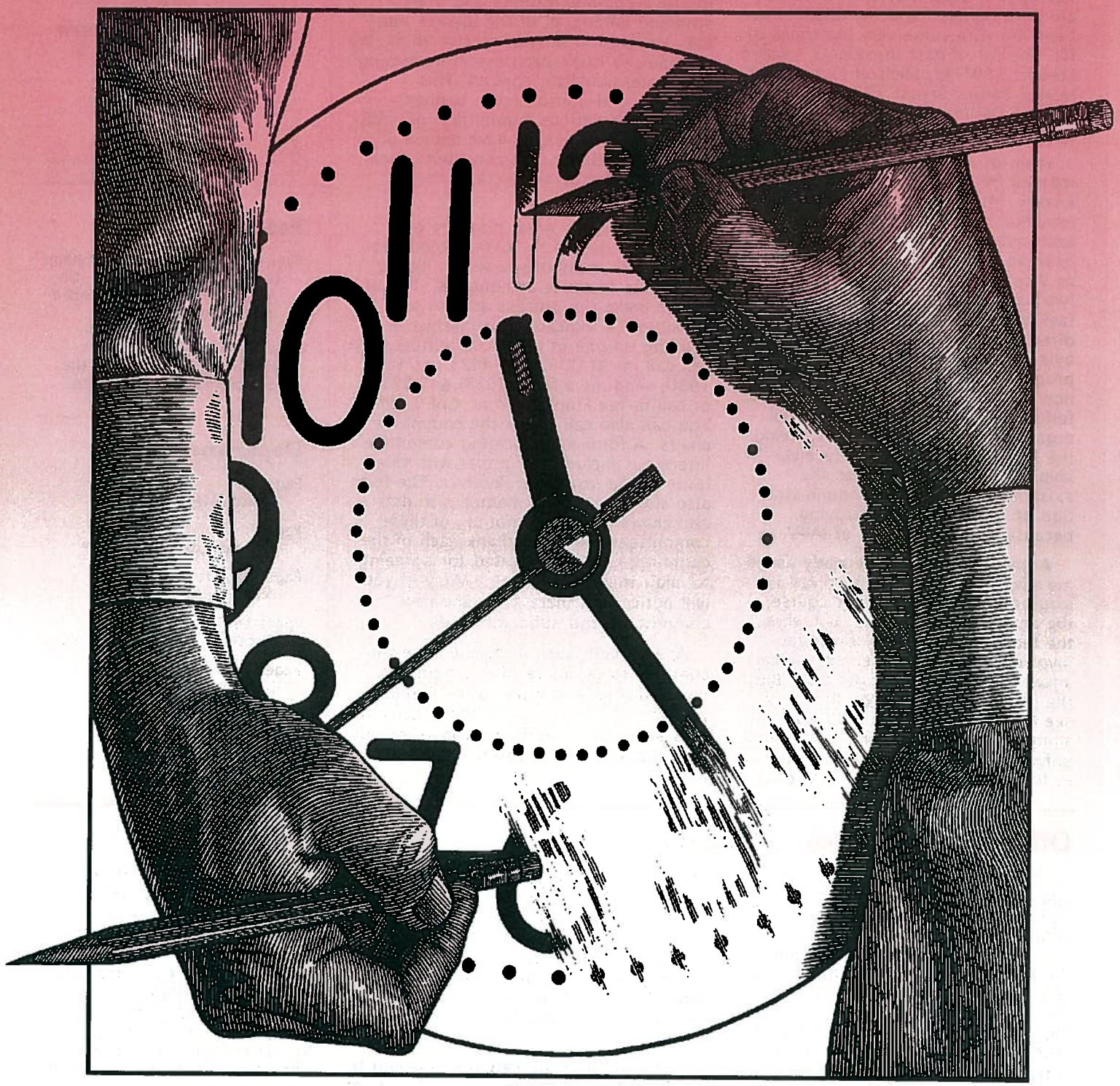
The INSURANCE RECEIVER

Promoting high ethical standards in the administration of insurance receiverships.

Volume 6, Number 4 WINTER 1997



- Lloyd's Market Regulation - A Review of the Structure and its Evolution
- Lawyers Shouldn't Jump to the Front of the Line: No Place for Common Law Retaining Liens in Liquidation

President's Message

From Douglas Hartz

I approach the writing of this, my first President's Message, with a great deal more emotion than one would think it might elicit. After many years as IAIR's perennial Vice President, having now been elected President, I am both honored and humbled. I have been left with some very big shoes to fill. The list of past presidents - Karen Stewart 1991-92, Michael Miron 1993, Jeanne Barnes Bryant 1994-95 and Richard Darling 1996-97 - is truly auspicious.

From its first years which were marked by great enthusiasm and energy, IAIF has matured and grown remarkably in the last few years in both quality and credibility. It has been an honor and a pleasure to work as Vice President with both of the last two past Presidents on the enormous task of redefining the course and direction of IAIR. With the most recent bylaw changes and the accreditation program gaining momentum, we are now on a course that will allow IAIR to fulfill its promise as a professional organization dedicated to improving the handling of insurance receiverships. This is what justifies the existence of IAIR. Is the administration of receiverships improving because of the existence of IAIR?

A great philosopher recently asked me why people become involved in insurance receiverships. Of course, the answer is by accident. But, then, the real question is why they stay involved. And, of course, the cynical answer is because they get paid. But, the better answer may be that they see that they can make a difference in something that is important. While we unfortunately sometimes lose sight of it, fulfilling the failed promises of the insurers that fall into our charge, to the greatest extent we can, is important and honorable work.

In many ways IAIR serves as focal point for making a difference. We continue to improve communications and understanding among all of the diverse interests involved in insurer receiverships. We continue to make progress in increasing the professionalism applied. This progress and improvement happens through the various committees of IAIR. It happens because we have people of remarkable ability that contribute their time and effort to the work of these committees.

I now have the great pleasure of appointing people to these committees. As I believe many of you would like to contribute to these committees, I would like to make the process as easy as possible. To indicate your interest in working on one or more committees, you can call me at (573) 526-4425 or 751-1930, send me a fax at (573) 445-9717, or call or fax Frank Bistrom, CAE at IAIR. You can also call or fax the committee chairs. A form for indicating committee interest is included as a flier with this issue of *the Insurance Receiver*. The form also shows the 1998 members to date and chairs of most, if not all, of these committees. I want to thank each of the committee chairs indicated for agreeing to chair these committees. Many of you will notice that there are some new committees and subcommittees.

As IAIR continues to do more we will continue to get more of the membership involved. I look forward to the coming year and the challenge of IAIR's activities with all of this membership involvement and thanks to all of you for making it work.

The Insurance Receiver
Volume 6, Number 4
Winter 1997

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At this writing, sixteen states have adopted mutual holding company legislation (three others pending), with several others considering it. Four companies have already completed a conversion, with three more in process. Mutuals have to find ways to access capital to grow and participate in the consolidation process. An MHC is one structural way to do it, maybe the best way, given the costs, uncertainties and delays in a full demutualization. Once again, however, changes of this magnitude can - and almost surely will - produce mistakes and miscalculations that over a period of time could shake the stability of many companies. And if that resulting instability hits the danger zone, could the new corporate structure spell trouble for the exclusive jurisdiction of the state receivership system? Could a creditor invoke federal bankruptcy jurisdiction instead?

The insurance marketplace is going to be shaped by all these changes hitting at once (not to mention the continuing upheaval in the health markets). That marketplace will produce business failures like every other segment of the American economy, simply because companies are not going to be able to conduct business as usual and stay alive in this "what have you done for me lately" consumer environment where operating efficiencies and price competitiveness are necessities. Receivers, guaranty associations and others involved in the insolvency process are going to have to adapt to these changing dynamics in searching for the best achievable policyholder protection.

Seattle Meetings Recap

By Mary Cannon Veed

Ah, the endless variety of the NAIC! I think we will call Seattle the Meeting of the White Papers. Stephen Schwab seems to have started it on Saturday by organizing an entire segment of the IAIR roundtable around a discussion of how to apply something approaching generally accepted business practices to liquidation. I think he and Charles Glass demonstrated that real liquidation accounting is feasible, conventional wisdom notwithstanding, but they proved equally forcibly that it is not anything like what we are used to.

