would be no abuses by employers and insurance agents.	Not permitted; does not meet definition of group life insurance.	Safeguards should include full disclosure to employees. Possible abuses by employers, such as hiring terminally ill employees or the maintaining of an unsafe workplace, could affect the financial condition of an insurance company insuring the lives of the employees. Abuses in labor & tax laws should be studied. Insurance companies should use sound underwriting practices.
AR	Yes, in Arkansas particularly, since it involves employer beneficiary of a group policy.	Not permitted; Statute 23-83-102 states "group insurance is to insure employees of the employer for the benefit of persons other than the employer." Under various employee benefit plans, employer ownership is an integral part of the plan. Prohibiting it, as the current law appears to do, would limit the ability of the employer to provide certain employee benefits. However, the potential abuses are obvious.	It would be necessary to write in safeguards that the employer could not benefit from the insurance and that all benefits would go to employee designated heirs.
FL	Yes.	Only because there is no legislation.	None needed. The insured is best able to determine who has insurable interest.
GA	COLI has been statutorily permitted in Georgia by amendments to Code Sections 33-24-3 and 33-24-6, and insurance policy analysts have a problem with a statute that states an insurable interest exists, whether it does or not. However, the law has been stated on this matter, and until tested and possibly changed, it is the law.	Copies of the aforementioned Code Sections are attached, along with a copy of newly enacted S.B. 523.	I can see no reason for COLI on anyone that is not a key man, i.e., no insurable interest exists. Secondly, no insurance should be placed on anyone without that person's knowledge and consent. It seems the present trend is back to wagering type contracts similar to the ones found in 18th century England, with no insurable interest, lack of any benefit to the insured person, and lack of knowledge and consent of insureds. As we understand it, most of COLI is sold on a single premium basis with the attendant tax benefits to the corporation being the prime mover for the coverage.

State	Is COLI a viable concept within current legal framework for insurance?	Is COLI permitted under current state statutes? Applicable authority?	If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation?
HI	Conceptually, COLI as described is somewhat similar to contingent business interruption coverage as written in property insurance whereby benefits are payble due to losses occurring at dependent, recipient, or leader locations. At times such property insurance is difficult to underwrite, because loss control measures in some instances are not feasible. While medical checkups are generally waived for group life, some employees may raise objections based on moral hazard grounds or other reasons. From an insurable interest standpoint there are differences. In property insurance, the insured must have an insurable interest at the time of the loss. In life insurance, however, the question of insurable interest is generally determined when the application is completed.	Not permitted.	Yes, there is a need for regulation. The employer, if any, has an insurable interest in the life of an employee while employed. Does insurance on the life of a former employee in any way provide "something that guards, aids or promotes well-being" of active employees? If it does not, such policy should be cancelled when employment is terminated. Otherwise the number comprising the group over a period of time could be many times the actual number of employed individuals. Furthermore, with the passage of time, the employer or the insurer may not know the whereabouts of former employees, and claims may never be paid in some cases. While premiums may not be deducted as business expenses, death proceeds made to the employer are believed to be nontaxable income. Further, the employer being the beneficiary of any equity buildup may elect to be insured under an investment oriented life policy which will permit the employer to defer taxes on such buildup. In the Technical and Miscellaneous Revenue Act of 1988, Congress directed the General Administration Office (GAO) to examine the policy justification for, and practical implications of, this tax treatment. In its report (GAO/GGO-90-31 Taxation of Inside Buildup), GAO estimates that the federal government forgoes $5 billion a year by not taxing such inside buildup. COLI may substantially contribute to this problem, thereby adding another justification for the repeal of McCarran-Ferguson. Finally, as state officials we should be concerned with our own fiscal affairs.

State	Is COLI a viable concept within current legal framework for insurance?	Is COLI permitted under current state statutes? Applicable authority?	If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation?
IL	If the insurable interest of all of the covered persons is served, yes. An example would be that form of a co-dependency of all the employees upon one another for their future livelihood through the continued operation of an enterprise. Where the loss of any individual would have an effect on the corporation as a whole, and if the proceeds of an insurance contract would benefit others - such as through a temporary substitution of such proceeds for the earnings generated by the deceased employee, then COLI would seem to be not only viable but desirable.	For life insurance, no! The Illinois Code says such group coverage is for the benefit of other than the employer. Unless the rationale in question number 1 can be construed to say that the insurance, by benefiting all employees and the corporation, is not violative of the law. For group annuities the statute recognizes "survivorship annuities." That phrase, while subject to interpretation, does not appear to preclude the possibility of COLI.	The central issue is insurable interest; the Ill. Statute reads as it does from the historical perspective that non-interest and the further concern of an employer inappropriately or, worse, illegally benefiting from the demise of any insured employee. While it may be felt that safeguards and controls might be appropriate the question first ought to be regarding the real or suspected problems/dangers. Does an Insurance Director have the right to address the issue of insurable interest in the group area or should that be the absolute determination of the insurers' underwriters? Although we are not aware of any "schemes" against the public interest, with respect to COLI, we are much concerned with a somewhat parallel situation occurring more frequently in the area of charitable associations as irrevocable beneficiaries and would like to see the Task Force address this issue, if possible, in conjunction with that of COLI. If there are known abuses we need a regulation generated by an enabling statute dealing with insurable interest.
IN	Yes it is a viable concept, but it could be used in such a variety of ways that do not benefit employees or members that we must propose limitations. Those limitations should require that an entity owning and benefiting from life insurance on an individual and must possess an insurable interest at issue time. We definitely feel the entity must have the insured's permission to obtain the insurance.	Nothing under statute to preclude it.	Would like to see NAIC enact regulations that would prevent "non-insurance" use of COLI.
IA	Yes.	No prohibition against COLI.	COLI should be permitted subject to the following requirements: a. The insurance should be for the direct benefit of the employee unless it is sold as Key Person Insurance in which the corporation would be a legitimate beneficiary. b. A legitimate benefit for the employee would be using the proceeds for funding of health insurance benefits or other similar benefits upon retirement of the employee. The group policy should specifically state the purpose for which the insurance is being purchased such as funding of retirement benefits.

