CASUALTY ACTUARIAL SOCIETY
SPRING 1987 MEETING

PANEL: The McCarran-Ferguson Act; Have We Seen The Last Of It?

Moderator: David G. Hartman
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Panelists: James M. Stone, President
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Representative Edward F. Feighan
U.S. House of Representatives (D-Ohio)
Member of Judiciary Subcommittee
on Monopolies and Commercial Law
We're very fortunate to have Dave Hartman, the president-elect of the CAS. He is a graduate of the University of Michigan, with a Masters Degree in Actuarial Science, and of course, a fellow. He began his career at Kemper, and for the last 16 years he's been with Chubb, where currently he is senior vice president & actuary. Dave will introduce the panelists and also handle the question and answer session. So without further ado, Dave Hartman.

DAVE HARTMAN: Thank you, Mike. It's certainly my pleasure and privilege to moderate this prestigious panel. We have three people here today who I am sure you'll find most interesting and varied. You can hardly pick-up a copy of the trade press and not find something about the McCarran-Ferguson Act or competitiveness. In fact, it's getting more difficult to pick up a copy of any periodical or newspaper and not find some mention of property/casualty insurance competitiveness and the future regulation or property/casualty insurance. There is an increasing national debate broiling on this topic. We in the Casualty Actuarial Society generally do not take positions on debates of this sort. However, we have an opportunity today as members of the CAS to increase our level of knowledge and understanding about some of the issues, and also I think we're uniquely positioned to contribute education to the debate that is going on. When you stop to think of it, who else has had the kind of training that we've had through Part 8 of our examinations? Who else has had the experience in data
gathering? The experience in putting together rate indications? The experience in filing and defending those rate indications with state regulators? The experience in dealing with data requests at the federal level? I visited Abcott on Saturday and was impressed with one of the exhibits about using our imagination. Consider, if you will, the impact that this group of 600 people could have as you return home and discuss some of the things that you're about to hear with your colleagues. To talk with others who influence opinions, both CEO's and perhaps legal representatives of your firms. And furthermore, the opportunity that you'd have to help provide knowledge to people in Washington who set policy in this area of regulation of insurance.

Our first speaker this morning is from Washington, Congressman Edward F. Feighan. He was elected to the U.S. House of Representatives from the 19th District of Ohio in 1982. A Democrat, Mr. Feighan was re-elected in 1984 and 1986. Prior to his election in Congress, Congressman Feighan was elected to the Ohio General Assembly at the age of twenty four in 1972. He was re-elected in 1974 and in 1976. I think clearly he is one of the new generation of political leaders that we heard reference to by Pat Choate. Mr. Feighan is a member of the House Foreign Affairs Committee, and the House Judiciary Committee. Early in his first term he was named chairman of the House Foreign Affairs Task Force on International Narcotics Control. He was the only first-term Member of Congress to hold a Chairmanship during the 98th Congress. In the current Congress, Mr. Feighan serves on the
Judiciary Committee's Subcommittee on Crime and on the Subcommittee on Monopolies and Commercial Law. It is this Subcommittee on Monopolies and Commercial Law, that deals with all of the proposed legislation that comes before the House, addressing any possible revisions to the McCarran-Ferguson Act. In other words, this would be the first subcommittee that would review such legislation.

A native of Lakewood, Ohio, Congressman Feighan graduated from St. Edward's High School, the following year at Baremo Seminary. He completed his undergraduate studies at Loyola University in New Orleans. He received his law degree from Cleveland Marshall College of Law at Cleveland State University. He and his wife live in Lakewood, Ohio, with their three young children, probably a little too young to bring here to Disney World. But we would like all of you to join us in welcoming Congressman Feighan.

CONGRESSMAN FEIGHAN: Thank you very much Dave, and let me thank you and Mike Walters and others for the opportunity to join with you for a few minutes this morning to talk about what's happening in Washington in your industry, and particularly McCarran-Ferguson legislation. I was eager to join you for a number of reasons, not the least of which is to serve on a panel with two distinguished members of the industry, Jim Stone and Bruce Bunner, but also, as a Member of the House Judiciary Committee, a committee, as Dave had said, that has oversight for McCarran-Ferguson, to share some thoughts with you and hear from
some of you about your views on various proposals.

I think I was also eager because as an elected official I have the opportunity to speak to a wide range of audiences, and I particularly like it when I have a sophisticated, aware, intelligent audience to speak to, as I know this is this morning. That compares with my experience of Saturday morning, while many of you were here perhaps relaxing with your families. I was speaking to a third-grade Cub Scout group in Lakewood, Ohio. Not to make an analogy too strong. I was dangerous. I did something with that audience that I would not do with this. I began by asking questions in order to determine their level of awareness of politics and government. I asked the group of young men if anyone in the audience could tell me what the difference was between their Cub Scout pack and the United States Congress, thinking that would elicit some basic information about their level of understanding. And after a long uncomfortable pause, a hand went up in the back of the room and the young boy that stood up said, "I think I know what the difference is, we have adult supervision." I thought about it for a moment and I realized that this was likely to be more of a learning experience for me than it was going to be for that group. Hopefully, I'll have an opportunity in a few short minutes this morning to shed some light on the operations of the Congress so you are able to have a view about the nature of the Congress that is not quite as harsh as the view that that young man had had.
McCarran-Ferguson is a particularly interesting debate. Hearings on the insurance industry, of course, are always interesting in the Congress, but particularly I enjoy the McCarran-Ferguson hearings because we have before us individuals who will testify that repeal of McCarran-Ferguson is without question the magic bullet to cure all the problems of the insurance industry, particularly property and casualty. And then at the same time we have individuals who tell us that retention of McCarran-Ferguson antitrust exemption is actually the fundamental cement of an industry removal of which is going to cause virtual irreparable and total collapse of an industry. Attempting to balance those two perspectives has become a real challenge in the Congress.

McCarran-Ferguson repeal efforts, I think, have to be understood in the context of what is driving congressional interest in your industry, generally, and in McCarran-Ferguson, specifically. I'd like to just touch upon some of those forces that I think have been fueling the debate. Most importantly, of course, in the past several years we've seen dramatic increases in the cost of insurance, and that has fueled concern among consumers who come to town hall meetings and other public forums with members of Congress and ask them why they can't correct that experience.

Liability insurance, as you well know, has sometimes doubled or tripled in cost. In 1985, I thought it was interesting to note that Americans paid $9.1 billion in liability insurance premiums, which was 60% higher than the amount of money they had
been spending in 1963. I don't have the data for 1986, but I'm sure that there was a significant, if not that high, a significant increase over the previous year. It would be interesting perhaps for you to know that that total amount on an annual basis is equal to the budgets of NASA and the CIA combined.

The causes of that problem we all recognize are very complex, and I don't want to get into them except to say that some insurance company representatives and others will point primarily to our legal system and claim that the costs are due to excessive litigation and the multi-million dollar jury awards. And pointing out, rightly in many instances, that some of the punitive damage awards that we've seen in the country really look more like lottery jackpots than they may look like the deliberative results of our judicial system.