Some receivers have gotten into the lazy habit of ceremoniously presenting periodic reports to their supervising courts made up of nothing but cash receipts and disbursements. I can't think of any user whose need for information is satisfied by what amounts to a copy of the estate's check register. Nevertheless, many receivers have stopped tracking most of the bread-and-butter accounting data live companies use to assess their positions. They justify the omission by saying that information is no longer needed for a defunct company, but that is an evasion. Consider these thoughts:

There is a reason why live companies employ legions of bean-counters, and it's not just a morbid fascination with the Yellow Peril. Do liquidators need to prioritize, allocate resources, and choose their battles, too? Have some of them been conspicuous by getting entangled in nasty claims issues not worth the price of their dividend? Or chasing small assets while big ones languished? Is there a pattern here?

Liquidators once thought it was a waste of time to reserve for claims before there were dividends in prospect. This has proven to be a short-sighted cop-out. Turns out claims handling is much tougher when you try to do it ten years after the fact. Meantime plenty of claimants gave up, went away, settled for peanuts or took bankruptcy. For those people the insurance system has simply and irretrievably failed. And to add insult to injury, add up the lost reinsurance recoveries, the uncertainty in early access plans and the impossibility of a defensible claims estimation without claims development data. All because we thought case reserves were idle speculation, and IBNR was a frill.

It's obvious that insolvent companies do not need the full range of accounting information they used to have, but they need more than most of them are getting. What's the balance of cost and benefit? Is accounting a seamless web from which nothing can be deleted without endangering the rest, or are the accountants just creatures of habit? Stay tuned.

A very different sort of principled discussion has been going on in the Special Committee on Regulatory Re-engineering, which finally exposed its White Paper. Loyal readers will remember that I am a fan of this initiative. The White Paper contains one of the most perceptive and concise descriptions of why we bother to regulate (and therefore, how we decide what needs regulating and what doesn't) I have seen in a while. It uses that definition to pick out some areas where regulation is superfluous or can be streamlined, and makes some specific proposals to improve it, many of which seem eminently "do-able" to me, and seem to have been well-received.

Another White Paper turned up on the subject of Mutual Holding Companies — a first draft of the working group's efforts. This issue is of significance to liquidators chiefly because it may define our next set of customers. We're familiar with the predicament of a mutual company which suffers financial reverses — it can't replenish its capital without some more business, and it can't get the business without the capital. One way out of the box is to demutualize, but that raises some of the darnedest metaphysical issues about who gets to control the outcome. The trouble is that policyholders do not know they have any ownership interest, or care about it if they do, and everyone spends a great deal of time, and astonishing amouts of money, protecting people who are not very grateful. On the other hand, management of mutual companies has been handed down from generation to generation, and even traded, as if it were a property right, but one struggles to ascertain its provenance. Managers often insist on protection for their *de facto* control if the company is demutualized. That makes a certain intuitive sense—after all, inurance is a people business—but in effect they are using a position of trust to obtain a personal benefit at the expense of the people they are responsible to. That's pretty boggy ground. Whoever has to make the call as to how much "management incentive" is appropriate is in grave danger of making a politically and commercially sensible decision that is legally suspect.

Steven Schwab, co-chair of the IAIR Roundtable shows some overheads developing one of the many subjects discussed.

Things would be a little less like a minefield if somebody wrote some standards, and it seems that is part of what is going in with the White Paper. But maybe it will turn into a White Wash, instead. A mutual holding company (MHC) is a gimmick in which the former mutual insurer is turned into a parent of a stock insurer, which issues all the policies going forward and may assume the old ones. For some reason, these plans invariably include a requirement that the MHC always own 51% of the stock company's stock, which turns them into what might be called a Management Perpetuation Scheme (MPS). Moreover, that also creates an entity which can never raise capital beyond the 49% level, no matter how badly it needs it or how tempting the opportunity, and whose stock can never command a control premium. In an environment when useable insurance companies sell like

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Seattle Meeting Recap

(Continued from Page 3)

hotcakes, it would be a shame to leave mutual insurers crippled by capital shortages because they cannot make themselves attractive investments. Demutualization certainly is ripe for flim-flam. It needs regulation, but I am not sure it needs this one.

Also in the category of White Papers about our prospective customers was one on "Risk Bearing Entities" (translation: managed care organizations in their myriad variety). An RBC formula and model act for HMO's was in circulation, but fell in a hole unless I missed something. It might have been the same hole the Accounting Codification project disappeared into.

Liquidators have always watched the proceedings of the Surplus Lines task force with a proprietary air. Having driven the move toward 100% securitization of Lloyd's risks, New York seems to have done an abrupt about-face, and unilaterally agreed to reduce the security requirement to 50% — including for business already written.

It proposed that IID should do the same, but the retroactivity of the scheme was a sticking point. And the NAIC hates to be rushed, especially by New York. So they put a toe in the water, agreeing to accept the 50% security as to business written in 1998 only, and sent out for a opinion on whether it was legal to reduce the security for business already written. What the IID will say about next year's business is supposed to depend on a review of Lloyd's reborn operations.

I don't blame the Task Force for being sceptical about the idea you could, by regulation, reduce the trust fund for business written in previous years, but New York was right. As liquidators, we see the phenomenon now and then, when we attempt to decide who owns a state special deposit fund.

Oddly enough, the only owner of such a fund is probably the company that established it. Because it is a trust for everybody, it is really a trust for nobody until the conditions established in the trust document are fulfilled.

The trust is not part of the insurance contract; it's a regulatory requirement imposed as a police matter, and the regulator can change the rules. Does that make you wonder just how much protection we get from these creations? Me too.

My last comment is not about paper at all — it's the absence of paper. For some time the NAIC has maintained committee minutes on the Internet at its Web site.

All to the good, except they charge you for downloading them, and they show up kind of late. Hard copies were available at the meetings, maybe, but never in enough quantity, and acquiring them took some skills better suited to rugby.

The NAIC has just solved that problem by simultantously conceding that registration at the NAIC entitles one to a copy of the minutes, and making the minutes disappear!

Supposedly they will turn up on the Web site, but the substitution is not a good one, because they arrive, if at all "no later than January 12" — i.e. 5 weeks after the fact. As of this writing, (8-10 days later), they aren't there yet.

How they will handle submissions from outside is not yet clear. Download is free to meeting registrants (how do they identify us?) for the month of January, but that is not much comfort when they aren't on the Net until January.

It doesn't get easier to write minutes if you wait until two weeks after the meeting, and it is a foolish economy to pack meetings so tightly on staff schedules that they cannot write up the minutes contemporaneously.

It might help if you could use the web site to put in an order for the minutes via email when they were ready, but there is no sign of that yet.

It won't do to make meeting minutes functionally inaccessible, and then blame "modern technology" for the logjam.

At the recent Board Meeting held prior to the NAIC meeting in Seattle, board members Jim Gordon, CIR; Doug Hartz, Dick Darling, CIR; Mike Marchman, CIR and Finance Chair Dale Stephenson, CPA discussed the Budget for IAIR.

INSOL International

INSOL is on the Internet. As you may know, by virtue of your membership in IAIR, you are also a member of INSOL International.

We are pleased to inform you that INSOL has launched its Web site on the Internet. You can inspect the site by selecting:

http://www.insol.org.

There are seven items on the menu, namely:

1. Organization
2. Directory
3. Forum
4. Conferences
5. Publications
6. Links
7. E-mail

Your specific attention is drawn to the following features:

Forum

Forum - Item 3 on the menu offers a new mechanism for exchange of ideas among professionals around the world who work in the area of international and cross-border insolvencies.

Access to this item is restricted to INSOL members only, and each INSOL member association has been issued an exclusive password for use by its members.

The password which has been allocated to IAIR is: "SHATTERDAY"

IAIR members may use this password to gain access to this section and communicate with fellow INSOL members.

There are currently seven categories of discussion items listed and we understand that further categories will be added to these in the course of time.

Directory and E-mail

Directory - Item 2 on the menu currently shows the membership directory which was issued at the INSOL: 97 World Congress.

This will be updated as INSOL receives new lists of members from member associations.

With regard to particulars of individual members, INSOL will also include as your contact details, currently: your correspondence address, telephone and fax numbers and your E-mail address.