State	Is COLI a viable concept within current legal framework for insurance?	Is COLI permitted under current state statutes? Applicable authority?	If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation?
IA (Cont.)			c. The employee should have knowledge that the insurance has been purchased on their life and their written consent should be obtained by the employer.
KS		Statutes require that employees be insured only for the benefit of persons other than the employer (K.S.A. 40-433(1))	
KY	No.	No, lack of an insurable interest pursuant to KRS 304.14-040(3)(c).	Regulation is necessary. Some of the questions that would need to be addressed are: 1. How is the decision made as to which employees are to be insured and who makes the decision? 2. What contingency is made for the resignation or termination of an employee? Can he somehow convert the plan to his own benefit? 3. In what manner can the employees benefit in the event of someone's death 4. Should or could the amount of insurance be limited? 5. COLI should be optional.
ME	Yes, corporations wish to utilize corporate-owned life insurance policies (COLI) for two primary reasons. First, certain advantages instituted by 1986 changes in the federal tax law make COLI an attractive funding vehicle. Second, COLI programs effectively address the Federal Accounting Standards Board (FASB) regulations permitting the corporate employer to accrue an asset in the form of life insurance. This asset offsets the liability envisioned by the FASB regulation.	24-A M.R.S.A. Sections 2404(3)(D) and 2408(2)(A) allow the sale of COLI. Employees are protected by Section 2408 of the current law which requires employers to obtain employee consent prior to placing insurance on their lives, on an individual basis.	
MD	Corporate owned life insurance is a viable concept within the current legal framework for insurance. A corporation which provides employee benefits has an insurable interest in all of its employees, as employers of all levels are part of the corporation's collective human resources. Properly regulated, COLI enables a corporation to provide cost-effective funding of valuable employee benefits which might otherwise be unaffordable. For example, insurance proceeds may be used to fund liabilities associated with post-retirement medical benefits, deferred compensation benefits, etc., for all employees. Without such funding these	COLI is permitted in Maryland. On July 1, 1989, Section 366, Article 48A of the Annotated Code of Maryland was amended to permit certain corporations to purchase life insurance on its employees.	Certain safeguards and controls are necessary to avoid abuse with COLI. Several have already been built into Section 366 of our Insurance Code. The following are examples. (i) The employer in COLI situations must be a major public corporation rather than simply a proprietorship, partnership or close corporation. (ii) Non-key employees must have been employed by the corporation for 12 consecutive months. (iii) Non-key employees must consent in writing to such insurance.

benefits would be subject to pay-as-you-go.

State	Is COLI a viable concept within current legal framework for insurance?	Is COLI permitted under current state statutes? Applicable authority?	If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation?
MD (Cont.)	financing which reduces the security of an employer's promises to employees, and unnecessarily increases the cost of the benefits while at the same time contributing risk to a company's financial structure.		(iv) The amount of insurance on non-key employees is limited to an amount commensurate with employer-provided benefits to such employees. (v) A corporate employer may not take any type of retaliatory action against an employee who refuses to consent to an insurance contract being purchased on the employee's life. We are not aware of any problems arising from COLI in Maryland at this time. However, this is not to say that further regulation is not needed. COLI is still in its preliminary stages and further expansion in this area could lead to possible abuses. This could be avoided by closely monitoring COLI and developing regulations and/or guidelines as needed.
MI	No.	No.	This is a tax driven gimmick and not a result of a real need for insurance.
MT	No. The corporation has no material insurable interest in a rank and file employee. Basically, the corporation cannot show a particular financial loss when an employee dies.	Not permitted under current state statutes.	The insured would pay no premium unless the insured would derive some economic benefit.
NE	No. Employer-employee group is for the benefit of persons other than the employer.	No. See 44-1602.	There should be a legitimate insurable interest in the lives of the insured employees.
NH	COLI would be a viable concept within the current legal framework for insurance in New Hampshire provided individual policies are used. Our group life insurance statute dictates that group policies issued to employers be for "the benefit of persons other than the employer."	New Hampshire would consider that COLI is permitted under current state statutes based on the lack of any prohibition of COLI in our statutes.	COLI should be permitted as there are legitimate purposes it can accomplish, e.g., funding corporate buy-sell plans, key man programs, etc. There are no legal safeguards or controls imposed at the present and no problems have appeared. Accordingly, there seems to be little need for additional regulation.
NJ	Yes.	Permitted by state's group life laws N.J.S.A. 17B:27-1 et seq	Requirements for COLI contracts (not applicable to key man insurance): The contract must be a group policy. The contract holder must be the sponsoring employer. The employer must pay 100% of the premiums. Therefore, split-funded or other programs requiring employee contributions are not permitted. The contract holder may effect surrender of the policy for its net cash value, may effect partial withdrawals from the policy fund,

