



International Association of
Insurance Receivers

Welcome to the Issues Forum

Kathleen McCain
Education Committee
Co-Chair



J. Kevin Baldwin, OSD General Counsel &
Director of Receivership Operations

Mike Consentino, OSD Chief Reinsurance
& Technology Manager

Ellen Fickinger, OSD Senior Manager-
Claims

Update on the Lumbermens Mutual Casualty Company Proceedings

Illinois Update – Lumbermens Mutual Casualty Company, In Liquidation

August 16, 2015

The Office of the Special Deputy Receiver

Representing Anne Melissa Dowling

Acting Director of Insurance

State of Illinois

Office of the Special Deputy Receiver ("OSD") - General Update

Summary:

52 employees servicing 23 pending receivership estates

OSD has completed and closed 142 Illinois domestic insurer receiverships

Office of the Special Deputy Receiver ("OSD") - General Update (continued)

2014 Results

Marshaled and distributed \$204,766,960 to consumers and other estate creditors

Reinsurance cash collections totaling \$29,749,557

Administrative expenses totaled \$7,732,786, or 3.8% of total distributions

Office of the Special Deputy Receiver ("OSD") - General Update (continued)

5 Year Summary Results

Marshaled and distributed \$1,172,119,425

Reinsurance cash collections totaling \$162,787,021

Administrative expenses of \$38,597,785, or 3.3% of total distributions

Liquidation Update

- Agreed Orders of Rehabilitation entered against LMC, AMM and AMICO July and August 2012
- Complaints for Liquidation filed March 2013
- Orders of Liquidation entered May 2013
- Substantive Consolidation of LMC, AMM and AMICO granted May 2013
- Liquidator's UDS transmitted to GF's May 2013
- 8 week pre-pay of work comp. pension claims at liquidation date
- Liquidator's GF expense guidelines transmitted to GF Coordinating Committee July 2013
- Cost-sharing information sharing protocols implemented August 2013
- Lumbermens Casualty sold to American Family October 2013

Liquidation Update - continued

- Preliminary policyholder collateral review and large deductible billing facility completed April 2014
- Reimbursement of GF administrative expense claims commenced November 2014, and presented to Supervising Court bi-annually
- Timely-filed claim deadline runs November 2014
- Merger of LMC, AMM and AMICO completed December 2014, predicated on substantive consolidation ruling
- Annual policyholder collateral final reviews and large deductible billings commenced January 2015 with final GF UDS payment and reserve information
- Timely-filed contingent claim cut off expires November 2015
- Unliquidated contingent claims fall to priority level "e"
- Late claims can still be reported

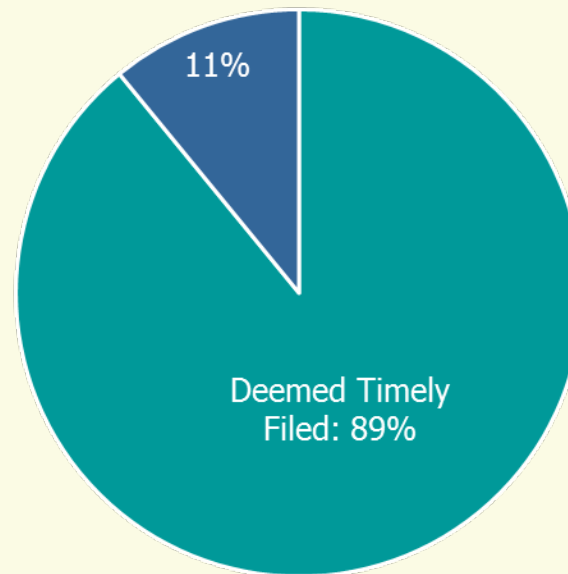
Loss Claims Status (as of 6/30/15)

Filed Proofs of Claim

- Notices Sent: 3,272,498

Timely Claims Filed Breakdown:

| | |
|----------------------|--------|
| Deemed Timely Filed: | 17,688 |
| POC's Sent: | 4,099 |
| POC's Received: | 2,131 |



- Workers Comp. claims with medical payments closed within 12 months of rehabilitation were reopened to ensure maximum consumer protection

Guaranty Fund - Open Claims

- Transmitted 6,564 to various state Guaranty Funds in May 2013
 - Workers Comp. Claims: 5,937
 - Other Claims: 627
- Transmitted 2,772 new or reopened claims to various state Guaranty Funds since May, 2013
 - Worker Comp. Claims: 2,095
 - Other Claims: 677
- As of June 30, 2015: 6,748 open claims (9,425 claimants) with various state Guaranty Funds
 - Workers Comp. Claims: 5,868
 - Other Claims: 880
- Transmitted 1,136 cost sharing claims via UDS to various state Guaranty Funds
- Total Guaranty Fund Payments made by all states totals \$169,849,104:
 - Losses Paid: \$154,378,182
 - Expenses Paid: \$15,470,922

