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The Tension Between Integration Clauses and Disengagement Provisions

The Arbitration Task Force's Proposed Procedure for Reinsurance Arbitrations

feature

The Tension Between Integration Clauses and Disengagment Provisions

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I. Introduction

In recent years, reinsurance contracts relating to property and casualty business have increasingly included integration, or "entire agreement," clauses. Integration clauses generally provide that the contract document itself comprises the entire agreement between the parties, precluding consideration of any evidence outside the four corners of the contract. In the reinsurance context, this prohibition against the consideration of any evidence outside the four corners of the contract would include a prohibition against the consideration of representations and warranties made during the solicitation process. Arbitration panels do often consider representations and warranties made during the solicitation process when resolving disputes, however. Indeed, the "disengagement" provision found in most arbitration clauses arguably provides an arbitration panel with the authority to do so. More specifically, the disengagement provision normally relieves the panel from following the strict rule of law, allowing the panel to render a decision informed by industry custom and practice. Thus, there is a tension between the apparent mandate of the integration clause and the flexibility afforded to a panel by virtue of the disengagement provision. This article examines that tension and proposes several contractual solutions that may resolve the issue in a way that is consistent with custom and practice in the reinsurance industry.

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II. The Effect of Integration Clauses

An integrated agreement "is a writing or writings constituting a final expression of one or more terms of an agreement." (Restatement (Second) of the Law of Contracts § 209 (1981).) The import of an integrated agreement lies in the effect that a finding of integration has on the consideration of terms not found in the writing. An integrated agreement supersedes contrary prior statements. (*Id*., Comment (a).) Moreover, a "completely integrated" agreement – that is, an agreement for which the parties have evidenced their intent that the written document contains all relevant terms and conditions – supersedes even those additional terms that are consistent with the writing. (Id.) These two concepts, taken together, are generally known as the "parol evidence rule." The Second Restatement articulates the parol evidence rule as follows:

> (1) A binding integrated agreement discharges prior agreements to the extent that it is inconsistent with them.
>
> (2) A binding completely integrated agreement discharges prior agreements to the extent that they are within its scope.
>
> (3) An integrated agreement that is not binding or that is voidable and avoided does not discharge a prior agreement. But an integrated agreement, even though not binding, may be effective to render inoperative a term which would have been part of the agreement if it had not been integrated.

(Restatement (Second) of the Law of Contracts, § 213 (1981).) The "prior agreement" referred to in §213 might be either a prior oral or a prior written agreement. Despite its name, the parol evidence rule is neither an evidentiary rule, nor a rule of contract interpretation. Rather, it is a rule of substantive law that defines the subject matter of interpretation. (*Id*., Comment (a).)

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Of course, the applicability of the parol evidence rule depends upon the existence of an integrated contract. The easiest way for parties to effectuate an intent to reduce their entire agreement to writing, thereby creating an integrated contract, is to include an integration or "entire agreement" clause within the written contract document. A simple integration clause in a reinsurance contract might read as follows: "This Agreement of Reinsurance constitutes the entire agreement of Reinsurance between the parties hereto." While this type of integration clause is sufficient to establish the parties' intent to reduce their entire agreement to writing, parties may also use a more comprehensive integration clause, explicitly excluding prior representations and warranties from the contract. For example, a more comprehensive integration clause might provide as follows:

> This Reinsurance Agreement and the exhibits and schedules attached hereto constitute the entire agreement between the parties hereto relating to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties. There are no general or specific warranties, representations or other agreements by or among the parties in connection with the entering into of this contract or the subject matter of any of the foregoing except as specifically set forth or contemplated herein.

A clause in the form of this latter clause likely establishes that the agreement is "completely integrated." (Restatement (Second) of the Law of Contracts, § 216, Comment e, (1981).)