State	Is COLI a viable concept within current legal framework for insurance?	Is COLI permitted under current state statutes? Applicable authority?	If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation?
NJ (Cont.)			and may effect borrowing from the policy fund. However, all surrenders, withdrawals and borrowings must be payable to a trust. The trust must be established and maintained for the sole purpose of funding benefits for employees and qualified dependents. Those benefits are limited to retirement medical health benefits, other retirement benefits, and deferred compensation plans. Moreover, such trusts include those which may be reached by the general creditors of the contract holder. The employee must consent to the insurance in writing. Passive consent is not permitted. Also, the employee must be informed of the amount of insurance on his/her life in writing. The beneficiary designation must be the trust to which the death benefit must be payable. All requirements of the insurance laws not inconsistent with the preceding must be complied with.
NY	No.		
OH	No.	Under Ohio law group COLI is not possible. See 3917.01. Except for creditor groups, all permitted groups have language "...for the benefit of persons other than the [employer, trustee, association etc.]... ". This language prohibits an employer from being a beneficiary or getting any benefit from a group life insurance policy. It is permissable in Ohio to issue individual policies with the employer as policyowner and sole beneficiary.	
OK	Not familiar with this concept.	Current statutes do not specifically address COLI. 360.5 Sec. 3604 requires an insurable interest in the person insured.	
PA	Yes.	COLI is permitted under Chap. 3 Sec. 1 of Pennsylvania Insurance Laws.	When considering a COLI filing, the Pennsylvania Insurance Department requires a) that employees and retirees have a full opportunity to decline the employer's purchase of the policies in their (i.e., the employees' and retirees') names; and b) all benefit monies received go directly to a third party other than the employer (e.g., a retirement/welfare trust, trust or other fund recognized by the Internal Revenue Service, etc.).

State	Is COLI a viable concept within current legal framework for insurance?	Is COLI permitted under current state statutes? Applicable authority?	If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation?
TX	COLI is a viable concept within the current legal framework for group insurance under the discretionary group statute. For individual life insurance, COLI could be a viable concept provided that each individual (employee) designates the corporation (employer) to be the owner and beneficiary of the individual contract.	Senate Bill 226, signed into law [Texas Insurance Code, Article 3.50, Section 1(6)] on June 14, 1989, amended the discretionary group law, to allow an employer to insure the lives of officers, directors, employees, and retirees for the purpose of providing funds to offset fringe benefit-related liabilities. Also attached is Section 2 of Article 3.50 - S.B. 226 excluded Subdivisions 5 through 10 as required provisions. Current statutes applicable to individual life coverage are in Texas Insurance Code, Article 3.49, 3.49-1, 3.49-2 and 3.49-3. These statutes contain requirements related to insurable interests, owners and beneficiaries.	The need for regulation and safeguards and controls for group insurance which may deserve consideration are: (A) Definitions of employee benefit plans or fringe benefit-related liabilities; (B) Required disclosure regarding the purpose of the funds from the insurance; (C) Requirements for established plans for utilization of funds from the insurance; and (D) Possible controls over employers to prevent use of funds other than for the established plan (employee benefits plan and/or fringe benefit-related plan). For individual life insurance, even when individuals designate the corporation to be the owner and beneficiary, there should be some requirement that the individual be informed of the purpose for the corporation's need for the individual life insurance contract. Perhaps consideration should be given to limiting amounts of insurance under individual life contracts purchased by an employer (corporation) on employees (individuals) with requirements for established plans for use of the funds, as suggested for group insurance. It seems that corporations should not be allowed to make large profits on individual life insurance proceeds if the corporation has no clear-cut insurable interest in the individual's (employee's) life.
SD	There is no doubt that in the case of certain key employees the employer has an insurable interest. However, COLI on each employee is not a viable concept generally within the current legal framework for insurance.	Except in the case of nonprofit charitable employers, COLI would not be allowed in an employment situation. SDCL 58-16-2 states "A policy of group life insurance may be issued to an employer..to insure employees of the employer.. However, an employee of a nonprofit charitable employer, may name the employer as the beneficiary of a policy of group life insurance; provided that the employee has furnished the insurer with a notarized statement, signed by the employee, certifying his intent to voluntarily name the employer as the beneficiary." There is no similar wording with regard to members of associations, but in most cases the insurable interest statute would prohibit COLI.	If COLI is permitted, notification of and perhaps approval by the insured individual should be required. As I mentioned previously, I don't believe that an employer necessarily has an automatic insurable interest in all employees. As such, this is a concept which should definitely be regulated, if allowed at all.
UT	No.	No.	The concept as described would be prohibited by Utah Code.