Consumer groups, on the other hand, will point to insurance companies themselves and say that they are the ones that have raised rates to recoup losses resulting from irresponsibly low premiums charged in the late 70's and early 1980's, when interest rates were significantly high. The truth of the matter is, of course, both representatives have some considerable truth to their perspectives. A related reason, though, for congressional interest over the past two years, particularly in repeal of McCarran-Ferguson, undoubtedly comes from the much publicized liability insurance crisis of the past eighteen months. It seems to have been alleviated, at least in the media's mind in recent months. But last year, when the country was in the throes of
that crisis, many types of liability insurance, in fact, were either prohibitively expensive or simply unavailable. That publicity, of course, heightened congressional interest of a majority of the members of Congress who really had very little understanding of the fundamental operations of the industry itself.

One final factor that I would point to that has emerged really since August or September of 1986, and that is the new congressional fascination with competitiveness. Pat showed in an exceptionally fine commentary this morning, spoke to some of the factors that have led the Congress with a fascination with competitiveness. And how important it is that the Congress be focused in a responsible fashion in dealing with the problems of American competitiveness. It is not surprising that in that context a lot of members of Congress are looking at repeal of McCarran Ferguson as an opportunity to bring dramatic new competitiveness to a major and vital industry in the United States. There's no doubt that the high cost of insurance today, in fact, does have an impact on American competitiveness. Indeed, the pursuit of the American dream, either by a factory owner who is seeking to expand, or a young entrepreneur seeking to start a new enterprise, is finding that they're running into a obstacle as formidable as high taxes or high insurance rates which can be the cost of liability insurance.

I find it interesting that in that very context, a number of members are proposing that to deal with the problems of American competitiveness, what we should be doing is adding more
exemptions to the anti-trust laws of this nation. Particularly, for distressed industries to expand the numbers of anti-trust exemptions. And yet at the same time, many of those same members are saying that in order to increase American competitiveness in the insurance industry, we should be removing the exemption that has existed now since 1945. I'm not quite sure that those two thoughts can be held simultaneously, but members of Congress have remarkable capacities for accomplishing that. What has resulted really has been a two-pronged attack on the liability insurance problems that we have. One drive focused on reviewing the operations of the property and casualty insurance industry, and the other focused on overhauling both federal and state tort law that would govern liability lawsuits.

At the state level, of course, there has been tremendous explosion of movement in the efforts of tort reform. There have been a number of proposals introduced to the Congress, but as yet, there have been no significant bills enacted by either the House or the Senate, that would deal with a tort reform generally or industry specific tort reform. It's been interesting to watch those that are approaching the liability insurance problems from the perspective of an interest in the insurance industry's anti-trust exemption. Looking, for example, at an industry like professional major league baseball is one of the few industries that has that kind of protection under American anti-trust law.

Proponents of repealing McCarran-Ferguson have made a number of arguments. First, they claim that McCarran-Ferguson unnecessarily shields the insurance industry from competition.
They criticize the use of ratings organizations to develop rates that include expenses. Even if insurers do not adhere to those rates, they would argue, they still track the suggested rate and not sell insurance at the lowest possible price for the American consumer. At a recent hearing, as a matter of fact, just about ten days or two weeks ago, FTC Commissioner Dan Oliver testified that legislation to repeal McCarran-Ferguson in his words, "is long overdue." He said, "exposing the industry to the brisk winds of competition can only serve to benefit consumers and promote the general welfare." He was joined at the table by other advocates of modifying McCarran-Ferguson who were raising questions about the extent and the vigor of state regulation, which in fact, does vary considerably from state-to-state.

Finally, proponents or repeal or modification have argued that the industry, in fact, no longer needs that kind of broad anti-trust exemption. That the doctrines of state action and other doctrines that have been engrafted by the courts in recent years have now been fully developed and give adequate protection to the industry. I thought it was interesting to watch at that same hearing that the FTC Commissioner testified, the shrillness, the harshness of some of the exchange. We had a colleague of mine seated next to me who feels very strongly about retaining McCarran-Ferguson. He was questioning a representative from the American Bankers Association, a group, of course, that is arguing for repeal of McCarran-Ferguson, only because they'd like to enter into the profitable realm of insurance.

After the individual testifying for the American Bankers
Association was telling about the experience in West Virginia, and saying that the virtual boycott of insurance companies in West Virginia would not have happened except if we didn't have McCarran-Ferguson on the books. That irritated his colleague seated next to me who rightfully pointed out that McCarran-Ferguson does not exclude the boycott activities of the insurance industry, and that if there was a boycott taking place that the insurance industry would still be subject to American anti-trust law.

The microphone was still on when the member of Congress turned to me in anger and rather caustically, (he'd been dealing with this particular representative testifying before), turned to me and said, "you know, it's not amazing to me that this individual has his foot in his mouth once again, considering where his head is most of the time." I recoiled in my seat for a minute, but I didn't recoil quite as much as the individual seated at the table who could still pick it up because the microphones were on.

I'm not at all certain that shrillness or caustic nature is going to lead to the kind of reasoned debate that we need to come to the appropriate conclusion for American consumers. These advocates, which you should know include the National Federal of Independent Businesses and the National Conference of State Legislatures. A number of consumer organizations contend that in the long run repeal is going to result in lower prices, a very attractive prospect to American consumers. Politicians who believe that that's going to be the end result are clearly going
to be attracted to joining in the effort at repeal of McCarran-Ferguson so they can take credit for lower premiums in insurance.

Opponents, of course, of repeal say that there is no need to remove that vital anti-trust exemption. And they view the industry as already highly competitive. They're able to point to the approximately 3500 property and casualty insurers and over 2200 life insurance companies that are currently doing business in the United States. Compelling evidence, I would have to admit, of the nature of competition. Moreover, they would argue that the elimination of certain joint activities in the industry would harm especially smaller companies which don't have the capability to perform a number of those tasks in-house. According to these individuals, if McCarran is repealed, smaller companies simply will go out of business, and the end result of that, of course, will be higher interest or higher premium rates.

A related concern is that if McCarran is repealed then we will have an absence on the federal books of any laws defining and describing exactly what activities might be permitted. Certain collective activities such as pooling arrangements might pass muster under that arrangement, or they might not. Without McCarran, clearly insurers could face the high cost of business uncertainty as well as the cost of possible anti-trust litigation over practices that today are commonplace in the industry.

Insurers also take little comfort in the state action doctrine arguing that it is really unclear precisely what is going to meet that test in the final analysis. The interest has been heightened in recent months, and I'd like to leave with you
this morning a sense and a review of what is likely to take place in the Congress, in both the House and the Senate in efforts at reviewing and possibly taking action on proposals to either modify or completely repeal the McCarran-Ferguson anti-trust exemption. Currently there are McCarran bills that have been introduced in the Senate. In the House there has been nothing introduced until Friday of last week. But in the Senate there is Senator Howard Metzenbaum from Ohio's legislation which would be a complete repeal of McCarran Ferguson, and would leave in place only the state action exemption and the rule of reason to fundamental concepts of anti-trust law as protections for insurers.