In the context of reinsurance agreements, the difference between an "integrated" agreement and a "completely integrated" agreement matters to the extent that representations or warranties made during the solicitation or negotiation for the contract do not find their way into the final written agreement. As noted above, the general rule holds that "[e]vidence of a consistent additional term is admissible to supplement an integrated agreement unless the court finds that the agreement was completely integrated." (*Id*. at § 216.) That is, once the court finds that an agreement is "completely integrated," neither party is permitted to offer evidence that additional terms exist -- even if those proffered additional terms are consistent with the terms of the writing. An example may be instructive here: A reinsurer makes its participation on the contract contingent upon a representation by the cedent that the cedent will follow certain underwriting guidelines when writing the subject business. The cedent provides that representation in writing, in a letter sent to the reinsurer during negotiations. The parties, for whatever reason, do not include that representation in the final agreement; rather, the contract is silent on the issue of the underwriting guidelines that the cedent must follow. If the factfinder should determine that the contract is "completely integrated," the reinsurer could not then claim that the cedent breached the agreement by failing to adhere to the agreed-upon underwriting guidelines.

Indeed, the existence of an integration clause identical to the one cited above as evidencing a "completely integrated" agreement provided the basis for one court's denial of a reinsurer's motion to compel the cedent's production of certain documents. *PXRE Reins. Co. v. Lumbermens Mut. Cas. Co.*, 2004 WL 1166631 (N.D. Ill. May 24, 2004.) In *PXRE*, the reinsurer alleged that the cedent had breached its duty of utmost good faith during the due diligence that the reinsurer conducted before it agreed to enter into the reinsurance contract at issue; that alleged breach was the failure of the cedent to inform the reinsurer of certain side deals that the cedent had entered into with respect to risks that the cedent intended to include as part of the subject business under the reinsurance agreement. *PXRE Reins. Co. v. Lumbermens Mut. Cas. Co.*, 2003 WL 2366807 (N.D. Ill. July 24, 2003.) The reinsurer also alleged that, by withholding this information, the cedent had fraudulently induced the reinsurer into entering into the reinsurance agreement at issue. *Id*. During discovery, the reinsurer moved to compel the production of documents that would establish whether the cedent had disclosed the existence of those alleged side deals to other reinsurers in connection with other contracts. See *PXRE Reins. Co. v. Lumbermens Mut. Cas. Co.*, 2004 WL 1608393 (N.D. Ill. April 21, 2004.) The court denied the reinsurers'

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motion to compel, stating that even if the duty of utmost good faith existed between the parties, that "default rule" did not trump the integration clause. 2004 WL 1166631 at *2. Specifically, the court asserted that

> . . . it is simply not true that a contract freely entered into by parties such as PXRE and Lumbermens is trumped by a doctrine that, like other statements of legal rules, is a default rule. No case suggests that the [integration clause found in the reinsurance contract], with its express negation of any warranties, representations, or other agreements that are not in the document itself, is somehow contrary to public policy so as to be overridden by *uberrimae fidae* or any other doctrine
>
> * * *
>
> here the parties went well beyond the ordinary integration clause to preclude precisely what PXRE is attempting here by seeking to import implied representations found nowhere in the Agreement.

(*Id*. at *2, *3.) The "implied representations" rejected by the court in *PXRE* include representations made during the negotiations for the agreement at issue -- representations that, pursuant to industry custom and practice, arbitrators might normally consider when rendering a decision.

III. Statutorily-Required Use of Integration Clauses in Reinsurance Contracts

Most states have long had regulations on the books requiring reinsurance agreements reinsuring life and health insurance policies to include integration clauses in order for the cedent to take credit for the reinsurance on its statutory financial statements.[1] The regulation found in the Illinois Administrative Code provides a typical example, with respect to "Life Reinsurance Agreements":

> 1103.40 Written Agreements
>
> * * *
>
> c) The reinsurance agreement shall contain provisions which provide:
>
> 1) That the agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement . . .

50 Ill. Adm. Code 1103.40.

Following the model of the regulations applicable to the life and health industry, regulators have similarly begun to require that reinsurance contracts related to property and casualty business include integration clauses. To date, five states[2] have promulgated regulations requiring integration clauses in reinsurance contracts for property and casualty business and, given the current regulatory climate regarding "side deals," it is likely that other states will follow suit. The Texas regulation serves as a good example:

> § 7.611 Indemnity Reinsurance Agreements – Required Provisions
>
> Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers . . . or otherwise in compliance with this subchapter unless the reinsurance agreement:
>
> * * *
>
> (9) includes a provision indicating that the written agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement . . .

Presumably, regulators have begun to require parties to include "entire agreement" clauses in their contracts so that the regulators can gain some comfort that there are no conditions to the parties' agreement that fall outside the four corners of the written contract document.[3] The absence of terms falling outside the four corners of the written contract document affords the regulator a reasonable degree of confidence that if the cedent takes credit for the reinsurance, the reinsurance does, in fact, exist. In other words, the cedent has properly stated its capital and surplus.

IV. Disengagement Provisions

The arbitration clauses found in many reinsurance contracts provide that the arbitrators shall interpret the contract "as an honorable engagement, and not merely as a legal obligation." (Brokers & Reinsurance Markets Association, Contract Wording Reference Book, Clause 6C (January 1, 1990)). In addition, an arbitration clause may provide that the arbitrators "are relieved of all judicial formalities and may abstain from following the strict rules of law." (*Id*.) Courts have consistently read such a clause, sometimes referred to as a "disengagement provision" or an "unrestricted submission," to confer expansive authority upon the arbitration panel -- including, for example, the power to ignore the substantive law that the parties have agreed will apply to the contract. *St. Paul Fire and Marine Ins. Co.* v. Eliahu Ins. Co., 1997 WL 357989 at *7 (S.D.N.Y. June 26, 1997). In *Eliahu*, the arbitration provision in the reinsurance contract at issue provided that, "Said arbitration shall take place in a city mutually agreed upon by the Company and the Reinsurer. Failing agreement, the seat of arbitration shall be New York. The laws applicable shall be those of the seat of arbitration." *Id*. In deciding whether that provision conferred personal jurisdiction over the defendant in New York, the court noted that:

> although the certificate states that the law of the seat of arbitration governs, it states also that "[t]he [arbitrators] are relieved of all judicial formalities and may abstain from following the strict rules of law." Therefore, even if New York was the seat of arbitration and New York law governed, the arbitrators would be free to disregard New York substantive law.

(*Id*.)

The breadth of authority afforded to an arbitration panel by virtue of a provision relieving the panel from following the strict rules of law makes perfect sense in light of the fact that arbitrators are normally chosen because of their specialized knowledge regarding the subject matter of the dispute.

V. The Tension Between "Integration" Clauses and "Disengagement" Clauses

As discussed above, an integration clause arguably bars the consideration of evidence of prior agreements and any representations or warranties made during the negotiation process that are not ultimately included in the written contract document -- whether or not one of the parties relied upon those representations or warranties when it entered into the agreement. A finding that a contract is an integrated agreement precludes the introduction of evidence of prior agreements that is meant to alter, vary, or contradict the written terms of the contract document. The existence of a "completely" integrated agreement precludes the introduction of evidence of *any* prior agreements, even those that are consistent with the written terms of the document.

In the context of a reinsurance agreement, strict application of the parol evidence rule in the case of an integrated reinsurance agreement would arguably bar the consideration of certain representations and warranties made during solicitation or negotiation that were not explicitly included within the four corners of the final reinsurance agreement and that contradicted written terms of that agreement. In the case of a completely integrated reinsurance agreement, strict application of the parol evidence rule would arguably bar the consideration of *any* representations and warranties made during solicitation or negotiation that were not explicitly included within the four corners of the final reinsurance agreement. The industry custom and practice in place prior to the time when parties began using integration clauses in their contracts, however, favored the consideration of representations and warranties made during solicitation or negotiation, regardless of whether those representations and warranties found their way into the written document. (*See* Ostrager and Vyskocil, *Modern Reinsurance Law and Practice* at 14-3 (Second Ed. 2000) ("[a]rbitrators may also be more willing to rely upon extrinsic evidence of intent or industry custom and practice with regard to contract provisions that are seemingly unambiguous on their face.") If the reinsurance contract contains a

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In *Schacht v. Beacon Ins. Co.*, 742 F.2d 386 (7th Cir. 1984), the Seventh Circuit Court of Appeals opined that an arbitration panel faced with a reinsurance agreement containing both an integration clause and a disengagement provision could choose to ignore the parol evidence rule.

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disengagement provision, whereby the arbitration panel is exhorted to treat the contract as an "honorable engagement" and is relieved from following the "strict rules of law," that disengagement from substantive legal rules would arguably include a release from any obligation that the panel might otherwise have had to strictly apply the parol evidence rule to the reinsurance agreement at hand. Rather, the panel could consider representations and warranties made during solicitation and negotiations, in accordance with both the instruction to interpret the agreement as an honorable engagement and industry custom and practice. Accordingly, to the extent that a reinsurance agreement includes both an integration clause and a disengagement provision, there is an inherent tension between those two contractual provisions that a panel charged with resolving a dispute arising under that agreement may need to address.