If you would like your E-mail address to appear as part of your entry in the INSOL Internet site, please E-mail INSOL directly through the Internet site.

Should you have any questions regarding this site, please contact IAIR Office.

WANTED

Your Articles for *the Newsletter*

If you have an article you would like to submit for publication in the *Insurance Receiver*, please submit it in MS Word 6.0, or Wordperfect 5.0 or 5.1 on an IBM-formatted 3.5" floppy disk. Mail it to IAIR Headquarters, attention Lisa.

Articles must be received by the first of the month, one month prior to publication date. All submissions become property of IAIR and may or may not be chosen for publication.

If you wish to have your diskette returned, please enclose a 6"x9" SASE.

IAIR Roundtable Schedule

NAIC Meeting - March 14-18, 1998
Salt Lake City, Utah
IAIR Roundtable - March 14, 1-4:00 p.m.

NAIC Meeting - June 20-24, 1998
Boston, Massachusetts
IAIR Roundtable - June 20, 1-4:00 p.m.

NAIC Meeting - September 12-16, 1998
New York, New York
IAIR Roundtable -
September 12, 1-4:00 p.m.

NAIC Meeting - December 5-9, 1998
Orlando, Florida
Saturday - December 5
IAIR Roundtable - 1-4:00 p.m.
Annual Meeting - 4:30 p.m.

NAIC Meeting - March 6-10, 1999
Washington, D.C.
IAIR Roundtable - March 6, 1-4:00 p.m.

The INSURANCE RECEIVER

The Insurance Receiver is intended to provide readers with information on and provide a forum for opinion and discussion on insurance insolvency topics. The views expressed by the authors in *The Insurance Receiver* are their own and not necessarily those of the IAIR Board, Publications Committee or IAIR Executive Director. No article or other feature should be considered as legal advice.

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LAWYERS SHOULDN'T JUMP TO THE FRONT OF THE LINE: NO PLACE FOR COMMON LAW RETAINING LIENS IN LIQUIDATION PROCEEDINGS

By Ellen S. Robbins[1]

The statutory provisions governing the liquidation of insolvent insurance companies in most states allow for the immediate payment of administrative costs, including the attorneys' fees incurred in connection with the liquidation. However, pre-liquidation attorneys' fees incurred in connection with the defense of policyholders on behalf of the insurer must be adjudicated pursuant to the same proof of claim procedures utilized for policyholder claims, third-party direct claims, and general creditor claims. Recently, however, in Illinois, in the liquidation proceedings respecting Coronet Insurance Company ("Coronet"), the supervisory court treated a law firm's claim for pre-liquidation attorneys' fees incurred in representing Coronet's policyholders in the same manner as post-liquidation administrative fees. After initially granting the law firm secured creditor status based on its assertion of a common law retaining lien over Coronet's pre-liquidation litigation files that it held, the court then treated the law firm as a post-liquidation administrative claimant and directed that it receive immediate payment of its fees in full pursuant to a summary hearing, rather than having its claim adjudicated pursuant to the proof of claim procedures that govern all other pre-liquidation claims. (The supervisory court's orders are currently on appeal to the Appellate Court of Illinois, First District, No. 1-97-2332.) Not only does this ruling appear to violate the Illinois Insurance Code, but, if the ruling is upheld on appeal and/or followed by other courts, it threatens to disrupt the orderly administration of the estates of insolvent insurers well beyond the estate of Coronet. This article will critique the position that a lawyer is entitled to assert a common law retaining lien against a liquidator, and will illustrate how the explicit priority schemes in liquidation statutes could be significantly undermined if the assertion of retaining liens is permitted.

A retaining lien is a possessory lien that gives an attorney the right to retain a client's property (usually files) as leverage for obtaining the payment of attorneys' fees due from the client. The retaining lien has no value in and of itself; rather, the value of the lien arises from the delinquent client's need for its files and/or property. In short, by asserting a common law retaining lien, an attorney holds the client's property hostage in exchange for the ransom (i.e., payment of outstanding legal fees).

The assertion of common law retaining liens in insurer liquidation proceedings raises particular issues which are best understood after a brief overview of the governing insurance statutory provisions. Insurance codes such as those based upon the NAIC Insurers Rehabilitation and Liquidation Model Act ("Model Act") provide a comprehensive and exclusive regulatory scheme for the liquidation of insolvent insurance companies. See In re Liquidation of Security Casualty Co., 127 Ill. 2d 434, 445, 537 N.E.2d 775, 780 (1989).

Under the provisions of the Model Act, the liquidator is charged with the responsibility of liquidating the property, business and affairs of the insolvent insurer. To expedite the administration of an insolvent insurer's estate, the Model Act vests the liquidator with title to all property . . . books and records of the insolvent insurance company. See Model Act, Section 20(A). The Illinois Insurance Code specifically states that such property includes litigation files. See 215 ILCS 5/191. In addition, Section 5 of the Model Act states that the entry of a liquidation order operates as an automatic stay which prohibits the withholding from the receiver of "documents or other records relating to the business of the insurer." The Illinois Insurance Code goes further by expressly authorizing courts to enjoin the assertion or enforcement of any preferences or liens, including common law retaining liens. See 215 ILCS 5/189.

The rights of creditors asserting liquidated claims against the estate of an insolvent insurance company are fixed upon the entry of the liquidation order. See Model Act, Section 20(B). Before the claim bar date, all claims against an estate must be presented to the liquidator for approval in a written, sworn proof of claim setting forth the nature of the claim and including all documents upon which the claim is based. Id. at Section 40(A). The liquidator may request additional information or supplementary evidence to support the proof of claim. Id. at Section 40(C). If the liquidator denies a claim or allows a claim for less than the requested amount, a notice of determination is issued. Id. at Section 43(A). Where a claimant objects to the liquidator's determination and the liquidator does not alter his determination as a result of the objection, the liquidator petitions the supervisory court for a hearing on the claim. Id. at Section 43(B).

Both the Model Act and relevant case law make clear that claims for pre-liquidation attorneys' fees and costs should be accorded general creditor status (Class 6). Id. at Section 46(F); People ex rel. Schacht v. Prestige Casualty Co., 287 Ill. App. 3d 577, 678 N.E.2d 785 (1st Dist. 1997). In the Coronet liquidation proceedings, however, the law firm asserted that the decision in Matter of Liquidation of Mile Square Health Plan, 218 Ill. App. 3d 674, 677-78, 578 N.E.2d 1075, 1078 (1st Dist.

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1 Ellen S. Robbins is an associate with the law firm of Sidley & Austin. Sidley & Austin is counsel for the Liquidator in connection with the claim of David Kreisman & Associates against the Coronet estate.

The views expressed in this commentary are solely those of the author and are not intended to represent statements, opinions or positions of Sidley & Austin, the Illinois Department of Insurance, or the Liquidator of the Coronet estate.

1991), entitled it to a higher priority based upon its withholding of Coronet litigation files and concomitant assertion of a common law retaining lien against the Coronet estate.

Because the Illinois Insurance Code and the Model Act require pre-liquidation attorneys to release all of the insolvent insurer's property to the liquidator, the assertion of a common law retaining lien should be effectively eliminated. A common law right to withhold property should not prevail in the face of a statutory provision to the contrary. The Mile Square Health Plan opinion states that a retaining lien is dependent upon the attorney's continued possession of the client's property and is lost if the attorney surrenders possession of the documents. Mile Square Health Plan, 578 N.E.2d at 1078.

Although case law in this area is sparse, other courts have held that an attorney's retaining lien cannot be used to withhold files from the receiver of an insolvent insurance company. For example, in Maleski v. Corporate Life Ins. Co., 641 A.2d 7, 10-11 (Pa. Cmwlth. 1994), the court held that a law firm that represented an insolvent insurer prior to its liquidation was statutorily required to turn over its files to the liquidator pursuant to the provisions of the Pennsylvania Insurance Department Act despite the fact that the law firm had a retaining lien on the files. The Maleski court noted that the liquidator's need for access to all property of the insolvent insurer to protect the interests of policyholders and the general public outweighed a law firm's right to assert its retaining lien. The court reasoned that the law firm could still assert its claim as a creditor in the liquidation proceedings.