Many industry representatives feel that those are really not protections. Then there is an alternative to the Metzenbaum legislation, introduced by Senator Paul Simon, that removes the anti-trust exemption for the insurance industry but specifies that certain collective activities would still remain exempt. He would propose that there are safe harbors in the legislation for collecting loss and trending data as well as for other joint activities. I think that my colleague from Ohio, Senator Metzenbaum, has recognized that it's very unlikely that his colleagues are going to accept the complete repeal of McCarran Ferguson. He told me in a conversation about a week ago that he intends in the next week or two to introduce a modified version of his legislation that also would include safe harbors for collecting historical loss data and exempting pooling arrangements from the repeal of the anti-trust exemption.
All of these bills, of course, would grant to the Federal Trade Commission the authority to bring deceptive trade practice cases against insurers, which clearly signals the emergence of a very significant involvement of the federal government in the regulation of the insurance industry.

The Senate Judiciary Committee has already held a hearing this year on McCarran-Ferguson legislation and expects to hold another one this June. It is interesting how the politics of different members of Congress will effect how the legislation might move. The chairman of the Senate Judiciary Committee is Joe Biden, running for President, and because of that, there's a good likelihood that there will not be any action on McCarran-Ferguson legislation, at the earliest, probably before the fall of this year.

There's been far less activity in the House. While Chairman Peter Rodino is very interested and seems relatively supportive of at least modification of McCarran-Ferguson, he has not introduced legislation. He's on the Iran-Contra Panel that is now working five days a week and will work until the end of July. The likelihood of the House Judiciary Committee addressing McCarran-Ferguson because of that, is very remote, and we wouldn't see action probably, at the earliest, until the end of this year.

I would like to urge all of you, being in a very unique position to have an impact on the United States Congress, to use that influence. You have a national network that has a great deal of knowledge and certainly tremendous experience in dealing
with these issues. That can be very helpful to the Congress if you use it and if you reach out to individual members to try and give them the guidance, the experience, the knowledge that you've acquired in this profession.

I almost hesitate to do that because I made a similar recommendation about a year ago to a group of CPA's in my community, and one of them in fact, the first time ever decided to contact his local member of Congress in the suburban area of Cleveland. And he called me up and said it was not a very satisfactory experience. During the course of the discussion, it was on RICO Reform legislation that effects CPAs. He had said to the member of Congress who represents him, appealing for what he thought would be his fundamental concerns, and said "I hope that you will consult your conscience before you vote on this important legislation effecting my industry." The congressman looked him dead in the eye and said, "Son, I'm not about to start taking political advice from a complete stranger."

I hope that that's not reflective of the approach that all members of Congress would have. I think you'll find a great deal of reception to bringing the experience and knowledge that you have. Thanks very much.

DAVE HARTMAN: Thank you very much Congressman Feighan. I consider him a true representative of the people. We will, by the way, have time for questions and those questions will be after all three presentations.

Our next panelist is James M. Stone. Jim Stone is President
of the Plymouth Rock Assurance Corporation, a company he founded in 1983. Plymouth Rock is the Boston based property and casualty insurer specializing in personal auto and homeowners' coverages. For those of you who are interested in numonics or numerology, you'll be delighted to know that the last four digits of the telephone number and the post office box of Plymouth Rock are 1620. He holds a B.A. with highest honors and a Ph.D. from Harvard University, both in economics. He also holds the designation of chartered, property and casualty underwriter.

This audience will be particularly interested to know that he has passed six of the actuarial exams, including Part 8 and sat for Part No. 6, last Friday. One of the many reasons he was invited to be on this panel is not the fact that he's already passed Part 8, but rather his experience as a state and federal regulator combined with his experience as president of a small insurance company.

In February of 1975, Mr. Stone was appointed by Governor Michael Dukakis, who is another democratic candidate for president over age 50, to serve as commissioner of insurance for the Commonwealth of Massachusetts. He served as commissioner for four years. Mr. Stone was nominated in 1979 by President Carter to be chairman of the Commodity Futures Trading Commission. The CFTC is the federal agency vested with exclusive regulatory jurisdiction over futures trading activity in more than 60 commodities. He served as chairman and then commissioner of that agency until January, 1983. Mr. Stone is the author of a book entitled One Way for Wall Street and numerous articles on
insurance, finance, and economics. Please welcome today Jim Stone.

JIM STONE: Thank you. I can't resist beginning by saying that I was asked to make this presentation by Russ Fisher, and when he called me I told him that this society had put me through so much pain over the years that I was reluctant to make this sort of speech, but that I would do it if he would promise me one point of exam credit on Part 6. He made me that promise and I now consider it ratified by your silence. What I am not sure of, however, is when I get my 2 or 3 on the exam I just took, how will I know whether it includes the extra point or whether I get to add one to that.

I thought that I should begin with an overall summary of what I'll say in about ten minutes after that, because I have a view on McCarran-Ferguson that may be different from most of the people in the audience, and I thought I should summarize it rather than ask you to try and guess it as I go along. The view is that I think it's something of an overblown issue from the industry's point of view, economically. It has a significance but the significance is not the economics.

I don't spend a lot of time worrying as a company president about whether McCarran-Ferguson is going to be amended or even repealed. I think it's more of a symbolic issue than an economic one. If a repeal or amendment should pass, I would view it as a very serious symbolic act. It's a very serious slap on the wrist
from the society that we're all here to serve. If Congress is angry enough at the insurance industry, that means something. The specific consequences of what would come out of the legislation I think are somewhat less important. But let me give you what I think are five things that you might look for if indeed McCarran-Ferguson should be repealed or changed in some very important way. The first is, that whatever is done by the Congress almost certainly, I believe, will include some exemption for small companies. The second is that large companies will continue to be able to exchange experience data in some manner that will be helpful to them in deriving rates. The third general observation is that most state regulation as we know it would be absolutely unaffected. The fourth is the one area of state regulation that would be effected, which is rate regulation, particularly in the personal lines, is going to be subject to continued debate anyway, and it's hard to tell what the impact of McCarran-Ferguson will be and how that debate is decided.

Lastly, there will be some changes that will come about if McCarran-Ferguson should be repealed or greatly amended, but they're probably in things that most people in this room haven't even thought about. It's a convention of lawyers that would be interested in discussing those issues. Let me go to each one of those in turn and briefly give you an explanation of why I feel that those are the consequences should it be repealed.

With respect to small companies two facts I think are beyond dispute. One is that entry into a market of new participants
enhances competition and that's a good thing. Secondly, small companies cannot assemble credible data or pay for the high salaries in this room to assemble an actuarial staff without some pooling of resources. I really don't see how any rational observer and any legislator or any policymaker could dispute either of those facts, and therefore I think they'll be taken into account. I would add a third, although I'm reluctant to go outside my own area of expertise, and perhaps the congressman can confirm it later in the question period whether I'm right or not, and that is that small companies and their agencies are a powerful political force and they'll get listened to in this process.