State	Is COLI a viable concept within current legal framework for insurance?	Is COLI permitted under current state statutes? Applicable authority?	If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation?
VT	Yes.	No specific code prohibiting COLI; it is, therefore, allowable.	Yes there is a need for regulation. Consideration should be given limiting amount available to that reasonable exposure to continue operations which the death or disability of the particular insured represents. Additionally, upon discharge, retirement, etc., the company should be required to cancel COLI, as an insurable interest is no longer present.
VA	Corporate owned life insurance is not a viable concept under most insurable interest statutes in most states. Most insurable interest statutes are not broadly enough drawn to permit corporate owned life insurance. In addition, most group life insurance statutes have a provision prohibiting the proceeds of group life insurance being for the benefit of the employer.	Section 38.2-301.B.3. of the Code of Virginia has been specifically amended to permit corporate owned life insurance.	COLI is now permitted in Virginia with the change to this section of our Code. The criteria set forth in this section of our Code appear to be appropriate safeguards.
WV	The West Virginia Code does not give the insurance department position to regulate the COLI concept. It only gives us position to regulate the vehicle (life insurance product).	No state statutes are in place to regulate COLI.	There should be some position of regulation protecting the employee, since the proceeds of the insurance benefits are in total control of the employer or group entity. This would be especially important if the employer designated these proceeds toward post-retirement medical benefits (the examples from the Task Force minutes). The proceeds would have to be used by the employer for the specific purpose intended, and then monitored as to the effectiveness of their use. It should be encouraged that the use of COLI benefits be directed toward employee benefits rather than open discretionary use by the employer. This would only seem fair since the insurance would be on the life of the employee with the corporation the beneficiary. Truly a one sided position. Summarizing those mentioned above, they are: (1) misuse of funds, (2) mismanagement, (3) the limited or absence of input the insured employee would have. The proceeds from COLI could be funding for future corporate growth, employer discretionary use, employee benefits (health or retirement), etc. Nice ideas, but with no employee involvement certainly appears like it would not promote or aid well-being. Employee Retirement Income Security Act being involved would not be the solution. The consideration of regulatory safeguards and controls may have to be implemented at state level.

State	Is COLI a viable concept within current legal framework for insurance?	Is COLI permitted under current state statutes? Applicable authority?	If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation?
WI	It can be when certain conditions are met.	Sec. 600.03 (23), Wis. Stat., defines a group policy as being "for the benefit of group members." Note that this excludes group key man coverage but permits coverage on active employees (with their permission) for the purpose of funding benefits on retired employees.	Any proposed regulation should deal with group key man coverage. We have heard that a blind trust is sometimes used to keep the widow from finding out about such insurance.

****

ATTACHMENT TWO

TO: Judy Lee, NAIC Director of Operations
David B. Simmons, NAIC General Counsel
FROM: Samuel L. Bolinger, NAIC Associate Counsel
DATE: May 1, 1990
RE: Insurable Interest/Corporate Employees

I. INTRODUCTION

This memorandum will address the legal issues of employee insurance contracts. It will include both a caselaw analysis and the statutory factors involved in such scenarios.

II. EMPLOYERS AND EMPLOYEES

A. General Rule

The general rule is that a mere relationship of employer and employee is not sufficient in itself to give the employer an insurable interest in order to have the employer obtain an insurance contract. For an "insurable interest" to exist, it is reasonably expected that the employer would realize a "substantial pecuniary" gain through the continued life of the employee or sustain a "substantial pecuniary" loss in a case of death. *See, Carruth v. Aetna Life Ins. Co.,* (1924) 157 Ga. 608, 122 S.E. 226; *Turner v. Davidson,* (1939) 188 Ga. 736, 4 S.E. 2d, 814, 125 ALR 401, former app. 183 Ga. 404, 188 S.E. 828; and later app. 191 Ga. 197, 12 S.E. 2d 308.

An employee may contract for policies upon his life in an honest and bona fide transaction between him and the insured and may name as a beneficiary his employer. If the employer procures policies on his own account, in his own behalf on the life of an employee who is only the nominal and not the real party in interest, the courts have held that the employer has no "insurable interest" in the life of the employee. Such policies are void as wagering contracts. The mere fact that at the time the policy is issued, the employee was under contract to the employer for a period of approximately a year did not, standing alone, disclose an "insurable interest" of the employer in the life of the employee. *See, Lincoln Nat. Life Ins. Co. v. Sobel,* 110 Ind. App. 331, 35 N.E. 2d 121, *rehearing denied* 110 Ind. App. 359, 37 N.E.2d 698 (1941).

B. General Employee

Where an employee is neither an officer nor key employee of a corporation, an employer has no "insurable interest" in employee's life. This applies even to a group life policy. *See, Bauer v. Bates Lumber,* 84 N.M. 391, 503 P.2d 1169, *cert, denied* 84 N.M. 390, 503 P.2d 1168 (1972). In *Bauer,* the employer purchased a group life policy on its employees and named itself beneficiary of an alleged trust which never existed, except as a booking entry in business records of the employer. This trust was to be used to assist the employer in paying compensation benefits. The trust was not a legal entity. The court also held that the alleged trust did not have an insurable interest in the employee at the time of death.