In Superintendent of Ins. v. Baker & Hostetler, 668 F. Supp. 1054 (N.D. Ohio 1987), the court similarly required a law firm to turn over the insolvent insurer's documents and property, regardless of any lien the law firm possessed. Other courts also have noted that the rights of attorneys to assert retaining liens must be weighed against the public interest. See Israel Travel Advisory Service, Inc. v. Israel Identity Tours, Inc., 1993 WL 34681 (N.D. Ill. 1993); In re Olmsted Utility, Inc., 127 B.R. 808, 813 (B.R.N.D. Ohio 1991) (recognizing that under certain circumstances an attorney's retaining lien must give way to competing interests, such as bankruptcy proceedings).

Furthermore, ensuring the efficient and equitable administration of insolvent insurers' estates counsels that law firms be prohibited from withholding litigation files that the liquidator needs to administer the estate in order to obtain leverage for the payment of its fees. It is one thing for a law firm to seek to assert a common law retaining lien to ensure payment from a solvent client with a delinquent balance; it is quite another for a law firm to in essence hold the litigation files hostage until the liquidator pays the ransom. Accordingly, in addition to the clear mandate of the Model Act, public policy dictates that a law firm should not be permitted to become a secured creditor through the assertion of a common law retaining lien.

In addition to inappropriately allowing the assertion of a common law retaining lien in liquidation proceedings, the Coronet supervisory court improperly equated the law firm's claim for pre-liquidation attorneys' fees (for which distributions can only be made after the claims bar date) with a claim for post-liquidation administrative expenses. The inequity of giving such preferential treatment to pre-liquidation attorneys' fees (as compared to other pre-liquidation debts of the insolvent insurer) becomes apparent after considering the distinction in the manner in which claims for pre-liquidation attorneys' fees and post-liquidation administrative expenses are handled.

The Model Act requires all pre-liquidation claimants to file a sworn proof of claim with the liquidator. The liquidator is given the opportunity to examine and investigate all claims filed against the estate of an insolvent insurer, and the liquidator may request that the claimant provide additional evidence or documentation regarding the nature of the claim. See Model Act, Section 40(C). In addition, claims for pre-liquidation attorneys' fees, like all pre-liquidation claims, are typically paid through partial distribution in accordance with the priority of distribution only after the bar date for the filing of proofs of claim. Thus, those with claims against the estate for pre-liquidation professional services should have their claims adjudicated and paid in the same manner as all policyholder claims and third-party claims.

On the other hand, those rendering post-liquidation professional services to the liquidator are entitled to more immediate payment. Under the Model Act, the liquidator is authorized to retain professionals, including attorneys, to assist with the liquidation proceedings, and to

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Lawyers Shouldn't Jump . . . *(Continued from Page 7)*

pay reasonable compensation to such professionals upon the supervisory court's approval. Id. at Section 24. Once the expenses have been approved by the court, where required, payment may be made from the estate.

The statutory framework calling for the immediate payment of attorneys' fees and other expenses incurred in connection with the liquidation of insolvent insurers accords with common sense.

If such post-insolvency administrative expenses were not granted first priority, it is highly unlikely that anyone would agree to undertake work on behalf of the estate of an insolvent insurer.

Treating a law firm's claim for pre-liquidation attorneys fees as an administrative expense improperly affords attorneys special status vis-a-vis other pre-liquidation creditors of the insolvent insurer. In FDIC v. Shain, Schaffer & Rafanello, 944 F.2d 129 (3d Cir. 1991), the court overruled the assertion of an attorneys' retaining lien and directed the law firm to submit its pre-liquidation fee claim to the receiver of its former client, a federally-chartered bank.

In discussing the law firm's claims, the court emphasized the distinction between pre-receivership and post-receivership attorneys' fees by noting the substantial differences in both the operation and regulation of the insolvent entity pre- and post-receivership.

The court further stressed that the purpose of liquidation proceedings is for creditors to submit their claims to the estate. Accordingly, the court found no reason for pre-liquidation attorneys' fees to be given any special treatment over other pre-liquidation claims. 944 F.2d at 135.

Moreover, the Model Act sets forth detailed proof of claim procedures for all pre-liquidation claimants. These procedures authorize the liquidator to review and scrutinize claims against insolvent insurer's estates, thus expressing an intent to have all pre-liquidation claims evaluated by the liquidator and his or her staff — personnel possessing both extensive experience and expertise in insurance matters.

This intent would be thwarted (and the supervisory courts overwhelmed) if law firms were able to freely circumvent the proof of claim provisions by filing claims for pre-liquidation attorneys' fees directly with the supervisory court in the manner that post-liquidation administrative expenses are handled.

Moreover, allowing a law firm's claim for pre-liquidation attorneys' fees to be determined through a summary hearing is unfair to the other pre-liquidation claimants of the estate, who will have their claims adjudicated pursuant to the more lengthy proof of claims procedure set forth in the Model Act.

Perhaps even more important, allowing a law firm to receive immediate payment in full for its claim for pre-liquidation attorneys' fees, like an administrative claimant, is unfair to the other pre-liquidation claimants, who generally must wait until after the proof of claims filing bar date to receive even a partial distribution — if sufficient assets exist in the estate.

If all law firms that performed pre-liquidation legal services were treated as administrative claimants, and thus entitled to receive immediate payment, there is a significant risk that the funds in the estate would be severely depleted or even exhausted before many policyholders and beneficiaries had an opportunity to even file their claims.

Such a result is clearly not what was intended when the Model Act was drafted to give policyholders, beneficiaries, insureds and claimants against insureds a higher priority status than general creditors such as pre-liquidation law firms.

To conclude, the Model Act is designed to provide a comprehensive, orderly and efficient procedure for liquidating insurance companies, while ensuring that the rights of interested parties are protected.

If supervisory courts are permitted to displace the statutory provisions with their own notions of equity by allowing law firms to assert common law retaining liens against the insolvent insurers' litigation files and by treating claims for pre-liquidation attorneys' fees in the same manner as attorneys' fees incurred in connection with the administration of the estate, the liquidators' ability to administer estates of insolvent insurers in an orderly and equitable manner will be jeopardized.

To the extent that law firms disagree with state insurance codes' mandates that all litigation files be turned over to the liquidator, the appropriate remedy is to seek amendment of the statutes, not to violate them. By allowing a law firm to assert a common law retaining lien, the Coronet supervisory court in effect both rewarded the law firm for violating the Illinois Insurance Code by refusing to turn over the litigation files and encouraged other law firms to fight to obtain payment of their fees by withholding from the liquidator the files necessary for the administration of the estate. Such conduct can result in a waste of both the estate's assets and the liquidator's time and resources.

Moreover, treating a claim for pre-liquidation legal fees in the same manner as post-liquidation administrative expenses is unfair to other claimants because it could potentially significantly reduce the amount of available assets in the estate. Of course, such a result would undermine the statutory priority of distribution. Accordingly, there is no justification that would allow attorneys to cut to the front of the priority of distribution line by asserting common law retaining liens in liquidation proceedings.

RECEIVERSHIP LAW ADVISORY COMMITTEE PRESENTATION

The Receivership Law Advisory Committee of the Interstate Insurance Receivership Commission invites all who plan to attend the NAIC/IAIR Insolvency Workshop in LaJolla to a special public meeting on Wednesday, January 28, 1998 from 3:00 p.m. to 5:00 p.m. at the Hyatt Regency LaJolla.

The Committee, which is developing proposed legislation for the Receivership Compact states, will conduct a panel discussion of its preliminary draft Uniform Receivership Rule and solicit comments and questions from those in attendance.

The Committee encourages everyone with an interest in insurance receivership law, particularly regulators from non-Compact states, to attend.

NOLHGA/IAIR Second Joint Seminar

By Paula Keyes, CPCU, ARe, CPIW - IAIR 1997 Education Chair

If you did not attend the NOLHGA/IAIR Second Joint Seminar in Louisville, KY, an opportunity was missed to participate in a truly remarkable program.

The seminar involved a case study of a fictitious life insurance company facing serious financial, legal, environmental, and political issues.

The participants were divided into Red and Blue teams with instructions to prepare a recommendation to a panel of eight deputy commissioners and Acting Commissioner Bob Sanderson.

Under the direction of this panel, the two groups worked diligently to address the asset, liability, coverage and legal problems of Down Insurance Company.