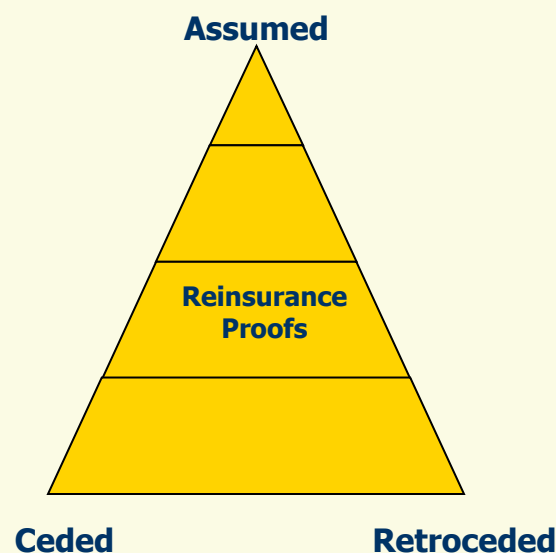
National Organization of Life & Health Insurance Guaranty Associations (NOLHGA)

- 68 Accident and Health in force policies in May, 2013 (liquidation). Policies were assumed by American Progressive.
- 177 Long Term Disability in force policies in May, 2013 (liquidation). NOLHGA negotiated an assumption agreement with Madison National Life Insurance Company.
- All policies were transferred to the respective new insurers in June, 2013.

Reinsurance Proofs of Claim

Initial Proofs of Claim Forms are mailed and/or deemed timely filed by the various reinsurance entities as indicated on the company's financial records.

- Ceded
 - Reinsurers
 - Brokers/Intermediaries
 - Managing General Agents
 - Underwriting Managers
- Assumed
 - Cedents
 - Brokers/Intermediaries
 - Underwriting Managers
- Retroceded
 - Retrocessionaires
 - Brokers/Intermediaries
 - Underwriting Managers



Notices and updates are communicated to these entities as mandated by the Court or in the general course of business.

Lumbermens as Reinsuring Company

- Level “G” Class Creditors
- Timely filed reinsurance creditor claim review triggered when:
 - Collateral (Funds Held, Letter of Credit, Security Fund) is involved
 - Risks have retrocessional protection
 - Setoffs exist
 - Global commutation is sought
 - Determination of funds available at class level is made
- Distribution of funds are interim or final
- Distribution of funds are made at any percentage
- Presently, timing and distribution percentage are not known

Reinsurance Billing & Collection (as of 6/30/15)

- Incurred recoverables estimated total: \$277M
 - Reinsurance collateral held: \$91M
 - Less than 6% of the reinsurance portfolio is categorized as non-performing; 85% related to one group
- Post Liquidation Billings: \$22M
 - \$20M settled.
 - 90% of invoices billed collected via setoff or cash
 - No commutations completed since liquidation date
 - Continual monitoring of reinsurer solvency
- Necessity of Guaranty Fund assistance for future reinsurance collections:
 - Timely and accurate reporting of Loss and LAE Data
 - Remote access to Guaranty Fund claim file detail
 - Direct access to Guaranty Fund Personnel
 - Detailed claim reporting as support for significant incurred changes

Reinsurance Assets as of 6/30/15

(In Millions)

| <u>Reinsurance Recoverables</u> | <u>06/30/15</u> |
|---|-----------------|
| Reinsurance receivables on paid losses | 7.7 |
| Reinsurance recoverables on unpaid losses | <u>269.7</u> |
| Total reinsurance recoverable | 277.4 |

Major Reinsurer Companies:

- ALEA (Bermuda) LTD
- Alterra Bermuda LTD
- GE Reinsurance Corporation
- Global Aerospace, Inc.
- Munich Reinsurance America, Inc.
- National Fire & Marine Insurance Company
- Swiss Reinsurance America Corporation
- Workers Compensation Reinsurance Association

Deductible Billing & Collection

- As of June 30, 2015 the amount of deductible loss reserve credits recorded on unpaid workers compensation claims was \$95M
- Lumbermens has 676 accounts with open deductible and/or loss sensitive plans as of June 30, 2015
 - Calculations occur on over 2,000 open effective years across the open plans
- Post liquidation Guaranty Fund deductible billings total \$6.4M as of June 30, 2015
 - Liquidator has disbursed \$4M of deductible reimbursements to the Guaranty Funds as of June 30, 2015 and plans to disburse an additional \$1.6M before the end of Q3 2015
- Effective billing and collection of deductible amounts due is dependent upon timely and accurate submission of loss data and claim information from the Guaranty Funds
 - Timely information regarding Net Worth Claims
 - On-line access to Guaranty Fund financials and claim file detail when possible

Deductible Collateral

- As of June 30, 2015 Lumbermens held collateral for deductible and loss sensitive plan obligations of \$116.5M
 - \$92.6M in Letters of Credit
 - \$23.9M in Cash
- Collateral need calculation and review during Liquidation differs from the calculation during Run-off
 - Establish Collateral Review Committee
 - Strengthened medical and expense reserve calculations
 - Strengthened reopen and new claim factor
 - 75% safety factor incorporated (215 ILCS 5/202.1 (g)(3))
 - Loss run and affidavit required of TPA handled accounts prior to collateral release
- As of July 2015, 276 of the 648 collateral need reviews have been calculated and approved by the Collateral Review Committee
 - 126 with excess collateral of \$28M
 - 150 with additional need of \$26M
 - Remainder are in process and the majority are low claim volume and low exposure accounts scheduled for completion by year end 2015
- Adequate collateral is dependent on the timely and accurate submission of case basis reserve data from the Guaranty Funds
 - Several accounts have requested information on claim reviews to support collateral need calculations