In my eight years in government I observed a lot of issues in which you could say that the merits were on one side, matched against some vested interest and the power of campaign contributions, advertising budgets, and so on on the other. In those cases results are unpredictable. You never knew which side was going to win in a particular case. In this one, that is with respect to small companies, where they enhance competition, where they need some pooling, and where they're politically powerful, it seems to me, that the result is inevitable. That you're going to see if there's a repeal of a small company exemption.

With respect to large companies, there you've got carriers that can afford actuaries and often do have credible data. But even there, the repeal of McCarran-Ferguson wouldn't be able to wipe out what exists now in the exchange of data because regulators need to pool the data. You're going to need to know
in areas, particularly the controversial areas, what the overall industry results are in order for society to judge whether insurance is being priced fairly. If companies simply send that information into public agencies and that information is published, large companies are going to have all that they really need.

It isn't really necessary, in my view, and I think it never has been necessary, for very large companies to see anything other than the pure premium, that is the loss experience. I don't feel that large companies need to pool anything to be able to determine their own expense loadings, to be able to decide what departures and modifications they want to use from standard programs. Those are not things that they really need bureaus to do. I think that what you would end up with is the pooling of all of the experience data around which the difficult rate decisions have to be made, and a non-pooling of the expense data and some of what I consider more incidental data, or the predictions for the future, which again, large companies are perfectly capable of doing on their own. In fact, for most of the giant companies this is the real world today anyway, and what happens in theory at the bureaus is more or less irrelevant except with respect to the pooling of that huge experience data and we're going to see a demand from government for more of that rather than less of that, whatever way the McCarran-Ferguson debate comes out. The government is going to want to know after the liability crisis of the last couple of years, what the overall experience was in all of those controversial lines.
They're going to demand the pooling of data, not forbid it. Expect the public policy change in that direction and not the other.

With respect to most of state regulation, when you think about what a state department does, most of it isn't rate regulations, and most of it would be unaffected by whatever happens in this debate. When I think back to how the Massachusetts Insurance Department was organized when I was commissioner, there were 5 major areas, one of them was rate regulation, and I'll come back to that one in a second. The other four were business conduct and complaints. That is the handling of problems where customers on a local basis feel offended by an agent or a company and that's always, in my view, likely to be handled by some local dispute resolution mechanism and the insurance departments have done a reasonable job of doing that. A local focus for that is probably the right way because customers are just not comfortable calling the federal government and shouldn't be expected to, about a problem involving a cancellation of an individual policy or a billing matter. All of the usual things we got those complaints about, all of that will continue whether or not there's McCarran-Ferguson reform or not.

The second general area was policy forums and again, since policy forums become a matter of public record when they are filed, seems to me, that you'll have very little change there. The public does have some right to look at how policy forms, to follow the standards of fairness and clarity and so on. They'll continue to do that, as those forms are filed, and go into the
insurance department records. They become available to the public. Other companies can then use them if they're good, and I suspect that that will continue just exactly as now.

The next area was the licensing of agents and new companies. There the department is trying to judge whether an agent or a company is trustworthy and competent to be able to do business is that state. Again, that will have to continue at the state level. Particularly, the trustworthy aspect really has to be judged on a local basis, and I suspect we'll continue to. It's conceivable that you could have some kind of federal chartering as well, but my bet would be that even if you had federal chartering, that state authorities would retain the right to forbid entities to operate in a particular jurisdiction if they didn't meet that standard of trustworthiness that the state demanded. In any case, I think that's a sensible way to handle that. Even if someday there's some mixed jurisdiction over a licensing.

Lastly, there's the issue of solvency, which of course is the one state regulation really began with and in many senses is the most important. The insurance industry is an industry in which there is a trust feature. Somebody is holding a lot of somebody else's money and it's important that those pools of money be kept from being plundered or being foolishly wasted. States have concerned themselves a great deal with the regulation of solvency as well as it should. I've always had my doubts about whether that is something that ought to be handled on a state basis as opposed to a federal basis. And there I had
departed when I was commissioner from my colleagues. The NAIC felt very strongly the other way. I'm not closed, wasn't then and not now, to the possibility that there is a federal role with respect to the monitoring of the solvency of interstate companies. Whatever happens in that debate that's a different debate for McCarran-Ferguson and that's not going to be effected either.

That brings us then to the issue of rate regulation. There there is a genuine philosophical battle going on anyway. And the repeal of McCarran-Ferguson would certainly raise its favor and focus some of the issues. States vary across the lot and across the country. I guess Massachusetts and California are about as different as any two can be. Somebody from California once told me that we were a whole generation culturally behind California, and someone from Massachusetts once said to someone out there that he didn't understand how anyone could want to live 3,000 miles from the ocean. In regulatory matters there's just as much of a difference.

The ironic thing about the McCarran-Ferguson debate is that in a very strange way, if you look at it legalistically, it favors the two extreme systems, the Massachusetts system and the California system more than it favors the system in between if the anti-trust exemptions should be repealed. That may be a strange sounding statement but let me make a case for it. The California system that is relatively pure competition, is clearly one compatible with the usual methods of anti-trust regulation. The Massachusetts system, where the commissioner makes the rates,
this is in auto insurance I'm talking about now which I would like to use as an example of what I'm going to talk about for the next couple of minutes, although you could say some interesting things about the other lines as well.

Auto is the biggest line, it's also the one I know best, so let me illustrate things by that. In Massachusetts where the commissioner makes the automobile insurance rates, you clearly have mandated state action. The law says that the commissioner shall make the rates and the company shall use them. It's the cases in between where it's not clear whether it's mandated state action or pure competition that is going to be confused if there's a change in McCarran-Ferguson. In a way the two extreme systems are favored. As to which of those two extreme systems will survive, or which one will win if they become more and more pitted against one another, I don't know the answer to that but I have an idea as to where to look.

My idea of where to look is not to look in overall rate levels or overall rate of return or profitability, it's all in relativities. That's where I think the issue is. So as far as I can tell from the data, everything that's been written indicates that it makes a lot less difference than you might intuitively think it would, whether you use the California system or the Massachusetts system. That is, whether the commissioner makes the rates or whether the industry does. There have been whole periods of ten years in which the Massachusetts states made rates, have given higher profits to the industry than the most competitive states have, and there are periods like now, I think,
in which the reverse is true. The data doesn't support a simple conclusion that pure competition or state made rates is better for regulating profit. It can go either way.