The success of the program was wholly dependent upon the complete participation of the attendees, and the level of enthusiasm was phenomenal.

The teams took their charge seriously, working late into the night and even foregoing hors d'oeuvres and cocktails provided at the reception on the second night.

During the three days of this seminar (Nov. 18-20), the conversation during meals and breaks centered around the case.

The competitive spirit between the two teams provided an extra element of excitement.

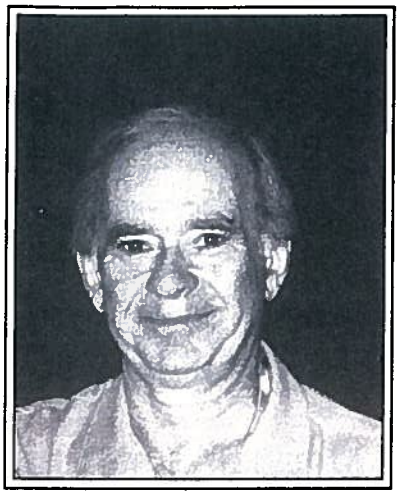
The Red Team working on their recommendation.

Final recommendations were presented on Thursday morning, and although it was a difficult decision, the panel chose the plan formulated by the Red team. Way to go Red team!!!

The response to this format was exceptionally favorable and IAIR looks forward to working with NOLHGA again in 1999 on the Third Joint Seminar.

From left to right: Brian Donnelly, President of NOLHGA; Dick Darling, CIR, '97 IAIR President; Paula Keyes, IAIR Education Chair; Tom Peterson, NOLHGA Education Chair and Dick Klipstein, Director of NOLHGA.

Meet Your Colleagues



Leonard H. Minches

Leonard Minches graduated from New York University with a BA in 1952 and from New York University School of Law in 1955. He is counsel at Edwards & Angell in the Palm Beach and New York Offices.

He has extensive experience representing many sectors of the insurance industry including insurers and reinsurers in the United States, United Kingdom, France, Germany, Scandinavia, Bermuda and Japan.

He has represented his clients in numerous commutation agreements involving receiverships in the United States and elsewhere.

He also represents insurance and reinsurance companies in regulatory matters involving licensing and company formation.

Minches addresses insurance and reinsurance conferences and meetings on an average of six or seven times per year in the United States, Bermuda and London. Prior to joining Edwards & Angell, Minches was Vice President and Counsel to the Gerling Global Reinsurance Corporation and was in charge of reinsurance claims for that company. Minches was with the New York State Insurance Department for nearly 20 years and was Special Deputy Superintendent in charge of the Department's Liquidation Bureau for the last 4 years of his tenure.

During his association with the Department, he was counsel to the Superintendent of insurance in all receivership matters. In addition, Minches has been appointed an arbitrator in a number of reinsurance disputes.

Minches is an avid sports fan with a baseball card collection containing 75,000 cards. He and his wife Lorraine are avid movie and theatergoers.

John Milligan-Whyte

John Milligan-Whyte is a founding partner of the law firm of Milligan-Whyte & Smith in Bermuda. He grew up in California and Ontario and moved to Bermuda in 1984 after receiving a BA (Honors), LL.B and L.L.M from the University of Toronto, Queen's University Law School and Osgoode Hall Law School respectively.

Milligan-Whyte & Smith specializes in reinsurance, insolvency, litigation and arbitration as well as corporate and finance and has grown to 15 lawyers since its start in 1984. Milligan-Whyte has published many articles on international reinsurance, litigation, arbitration, and insolvency issues.

In 1988 he published a seminal article on the use of actuarial estimation to speed up reinsurance company liquidations in the American Bar Association's text International Reinsurance Collections and Insolvency. This article grew out of his work as a legal advisor to the Joint Liquidators of Cambridge Reinsurance Ltd.

Milligan-Whyte presented a paper to the NAIC's 1993 Insolvency Workshop: "Creativity Plus Insolvency Equals Unexpected Answers" which focused attention on initiatives to close liquidations and on creative approaches to dealing with potential insolvencies.

He has served as a member of the NAIC Rehabilitators and Liquidators Task Force Advisory Committee and Sub-Committee Redrafting the NAIC Insurers Supervision, Rehabilitation and Liquidation Model Act and as the Chairman of a Committee advising Bermuda's Minister of Finance on Insurance, Reinsurance and Insolvency Reform. He has served as Vice Chairman of the Committee on the Public Regulation of Insurance Law of the American Bar Association Tort and Insurance Practice Section.

Milligan-Whyte and his firm have taken a characteristically innovative approach when advising liquidators, receivers and creditors involved in reinsurance and insolvency proceedings. His firm acts for a number of liquidators/ receivers including Bermuda Fire and Marine Limited's liquidators.

Milligan-Whyte serves as Bermuda Accomplishments Editor for the International Association of Insurance Receivers Quarterly Newsletter, *The Insurance Receiver*.

Elisabeth Fura Sandstrom

Elisabeth Fura-Sandstrom is a partner with the Vinge law firm and practices corporate, transportation and bankruptcy law.

Fura-Sandstrom holds a master of law degree from Stockholm Unviersity but never really left as she returns to teach there as well as at Uppsala University and the Stockholm School of Economics. Before working with the Vinge firm, Fura-Sandstrom served with the Swedish Courts for two and a half years as a junior judge.

In addition to her activities as a practicing lawyer, Fura-Sandstrom is active in many associations. This involvement means significant world travel and speaking engagements at various international seminars and conferences.

As the consummate polyglot, she has written articles in numerous law reviews in Swedish, English, and French. Fura-Sandstrom has also participated as co-author of several books.

Fura-Sandstrom tried life in France for three years from 1991 to 1993. During that period she practiced law at the Vinge office in Paris and served as President of the "Association International des Jeunes Avocats".

Today, Fura-Sandstrom resides in Stockholm and continues her involvement with several associations. After having served as President of the Association of the Official Receivers in Stockholm, she is currently Deputy Chairman of the Swedish Bar Association, of which she has been a member since 1985.

At the present time Fura-Sandstrom serves as an expert on a parliamentary committee with the task of reviewing the Wage Guarantee Act and the Act on Floating Charges. The latter being a politically sensitive position since some of the areas considered are "hot issues" and are expected to receive a great deal of attention and debate.

Married with a seventeen-year-old son, Fura-Sandstrom likes to spend her free time with her family enjoying all the good things in life. This includes sports such as tennis, sailing and jogging, good food and wine but, above all, music of all kinds. As an amateur musician and singer, her busy schedule usually means she must pursue this favorite avocation passively by listening to other performers, live or on CD.

Elisabeth "Beth" Sauer

When not pursing her primary goal of becoming Kansas City's premier host of backyard barbecue parties, Sauer, spends time managing her law firm and engaging in receivership matters.

After practicing business litigation law with several law firms in Missouri since 1975, Sauer opened a law firm concentrating on insurance insolvency law, bankruptcy and litigation. The firm handles all aspects of insurance receivership law including litigation, appeals, reinsurance collection, and claims analysis, transactional and corporate matters. Sauer acts as general counsel to the receiver for both property and casualty, and life receiverships, and is appointed as the Special Deputy Receiver for both a risk retention group and a managing general agent in liquidation in Missouri.

In addition to receivership matters, Sauer is an active arbitrator and mediator. She has joined ARIAS-US, a professional reinsurance arbitration association to expand her experience as an arbitrator and a mediator of tort and products liability cases, to include reinsurance arbitration. She is a certified state mediator and a federal court approved arbitrator.

Sauer enjoys the variety of problems presented to the insurance receiver, especially the constant interface between legal and financial matters. She has found that the experience she has obtained in managing receivership estates is applicable to managing the law firm. However, she has found that nothing quite prepares one for the disciplines of meeting payroll twice a month every month, and dealing with personnel issues.

Sauer is active in the National Women's Law Center and other women's legal and business organizations.

Sauer graduated from Northwestern University in 1970 with a degree in English literature. She was a social worker in Chicago before returning to law school in Missouri where she obtained a J.D. degree from the University of Missouri in 1975.

Spare time is scarce since she started her own firm, which now includes five lawyers and several paralegals. Despite her demanding schedule, Sauer says she can always make time for the important things in life, like outdoor grilling. Sauer also enjoys white water canoeing, tennis, reading and traveling.