It is extremely important to note that in Bauer, the court did not even consider the validity of the insurance contract. In addition, neither employer nor the alleged trust were permitted to be a beneficiary under the statute. The statute involved issuance of a group policy to insurer or trustee.

In *Turner, Id.,* the Georgia Supreme Court held that an employer engaged in a wholesale distribution of gasoline and oil had no "insurable interest" in the life of one employed by him to drive a truck and work the retail trade because there was no evidence warranting an inference that succession of the employment from disability or death of the employee might reasonably have been expected to or actually did result in a "substantial pecuniary" loss to the employer.

The same has also been held when an employer applies for a policy of insurance on the life of an employee (manager). In such an instance, the courts have held that there was nothing to show that the success of the business was dependent upon the employee's life. *See, United Securities Life Ins. & Trust Co. v. Brown,* 270 Pa. 270, 113 A. 446 (1921). *See also, Gerard v. Metropolitan Life Ins. Co.,* 167 Miss. 207, 149 Southern 793 (1933).

C. Employment Agreements

On the other hand, an agreement for the employment by a company of a person as general manager for a year at a stated amount and a sum based on profits and for the taking out of the policy by the manager on his life, payable to the company which was to pay the premiums and later deduct them, was held not illegal or void as a wagering contract. *See, Wagner v. Gaudig Emblem Corp.,* 233 App. Div. 254, 228 NYS 139 (1928).

There is also authority which holds that an employer has "insurable interests" if he has a legal right to the services of the employee or agent because they had executed a contract from employment for a definite period of time. *See, Trenton Mutual Life and Fire Ins. Co. v. Johnson,* 24 N.J. L. 576 (1854).

There is a trend of caselaw which indicates that there may be an "insurable interest" in an ordinary employee at least to the extent of permitting the obtaining of insurance not unreasonably disproportionate to the amount which the employer is likely to expend on behalf of the employee. An employer may have an "insurable interest" in an ordinary employee, the benefits of which are payable to him (employer) against injuries to the employee for which the employer

would not be legally responsible. *See, Neeley v. Pickford,* 181 Miss. 306, 178 913, 122 ALR 1188 (1938). In *Geisler v. Mutual Ben. Health & Accident Ass'n.,* 163 Kan. 518, 183 P.2d 853 (1947), it was held, that an employer can be the main beneficiary of a policy which has been taken out on the life of an employee. The court determined that there was an "insurable interest" in the life of the employee on the date of the execution of the insurance contract and that such contracts were entered into by the parties in good faith and not for speculative or wager purposes. The death benefits under such contracts were payable to the employer as a beneficiary.

In *Malcolm Labor Life Ins. Co. v. Rowe,* 421 S.W.2d 364 (1967) the court held that an employer who does not operate under the Workers' Compensation Act and is thus denied certain defenses in case of injury or death to his employee, runs the risk of being financially responsible to the employee. Such an employer has an "insurable interest" in the life of the employee under a policy which the employer takes out in lieu of workers' compensation.

III. KEY MAN INSURANCE

Key man insurance coverage is taken by the employer to cover the lives of important employees. The employer has an insurable interest in the lives of employees who are crucial to the operation of the employer's business.

Most courts have held that a corporation has an "insurable interest" in the lives of its officers and its key employees whose services and qualifications are of such a nature that the corporation would suffer "substantial pecuniary" loss by their death. *See, United States v. Supplee-Bittle Hardware Co.,* 256 U.S. 189, 44 S.Ct. 546, 68 L.Ed. 970. *See also,* 43 Am.Jur.2d, Section 991. An "insurable interest" in the lives of a corporate officer may be given to a corporation by statute. *American Trust Co. v. Life Ins. Co.,* 173 N.C. 558, 92 S.E. 706 (1943); *Alexander v. Griffin Brokerage Co.,* 228 Mo. App. 773, 73 S.W.2d 418 (1931). In *Manhattan Life Ins. Co. v. Lacey J. Miller Machine Co.,* 60 N.C. App. 155, 298 S.E.2d 190 (1982) the court held that where an employee: had been barred as a matter of law from his employer's premises; had been stripped of all his duties, rights and responsibilities; was not active and working full-time for his employer; nor was a "key man," he was ineligible for protection under such a policy by its own terms.

IV. NOT A WAGERING CONTRACT

Insurance policies are not wagering contracts, if the proceeds of the insurance go to the profit and loss account of the corporation. In addition, the fact that the corporation continues to exist after the death of this insured officer, does not disprove the fact that his death caused a substantial loss to the corporation, nor negate the existence of an "insurable interest" at the time the policy was obtained. *See, Murry v. G. F. Higgins Co.,* 300 Pa. 341, 150 A.2d 629, 75 ALR 1360 (1930).

As a general rule, a corporation has an insurable interest in the life of its president, director, stockholder, secretary, treasurer, a large stockholder director and an officer and principal executive officer and/or vice president. Often times this type of activity is covered by statute.