PEOs:
What's New,
What's Problematic In Insolvencies
Introduction

Rowe W. Snider
Locke Lord LLP

Description of the Panel

- Professional Employer Organizations ("PEOs") have frequently been significant large deductible policyholders in several of the more recent commercial lines insolvencies. Various stakeholders will discuss their respective points of view regarding the role of PEOs in these recent insolvencies and whether further regulation of PEOs and Insurers is needed.

Speakers

- **Robyn Crosson** - Senior Counsel, ADP
- **Farrah L. Fielder** – General Counsel, National Association of Professional Employer Organizations (“NAPEO”)
- **James Jones** – Director, Katie School of Insurance and Financial Services
- **Sandy Robinson** – President, American Guaranty Fund Group (Florida) and NCIGF Board Chair

Social Context of the Issue: The Dynamic Work Place

- Dr. Robert Hartwig, President
Insurance Information Institute
- *The Workplace of Tomorrow: The “On-Demand” Economy and the Implications for Workers Compensation Insurance*
 - Salim Ismail, Executive Director
Singularity University
- *Disruptive Convergence: Jaw-Breaking Insights into Breakthrough Technologies*

Social Context of the Issue

- A Traditional “Good Job” is an Industrial Age (1880-1980) Concept
 - Eroded by Labor Strife, Globalization, Automation, and Information Technology – the move to “On-Demand” Labor
 - Replaced with “Occupations” and “Independent Contractors” with greater fluidity
 - Associated Loss of Conventional Employer Benefits
 - Workers Compensation, Health Insurance, Retirement Plans
- Since 2008, WC Premium Growth lags Payroll Growth
 - \$7.5 Trillion Non-farm Payroll in 2014, +\$1 Trillion > 2008 “bottom”
 - WC Premium “peaked” at \$47.8 Billion in 2005
 - WC Premium 2014 estimated at about \$44 Billion

Social Context of the Issue

- The Employer-Employee Relationship is undergoing rapid changes, driven by disruptive technologies, social trends, and other forces not currently well understood.
- WC Premium Growth Lags Traditional Models – Benefits, including WC coverage, are in flux.
- Professional Employer Organizations function in this context, by assuming some roles of the Industrial Age Employer through “Co-Employment.”
- What are the Pluses and Minuses of this new employment structure?

Presentation Topics

1. What are PEOs, how do they contribute value, and how are they regulated?
2. How PEOs obtain and provide WC coverage and possible problems.
3. Insurance Insolvencies and PEOs - some case histories.
4. The Guaranty Fund experience in recent insolvencies and possible solutions.

PEOs and Large Deductible Workers' Compensation

Robyn S. Crosson, Senior Counsel ADP

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PEO Value Proposition

- PEOs are recognized in approximately 40 states
- W-2 Employer and co-employer
- Allocation of rights and responsibilities
- Remit/withhold payroll taxes
- Maintain workers' compensation coverage
- Offer employee benefit programs
- Assist in human resource issues/challenges
- Consult on worksite safety programs
- Employee relations, leave management, etc.

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ADP TotalSource

- More than 371,000 WSEs with more than 7,800 clients
- Offer comprehensive Health & Wealth programs, including WC
- WSEs in all 50 states

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ADP TotalSource's WC Program

- AIG insures ADP TS and its Client Companies by issuing a Standard Workers Compensation policies in accordance with State PEO regulations.
- ADP TS reimburses AIG for the first \$1MM per accident, as a deductible
- ADP Indemnity, Inc (ADP's captive company) issues to ADP TS a deductible buy-back policy to cover 100% of ADP TS' obligation to AIG under the \$1MM deductible agreement.
- ACE reinsures 100% of ADP Indemnity, Inc.'s liability under said deductible buy-back policy issued to ADP TS.
- 3rd party actuarial and auditing services engaged

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Client Services Agreement

- Workers' Compensation Coverage Provided by TotalSource for worksite employees. Coverage is not extended to Non-Worksite Employees.
- Workers' Compensation for Non-Worksite Employees – TotalSource does not provide coverage for Non-Worksite Employees and requires the client to maintain or cause to be maintained workers' compensation for such Non-Worksite Employees. The CSA requires the Client to
 - provide TotalSource with a certificate naming TotalSource as a certificate holder;
 - obtain a labor contractor endorsement (or the equivalent) in favor of TotalSource; and
 - require that Client's insurer notify TotalSource in advance of any termination of coverage.