Competitive cycles can cause insurance to be underpriced or overpriced, and so can regulation. Where there is a tremendous difference is with respect to the relativities. It's in that area where I think the fight will be waged and not in the overall rate levels. With respect to most states in the country that would tip the balance towards competition. Those states that do not have pockets of very high traffic density or very high crime, aren't going to have the relativity problems that bring this to the fore. The balance share should tip toward competition. Those states that do have these high cost pockets have a much more difficult problem. To try and put it in mathematical terms, I would say that there are three things that the best mathematicians in this audience are going to get stumped on or at least challenged by looking at, and they are the issues that the public in its own intuitive way is really looking at. The first one is the question of heterogeneity. We know that when you set up classification cells that there is some tradeoff between creditibility and homogeneity but not a lot of attention is focused by actuaries on anything except the means of the distributions. What happens when a distribution is heterogeneous? What happens in the tails is very important. I would urge you not only to think of the first moment of the distribution, but particularly in high paying classification groups, always think about the tails because that's where the
political pressure will focus.

If there's a single thing that caused our Massachusetts competitive rating law to be removed or obscured by a return to state-made rates within the first year, it was the fact that a Dorchester driver with seven years of a perfect record could be paying ten times as much for auto insurance as somebody in Wellesley with half a dozen accidents who happened to be in the right classification cells. The public and the legislature intuitively understood that there's something wrong there. It's a hard problem to solve what to do with tails of distributions, but you've got to solve it. Because if you don't then you end up with the state coming in and essentially saying you can't use this whole approach because the tails poison works pretty well at the means. The tails in the high rated distributions are where you can get very very large discrepancies from true expected rates.

The second general mathematical area for thought here is that it's fairly clear if you look at pricing patterns, that there are risk loadings for other than things that show up in a simple static distribution. That is, there are risk loadings for uncertainties about what the distribution is going to look like in the future. Again, those are particularly focused in the highest rated classification cells. You've got a double problem there. You can't prove by the shape of any curve some of the rates that make sense if you can take into the sort of generalized risk or the risk about risk, the kind of second degree uncertainty around which insurance pricing really has to
be based if you're going to preserve capital in the long run. The whole sort of field of dynamic models of how to do pricing is something actuaries have not paid a lot of attention to. But again, if the public looks at rates and sees that they don't match any kind of actuarial data, and you have to explain rather vaguely that they take into account some uncertainty about the future, you're going to have a tougher time than if there's a science of that.

The third is, I think that with respect to classifications the industry has not paid a lot of attention. The best scientist in the interest, as well as its business leaders, have not paid enough attention to the impacts of classification on behavior. This industry was founded on a tradition many many years ago, that it was our job to try to reduce losses as well as to compensate for them, to have a means of spreading them. Classification systems can have a lot to do with that. You can have a classification system that explains 10% of the variance and an alternative one that explains 9% of the variance. If the one that explains 9% of the variance produces useful incentive variables that actually change the overall loss experience, well, it's a lot better than the slightly predictive one. It's better for society; society ought to demand that we use it and I think you'll see we don't always do that.

I am particularly interested in straying from the auto for a moment to the medical malpractice area, where I think we've sort of forgotten that altogether and concentrated entirely on prediction rather than impacting results. I think that the
insurance industry's job and the actuary's job is to have as much of an impact on results as possible as well as an ability to predict them. If we lose sight of that, boy we've lost half the battle already. It's not necessarily true as economists know, but insurance literature doesn't always say that what works best for an individual company in competition, works best for all companies taken together. There are such things in the economic world as extranalities, things that have to be done by state action. This area is one that's right for that kind of work. All of these are problems I think we're going to have to overcome one way or another. If McCarran-Ferguson goes ahead, it's going to intensify that focus, it's going to speed it up. But those are issues that weren't going to go away anyway.

My last point was that there would be some changes but they probably weren't ones actuaries thought a lot about. I'll tell you what a couple of them are. I think that if the federal anti-trust laws are changed, you take a look at those laws and you'll see there's a very very heavy emphasis on civil damages. Companies suing one another for impermissible behavior with respect to competition. And also don't ever forget that Southeast Underwriters was a criminal case. There are criminal anti-trust penalties as well as these treble damages. And that's where the focus is going to be.

The repeal of McCarran-Ferguson isn't so important for what it would do to the bureaus. It is important for what it will do with respect to litigation, for what it's going to mean to all of your lawyers, for what it's going to mean should McCarran
Ferguson be repealed. To industry behavior, the people haven't even thought twice about probably. It's only half facetious to predict that all of the country clubs in Hartford are going to change memberships if McCarran-Ferguson is repealed. People actually go to jail for sitting around having drinks and talking about pricing in other industries. This industry hasn't worried a lot about that. If McCarran-Ferguson is repealed, you're going to have to worry about what's said at these conferences during the breaks and at lunches and dinner. There's a lot of restrictions of a legalistic sort that this industry just hasn't thought a lot about. And it's in these legal areas that I don't think there's much economic significance. I really don't think it matters to which country club. And in this industry it doesn't seem to matter very much when people talk about pricing. It certainly doesn't seem to have helped much. But in any case, that's what people will become sensitive to. That will be the big change. There would be a big change in the way lawyers rather than economists would look at the insurance industry if McCarran-Ferguson is repealed. From an economist's or an actuary's viewpoint this issue is not the greatest issue facing us. From a lawyer's viewpoint, it may be the greatest issue facing the industry. The repeal would be a lawyer's dream. You can't imagine how much legal business it would generate if McCarran-Ferguson is repealed. So as an extremely rational economist, I've prepared myself for this contingency and diversified by marrying a lawyer. I suggest that all of you do likewise. Thank you.
DAVE HARTMAN: Thank you very much Jim. Our third speaker is Bruce A. Bunner, who is a partner in the national insurance practice of Peat, Marwick in New York City. He earned a bachelor's of business degree in accounting at New York University, and recently received an Honorary Doctor of Business Administration degree from Asouza Pacific University in California.

Bruce also has many reasons why he's been asked to be on this panel. Clearly, one of them is that he's out in California or was before moving back to New York, and Jim has been in Massachusetts. As Jim pointed out, Massachusetts has state made rates and California has had an open competition environment for rate regulation. Bruce is a recognized authority on insurance matters, having significant experience in the field. He has twenty years of experience with Peat, Marwick in insurance and related industries. At the request of California Governor George Deukmejian, Mr. Bunner left the firm in 1983 through 1986 to become the California State Insurance Commissioner. There he initiated significant changes in the rating systems for workers' compensation and automobile, broadened the department's consumer activities, and implemented changes that have had nationwide impact on insurers reporting requirements. He's also served on the supplemental health insurance panel, a position to which he was supported by President Reagan in 1983. He's a member of the American Institute of Certified Public Accountants, the California Society of Certified Public Accountants, and the Insurance
Accounting and Statistical Association. He's been active in the National Association of Insurance Commissioners, having served as Chairman and/or Vice Chairman of a number of NAIC task forces and committees relating to such issues as federal income taxes, financial accounting and reporting, actuarial matters, and industry solvency.

Mr. Bunner also speaks and writes extensively on insurance matters, and you may have noticed in the January issue of Best's Review, an article that he wrote about escaping the regulatory bondage. We're very pleased to have him here this morning. Let's welcome him.