Most courts have held that insurance contracts in which the beneficiary lacked "insurable interest" were against public policy and void. The reason being, such contracts were mere wagering contracts. The purpose of this rule is to limit public opportunity to engage in speculative business of buying and selling policies on the lives of others. *See, Watson v. Massachusetts Mut. Life Ins. Co.,* (1944), 140 F.2d 673, 78 U.S. App. D.C. 248, *cert, denied* 322 U.S. 746, 64 S.Ct. 1156, 88 L.Ed. 1578. Fifteen states have caselaw on this same point and all have reached the same conclusion.

In *Lakin v. Postal Life & Casualty Ins. Co.,* 316 S.W.2d 542, 70 ALR.2d 564 (Mo. 1958), the court held:

> If the plaintiff had been named in the policy as beneficiary, it would be assumed, in the absence of a contrary showing, that she had an insurable interest in the life; but, when the claim is made otherwise, than by the beneficiary named, it is essential that the claimant show an insurable interest.

See also, Troy v. London, 145 Ala. 280, 39 So. 713 (1919); *Alabama Gold Life Ins. Co. v. Mobile Mutual Life Ins. Co.,* 81 Ala. 329, 1 South 567 (1887).

The court in *Helmetag's Adm'r v. Miller,* 76 Ala. 183 (1884), held that "in the absence of such showing the entire transaction will be condemned as a wager and against public policy." Wagering or gaming contracts are against public policy and are not enforceable, even though the company knew that fact when issuing the policy. The court generally considers whether or not the beneficiary had any pecuniary interest in the life of insured, and where there is no such showing, a speculative purpose is presumed regardless of the real intention of the parties. *Keyston Jut, Benefit Ass'n v. Norris,* 115 Pa. 446, 8 Atl. 638 (1911). The court in *Seigrist v. Schmoltz,* 113 Pa. 326, 6 Atl. 47 (1911) held that under these circumstances, the speculative purpose is presumed.

A. What Constitutes "Insurable Interest"

One question that must be examined is, whether the corporation has an insurable interest or not. Insurable interest in these scenarios is determined by whether it is within its powers as a corporation to obtain insurance on the lives of its officers or key personnel. Public policy against speculation on the life of another did not prohibit insured's former employer from collecting on an insurance contract. *See, Secor v. Pioneer Foundry Co.,* 20 Mich. App. 30, 173 N.W.2d 780 (1969).

The determination of the "insurable interest" depends upon the inherent nature of the relationship between the parties. As a general rule, an "insurable interest" exists only if the beneficiary has some interest or a reasonable expectation

of advantages from the continuance of one's life. *See, Warnock v. Davis,* 104 U.S. 775 (1881). The chief objection to wagering contracts is that it furnishes a temptation to the beneficiary to terminate the life of the insured by unfair means. *Burdette v. Columbus Mut. Life Ins. Co.,* 93 S.E. 366, 80 W.Va. 384 (1917).

V. BUSINESS RELATIONSHIP

The court in *Butterworth v. Mississippi Valley Truck Co.,* 240 S.W.2d 676, 362 Mo. 123, 30 ALR.2d 1298 (1951) held that where business relationships of insured and beneficiary under a life policy were interlocked and intertwined and they were mutually dependent upon each other for their mutual prosperity, then the beneficiary has an "insurable interest" in the life of the insured.

Only when the "insurable interest" is small and the insurance vastly disproportionate, the contract will be usually considered a wagering one. *Mowry v. Home Life Ins. Co.,* 9 R.I. 346 (1869). The beneficiary must have insurable interest in insured at time of procurement of life insurance and there cannot be gross disproportion between value of interest protected and amount of coverage or insurance contract will be deemed against public policy as "wagering contract." *See, National Life Ins. Co. v. Tower,* 251 F.Supp. 215 (D.C. MD. 1966). Generally, a corporation has insurable interests in lives of its key employees. *See, New York Life Ins. Co. v. Baum,* 700 F.2d 928 on rehearing, 707 F.2d 870 (C.A. Tex. 1983). Whether or not a contract is a wagering one is usually a question for the jury. *See, Bloomington Mut. Life Ben. Ass'n. v. Blue,* 24 Ill. App. 518, affirmed, 120 Ill. 121, 11 N.E. 331 (1887).

VI. JURISDICTIONAL CONSIDERATION

In *McDermott v. Prudential Ins. Co.,* 7 Kulp 246, 7 Luz.Leg.Reg. 246 (1894), the court held that a wagering policy cannot be enforced in the courts of Pennsylvania, though valid in the statute where it was signed and is to be paid.

VII. NO INSURABLE INTEREST NEEDED

There is a line of cases that notes that no showing of insurable interest is necessary if there is nothing in the state statutes or corporate charter, rules or bylaws of an organization that would restrict the class of beneficiaries. This applies only to ordinary life insurance contracts. *See, Barnett v. United Brothers of Friendship,* 64 So. 518, 10 Ala. App. 382 (1914). *See also, Aetna Life Ins. Co. v. Patton,* 176 F.Supp. 368 (D.C. Ill. 1959); *Subin v. Phinney,* 31 N.E. 1087, 134 N.Y. 423 (1892); *Union Fraternal League v. Walton,* 37 S.E. 389, 112 Ga. 315 (1900); and *In re Zinn's Estate,* 2 Pa. Dist. R. 801, 14 Pa. Co. Ct. Rep. 33 (1893).