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Other Client Protections

- Client may request Certificate of Insurance
- AIG recognizes ADPTS liability for deductible not client
- In most Multiple Coordinated Policy jurisdictions, an individual policy is issued to ADPTS with the client named as an alternate employer
- In Master Policy states, client is named as additional insured (policy is constantly updated by endorsement)



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NAIC/IAIABC Update

- White Paper on Large/Mega Deductibles
- Separated into Modules:
 - State Filing Requirements
 - Current Buying Trends
 - Data Reporting Concerns
 - Unpaid Claims
 - Underwriting Best Practices
 - Solvency Concerns
 - PEO

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Draft Status

- PEO circulated, comments due August 21, 2015
- Solvency circulated, comments due August 12, 2015
- Underwriting Best Practices circulated, comments due on August 28, 2015
- Claims circulated, comments due August 19, 2015

For more information go to

[http://www.naic.org/meetings1508/
committees_c_wctf_2015_summer_nm_materials.pdf?
1439554808754](http://www.naic.org/meetings1508/committees_c_wctf_2015_summer_nm_materials.pdf?1439554808754)

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The PEO Landscape

Presented by Farrah L. Fielder, J.D.
General Counsel of National Association of
Professional Employer Organizations (NAPEO);
ffielder@napeo.org, 703-739-8178



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State Regulations for PEOs

- 40 states provide some form of specific licensing, registration, or regulation for PEOs.
- These states statutorily recognize PEOs as the employer or co-employer of worksite employees for many purposes, including the administration of workers' compensation and remittance of state unemployment insurance taxes.



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PEO Regulatory Framework: 2015



Federal Regulation/ Small Business Efficiency Act (SBEA)

- **What the SBEA Does:**

- Creates a certification process for PEOs within the IRS;
- Gives certified PEOs (CPEOs) the clear statutory authority to collect and remit federal employment taxes;
- Eliminates the wage base restart for CPEO clients who join or leave a CPEO relationship; and,
- Codifies that customers of CPEOs will qualify for specified federal tax credits that the customers would be entitled to claim if there were no PEO relationship.



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Certified Professional Employer Organization Requirements

- **What are the requirements under the SBEA for a PEO to become a Certified Professional Employer Organization?**
 - **Bonding** - A CPEO must maintain a \$50,000 bond, or, if greater, a bond in an amount that is equal to five percent of the CPEO's federal employment tax liabilities for the previous year (not to exceed \$1 million).
 - **Annual Audits** - A CPEO must prepare and provide the IRS with annual independent financial statement audits prepared by a CPA.
 - **Quarterly CPA Attestations on Employment Taxes** - A CPEO must provide quarterly assertions to the IRS regarding payment of all employment taxes, accompanied by an examination level attestation by an independent CPA with respect to each such assertion.
 - **Annual Fee** - The CPEO must pay an annual fee of up to \$1,000 per year to be (and remain) certified.



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Supporting the Industry

- NAPEO provides best practices for financial performance and risk management.
- Certification Institute offers PEOs workers' compensation certification.
- Employer Services Assurance Corporation (ESAC) provides an accreditation and financial assurance program for the PEO industry.



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NAPEO Objectives

- To provide opportunities for the exchange of ideas and information concerning the professional employer industry for study, discussion, and publication;
- To develop and encourage the practice of high standards of personal and professional conduct within the professional employer industry;
- To hold meetings and conferences for the mutual improvement and education of individuals associated with the professional employer industry.



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Small Insurer Failures and The Misuse of Large Deductible Policies

James R. Jones
Executive Director
Katie School of Insurance
Illinois State University



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In 2006 the NAIC published a Work Comp Large Deductible Study. Recommendations were:

- Insurer must be responsible from first dollar to ultimate benefits level
- Insurers, not employers, must handle claims
- State laws should be clear that self-administration of claims is contrary to the public interest
- Only insurers and approved self-insurers should be able to contract with TPAs for claims administration
- Deductible reimbursement policies should be prohibited
- Failure to reimburse deductible payments should be grounds for cancellation
- Require the filing of all agreements between insurers and employers relating to handling of claims by TPAs
- Annual statement reporting should be amended to show workers' compensation losses under the deductible amount
- Avoid licensing an insurer controlled or affiliated with a PEO if that insurer would be able to write a large deductible for the PEO
- Change and clarify guaranty funds laws to assure the reimbursement by employers for claims paid by the guaranty funds go to the guaranty funds instead of simply becoming assets of the estate



Workers Compensation Insurer Insolvencies since 2007

| Company | # of WC Claims | Year Prior to Insolvency | Worker Comp Reserves one year prior to insolvency (000) |
|---|----------------|--------------------------|---|
| Imperial Casualty & Indemnity Insurance Total | 905 | 2007 | 17,475 |
| Insurance Corp of NY Total | 15 | 2008 | 20,334 |
| Lumbermens Mutual* Total | 6,968 | 2010 | 542,096 |
| Park Avenue Property & Casualty Total | 2,039 | 2007 | 37,334 |
| Pegasus Insurance Company Total | 629 | 2008 | 3,381 |
| Red Rock Insurance Company Total | 187 | 2012 | 29,657 |
| Reinsurance Co. of America Total | 158 | 2007 | 9,214 |
| Southeastern U.S. Insurance Inc. Total | 1,054 | 2007 | 35,110 |
| Southern Eagle Insurance Company Total | 458 | 2009 | 8,450 |
| The Insurance Company of NY Total | 14 | | |
| Ullico Casualty Company Total | 7,812 | 2010 | 73,361 |
| Valor Insurance Company Total | - | | |
| Grand Total | 27,526 | | |

