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Sent: Monday, July 21, 2008 3:21 PM

To: Director - FASB

Subject: File Reference No. 1600-100



LETTER OF COMMENT NO.



## Re: Comments regarding proposed FASB Statements #5 & #141

To Whom It May Concern:

We are greatly concerned about the proposed expanded disclosures in financial statements of pending or anticipated litigation. The existing FASB 5 rules as interpreted and applied by the AICPA/ABA protocol are adequate.

Under those rules we already disclose the "reasonably estimable" amount of contingent liability. Disclosure of maximum potential aggregate contingent liabilities would have a depressing effect on stock prices – but the maximum exposure would never happen and therefore would overstate contingent liabilities. Such a rule fails to appreciate the legal / business ramifications outside a narrow accounting application. Please allow me to outline some of these.

- 1. There is absolutely no limit on what plaintiffs can demand as such these outrageous demand amounts constitute hyperbole, disclosure of which has little, if any, bearing on what the actual reasonably estimable exposure might be.
- 2. These rules would require waiver of attorney client privilege for highly sensitive case assessment information in most states, including Texas.
- 3. These rules would therefore result in providing great benefits to plaintiff lawyers who would no doubt argue to juries that the maximum identified exposure is an admission of what should be paid (or at a minimum, the actual reserve would be such an admission). Notwithstanding the perceived benefit for accounting rules etc, what the jury will hear is "the company admits exposure of \$ X".
- 4. Once disclosed or discoverable, the actual per claim reserve amount will become the floor demand of the other party in any dispute after all, once reserved, it costs the company "nothing" from an accounting standpoint to pay that amount on that particular claim.
- 5. Perhaps worst of all, once individual case ranges are provided to accounting firms, it invites them to substitute their judgment for the professional opinion of counsel, as opposed to simply auditing the process used. If you give them numbers, they will be constitutionally incapable of avoiding the tendency to challenge the range, the probabilities, or any other calculations.

Please reconsider instituting such a rule.

Sincerely,

## Michael H. Gibbs

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