VIII. EMPLOYER/TRUST SITUATION

In *Johnson, Lane, Space, Smith & Co., Inc. v. Trosdal,* 317 S.E.2d 294, 170 Ga. App. 456 (1984), it was determined that where an individual who was stockholder, director and executive vice president was listed on a group life policy as an employee, the employer was prohibited by statute from being a beneficiary.

The Oregon Supreme Court in *Gas-Ice Corp. v. Newbern,* 501 P.2d 1288, 263 Or. 227, 56 ALR.3d 1078, appeal after remand, 267 Or. 14, 514 P.2d 59 (1972), held that "notwithstanding the good faith of corporate president in originally purchasing policies on his life in his individual name, when the corporation thereafter paid the premiums the policies became corporate assets and were impressed with a trust under which defendant president held as fiduciary for the benefit of the corporation. These policies provided that the name of the beneficiary could be changed without consent of the corporation. This could be accomplished even in the absence of satisfactory evidence that the directors authorized or approved of some arrangements to the contrary.

IX. APPLICABLE STATUTORY PROVISIONS

Numerous states permit insuring of corporate officers, directors and employees pursuant to state statutes. These states use similar language that the courts have used in their holdings. In addition, these statutes set forth the requirements for insuring of life and health of these individuals. Review of the other provisions (see attached list), indicates that corporations (public or privately owned) do have an "insurable interest."

The state statutes would control over caselaw cited earlier. The exception to this rule is when the court has reviewed the specific statute and rendered a decision on it.

X. TAX RAMIFICATIONS

There are several key tax ramifications that need to be explored regarding this issue. These matters can be discussed later as the task force considers the initial issues before it.

Corporate Owned Life Insurance:
Insurable Interest Defined in Insurance Codes

<u>States with the following or similar language:</u>

> ... no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under the contract are payable to the individual insured or his personal representatives, or to a person having, at the time when the contract is made, an insurable interest in the individual insured ...

"insurable interest" means in the case of persons other than those with an interest by blood or by law, engendered by love and affection, having a lawful and substantial economic interest in having the life, health or bodily safety of the insured continued ...

Alabama	Sec. 27-14-3	Montana	Sec. 33-15-201
Alaska	Sec. 21.42.020	Nevada	Sec. 687B.040
Arizona	Sec. 20-1104	New Jersey	Sec. 17B.24-1
California	Sec.10110	New Mexico	Sec. 59A-18-4
Delaware	tit. 18, Sec. 2704	New York	Sec. 3205
Guam	Sec. 43328	No. Dakota	Sec. 26.1-29-09.1
Hawaii	Sec. 431:10-204	Oklahoma	tit. 36, Sec. 3604
Idaho	Sec. 41-1804	Oregon	Sec. 743.024
Indiana	Secs. 27-1-12-14, 27-8-3-8	So. Dakota	Secs. 58-10-3, 58-10-4
		Washington	Sec. 48.18.030
Kentucky	Sec. 304.14-040	W. Virginia	Sec. 33-6-2
Louisiana	R.S. 22:613	Wyoming	Sec. 26-15-102

Accident/Health Insurance: "insured" shall not be construed as preventing a person other than the insured with proper insurable interest from making application for and owning a policy covering the insured and being entitled under such a policy to any indemnities, benefits and rights provided therein"

Arkansas	Sec. 23-85-103	Minnesota	Sec. 62A.04
California	Sec. 10325	Mississippi	Sec. 83-9-5
Colorado	Sec. 10-8-108	Nevada	Sec. 689A.310
Connecticut	Sec. 38-167(e)	New Jersey	Sec. 17B:26-30
Delaware	t. 18, Sec. 3328	Ohio	Sec. 3923.06
D.C.	Sec. 35-517	Puerto Rico	t. 26, Sec. 1630
Florida	Sec. 627.631	Rhode Island	Sec. 27-18-7
Georgia	Sec. 33-29-14	So. Carolina	Sec. 38-71-640
Illinois	Sec. 357.28	Tennessee	Sec. 56-26-112
Iowa	Sec. 514A.3	Vermont	t. 8, Sec. 4069
Kansas	Sec. 40-2203	Virginia	Sec. 38.2-3504
Maryland	48A Sec. 465	W. Virginia	Sec. 33-15-8
Massachusetts	c.175 Sec. 108	Wyoming	Sec. 26-18-129
Michigan	Sec. 500.3462		

Other Provisions:

Arkansas	Sec. 23-79-103 a publicly owned corporation has an insurable interest in the lives of any of its directors, officers and employees
Georgia:	Sec. 33-24-4(c) a corporation has an insurable interest in the life or physical or mental ability of any of its directors, officers or employees, including subsidiaries, whose death or physical impairment might cause financial loss
Maine:	24-A Sec. 2404 a corporation has an insurable interest in the lives of its employees, former employees and retirees for the purpose of funding, in the aggregate, all or part of the cost for preretire ment and postretirement benefits for such employees, former employees and retirees; an insurance program used to finance these employee benefits shall be used for the sole purpose of funding preretirement and postretirement benefits
Maryland	48A Sec. 366 public and private corporations shall have an insurable interest in their employees with respect to employer sponsored employee benefits; non-key employees shall have been employed for a period of 12 consecutive months by public corporations
Missouri:	Secs. 376.530, 376.550 wife may procure life insurance upon her husband; unmarried woman may procure life insurance upon father and/or brother