\$1,167,125,730



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Key Factors Found in Failures

- The Use of Large Deductible policies with inadequate collateral posted by the employer.)
- PEO Employers that control the claims handling for injured workers through Third Party Administrators where the insurer has limited access to claims information;
- Cross-ownership of PEO employers with MGAs and/ or work comp insurance companies
- Unsustainable Emphasis on Premium Growth



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Recommendations for Large Deductible Programs with Small to Medium Insurers (i.e. < ORSA threshold)

- 1) Sufficient collateral must exist for insurer to pay the claims should the employer become bankrupt (i.e. LOC)
- 2) The insurer must have access to the collateral (rather than just the MGA)
- 3) PEO should not own or control the insurer
- 4) Insurer must control the claims reserving and payment process
- 5) No side agreements permitted which would make LD Policy tantamount to self-insurance
- 6) Better disclosure of “risks of material adverse deviation” based on credit risk (auditors and actuaries need to work this out)

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PEOs:
What's New,
What's Problematic
Guaranty Fund Experience
and Possible Solutions

Sandy Robinson, Executive Director
Florida Guaranty Fund

Workgroup Formed in Florida – WHY?

- There were 7 liquidations from 2009 through June 2012 resulting in **3,867 claims** transferred to FWCIGA with an estimated cost of **\$164 million**
- In the four years prior, 2005 through 2008, there had only been 3 liquidations accounting for **60 claims** at a cost of **\$6.6 million**
- For these 10 liquidations, **only \$6 million had been received in distributions** of estate assets and the outlook for significant recoveries is not favorable

Large Deductible Premium in Florida

- Almost \$1 billion in deductible credits reported in Florida - 1/3rd of the total workers' comp premium
- Written by only about 30 companies
- Surplus reported for 2011 by these entities ranged from \$25 billion to \$6 million

Large Deductible Premium in Florida for entities with less than \$100 million in surplus

| Member Name | Written Premium less dividends- FL WC | Deductible Credits - FL | Adjusted Prem Base - WC FL | NAIC Capital & Surplus | AM Best Rating |
|---|---|----------------------------|-------------------------------|---------------------------|-------------------|
| COMPANY 1 | 170,665 | 812,004 | 982,669 | 82,638,777 | A |
| COMPANY 2 | 9,833,220 | 29,901,620 | 39,734,840 | 64,621,946 | A- |
| COMPANY 3* In Rehab | 2,157,379 | 5,102,101 | 7,259,480 | 57,706,700 | B+ |
| COMPANY 4 | 29,404,214 | 4,930,429 | 34,173,853 | 46,729,525 | Not Rated |
| COMPANY 5 | 5,698,172 | 15,239,816 | 20,937,988 | 13,442,004 | B+ |
| COMPANY 6 | 10,020,783 | 6,372,300 | 16,393,083 | 5,903,954 | Not Rated |
| <u>Info on Recent Liquidations</u> | | | | | |
| Park Avenue P & C (2008) | 5,348,546 | 11,439,803 | 16,788,349 | 16,352,835 | Liq 11/18/2009 |
| Pegasus Ins Co (2009) | 3,545,196 | - | 3,545,196 | 6,422,601 | Liq 8/12/2010 |
| Southern Eagle (2010) | 7,025,223 | 1,868,780 | 8,894,003 | 8,763,004 | Liq 12/16/2011 |
| UNION LABOR GRP | 1,219,915 | 450,148 | 1,670,063 | 93,087,738 | Liq 5/30/2013 |

3 of the 5 active entities advertise their PEO business connections

- X “Insurance Company was founded specifically for Professional Employer Organizations, Staffing Companies and large companies”
- XX “Insurance Company is an experienced workers' compensation provider covering an expansive spectrum of industries through our affiliated professional employer organization (PEO)”
- XXX Insurance Company offers: “PEO Services for Small Business - We handle your Payroll, Workers’ Comp, Benefits and HR”

*information obtained from internet search on July 3, 2015

National Perspective

- The cost to guaranty associations of just 4 insolvencies since 2009:

| | |
|---------------------|---------------|
| – Park Avenue | \$ 51 million |
| – Imperial Casualty | \$ 25 million |
| – ULLICO | \$447 million |
| – Freestone | \$108 million |
| Total Cost | \$631 million |

| | |
|--------------------------------|-----------------|
| Early Access received to date: | \$ 20.4 million |
|--------------------------------|-----------------|

Problems encountered

- Outsourced claims administration
- Multiple claims systems
- Bad Agreements
- Poor Financial Controls
- Inadequate premium
- Collateral problems
- Fraud
- Conflicts of interest
- Collection issues