Lloyd's Market Regulation
A Review of the Structure and its Evolution

By John Baker, General Manager in the Regulatory Division of Lloyd's and part of the management team for the Division. John's specific areas of responsibility are Complaints and Investigations

Over the past several years, the manner by which the Lloyd's Market has regulated itself has been subject to a comprehensive review. John Baker, a General Manager in the Regulatory Division of Lloyd's, has had an active role in the implementation of the recommended modifications to the structure. In this article John considers the process of change in the way in which Lloyd's fulfills its regulatory obligations.

History

Regulation of the Lloyd's market aims to ensure that reasonable safeguards are in place for Lloyd's policyholders, members and market practitioners. Under existing legislation, the Council of Lloyd's ("Council") has responsibility for the regulation of the Lloyd's market. Thus Lloyd's is a self-regulatory organization, being answerable to the Department of Trade and Industry ("DTI") in respect of the overall solvency of the market. At present, the Council has devolved certain functions to the Market Board ("LMB") and Regulatory Board ("LRB") which were both created in 1993. The LRB exercises the Council's delegated powers to regulate, with the exception of making bylaws.

Lloyd's Regulatory Review

Towards the end of 1996 Lloyd's set up a Regulatory Review Group ("Review Group") to review the regulatory arrangements at Lloyd's. In May 1997 a report was published presenting the findings and recommendations of the Review Group. In addition a number of other discussion documents have also been produced, considering specific aspects of regulation, with the aim of improving regulation at Lloyd's and increasing confidence in the Lloyd's market and its participants in the post-Reconstruction and Renewal era.

The Review Group expressed the belief that the daily business of regulation at Lloyd's should remain the Council's responsibility since, with the existence of the LRB and LMB, it is in a good position to maintain this equity. The separate existence of the LRB was considered to underline the importance Lloyd's attached to regulation, and it was suggested that a structure of standing sub-committees of the LRB should be established to enable the LRB to concentrate on higher level policy.

The Review Group recommended that Lloyd's should seek external, formal accountability to a statutory body, with the most likely candidate being The Securities and Investment Board ("SIB"). It also stated that the powers of the DTI in respect to the overall solvency of the market should be extended to give it a wider oversight role. These measures would serve to emphasize the sufficiency and impartiality of Lloyd's regulation in safeguarding policyholder and Names interests.

On 20 May 1997 Gordon Brown, Chancellor of the Exchequer in the recently elected Labor Government, announced plans for a new system of financial regulation whereby SIB is to have an enhanced role overseeing all the financial markets. The new authority has recently been renamed the Financial Services Authority ("FSA"). Lloyd's has expressed its wish to be incorporated into this structure, whilst retaining day-to-day regulation within the sphere of the Council of Lloyd's.

Regulation

The Regulatory Division is part of the Corporation of Lloyd's, and is directly responsible to LRB. The Division's main responsibilities are:

- formulating and implementing regulatory policy;
- authorizing entities and individuals to trade or work in the market;
- monitoring their compliance with regulatory requirements;
- complaints handling; and enforcing regulation through processes of investigation, discipline and appeals.

Policy

In consultation with the market, there is a move towards establishing a set of core principles accompanied by codes of practice and guidance notes for market participants. This approach aims to encourage best practice and raise standards of competence, rather than provide specific rules with regards to compliance. In a similar vein, a revision and rationalization of Lloyd's bylaws is currently underway, aided by direct input from the market and experience from outside Lloyd's.

Strengthening Lloyd's 'Chain of Security' and capital requirements in order to protect policyholders has also been the subject of a recent review. One modification that has been in effected is that criteria for members' level of funds required to support underwriting and quality of assets have been made tougher in order to provide greater policyholder protection.

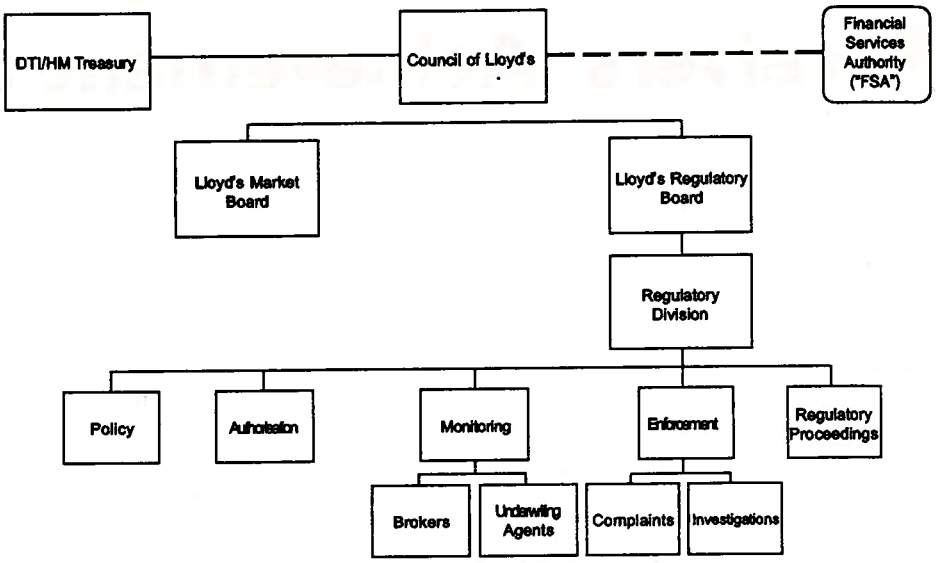
Authorization and Individual Registration

All Lloyd's brokers and intermediaries, underwriting agents and advisors must gain authorization from the Council before they are allowed to operate in the market. It is also essential that individual market participants should be competent and professionally qualified to ensure confidence in the market.

Thus Lloyd's has recently undertaken the registration of over 3,000 individuals working for members' agents, managing agents, run-off companies and advisors. When seeking to become registered the burden is on the individual to persuade Lloyd's that they are 'fit and proper' to perform a particular function. The registration of an individual can be reviewed at any time.

Monitoring

All regulated entities are subject to periodic reviews. Firms considered most at risk are prioritized. In 1997, 40 Lloyd's underwriting agents, 80 Lloyd's syndicates, 60 Lloyd's brokers and 16 service companies will be visited by monitoring teams from the Regulatory Division. Areas of potential weakness are looked into in greater detail. In line with other regulators, Lloyd's monitors firms at an individual transaction level.



A major advancement in Lloyd's regulation is the development of a risk assessment framework. More advanced realistic disaster scenarios are to be used by the syndicate monitoring teams to measure a syndicate's exposure to specified events. However, even if underwriters make prudent and rational decisions individually, the cumulative effect may expose Lloyd's Chain of Security to an unacceptably high risk.

A specialist financial risk assessment unit is to be set up, to enhance the computer modeling of market exposures giving rise to systemic risk. This is an essential development in seeking to protect Lloyd's Chain of Security. Where weaknesses are identified more extensive testing will be undertaken.

Complaints Handling

The Complaints Department offers a mediation service, which handles complaints from Names and policyholders.

A code of conduct for claims handling by syndicates is intended to reduce complaints made directly to this department, thus speeding up the process of dealing with more serious cases.

There is also a move to establish more formal links with overseas regulators and Lloyd's representatives abroad, to ensure that complaints made locally are reported so that Lloyd's can identify and remedy problem areas.

Investigations

Investigations are carried out into suspected regulatory breaches or allegations of misconduct. The aim is to take action on cases of misconduct of those working within the market, and the Investigations Department works closely with the lawyers comprising the Regulatory Proceedings team to prepare cases for consideration by the Investigations Committee of the Council.

Lloyd's disciplinary procedures were revised at the end of 1996. Individuals or organizations may be censured, fined and individuals banned from the market. In extreme cases it is also possible for Lloyd's to remove a company's authorization to operate in the market.

The objective of introducing a firmer disciplinary regime at Lloyd's is to ensure that those operating within the market are given a clear incentive to improve the control environment of their organization.

To this end the introduction of the principle of vicarious liability, making firms liable in disciplinary proceedings for the actions of their directors and employees, is seen as being an important step towards ensuring that the best practices of management are implemented within the Lloyd's community.