In *Schacht v. Beacon Ins. Co.*, 742 F.2d 386 (7th Cir. 1984), the Seventh Circuit Court of Appeals opined that an arbitration panel faced with a reinsurance agreement containing both an integration clause and a disengagement provision could choose to ignore the parol evidence rule. In the *Schacht* case, the cedent and reinsurer entered into a reinsurance agreement for automobile business that provided for premium as follows:

> The [cedent] shall pay to the [reinsurer] . . . with respect to business in force at the effective time and date of this Exhibit, 90% of the unearned portion of the [cedent's] net retained premiums for all losses of business reinsured hereunder; 90 days after inception in 10 successive monthly segments net of offsets.

Id. at 388. The treaty also included a termination provision, allowing the reinsurer to terminate the contract upon 180 days notice. *Id.* The contract also contained an integration clause in the contract, which provided: "That the Agreement of Reinsurance . . . and this Amendment constitutes [sic] the entire agreement of Reinsurance between the parties thereto." *Id.* Finally, the reinsurance agreement provided for the arbitration of "any difference of opinion . . . between the [cedent and the reinsurer] which cannot be resolved in the normal course of business with respect to the interpretation of this Agreement or the performance of the respective obligations of the parties under this Agreement." *Id.* The arbitration provision further provided that

> The arbitrators and umpire are relieved from all judicial formalities and may abstain from following the strict rules of law and they shall make their award with a view to effecting the general purpose of this Agreement rather than in accordance with the literal interpretation of the language, and the decision of the majority shall be final and binding upon the parties.

Id.

Approximately three weeks after the parties had executed the reinsurance agreement, the reinsurer threatened to terminate the contract if the cedent failed to pay $1,080,000 purportedly owed as advance premium under the agreement. *Id.* at 388. Approximately a week later, having not received the allegedly overdue advance premium, the reinsurer sent a notice of cancellation "effective back to inception for nonpayment of premium and failure of your company to act in good faith in fulfilling the verbal inducements used to get us to sign the aforementioned treaty." *Id.* The cedent responded that the reinsurer had failed to comply with the 180-day notice period for cancellation, and that the cedent had "made no verbal inducements on the above-mentioned treaty. This treaty stands as written." *Id.*

When the cedent submitted its first claim under the treaty to the reinsurer, the reinsurer refused to pay. *Id.* The cedent then requested arbitration, but the reinsurer refused to arbitrate, claiming that the contract was void at inception, such that the reinsurer had no obligation to submit to arbitration. *Id.* The cedent filed a complaint for declaratory relief and an order to compel arbitration. *Id.* In its answer, the reinsurer alleged that there had been a contemporaneous oral agreement between the parties that the cedent was to pay $1,080,000 in advance premium by a date certain, or else the contract would never come into existence. *Id.* Accordingly, the reinsurer asserted that the contract had never come into existence because of either

the failure of a condition precedent or the fraudulent inducement by the cedent, and, therefore, the arbitration provision had no effect. *Id*. at 389.

The trial court struck the reinsurer's defenses, ordered arbitration, and dismissed the complaint. *Id*. In so doing, the court rejected the reinsurer's argument on parol evidence grounds, finding that the agreement was unambiguous and contained an arbitration clause. *Id*. The trial court also held that since the alleged fraud concerned the entire contract, that issue was properly referred to the arbitrators. *Id*.

The reinsurer appealed. On appeal, the reinsurer argued that the trial court had improperly relied upon the parol evidence rule to exclude evidence of the purported condition precedent regarding the payment of advance premium. *Id*. at 391. The appellate court upheld the trial court's referral of the case to arbitration, finding that the trial court had properly applied the parol evidence rule, given the existence of the integration clause and the fact that the alleged condition clearly contradicted the written contract term relating to the payment of premium. *Id*. The appellate court further found that even if the reinsurer's condition precedent argument were correct, the alleged failure of the condition precedent represented an arbitrable issue. Id. In so finding, the Seventh Circuit advised that:

> Furthermore, we note that, since the parties agreed that the arbitrators "are relieved from all judicial formalities and may abstain from following the strict rules of law," the arbitrators have the authority to consider appellant's evidence concerning the alleged condition, even though the parol evidence rule precluded the district court from considering the same evidence. Thus, since the order to compel arbitration was proper, any error in the application of the parol evidence rule could have no effect on the order of arbitration.