Aggregate Guaranty Association
Exposure as of 12/13/2014
Park Avenue/Imperial Estates

| PEO | GA Total Paid WID | GA Total Reserves WID | GA Total Exposure WID | Intermingled Collateral ¹ | Collateral as % of Exposure WID |
|--------|-------------------|-----------------------|-----------------------|--------------------------------------|---------------------------------|
| PEO 1 | \$1,072,467 | \$15,291 | \$1,087,757 | \$1,000,000 | 91.90% |
| PEO 2 | \$732,199 | \$157,206 | \$889,404 | \$375,000 | 42.20% |
| PEO 3 | \$5,557,352 | \$654,004 | \$6,211,357 | \$6,410,158 | 103.20% |
| PEO 4 | \$2,455,682 | \$441,372 | \$2,897,054 | \$362,500 | 12.50% |
| PEO 5 | \$1,795,079 | \$893,013 | \$2,688,091 | \$0 | 0.00% |
| PEO 6 | \$685,537 | \$14,732 | \$700,269 | \$300,000 | 42.80% |
| PEO 7 | \$4,346,175 | \$1,118,897 | \$5,465,073 | \$750,000 | 13.70% |
| PEO 8 | \$10,553,632 | \$4,626,729 | \$15,180,361 | \$2,250,000 | 14.80% |
| PEO 9 | \$415,341 | \$68,015 | \$483,356 | \$339,200 | 70.20% |
| PEO 10 | \$1,862,653 | \$0 | \$1,862,653 | \$1,200,000 | 64.40% |
| PEO 11 | \$470,496 | \$250,419 | \$720,915 | \$708,335 | 98.30% |
| PEO 12 | \$138,292 | \$16,048 | \$154,339 | \$449,919 | 291.50% |
| PEO 13 | \$0 | \$0 | \$0 | \$0 | |
| PEO 14 | \$483,705 | \$149,652 | \$633,356 | \$300,000 | 47.40% |
| PEO 15 | \$54,726 | \$78,781 | \$133,508 | \$220,131 | 164.90% |

Aggregate Guaranty Association
Exposure as of 12/13/2014
Park Avenue/Imperial Estates

| PEO | GA Total Paid WID | GA Total Reserves WID | GA Total Exposure WID | Intermingled Collateral ¹ | Collateral as % of Exposure WID |
|--------------|---------------------|-----------------------|-----------------------|--------------------------------------|---------------------------------|
| PEO 16 | \$345,518 | \$40,588 | \$386,106 | \$250,000 | 64.70% |
| PEO 17 | \$14,835,453 | \$3,814,897 | \$18,650,349 | \$3,000,000 | 16.10% |
| PEO 18 | \$0 | \$0 | \$0 | \$0 | |
| PEO 19 | \$0 | \$0 | \$0 | \$0 | |
| PEO 20 | \$3,580,096 | \$294,478 | \$3,874,575 | \$1,000,000 | 25.80% |
| PEO 21 | \$1,837,901 | \$1,402,417 | \$3,240,318 | \$1,500,000 | 46.30% |
| PEO 22 | \$590,443 | \$0 | \$590,443 | \$250,000 | 42.30% |
| PEO 23 | \$452,479 | \$30,372 | \$482,851 | \$0 | 0.00% |
| PEO 24 | \$1,001,059 | \$616,747 | \$1,617,806 | \$1,000,020 | 61.80% |
| PEO 25 | \$455,020 | \$70,835 | \$525,856 | \$150,000 | 28.50% |
| PEO 26 | \$1,577,439 | \$555,833 | \$2,133,271 | \$1,000,000 | 46.90% |
| PEO 27 | \$0 | \$0 | \$0 | \$0 | |
| PEO 28 | \$269,431 | \$40,084 | \$309,515 | \$250,000 | 80.80% |
| PEO 29 | \$333,641 | \$30,716 | \$364,357 | \$0 | 0.00% |
| Total | \$55,901,815 | \$15,381,126 | \$71,282,941 | \$23,065,262 | 32.40% |

NCIGF Recommendations:

- Enact legislation relating to financial requirements for large deductible agreements for workers' compensation insurance. This language would be placed in the state codes within the general provisions governing insurance companies.
- Change the NAIC accounting rules to add the following:
“Any insurer that has an A. M. Best Company rating below A- and does not have at least \$200 million in surplus must fully collateralize all liability it has for workers compensation claims covered under large deductible policies issued to Professional Employer Organizations. Any liability it has in excess of the collateral must be fully reflected in its financial statement.”

NCIGF Recommendations:

- Require auditors to evaluate the credit worthiness of policyholders where their liability to reimburse the insurer for large deductible payments is unsecured.
- Enact in the states the NCIGF Large Deductible Model Legislation that governs rights and duties of the various parties regarding deductible business in insolvencies
- Upon recommendations of the guaranty association (based on its detection and prevention powers) suggest regulators conduct a special examination of a PEO insurer which is in possible hazardous financial condition. Such examination would be conducted by a special examiner with expertise in this business and would be paid for by the guaranty association.

NCIGF Recommendations:

- In states that do not already have this language, enact provisions permitting the collection of deductible amounts from insureds. This language is as follows:

“The Association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer..”

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"We're looking for a bold and innovative solution,
but I'd settle for a way out of this mess."