One further change has been the introduction of a scheme of fixed penalties for minor regulatory breaches.

(Continued on Page 18)

Receivers' Achievement Report

Ellen Fickinger, Chair

Reporters:
Northeastern Zone - William Taylor (PA); Midwestern Zone - Ellen Fickinger (IL), Brian Shuff (IN); Southeastern Zone - Belinda Miller (FL), James Guillot (LA); Western Zone - Mark Tharp, CPA, CIR (AZ), Jo Ann Howard, CIR (TX); International - Phillip Singer (England), John Milligan-Whyte (Bermuda)

Our IAIR achievement news received from reports covering the first quarter of 1997 follows with receivers' achievements by states:

Alaska (Joyce Wainscott, State Contact Person)

Disbursements made to policy/contract creditors

Receivership	Amount
Pacific Marine Insurance Company of Alaska	$2,025,764.16
	$4,737,996.76 (Total to Date)

Delaware (Richard Cecil, State Contact Person)

Recievership	Year Action Commenced	Licensed	Insurance Category	Dividend Percentage
Horizon Assurance Co.	1990	Yes	P&G	20.55%

Idaho (Robert Murphy, State Contract Person)

Recievership	Year Action Commenced	Licensed	Insurance Category	Dividend Percentage
American Benefit Life Ins. Co.	1992	Yes	Life	N/A

Disbursements for secoind quarter, 1997

Receivership	Amount
AIM Insurance Company	$200,000.00
Sierra Life Insurance Company	$853,580.00
Total	**$1,053,580.00**

Illinois (Mike Rauwolf, State Contact Person)

Recievership	Year Action Commenced	Licensed	Insurance Category	Dividend Percentage
Specialty Underwriters, aka North American Fire & Casualty	1988	No Unauthorized Co.	P&C	$171,085 Class D - 100% $5,537.00 Class F - 1.9%

Disbursements for secoind quarter, 1997

Receivership	Amount
AMRECO	$978,208.00
Centaur	$49,529.00
Edison	$10,484.00
Med Care	$400,000.00
Pine Top	$1,924,184.00
Prestige	$27,847.00
Sub Total	$3,390,252.00
Plus four (4) additional estates where disbursements for each estate were below $10,000	$4,210.00
Total	**$3,394,462.00**

Maryland (Jim Gordon, CIR - State Contact Person)

Disbursements made to policy/contract creditors

Receivership	Amount
Trans-Pacific Insurance Company, et al	$11,368.65
	$199,994.29 (Total)

(Continued on Page 16)

Mark Tharp (AZ) reported that, in connection with **Farm and Home Life Insurance Company (FHLIC)**, litigation settlements of claims against former officers and directors continues to result in cash payments to the Receiver. During the second quarter of 1997, an additional $3.75 million was received. Further, on May 30, 1997, the Court entered its Order Establishing a Claims Bar Date and Approving Claims procedure for Claims occupying Classes 5 and Below, for **American Bonding Company (ABC)**, thus furthering the goals and terms of the Rehabilitation Plan, implemented in the 1st quarter of 1997. Finally, an Order for Appointment of Receiver and for Injunction was entered on May 7, 1997 for USA Property and Casualty Insurance Company (USA). In excess of 18,000 cancellation notices were mailed out canceling coverage no later than June 7, 1997. The Arizona Property and Casualty Insurance Guaranty Fund has been triggered and has commenced claims adjudication and payment.

Mike Rauwolf (IL) advised that the Illinois receiver continues to manage the reinsurance run-off for **American Mutual Reinsurance Company (AMRECO)**, in rehabilitation. Reinsurance Payments to date total $114,043,000.29. Illinois additionally continues to manage the run-off for **Centaur Insurance Company**, in rehabilitation. Total claims paid inception to date are $50,232,196.43 for Loss and Loss adjustments Expense, $4,945,492.57 in reinsurance payments and $13,876,555.31 in LOC drawdown disbursements.

Jim Gordon (MD) advised that collections for **Trans-Pacific Insurance Company, et al.** against former officers, directors, employees, brokers and professionals totaled $36,263.40 during the second quarter of 1997.

Bill Taylor (PA) reported that Policyholder death benefits and annuity payments continue to be paid at 100% for the **Fidelity Mutual Life Insurance Company (FML)**, in rehabilitation. Crediting rates are at or above policy guarantees.

(Continued on Page 16)

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Executive Vice President
Secretary & General Counsel

A.L. "Tony" DiPardo
Senior Vice President

William T. "Bill" Long
Senior Vice President

Receivers' Achievement Report *(Continued from Page 14)*

New Jersey (John Kerr, State Contact Person)

Disbursements for secoind quarter, 1997

Receivership	Amount
Integrity Insurance Company	$5,110,096.00 (Guaranty Associations)
	$976,199.00 (Policy/Contract Creditors)
Total	**$6,086,295.00**

Pennsylvania (William S. Taylor, State Contact Person)

Disbursements made through Early Access and other Funds to Guananty Associations

Receivership	Amount
Rockwood Insurance Company	$537,968.00 (Pa. P&C GA)
Columbia Life Insurance Company	$2,000,000.00 (Pa. L&H GA)
National American Life Insurance	$150,459.68 (AR)
Company of Pennsylvania	$237,350.00 (FL)
	$74,069.41 (GA)
	$32,276.13 (NC)
	$130,962.51 (NM)
	$132,050.00 (VA)
Total	**$ 3,295,135.73**

As of 6-30-97, **FML** showed a statutory surplus of $32,345,421. In July, the Commonwealth Court approved the Rehabilitator's petition to relax the moratorium restrictions.

That court order expanded the hardship exemptions and allowed policyholders to have access to an additional 10% of their cash values. The proposed settlement agreement with most of the former **FML** agents was approved by the Commonwealth Court and has been implemented. The Rehabilitator continues to meet with the Policyholder Committee to resolve their objections to the Second Amended Plan which was filed in June of 1996. It is hoped that a revised plan will be filed by the end of this year which will include payment of all creditors. The Rehabilitator is planning to petition the Commonwealth Court to pay all outstanding guaranty association assessments billed or incurred since 1992, as well as all other normal regulatory fees. NOLHGA is working with the Rehabilitator to obtain accurate assessment information.

Further, a discharge petition was filed May 20, 1997 for **Fortune Assurance Company**. Final discharge and distribution is anticipated for third quarter, 1997.

Other News & Notes

By Charlie Richardson

With a new IAIR President (Doug Hartz) comes his replacement as the writer of this column. Bear with me. It will take an issue or two for the key events to jump into my mind, for just the right words to come, for my pen to sing. This time around, you will have to accept bread and butter prose. The literary soufflé will come later.

Yogi Berra said, "Predications are difficult, particularly if you're talking about the future." At the risk of violating Yogi's sage advice, let me mention several things that have been on the collective insolvency mind recently — forces in the marketplace that are going to shape the number, type and complexity of insurance insolvencies over the next few years. We will hit each of these in more detail in future columns.

1. **Consolidation.** You cannot pick up an industry publication without finding a comment or two on the rapid consolidation of companies, both property/casualty and life/health. At the IAIR/NOLHGA Joint Seminar in Louisville in November, Steve Levin, global account manager for the Monitor Company, spoke to the audience about that consolidation and identified the types of companies that will likely thrive and survive and those that will do neither. A once sleepy industry has in many ways become a boiling cauldron of change where customer service, niche positioning, technology innovation, and lean and efficient administration, are the watchwords. And with that change will come insolvency fallout of those companies that simply can no longer compete in the marketplace or ones that are "consolidated" out of business. Hopefully, they will only be small companies. But what happens if one of the consolidators fails? Are we ready? The IAIR/NOLHGA Joint Seminar took on the issues surrounding a large troubled company, with an infuriating mixture of legal, financial, administrative, and political problems. Receivers today have to have skill sets that cover that waterfront if they are going to continue to do a good job of saving the company or putting it out of its misery with minimal impact on policyholders.

2. **New Products.** Receivers should have their eyes on the hottest of the hot products: equity indexed annuities and life products. In my years of practice, I have never seen so much interest build over such a short period of time by companies, regulators and the press in a new product - in some ways even more than UL when it hit the street. The ACLI estimates that sales in 1996 were almost $1.5 billion, mostly annuities, with maybe three times that in 1997.