Id.

Thus, in *Schacht*, the Seventh Circuit reconciled the integration clause with the disengagement provision by essentially reading the integration clause out of the contract in the context of an arbitration.

The integration clause in the contract at issue in *Schacht*, however, merely stated that the contract document represented the entire agreement between the parties. It did not expressly provide that no representations and warranties existed other than those found in the contract document. Thus, even if other courts faced with the issue were to adopt the ruling in Schacht, one might argue that an arbitration panel resolving an issue arising out of a contract containing an integration clause and a disengagement provision, and faced with a decision whether to factor representations and warranties made during solicitation and negotiations into its decision, could do so only in circumstances where the integration provision did not expressly negate the effect of prior representations and warranties. In other words, if the contract contained an integration provision similar to that found in *PXRE*, where prior representations and warranties were explicitly excluded from the agreement, the arbitration panel could not consider evidence of such representations and warranties, notwithstanding the existence of a disengagement provision. This issue, however, has not been resolved in the Seventh Circuit. Moreover, apparently no other court has opined on the finding in *Schacht*.

VI. Proposed Contractual Resolution

As noted above, the use of integration clauses in reinsurance contracts is a fairly recent development, likely based in relatively recently enacted regulatory requirements. The extent to which parties have focused on contract drafting to ensure that the integration clause both captures the actual intent of the parties and does not conflict with other provisions in the reinsurance contract, such as the disengagement provision is unclear. We have identified three drafting options potentially available to parties who intend to use both an integration clause and a disengagement provision in a contemplated contract, and yet still wish to ensure that a potential arbitration panel may consider representations and warranties made during the solicitation for and negotiation of the contract.

The simplest -- and likely most effective -- way that parties could ensure that an

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arbitration panel could give full consideration to representations and warranties made during the solicitation and negotiation of reinsurance contracts would be to explicitly include those representations and warranties as part of the written contract document. Thus, if agreement to enter into a reinsurance contract depends upon certain critical representations or warranties made during solicitation and negotiation, each side should ensure that the particular representations and warranties upon which it relied are enumerated in the contract. The parol evidence rule would then not become an issue in any dispute. This approach benefits both parties in that each party knows precisely upon which representations and warranties it is entitled to rely, as well as what representations and warranties it is deemed to have made.

Alternatively, the parties could consider drafting the integration provision to incorporate generically all representations and warranties made by both sides during solicitation and negotiation. This alternative is less precise and leaves open to dispute precisely what representations and warranties were, in fact, made. As noted above, the rationale underlying the regulatory requirements that reinsurance contracts include integration provisions likely stem from the regulators' desire to ensure that there is nothing outside the four corners of the reinsurance contract that could affect the reinsurance coverage. This assurance gives the regulator some comfort that the cedent who is taking credit for that reinsurance has done so properly and has, therefore, also properly stated its capital and surplus. If the integration provision merely incorporated by reference all representations and warranties made during the solicitation for and negotiation of the agreement, the regulators would not receive the assurances that they appear to seek. Rather, conditions unknown to the regulator and indeterminable from the face of the document could affect the reinsurance coverage. Accordingly, this option may be less desirable, as parties might be required to justify the provision to a regulator.

The third drafting option consists of a compromise between the first two options. Specifically, the integration clause could incorporate by reference particular documents that contain the specific representations and warranties upon each party relied; the parties could then attach those documents as exhibits to the reinsurance agreement. This compromise would have the effect of incorporating representations and warranties made during the solicitation of and negotiation for the reinsurance contract into the agreement, and would also provide a regulator with one document to which she could refer to confirm the reinsurance coverage.

Finally, parties who include integration provisions in their reinsurance contracts but choose not to include an arbitration provision should be aware of the possible ramifications of that decision -- namely, that a court will find that a party to such a contract has abandoned any argument that it is entitled to rely on representations or warranties made during solicitation, whether or not such reliance is the generally-accepted industry custom and practice. Rather, a court will likely find that the existence of the integration clause precludes any consideration of prior representations and warranties that are not referenced in the agreement, as did the court in *PXRE*.