Networking Break





CONVOLUTED REINSURANCE CONTRACTS STILL CRAZY AFTER ALL THESE YEARS

HUNDREDS OF
SIDE 1

STEREO

GEMA/
BIEM

1. STILL CRAZY AFTER ALL THESE YEARS 3:25
2. MY LITTLE TOWN (With Art Garfunkel) 3:52
3. I DO IT FOR YOUR LOVE 3:35
4. 50 WAYS TO LEAVE YOUR LOVER 3:35
5. NIGHT GAME 2:47

All songs written by Paul Simon.
All songs published by (G.B. only) Pattern Music Ltd.
PRODUCED BY PAUL SIMON AND PHIL RAMONE.
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KEINE UNERLAUBTE VERVIELFÄLTIGUNG, VERMIETUNG, AUFFÜHRUNG, SENDUNG! - MADE IN GERMANY BY WEA MUSIC GMBH

WRIGLEY FIELD
HOME OF
CHICAGO CUBS

Evan Bennett

Mitchell A. Orpett - Tribler, Orpett & Meyer

Reinsurance Contracts –Still Crazy After All These Years!!

“These are but wild and whirling words.”

~ Hamlet

Reinsurance Contracts

**You can see a lot by
observing”**

Yogi Berra on Observation

Treaty Clauses : Some Basic Review Questions

- Who wrote this treaty?
- What Were they Smoking?(Please provide samples during this presentation)
- Were they crazy ?
- Can you reach the author?
- Another “as soon as practicable” and “Promptly” used- what exactly does this mean-are they that unimaginative to put in the date when they want things-other contracts do this-Just try this with a home mortgage or a car purchase!!
- Were they crazy-again?
- How many places in the treaty to you have to search for the definition of loss adjustment expense treatment
- What is really meant by NET premiums
- Were they crazy? Are you sure they weren't?

Treaty Clauses as We'd Love to See Them

- Premium:
- Reinsured will give you 50% of the premium for homeowners policies that they write in 2015 on the 1st day of every month in 2015
- Reinsurer will pay to (to be netted out) the Reinsured, 25% of each premium dollar Received as a ceding commission on the 1st day of every month in 2015
- All monies to be wired to respective bank accounts on the 1st day of every month at 10 a. m. Central

Treaty Clauses as We'd Love to See Them

Claims:

- Reinsured will send reinsurer an invoice on the 15th day of every month
- Reinsurer will wire the money to the Reinsured on the 20th of every month-if owed
- Questions on claims will be resolved on December 1st of 2015 and any agreed adjustments will be made on December 2nd.
- Any disputes will be formally written and dealt with by each parties' legal counsel and settled by December 23rd of that year –period!

Treaty Clauses as We'd Love to See Them

- The REINSURERS shall in all respects **share the luck** of the CEDENT.
- Errors, omissions, or delays committed in good faith by the employees or agents of the CEDENT in relations to this Treaty may in no event impair the rights of the CEDENT nor the validity of the reinsurance subject to omissions, errors, or delays. However, such errors and/or omissions and/or delays shall be repaired immediately after being discovered.

Treaty Clauses as We'd Love to see Them

All documents pertaining to the business coming under this Treaty shall be available at any reasonable time to the REINSURERS or their representatives at the main office of the CEDENT. The REINSURERS shall, however, notify the CEDENT eight days in advance of their intention to examine those documents.

Real Treaty Clauses

BRMA

- **Brokers & Reinsurance Markets Association**
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Park Ridge, IL 60068
Voice: 847-720-3666
BRMA.ORG

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Real Treaty Clauses

BRMA1 D

- **ACCESS TO RECORDS**
- **The Reinsurer or its designated representatives shall have access at any reasonable time to all records of the Company which pertain in any way to this reinsurance.**

Real Treaty Clauses

BRMA 1G

- ACCESS TO RECORDS
-
- A. The Reinsurer shall be afforded the opportunity, at its own expense, to appoint a duly accredited representative of its own choice to assess the Company's claims and claims procedures and to report to the Reinsurer the results of such review accordingly.
-
- B. The Company shall also permit the Reinsurer or its duly accredited representative, for the purpose of obtaining information concerning this Contract or the subject matter hereof, to visit, inspect, examine, audit or verify at the Company's offices or elsewhere as appropriate, original policies and claim files, accounts, files, documents, books, reports and other records belonging to or in the possession or control of the Company or any other company relating to business covered under this Contract. The Reinsurer or its duly accredited representative shall also be permitted to request copies of relevant documents, identified in the course of reviewing such books and records. However, any such requested copies will only be released to the Reinsurer after execution by the Reinsurer of a separate confidentiality contract containing terms mutually agreeable to the Company and the Reinsurer.
-

Real Treaty Clauses

BRMA 1G

- ACCESS TO RECORDS
- C. The Reinsurer or its duly accredited representative may exercise such rights at any time during the term of this Contract and thereafter so long as the Reinsurer shall consider necessary to protect its interests.

