TRAVELERS

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LETTER OF COMMENT NO. 195

Technical Director – File Reference No. 1600-100
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Via E-mail:
Attn: director@fasb.org
File Reference No. 1600-100

Re: Proposed Statement of Financial Accounting Standards on
Disclosure of Certain Loss Contingencies – an amendment of FASB Statements No. 5 and 141(R).

Dear Sir or Madam:

The Travelers Companies, Inc. (Travelers) appreciates the opportunity to comment on the Financial Accounting Standards Board's (the FASB or the "Board") Exposure Draft (ED), *Proposed Statement of Financial Accounting Standards on Disclosure of Certain Loss Contingencies*. Travelers is a leading provider of property/casualty insurance products and services to a wide variety of businesses and organizations as well as to individuals. As a property/casualty insurance writer, Travelers has extensive experience with litigation and the numerous issues that go with it. This is because, in addition to the corporate and extra-contractual litigation to which Travelers is a party, Travelers provides a defense to thousands of policyholders as an integral component of the services we provide under our insurance contracts. This contractual "duty to defend" covered claims gives us valuable insight into and concern about many of the issues in the proposed statement.

Travelers appreciates the goal of providing adequate information to assist users of financial statements in assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies. We are concerned, however, that the ED fails to recognize the inherent unpredictability of litigation and would require the preparer to disclose a high volume of highly speculative information. We question the predictive value of such information. Additionally, reducing the disclosure threshold from reasonably possible to "unless they are remote" would cast too wide a net. Given the vagaries of the litigation process, preparers would feel compelled to seriously consider disclosing nearly every claim, leaving the financial statement user unable to distinguish between the information about which they should be concerned and other information

that is disclosed simply because it is required. The elimination of a likelihood threshold for contingencies expected to be resolved within a year would further exacerbate these issues with the ED.

We believe the proposed disclosure would fail a cost/benefit analysis from the investor's perspective and would be extremely prejudicial in litigation. The prejudice to the issuer that would result from the disclosure would significantly outweigh any potential benefit to the investor from the disclosure.

Insurance Contract Exemption

As currently drafted, liabilities for unpaid claim costs related to insurance contracts and reinsurance contracts of an insurance entity or a reinsurance entity within the scope of FASB Statement No. 60, *Accounting and Reporting by Insurance Enterprises,* No. 97, *Accounting and Reporting by Insurance Enterprises for Certain Long-Duration Contracts and for Realized Gains and Losses from the Sale of Investments,* No. 113, *Accounting and Reporting for Reinsurance of Short-Duration and Long-Duration Contracts,* No. 120, *Accounting and Reporting by Mutual Life Insurance Enterprises and by Insurance Enterprises for Certain Long-Duration Participating Contracts,* or No. 163, *Accounting for Financial Guarantee Insurance Contracts* are not within the scope of the ED. However, property and casualty insurers would still be impacted by the ED from: (1) the disclosure of claims that are made against an insurer that are outside the insurance contract (e.g., extra-contractual damages and non-claim litigation) and (2) the disclosures that are made by the insurers' policyholders of covered claims for which the insurer is defending the policyholder. Insurers would be required to provide policyholders with information related to the defense of claims to enable the policyholders to make such disclosures in their financial statements.

We offer our comments on the impact that the ED is likely to have as a result of the property and casualty contracts that we write as well as several other concerns we have with the ED.

Impact on Property and Casualty Insurers

Scope Exception

As stated above, the ED does not include within its scope "liabilities for unpaid claim costs related to insurance or reinsurance contracts...", which we believe is a proper scope exception due to the extensive disclosures required by FAS 60. However, while the intent is to specifically exclude insurance liabilities from the scope of the ED, insurers would be significantly impacted by the proposed guidance. As mentioned above, many of the contracts that property and casualty insurers write have a contractual obligation for the insurer to defend the policyholder when a covered claim is brought against the policyholder. This "duty to defend" is an integral component of these contracts and the related litigation costs significantly impact the valuation of our insurance liabilities.

Impact of Policyholder Disclosures

The expanded disclosure requirements in the ED will require our policyholders to disclose quantitative information (including the tabular reconciliation) in their financial statements about the status of the claim(s) made against them as well as any potential recoveries. We believe that this disclosure could harm our ability to adequately defend the policyholder by providing the plaintiff with information about recorded liabilities and the insurer's estimate of the maximum exposure of loss from the claim. Considering that the disclosures would be in public filings and sworn to by the officers of the companies making the filings, the disclosures would likely be admitted in a litigation proceeding. We believe that attempting to explain these disclosures to an unsophisticated jury would be extremely challenging.

Disclosure of Settlement Offers

Question 6 in the Request for Comments asks whether the disclosure of settlement offers made by either party in a dispute should be required to be disclosed. This type of disclosure would be most problematic for property and casualty insurers. There are numerous strategies and dynamics that go into the amount of a settlement offer, and they are different for every case and situation. Additionally, it is very common for there to be numerous plaintiffs in the same controversy, or similarly situated plaintiffs in related or analogous proceedings. It would be an extreme disadvantage to property and casualty companies to have their covered policyholders disclose settlement offers which would allow parties other than the party receiving the offer to have a full view of the process. This would amount to the plaintiff's attorneys having access to the company's settlement strategies which could significantly impact the outcomes of other litigation. We believe that this requirement would discourage the settlement process, which is in direct opposition to stated public policy.