BRUCE BUNNER: Thank you Dave, and I'm delighted to be here with all of you. I always get a little intimidated because I know the wealth of knowledge of actuaries and I've always had difficulty sometimes communicating with them in getting my way. But I should set the record straight on a couple of things here. I'm really here because I'm the token Republican of this panel. They did forgive me last night because I told them I did vote for Jerry Brown when he first ran for Governor of California, although I didn't tell Governor Deukmejian that when he appointed me. Let me also add that I wasn't the one who said Massachusetts was a generation behind. I guess with those comments, I'd like to give a little perspective based on my experience as a California Insurance Commissioner, and again as Dave mentioned, coming from an opening rating state. I would
probably have to add, so you'll have to pardon some of my comments, because every once in a while my managing partner in my firm gets a few letters from the industry saying if you really want to develop any business in that firm of yours, you'd better keep that guy Bunner quiet, he's still talking like a regulator. If you'll forgive me, I'll just kind of keep a regulator hat on for a little bit because my experience has been somewhat jaded.

I can't quite understand the industry sometimes. I've always been a strong proponent of free enterprise and trying to preserve, if you will, the California open rating environment, and sometimes I just can't help feeling the industry is determined to destroy that environment and just let it erode and disappear and become one of those states that's going to be highly regulated. To set a little bit of the background for some of comments regarding McCarran-Ferguson. It's just been interesting, the number of things you do read in the trade press, if you will, and some of the conversations I've had with industry executives, certainly since I've been back in private practice. But you know, I can recall a meeting I had with one chairman and I was kind of reacting to your flex rating and the fact that California was moving in that direction. I was really kind of shocked that the chairman would just say -- what's wrong with that? Kind of harkening back to the Nixon years of wage price controls and what it did for the manufacturing industry in general, maybe it wasn't so bad after all. I don't recall anything being good about Nixon's wage price controls, but
somehow or other I think he felt that maybe it is appropriate for the insurance industry. I was really quite shocked by that because I've always felt the industry talks about open rating but sometimes you get into private conversations and they don't really feel that way at all. I think one other major company just made a comment very recently that competition can prevent prices from getting too high but it can't prevent them from getting too low. I don't know, I'm not an economist, but I had just never felt that way. I felt that if we had optimum competition, that prices will moderate at a level that is quite appropriate. It will remove excess profits and it will also remove inadequate profits, if you will. Some of the arguments that come in all of that.

I think there's a feeling among members in our industry that they want some form of price stability, and again, they use the whole argument that we need to have this because of the potential for insolvencies. I think that even some of the hearings that are going on in New York, and I need to be careful, I don't know whether I'm a carpetbagger or not. I haven't decided whether I'm a Californian or a New Yorker, even though I was born in New York. I was asked the other day to testify next week on financial guarantees, and I keep saying well maybe I'd better keep my mouth shut. I'm not sure whether to go or not. But like the junk bond issue, the industry's come back and basically said that they would support some sort of restrictions on the investments and high yield bonds. I just feel that whole approach is very arbitrary. We're not really getting to the nub
of the problem; it's another band-aid approach to a particular issue within the industry. Again, I think the companies that are in support of putting some limitations there are some of our larger companies. I think there's sort of a feeling, if I were to sort through all of that, it's a little bit of protectionism, I think, that they're looking for in that particular regard. If you spill over outside the industry, the congressman mentioned some of the comments. Oliver of the Federal Trade Commission really says McCarran-Ferguson is anti-competitive, it limits consumer's options by agreeing on forms and types of insurance plans, divides customers up into territories, and imposes uniform terms on agents. I sort of respond to all of that by saying, "so what?"

I know a number of times when I've testified in the California legislature, the complaint was that we've got too many forms and there is too much latitude and they're trying to narrow this down. That's where the consumer groups were coming from. We had this smorgasbord out there, which I think is quite appropriate, and yet they would like to have less forms and plans. You can't have it both ways. You need to decide, and I think perhaps Jim put his thumb on it, that probably both systems have some merit. There is a lack of credibility within our industry when there are senators who say the reality of life is that there is no competition in the insurance industry. I don't know how you can say that. It's an industry with a number of players in it. The fragmentations are there. I don't sense any real conclusion going on with price fixing. I think like
many have said, if that is going on they're really going at it in a very stupid way. Another senator says reality is that too many insurance commissioners are in the hip pocket of the insurance industry rather than protecting the American public. I think it's unfortunate that kind of perception comes forth in the regulatory environment from the states. I've worked long enough in the regulatory environment and I don't think that's true at all. Another congressman said the other day, in response to the GAO study that losses claimed by the industry disappeared when accounting practices in accordance with the Tax Reform Act, it sure is all of a sudden now have profits. They can devise any kind of accounting model you want and generate any kind of figures you want, and I think the consumer groups came back and said just eliminate all of the loss reserves and we've all made quite a bit of money. You can get there if you want to get there. But the whole point is the accounting profession has been around a long time and I don't know why we object to vowing up on my profession.

I think the whole point is there are a lot of smoke screens going on. We're talking about price stability, protectionism, I've kind of alluded to, some of the small company issues. We're worried that maybe they may go out of business. I'm not sure that's the bottom line issue, but certainly we should have some sort of mechanism to reflect industry statistical data, it's certainly needed for the large companies as well as the small companies, and certainly needed for the public.

Solvency, we use as an excuse for so many things with
respect to state regulation. I think that's an issue to itself it can be dealt with separately and not really drawn into this kind of an argument. The accounting area, we've done a very poor job of expressing what the industry is earning. That can be greatly improved. I've tried to be a proponent of that with the NAIC, but it's slow going. It's almost like Congress there as well. I think this perception is that there's a little bit of an "old boy" network going on. Maybe that might be true but I don't think that's true in the major states, if you will. I think the whole point is, we're attacking McCarran-Ferguson for the wrong reasons. The issues are not those issues, if you will. I don't think McCarran-Ferguson has anything to do with the liability crisis. I think really the basic issue, if we're going to focus on McCarran-Ferguson is going to be what is the industry's response going to be. We're really talking about competition and pricing. We're talking about data collection, how well it's done. If it's being done well at all. And we're talking about the whole efficacy of state regulation.

McCarran-Ferguson, I think probably doesn't do an adequate job, at least for all of us with respect to some definitional type problems. It talks in terms of state regulation dealing in the public interest, but I think really the key is state regulation serving the public interest. It doesn't do a good job defining competition. I think perhaps the problem there is there is a better way of communicating the competition type characteristic or either objective, if you will, in the sense that our states in fact are promoting and providing for optimum
competition of insurance within their states. I guess I'm saying there probably should be more of a burden on the states with respect to promoting competition and more accountability on their part.