Nebraska:	Sec. 44-373 whenever a corporation has caused or shall cause the life of any director, officer, agent or employee to be insured, or whenever such corporation is named as a beneficiary in any policy of life insurance, authority to assign, release, relinquish, convert, surrender, change the beneficiary or any other action shall be evidenced to the insurance company by a written statement of the board of directors and shall be binding upon such corporation
No. Carolina:	Sec. 58-204.1 an employer, whether a partnership, joint venture, corporation or other business organization, has an insurable interest in and the right to insure the physical ability or the life of an employee for the benefit of such employer
Pennsylvania	Sec. 40-37-121 corporations may insure the lives and health of officers, directors, principals, partners and employees without the signing of a personal application
Texas:	Art. 3.49 any corporation may be named beneficiary in any policy of insurance issued by a legal reserve life insurance company on the life of any officer or stockholder Art. 3.49-1 any person may apply for life insurance on his life and designate any person or legal entity as the beneficiary or as the owner of the policy
Utah:	Sec. 31A-21-104 policyholders in group contracts need no insurable interest if certificateholder or person other than group policyholders, who are specified by certificateholder, are recipients of the proceeds of the policy
Virginia	Sec. 38.2-301 when the corporate employer is the beneficiary under an insurance contract covering employees, the lawful and substantial economic interest shall be deemed to exist in (1) key employees, (2) other employees who have been employed by the corporation for 12 consecutive months; provided that the amount of insur ance coverage shall be limited to an amount which is commensurate with employer provided benefits to such employees
Wisconsin:	Sec. 631.07 a disability policy may be obtained by a person on others, without their consent, to merely indemnify against expenses policyholder would be legally or morally obligated to pay

****

ATTACHMENT THREE

Product Development (A) Task Force
Salt Lake City, Utah
March 26, 1990

The Product Development (A) Task Force met in the Sun Valley Room of the Little America Hotel in Salt Lake City, Utah, at 2 p.m. on March 26, 1990. A quorum was present and Reginald Berry (D.C.) chaired the meeting. The following task force members or their representatives were present: Roxani Gillespie, Vice Chair (Calif.); Zack Stamp (Ill.); and Theodore "Ted" Kulongoski (Ore.).

1. Review 1990 Mission Statement and Discuss Procedure for Addressing Charges

Reginald Berry (D.C.) began the meeting by reviewing the mission of the task force. He referred the task force members to a copy of a memorandum addressed to the NAIC Life and Health Actuarial Task Force by Asutosh Chakrabarti, Actuary, (N.J.) regarding corporate owned life insurance (COLI) which is included in the *NAIC Proceedings,* 1989, vol. II, pages 834-

836. Mr. Berry highlighted the issues raised in the memo which are: 1) is COLI a viable concept generally within the current legal framework for insurance? 2) Is COLI permitted under current state statutes? 3) If COLI is to be permitted, what safeguards and controls should be imposed? Is there a need for regulation?

John Montgomery (Calif.) stated that the Life and Health Actuarial (Technical) Task Force has this issue on its agenda, though it has a relatively low priority assigned at this time. Larry Gorski (Ill.) commented that items 1 and 2 seem to be more involved with legal issues, whereas item 3 might need to be responded to by the Actuarial Task Force. He suggested that input from the states would be beneficial.

Jim Swenson (Ore.) pointed out that corporate owned life insurance based programs are being marketed in Oregon, and his Department believes there is an insurable interest that allows these policies to be written. He said these policies are used specifically to fund postretirement medical benefits and, to the extent these programs can be prefunded, this would facilitate employers setting up and maintaining these programs which are serving a useful social purpose. Mr. Gorski inquired if Oregon limits the approval of these filings to postretirement medical benefit situations or if they permit their use within a broader range. Mr. Swenson responded that they are used for the specific purpose of funding the postretirement medical benefits. He stated further that the filing specifically designates how the funds are to be used; therefore, a filing indicating a different arrangement might not receive approval from the Oregon Department. Mr. Berry inquired whether Employee Retirement Income Security Act ever arises in this situation. Mr. Gorski responded that this is a life insurance vehicle that is health insurance related.

Mr. Gorski suggested that input from the legal staff of the state departments would be helpful to have at the task force's next meeting. Mr. Berry suggested that the NAIC staff be designated to survey the states to determine their concerns in this area. Mr. Gorski concurred that this would be a worthwhile endeavor and suggested that a good starting point for the survey would be the questions raised in Mr. Chakrabarti's memorandum.

2. Consider Amendments to the Modified Guaranteed Annuity Regulation

Mr. Montgomery stated that technical amendments to the Modified Guaranteed Annuity Regulation are under consideration by the Life and Health Actuarial (Technical) Task Force. He said the Task Force will also be considering new topics this year which were approved at their recent meeting, including two-tier annuity rates, which is one of the emerging issues.

Having no further business, the Product Development (A) Task Force adjourned at 2:15 p.m.