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LETTER OF COMMENT NO. 2

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Via email and ordinary mail

Technical Director,
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
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Comment to Proposed Statement of Financial Accounting Standards – Disclosure of Certain Loss Contingencies Amending FAS 5 and 141(R); FASB File Ref. 1600-100

Dear Technical Director:

Concord Specialty Risk, Inc. ("Concord") is a managing general underwriter, authorized to bind specialized risks on behalf of insurance companies. We focus on assessing and transferring contingent liability risks associated with the purchase or sale of a business, tax uncertainty and pending or threatened litigation.

In our view, the Proposed Statement, if not modified, will not significantly enhance the ability of a user of financial statements to assess the likelihood, timing and amount of future cash flow associated with a loss contingency.

The disclosure requirements fail to take into consideration the degree of investigation and discovery that may or may not have occurred. Until discovery is complete, a reporting entity would be disclosing a "moving target" which is likely to mislead users of financial statements. The ability to lump related types of lawsuits together further muddles the information. The failure to require specificity as to the alleged wrongful acts and affirmative defenses may allow many disclosures to degenerate into legalese. The requirement that an entity shall report its assessment of the most likely outcome (subject to the prejudice exemption) seems likely to create more heat than light. The disclosure of assumptions used in such assessment seems likely to create settlement "roadmaps' and/or potential subsequent derivative or shareholder suits to the detriment of almost every public reporting company.

We believe that the following modifications would vastly improve the Proposed Statement:

1. With respect to claims in litigation, disclosure beyond a summary of the claim(s) and defenses, the identity of the forum and the current status of the litigation should not be required until the time for discovery has concluded.

2. When the time for discovery has concluded, disclosure should include a precise statement of the alleged wrongful act(s) or breach(es), a precise statement of the key affirmative defenses and the respective range of damages that the reporting company believes each side is expected to provide to the trier of fact. A reporting company may provide such additional information as it believes would be relevant and reliable to a user of the financial statements.

3. Threatened or pending litigations, arbitrations and regulatory proceedings should not be lumped together by classification of claim (e.g., product defect or workers compensation), unless such aggregation results in numerous immaterial claims becoming material. In such instances, different (and less) disclosure should be required. We believe that when numerous claims that are immaterial in themselves but could be material when aggregated, financial statements should disclose only the estimated potential range of damages and defense costs, net of probable insurance and indemnity recoveries, for the aggregated claims, coupled with the approximate number of claims.

4. There should be no requirement to disclose the "most likely outcome" or the assumptions used in such calculation. Rather, if a loss is "probable and estimable", either the most likely outcome or a number within the range of potential exposure should be reported as loss and the disclosure should indicate what method was used in the reporting of such loss.

5. The Proposed Statement should expressly provide that the reporting entity may consider the existence and extent of insurance or indemnification arrangements when determining if a loss contingency is severe or material. Generally, if a loss contingency is adequately insured, it need not be disclosed. The existence and extent of such insurance or indemnification arrangements need not be separately disclosed unless the insurer or indemnifying party has denied or breached its purported obligations, raised significant reservations or conditions to its obligations or is believed to lack the financial solvency to meet its obligations.

6. The tabular reconciliation should be abandoned. Its costs outweigh its benefits. Each contingent liability is inherently unique and its outcome may be influenced by numerous factors. Aggregating them will not necessarily provide an historic pattern that would be a reliable glimpse into the future development of pending claims because they would lack homogeneity and, to the extent they are

comparable, they would lack actuarial analysis. Absent homogeneity and actuarial analysis, a tabular reconciliation is inherently misleading as a forecaster or trend.

7. If the above modifications were adopted, we believe that the "prejudicial exemption" would indeed be rarely used. Nonetheless, we think the "prejudicial exemption" should be modified to restrict its use to instances in which the information otherwise disclosed in the financial statements has not already been disclosed to the adverse party.

We appreciate your consideration of our comments. We would be pleased to discuss these issues with you and/or at a roundtable and would also be pleased to address any questions or comments that you may put to us in writing.

Very truly yours,

/s
David S. De Berry, CEO