The tragedy is that we seem to be moving in a direction of more regulation while the rest of the world is deregulating. If the consumer groups had their way we'd be a public utility, which I do not think will serve the public purpose. If we have price stability, we can have that. I think in California, the Workers' Compensation are the only rates that I set in there, and the workers' comp. companies have done fairly well over the years, primarily because we have the minimum rate law and we preserve some level of profit in there. But that really serves the trade-off if you will. Price controls will result in some form of higher premiums to the public. I just feel any kind of rate controls of any form are just going to breed inefficient underwriters in the marketplace.

In my mind, pricing is not really the regulatory issue or problem to be addressed. It is really the presence of optimum competition within our state environments, how can we promote that and how can we have effective competition. I think if we have effective competition, that will drive, if you will, inadequate profits up as well as bring excessive profits down. I think you can see I'm an ardent supporter of free competition. I think California has an excellent regulatory scheme. I think it's one we should encourage replicating elsewhere across the country. I think it's the only way to go. As I talk to
insurance executives over the years while I was a commissioner, and as well as since I've been outside of the department, I've always been sort of shocked that there's not more of an interest on the part of at least the Eastern the companies in preserving the open rating system that we have in California. I think it's eroding, and I think it's going to be unfortunate if we let it erode too far and we lose some of those basic concepts of free enterprise.

McBride-McGrunsky, which is the open rating law in the state of California, is very simple. It basically says rates should not be excessive or inadequate. It gives definition to excessive or inadequate and the rates shouldn't be unfairly discriminatory. I don't mean to imply that the California system in that sense is an ideal model. I think there are some problems with it. I tried to bring about some changes in light of the liability crisis and had some difficulty with the legislature. I again come back from a base point of saying what we need to have optimum competition and that's what we should be trying to promote and as regulators we should be trying to promote. But we do, in fact, have marked this location, we know that. What are some things that we can do about it? I think California is very successful in a number of areas dealing with market dislocations. I think the assigned risk plan was one example, and Dick Roth is in your audience out here with the California department.

When I came into office we had some problems with the public in general; they felt the auto rates were too high. We were
having difficulties in the inner-city areas, and we did a complete study and really found that competition really wasn't at an optimum level particularly in the high density areas of the state. Some of the things that we did there in the assigned risk plan was to give competition credits for those companies that were, in fact, willing to compete within the inner-city and within the Los Angeles County, in general, and in Oakland County. To my knowledge this is working very favorably, and basically I said to the industry that if you don't want to compete, that's fine, we'll just give you more assignments from the assigned risk plan. If you want to compete and you want to define those risks that are preferred, sub-standard, standard, or whatever your underwriting standards might be and take the time and effort to do that, then fine, you're going to get competition credits for that.

Workers' Compensation. We've had some problems in that area with no real penalties, and we came out with a point-of-sale disclosure type of document. Again, this sort of gets back to where we fail so often in the industry, inadequate accountability and really being above board and really transparent in that which we were doing. I think the one thing that we were missing in California, and which really broadened the focus, was the day care crisis. It was kind of shocking to me that the industry could not do a credible job in demonstrating the problem they were having with underwriting day care. We knew there were problems there. I went to the legislature, changed the law, gave definition to the kind of coverage. It was a general type rule
that day care centers had to have $300,000 of liability insurance, but it didn't give definition to what $300,000 meant. We clearly defined that as $300,000 on a single-occurrence on an aggregate basis.

We also moved to make provision for excluding child molestation and those kinds of issues. Despite of all that, the industry still didn't come back on the marketplace, put together a market assistance program. I think we were one of the first states that developed that, and yet the industry came together and had an opportunity to really demonstrate and did an adequate job. We've let applications pile up on the desk and very few were really written. We had an opportunity to really demonstrate for the legislation that they could have been responsive, but they weren't. It kind of drove me in the direction of saying that we needed to have some sort of a lever within the state environment in order to impose. In a sense, forcing the industry into the marketplace when we had these kinds of dislocations. I was sort of coming back to saying we should start with market assistance programs. We need to make the voluntary market work, and the market assistance program would be a demonstration of that. If, in fact, that kind of program wouldn't work where we had these difficult to place type coverages, then I was asking that we should be able to impose a JUA on the industry, but only after a public hearing, and only after a demonstration that competition wasn't working, and only after you could demonstrate that the coverage that you were talking about wasn't uninsurable. If it was totally uninsurable, then these are the
kind of issues that come forth in that environment. If we were
effective in putting a JUA together, then these things would
sunstate out after a year and a half or two years, once it had
been demonstrated that the mark has come back to some measure of
stability.

I guess if I was going to attack state regulation, I don't
mean to imply by this that this is just an occasion for doing
away with McCarran-Ferguson. But there are some things that do
go on that tend to be anti-competitive. I think the omission
process is abominable in state regulation. I had a call just a
couple of days ago, a major New York State Exchange, one of the
top twenty companies, wanted to buy a charter. And I said why
don't you just start the company. I said it takes something like
a year or two years to do that and that's much too long. When
you think about the price you have to pay for a charter and just
some of the stuff. It just gets mind boggling after a while. I
know exactly what they're talking about. It's so difficult to
make applications through the department in California. I think
the whole market-entry issue has to be dealt with to provide
greater ease for companies and competitors who come into the
marketplace.

I think when a name you would recognize is trying to put
together a tender offer on a major New York Stock Exchange
Company that had a California domestic, and literally I can just
stop him in his tracks, with merit or not. I look at the foreign
control type thing and I just don't think these kinds of things
need to be in the insurance codes. I know in California they say
if you've got one share of stock owned by a foreign government or it's under foreign control or domination, and for that reason the company can't be admitted in the state. This stuff gets kind of mind boggling. Whether you're for or against banks being in the insurance business, I think that's a U.S. government issue and not really a state issue. You go right down the line: anti-rebating, policy forums and approvals. I look at variable life as an example. There's no reason in the world why this shouldn't have moved through the California department much quicker than it has. It's a concept that should be expanded on. Risk retention is another example. The federal government's response to some of the group insurance type prohibitions in the insurance codes. You just go down the line on some of these issues. I don't think in the aggregate or a single basis any of these justify the abolition of McCarran-Ferguson. But I think these are some of the kinds of things we need to wake up to, whether we're state regulators or within the industry. Start moving in the direction to eliminate in the insurance codes. I think it would improve competition. I don't think in and of themselves they do anything against competition.

The other big issue that I have any real complaint with is the data collection area. I think the day care crisis brought it greatly in focus in California. I think as an industry we can do a much better job in data collection. I think Jim touched on some of the concepts that I would share. We are an industry in the statistic gathering business. We're probably the largest one apart from the federal government and in many ways I think we're
doing things the way we've been doing it for the last twenty years. I think if we did a better job, if we were more accountable, and more open, we'd be in a much better position and a more defensible position to talk about profitability, to talk about adequacy of rates, and to talk about underwriting experience.