VII. Conclusion

The tension between an integration clause and the disengagement provision creates a complex issue, especially for an arbitration panel charged with treating the contract as an "honorable engagement," rather than as a strictly legal document. Arbitrators must be conscious of the potential conflict between the two provisions when asked to resolve a matter arising out an agreement containing both an integration clause and a disengagement provision, and must give some consideration to how to address that potential conflict in light of both the language of the integration clause and the breadth of authority afforded by the arbitration clause. To the extent that the integration clause at issue does not contain an explicit exclusion for prior representations and warranties, the *Schacht* case may provide some guidance, and an arbitration panel may decide against strict application of the parol evidence rule. Should the integration clause at issue contain an explicit exclusion for prior representations and warranties, however, an arbitration panel faces a more difficult issue. ▼

1 Ariz. Admin. Code R20-6-307 (1995); Code Ark. R. 054 00 051 (1996); Conn. Agencies Regs. § 38a-72a-4 (1994); Code Del. Regs. 18 1000 1002 (2004); D.C. Mun. Regs. tit. 26, § 2303 (2005); Fla. Admin. Code Ann. r. 690-144.010 (2002); Ga. Comp. R. & Regs. 120-2-61-.05 (1993); Haw. Admin. Rules § 16-20-4 (1994); IDAPA 18.01.67.012 (1993); Ill. Admin. Code tit. 50, § 1103.40 (2004); 760 Ind. Admin. Code tit. 760 (2004), § 1-55-5; Iowa Admin. Code § 191-17.4(508) (1993); 806 Ky. Admin. Regs. 3:160 (1995); LA Admin. Code, tit. 37, Pt. XIII, § 3707 (1995); Code Me. R. 02-031 Ch. 760, § 5 (2004); Md. Insur. Admin. 31.05.07.08 (2004); Mass. Regs. Code tit. 211, § 129.03 (2004); MN St. §60A.803 (1996); Code Miss. R. 28 000 056 (1996); Mo. Code Regs., tit. 20, § 200-2.300 (1993); Mont. Admin. R. 6.6.3603 (1993); 210 Neb. Admin. Code, ch. 57, § 005 (2004); Nev. Admin. Code ch. 681A, § 190 (1996); N.H. Code Admin. R. Ins. 308.04 (1997); N.J. Admin. Code, tit. 11, § 2-40.3 (2001); N.M. Admin. Code tit. 13, § 13.2.7 (2001); N.D. Admin. Code § 45-03-07.2-03 (1995); Okla. Admin. Code § 365:25:7-52 (1994); Or. Admin. R. 836-012-0320 (1995); 31 Pa. Code § 162.8 (2004); RI Gen. Laws § 27-4.2-4 (1995(; S.C. Code of Regs. § 69-48 (1994); S.D. Admin. R. 20:06:30:11 (1995); Tenn. Comp. R. & Regs. 0780-1-62.05 (1994); Utah Admin. Code 590-143 (2002); Vt. Code R. 21 020 032 (1994); 14 Va. Admin. Code § 5-280-50 (1995); W. Va. Code St. R. § 114-48-4 (2004); Wis. Admin. Code § 55.03 (1993); WY St. § 26-5-119 (1994).

2 Alaska Admin Code, tit. 3, § 21.635 (1994); MN St. § 60A.09 (1996) (applicable only to "bulk reinsurance agreements" entered into by insurance companies, other than life insurance companies, that have a capital and surplus or surplus of $5,000,000 or less); 11 N.Y.C.R.R. 127.3 (1993) (applying to property and casualty insurers only with respect to accident and health business); 28 Tex. Admin. Code § 7.611 (1996); Wash. Admin. Code 284-13-860 (1995).

3 In explaining its adoption of a regulation requiring property and casualty insurers to include "entire agreement" clauses in their reinsurance contracts, the Texas Department of Insurance explained, "[this provision is] generally used in reinsurance agreements so the new provision[] codif[ies] standard practices that support the safe and efficient execution of reinsurance agreements." 20 Tex. Reg. 4408 (June 16, 1995).