Real Treaty Clauses

Sample E&O clause

- Any unintentional or accidental failure to comply with the terms of this Agreement which can be shown to be the result of an oversight, misunderstanding or clerical error, by either the Company or the Reinsurer, will not be deemed to be a breach of this Agreement. Upon discovery, the error will be corrected so that both parties are restored to the position they would have occupied had the oversight, misunderstanding or clerical error not occurred, including the effect of the time value of money. Should it not be possible to restore both parties to such a position, the party responsible for the oversight, misunderstanding or clerical error will be responsible for any resulting liabilities and expenses.

Real Treaty Clauses

- If either party discovers that the Company has failed to cede reinsurance as provided for under this Agreement, or failed to comply with reporting requirements, the Reinsurer may require the Company to audit its records for similar errors, and to take the actions necessary to avoid similar errors in the future. If the Reinsurer receives no evidence that the Company has taken action to remedy such a situation, the Reinsurer reserves the right to limit its liability to correctly reported policies only.
- This provision will apply only to oversights, misunderstandings or clerical errors relating to the administration of reinsurance covered by this Agreement and not to the administration of the insurance provided by the Company to its insured.

Real Treaty Clauses

BRMA 26 A LOSS NOTICE

- As a condition precedent to recovery hereunder, the Company shall advise the Reinsurer **promptly** of all losses which, in the opinion of the Company, may result in a claim hereunder and of all subsequent developments thereto which, in the opinion of the Company, may materially affect the position of the Reinsurer.

More Real Clauses

- BRMA 45 B
- REPORTS AND REMITTANCES
- Within _____ days after the close of each _____, the Company will furnish the Reinsurer with a report summarizing the earned premium ceded less commission, losses paid, loss adjustment expense paid, monies recovered, and net balance due either party. In addition, the Company will furnish the Reinsurer a _____ statement showing the total reserves for outstanding losses including loss adjustment expense, a breakdown by American Insurance Association catastrophic code numbers for paid and outstanding catastrophe losses and loss adjustment expense, and such other information as may be required by the Reinsurer for completion of its NAIC annual statements.
- Amounts due the Reinsurer will be remitted with the _____ report. Amounts due the Company will be remitted within _____ days following receipt of the report. Should payment due from the Reinsurer exceed _____ as respects any one loss, the Company may give the Reinsurer notice of payment made or its intention to make payment on a certain date. If the Company has paid the loss, payment will be made by the Reinsurer **immediately**

More Real Clauses

- **FOLLOW THE FORTUNES:**

“... THE LIABILITY OF THE REINSURERS SHALL FOLLOW THAT OF THE COMPANY IN EVERY CASE AND SHALL BE SUBJECT IN ALL RESPECTS TO ALL OF THE GENERAL AND SPECIAL STIPULATIONS, CLAUSES, WAIVERS AND MODIFICATIONS OF THE COMPANY’S POLICY....”

More Real Clauses

- **FOLLOW THE FORTUNES (redux):**

The Company may make Loss Settlements either under strict policy conditions or by way of compromise and such settlements will be unconditionally binding on the Reinsurer provided such settlements are made with the terms of this Agreement. The Reinsurer agrees to pay its share of any such loss settlement as soon as possible, but not later than 60 days after satisfactory proof of loss by the company is received by the Reinsurer.”

ANOTHER SHADE OF GRAY

- **ASBESTOS EXCLUSION:**

- “Liability arising from risks having an exposure to asbestos. . . .”
- I say “tomato,” you say “asbestos.”
- Is it Excluded? Who Decides?

And One More

- **ULTIMATE NET LOSS:**

The term “Ultimate Net Loss” shall mean the actual loss incurred by the Reinsured, such loss to include all expenses incurred by the Reinsured in connection with the settlement of losses or resistance to or negotiations concerning a loss, including salaries and expenses of employees of the Reinsured while diverted from their normal duties to the service of field adjustment but shall not include any salaries of officers nor offices expenses of undercover expenses of the Reinsured.

What's a Receiver to Do?

- No one left to talk to about the reinsurance contracts
- No directions
- Confusing wording
- Hard to read accounting statements
- Multiple treaty interpretations
- Intermediaries who may or may not help

What's a Receiver to Do?

- **Forensic reconstruction**
- **Treaty organization—do you know where they all are?**
- **Memoranda and old e-mails from all involved in the reinsurance area**
- **Reinsurance Systems-learning how to use an existing one or designing one's own**
- **Prior accounting what if the old /current method of accounting was wrong!!**

What's a Receiver to Do?

- Reading and Understanding the treaty: take it apart and see that it was followed
- Diagram it
- Test the accounting calculations
- Ask questions!!!!
- Don't be afraid to say . . .

It's OK To Say:

**“HELP!!! I DON'T KNOW
WHAT THIS MEANS!!”**

What's a Receiver to Do?

- **Talk with the auditors and actuaries**
- **Talk to the intermediaries**
- **Talk to reinsurance professionals**
- **Research via books, cases and the internet**
- **Talk with your reinsurance partner to get an understanding as to the actual practices used-prior and current**
- **Reach an Agreement going forward**

Realize That:

Some Wording Is Still Crazy!!



**See you in DC in
November**