Additionally, the settlement process often unfolds rapidly and in a series of steps. This process, along with the various strategies involved and the dynamic nature of the negotiations, would increase the likelihood of any offer made becoming stale very quickly and not useful to investors.

Availability of Information for Disclosure

In addition to the disclosure of prejudicial information regarding the litigation of claims and the disclosure of settlement offers, Travelers is also concerned with the information that would be required for policyholders to complete their required disclosures. Many smaller, publicly traded companies do not have the resources to be involved in the defense of the claims made against them or follow the litigation/settlement process. To these policyholders, the very reason they purchased insurance was to eliminate their involvement in and exposure from these types of contingencies. These policyholders do not necessarily analyze or contemplate their exposure since it is the insurer's responsibility to defend and resolve the claim. The ED would require these policyholders to have significant insight as to how the claim is proceeding in order to make the required disclosures, even though they may have no net exposure. In certain instances where we are required to defend our policyholder, we do not concede liability or damages early in the claims settlement process. In addition, it is possible that while we are defending the policyholder

against the claim made, we may also be involved in a coverage dispute with them. This would make it very difficult to provide information to the policyholder that would allow the policyholder to reliably estimate not only the exposure to loss, but also the potential for recovery.

For smaller companies who do not get involved with the defense of claims made against them, the ED would increase the operating costs for both the policyholder and the insurer (i.e., tracking and communicating the status of litigation with a large number of policyholders). We do not believe that requiring smaller companies to obtain information from the insurer about pending litigation for the purposes of disclosure when they have no net exposure is more beneficial than the costs that would be involved or the additional risks to which the company and its insurer may be exposed as a result of the disclosure. To this end, we believe that when there is a legal contingency that is material and probable, the related disclosure should include a *qualitative* discussion of the claim(s) made and whether the company believes that its insurance coverage will cover the full amount of the claim. The existence of any disputes over coverage that could materially affect the cost of the contingency should be included in the disclosure. Only at such time where the policyholder can reliably estimate any expected exposure above the recovery amount should *quantitative* information be required

Other Concerns

We have a few additional concerns that we feel are important to mention at a high level since they have already been thoroughly discussed in other comment letters, including the letters submitted by Financial Executive International and the various senior litigators from major companies.

Prejudicial Information

We believe that the paragraph 11 requirements for dealing with disclosing prejudicial information are not effective and will potentially harm a company's position in litigation. In limiting the exclusion only to that particular item that would be viewed as prejudicial, and then requiring the company to highlight the issue resulting in the exclusion, the ED provides knowledge to the plaintiff's attorney that there is discoverable, non-aggregated information supporting the disclosure.

Inability to make Auditable Estimates

We believe that there is a presumption throughout the ED that suggests that preparers have reliable information that they are failing to disclose. The fact is that the inherent uncertainty of the litigation process is significant and ever changing, and it is extremely difficult to estimate the outcome with any degree of reliability until the negotiations have substantially progressed.

Additionally, in our experience, many tort allegations are worded in as broad a fashion as possible, threatening almost anything that could conceivably be envisioned. In many cases, the claimant or lawsuit does not attempt to quantify the amount being sought. The requirement to disclose the best estimate of the maximum exposure to loss in this environment is simply not

reliable – and may be extremely prejudicial – without providing useful information to financial statement users.

Safe Harbor

We are concerned that the ED's requirement for preparers to disclose expectations as to the timing, maximum exposure to loss and/or an estimate of expected loss, and likelihood of loss would be forward-looking statements that would not be protected by the safe harbor provisions provided by the SEC. Without the safe harbor protections, the disclosure required by the ED could increase a company's exposure to lawsuits if the disclosed estimates are materially different than the actual outcome. Increasing the quantitative disclosure based on speculative information and without the safe harbor protection could result in lawsuits begetting lawsuits.

General

The final concern that we have regarding the ED is that it does not significantly address the potential for accounting rules and disclosure requirements to impact the economics or outcome of transactions. We believe the prejudicial exemption language is not effective and does not ensure that the disclosures made do not influence the outcome of litigation. We strongly believe that accounting should report the facts with minimal speculative information and in an unbiased manner that does not impact the economics or outcome of the transactions that are being reported upon. We are very concerned that this ED does not adhere to this principle and that the accounting will drive the economics.

In summary, we believe that the proposed guidance does not provide an improvement over the current accounting and will adversely impact a company's ability to defend itself and its policyholders in litigation. Additionally, we believe that shareholders would not be in favor of guidance that could negatively impact their investment as a result of a disclosure that fails to recognize the inherent unpredictability of litigation and other contingencies.

We thank you for the opportunity to comment on the ED and offer our assistance as the project progresses. We would be very pleased to share our views in any roundtable or other forum the Board may hold. If you have any questions or would like to discuss our comments, please feel free to call me at (860) 277-0537.

Sincerely,

D. Keith Bell

D. Keith Bell
Senior Vice President, Accounting Policy

c: Jay S. Benet
Vice Chairman and Chief Financial Officer