I guess what I reflect on the most when we talk about data collection is, I think of the California Workers' Compensation Rating Bureau. It's one that I work with very closely. We made some very significant changes in 3-1/2 years that I was Commissioner, and yet I felt very good about the direction that that rating bureau had gone on the collection of data. I remember several times standing before committees and the legislature where you can stand up with confidence and say, "I challenge you gentlemen, any one of you on the committee or within the industry, or consumer group or wherever, to find fault with the data collection model, if you will, as transpiring in the Compensation Rating Bureau. If there is, we welcome the comments, in order that we can make the appropriate adjustments." It think it's a model. I think it's one we ought to look at in terms of when we talk about data collection for the industry, and it's one that's industry financed. And yet, structured in such a way that there is some interaction involvement or interface with the regulator. I think that the benefits that you would derive from sort of a quasi-regulatory/data gathering type system. I was sort of moving in the direction that when I testify before the Little Hoover
Commission in California, that perhaps what we need in California is maybe a data base structured in such a way that it would promote free enterprise, promote the open compensation. The benefits of something like that would have been the gathering of reliable experience statistics for the state. And if something like this was done on a national basis, which I think it could be done, I would want it done on the industry level, not on the federal level. It does provide for proactive communication between the actuaries within the department, as well as the actuaries with the insurers, dealing with rating methodology. We'd have more timely statistics. I was always kind of shocked with the assigned risk plan. The statistics that we got were something like a year and a half old when we received them. Perhaps more importantly, it would really enhance the public disclosure, and if they wanted to deal with these things, then this would give them some point if there was going to be an argument, then they would have to argue from those statistics.

I think the industry ought to think long and hard on how they could do a better job in the whole data collection side. I think it's something they can do within the industry with the cooperation of state regulators, and I think we should do it in such a way that it will promote open competition. My fear is that if we allow this to go to state departments or to the federal scene, then it's going to get so highly structured that we're going to end up going down a path, if you will, to inspect the coverages. It gets so highly structured that we lose in the benefits of innovation, creativity, and as time changes with
respect to risk.

In summary, again I say states do a good job in a number of areas. I think where they do excel is in dealing with the consumers. I don't see how the federal government can deal with that as well as the states. I think they do a very credible job with insolvency. There's a lot of room for improvement and I've certainly been an outspoken critic as to financial analysis, but on balance they've done a good job. I know of very few policyholders that have lost any money in the last forty or fifty years, certainly on the T&C side. That doesn't mean we haven't had a problem and couldn't have done a better job dealing with solvency. But on balance the states have done a fairly good job. I guess I'll come back again and say states should be held to a higher level of accountability.

McCarran-Ferguson, if I was going to quarrel with it, I wish we could have a better definition of what does, in fact, serve public interest, and what does, in fact, promote competition. I think where we need to be getting is to have state regulatory schemes take care of the consumers, promote optimum competition, unrestricted price competition, dealing with market efficiency, ease of market entry, and more ease of capital formation. I think these are some of the kinds of areas where the states need to get their act together. I think they can do it. Maybe it's healthy for the federal government to express some of the concerns that it does. That might be just the impetus that we need to correct some of these deficiencies. I don't think they are deficiencies that justify the elimination of McCarran-
Thank you very much.

DAVID HARTMAN: Thank you very much, Bruce. We do have time for some questions.

QUESTION: Is it fair to say that repeal of McCarran-Ferguson is going to drive rates down?

BRUCE BUNNER: That is not a position that I have suggested that I hold. Unquestionably, the significant increase in rates in the past couple of years particularly has driven congressional interest. First, it has driven consumer interest, that means then that it has translated into driving congressional interest as well as interest throughout state legislatures, into some review of the industry, in Washington specifically, into a review of the continued appropriateness of McCarran-Ferguson. Actually, having set through several days of testimony over the past year and a half on McCarran-Ferguson, I don't think that the advocates of repeal of McCarran-Ferguson have at all made their case on that issue. I don't think that they have been able to offer data that can in any way demonstrates that repeal of McCarran Ferguson is going to result in reduced rates for the consumers.
QUESTION: How easy was it for your company to enter the market?

JAMES STONE: When a former insurance commissioner applies for a license, the Department bends over backwards to go slowly and carefully for fear that somebody is going to say that there was any kind of favoritism. I suppose it was longer than I wanted it to be and by a few months it slowed us down. On the other hand, I don't think it was an inappropriately long time for a brand new company. I think I agree with what I took to be most of Bruce's point, which is, that when you're not dealing with a brand new company, but a company that already has a track record or that's part of an enterprise that already has a track record. Boy, I think every department takes much too long on those. The Massachusetts department has been as guilty as any. On the new companies you do have to be careful.

QUESTION: Our previous speaker talked about the Congressional interest in competitiveness of U.S. industry. I think he also alluded to pressure on the insurance industry. Have you given any thought as to how the two issues relate? Our competitiveness to foreign insurance companies and the repeal of McCarran-Ferguson. If they pull for cross purposes, which do you think will carry the day?

CONGRESSIONMAN FEIGHAN: I think that in many respects, the nature of our insurance industry, and the nature of what's
happening in coverage in this country is enacted to some degree, and maybe in a healthy fashion, as a non-tariff barrier. A number of potential exporters to the United States are intimidated by the litigious nature of American society and the complexity of our tort system and the insurance system generally. Many would argue in these days where we're trying to get a stronger trade to balance on our side, that that's a healthy non-tariff barrier. I don't know what the nature is. I'm totally unfamiliar with the insurance industry of our trading partners. I think that the Congress has been attracted to the insurance industry competition as an issue because of the widespread publicity of the liability crisis in the past year. As I had suggested earlier, it's very enticing to a politician to accept the simple premise that repeal of a federal statute is going to bring about lower rates and the wild enthusiasm of constituencies, if not their gratitude for that action. I think it is far too simplistic of an analysis. I don't think it's likely to happen. I think as Bruce Bunner has suggested, there are anti-competitive natures of the industry at play today. And there might be a federal role in correcting those, but I don't think that the majority of members of Congress have been persuaded that repeal of McCarran-Ferguson is the appropriate road to take.

On a final note, I think it's particularly interesting, I mentioned earlier that there has not been legislation introduced in the House to either repeal or modify McCarran-Ferguson. Late last week there was one bill, I don't know the nature of it. One
of the reasons that it has not been introduced into the House is that, notwithstanding the joint efforts of a large number of consumer groups, the American Banking Association, the Association of State Attorneys' General. There has not been one republican member of Congress who has been willing to co-sponsor the introduction of a bill. Congressman Edwards, out of California, who is primarily interested in moving legislation in the House for modification of McCarran-Ferguson has said he will not introduce the legislation until he can get a Republican co-sponsor. Bruce, as long as your party holds out, there won't be any disruptive effect.

DAVID HARTMAN: Let me conclude the panel by saying that we've had some indications that the sky is falling. We've had some clear suggestions for change even within the current regulatory environment. And we've also maintained the rosy colored lighting here on the panelists. We appreciate your attention as the audience. We trust that you'll take away from this panel some motivation to discuss this issue with your colleagues, influence further thinking on this topic. And we especially thank all three of our panelists. Please join me in giving them a round of applause.