I attended, as many of you did, the excellent seminar put on by the ACLI at the NAIC meeting in Chicago last June. The seminar focused on four areas of concern to regulators, consumers, and industry management: (1) disclosure, (2) market conduct, (3) reserving, and (4) investment strategy and hedging. Boiling all this down, I came to the following conclusions:

- The insurance industry has no choice but to respond with this sort of "greed without fear" product, given the billions going into mutual funds and relatively flat annuity sales, at least through typical insurance company distribution channels.
- In saying that, we have to realize that the disclosure issues are immense. So long as the stock market keeps going up, everything may turn out okay. But many regulators and consumer advocates worry that the risks and rewards of these compli cated products are not very well spelled out and that a downturn in the stock market will produce a lot of disappointed people, the likes of which we have never seen before. After all, most of these products - not all, but most - are now sold by agents without securities licenses or expertise.
- As a corollary, the risks to the companies are also obvious. The investment/reserving strategy has to be correct. The ultimate profitability of these products is not clear and the margins are thin. The asset/liability risks have to be kept in sharp focus. What will the rating agencies think of all this?

3. **New Entrants in the Market: Banks.** The extent to which national and state banks and bank affiliates may sell insurance and annuities is another hot button topic in legislation, regulation, and litigation on both the state and federal levels - maybe the hottest of any industry development. The issue stems in part from recent efforts by the banking industry to diversify products offered to customers and by recent support in this quest from the Office of the Comptroller of the Currency ("OCC") and the United States Supreme Court. Needless to say, the banks' record is head and shoulders better than the insurance regulators', agents', and companies' on many fronts.

The market reaction to the Barnett Bank and VALIC cases in the Supreme Court has been what you would expect; new discussions by banks and insurance companies, with the banking industry poised to grab an ever-increasing share of the annuity market as growing numbers of financially savvy customers enter the annuity marketplace. Indeed, the grayer the American consumer gets, the greener the banking industry gets. In less than a decade the banks share of the annuity market has risen from nothing to nearly 25%. That share is likely to rise.

And don't kid yourself. While some smaller insurance companies and agents would like to send the OCC and banking leaders a gift certificate from Dr. Kevorkian, other companies are moving aggressively to pursue joint ventures with banking interests and to exploit new, possibly less expensive, distribution channels. No one believes bank expansion will stop with the sale of annuities. Banks are looking closely at other life and property/casualty markets, and there is no reason to believe that underwriting of risks by bank entities is not on the horizon.

Everyday we read about the pushes and pulls in Congress over Glass-Stegall reform, functional regulation, OCC moratoria, etc.

In short, we are going to have changes in the ownership/control/joint venture aspects of the industry that will marry in some form or fashion the banks and their distribution channels with insurance companies and their distribution channels. Are receivers ready for companies that look and act more like banks than like your typical agent-sold insurance company?

4. **Mutual Holding Companies.** And what about the revolution on the mutual side of the company fence?

(Continued on Paage 2)

Welcome!

We wish to welcome the following new members joining between 07-20-97 & 12-16-97.

We will regularly list our new members in each issue of *The Insurance Receiver.*

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(303) 904-2123
FAX (303) 904-3559

Please take a moment to review this list of new members and the recent Membership Directory and consider whether you knowpeople who should be IAIR members.

If you notice someone missing, fax their name, company and address to the IAIR office at (913) 262-0174 and ask us to send a membership brochure and application with a note from you urging them to join in 1998!

This will help us grow and allow the benefits of IAIR to be shared. A great way to begin 1998 for you and the prospective member!

Thanks for your help!

Lloyd's Market Regulation A Review of the Structure and it's Evolution

(Continued from Page 13)

Conclusion

Due to the advent of FSA, financial regulation in the UK is changing rapidly. This is particularly true of Lloyd's with the move towards external regulation. Due to the structure of its market, Lloyd's occupies a unique regulatory position. However, it is recognized that Lloyd's should draw on the best features of other regulatory regimes for its own use. The general outlook for Lloyd's is towards a 'leaner, fitter' Regulatory Division, such that it provides adequate safeguards for policyholders, market participants and capital providers, in order to maintain confidence in Lloyd's as a soundly managed place to do business. It seeks to do this in as efficient a manner as possible whilst endeavoring not to unnecessarily inhibit the entrepreneurial flair of the Lloyd's market.

Contacts

Should you have any queries please contact:

David Gittings, Director
Regulatory Division

Barbara Merry, General Manager
Policy

Peter Neville, General Manager
Authorizations

Richard Murphy, General Manager
Monitoring

John Baker, General Manager
Enforcement

Noel Lawson, General Manager
Regulatory Proceedings

CLAIMS AGAINST KOREA FOREIGN INSURANCE COMPANY

U.S. Receivers: If your companies have a claim against Korea Foreign Insurance Company of North Korea, you need to know that the U.S. Office of Foreign Assets Control of the Department of Treasury has published a rule requiring that any claims against the Government of North Korea or any North Korean government entity (which would include Korea Foreign Insurance Company) must be submitted to OFAC **on or before March 9, 1998.**

The failure to report any such claims will prejudice, if not bar, claimants from receiving relief in future claims settlement negotiations between the U.S. and North Korea.

GUARANTY FUND EXECUTIVE DIRECTOR

The Arizona Life and Disability Insurance Guaranty Fund and the Arizona Property and Casualty Insurance Guaranty Fund are jointly seeking an Executive Director to manage guaranty fund operations including assessments, finances, records, contract services, interaction with receiverships, development and implementation of administrative policies and procedures, coordination of Board meetings and supervision of staff. Duties also include liaison with NOLHGA, NCIGF, NAIC and similar organizations. Requires strong administrative skills including automated systems, knowledge of insurance industry and familiarity with administration of insolvencies. Weight given to candidates possessing significant insurance industry and/or public administration background.

Salary range: $47,627 to $72,882 DOQ. Full state employee benefits. Position located in Phoenix, Arizona.

Send résumé to
Charles R. Cohen, Deputy Director
Arizona Department of Insurance
2910 N. 44th St., Suite 210
Phoenix, AZ 85018-7256

or to

facsimile number (602)912-8452,
by January 16, 1998.

Accountants Financial Reporting Bug

By By Mark Femal, CPA,CPCU - Executive Director
Wisconsin Insurance Security Fund

Most of you are aware of the Millennium (Year 2000) Bug. Well, another bug is underfoot. It is known as the Accountants Financial Reporting Bug. This bug is not a computer bug.

It has to do with financial reporting requirements as promulgated by the AICPA (American Institute of Certified Public Accountants) and NAIC. Note that many of you may need another cup of coffee to struggle through the rest of this spine-tingling article.

Currently, insurance companies which are subject to guaranty fund assessments have only loosely defined requirements which guide them in estimating and recording liabilities for guaranty fund assessments (GFA).

Many insurers record no liability for GFA's. This will all change with the enactment of the AICPA's Statement of Position (SOP) and the NAIC's Codification Project, which includes conflicting guidance on the same topic.

The SOP is already specified to be instituted in 1999 whereas the Codification Project is intended for 1999. Some suggest that the Codification Project could be an additional Millennium Bug.

What do the two pronouncements mean to the receivership community?

Directly the pronouncements affect the guaranty funds, who will need to calculate estimated ultimate liabilities (ie - future guaranty fund assessments) for member insurance companies.

In order to achieve this task in a manner most equitable to the insurers (and to reflect the intent of the pronouncements) the guaranty funds will have to rely on the respective receivers to provide estimates of the timing and amount of early access distributions and ultimate estate distributions.

Whereas, this task seems simultaneously daunting, ludicrous and time consuming, we believe it is beneficial to remember that the numbers are (A) best estimates, (B) may, and should, change over time as better information becomes available and (C) will help your beloved brethren, the guaranty fund managers, do their job.

I am planning to request that this issue be included on the agenda for the IAIR Roundtable at the NAIC Meeting in Salt Lake City in March.

Hopefully, I can explain more fully the guaranty fund liability process and answer questions or concerns you may have.

Suffice it to say "the times they are a changin'."

1998 Insolvency Workshop

Anatomy Of A Liquidation From Grave To Grave

Program

The 1998 NAIC/IAIR Insolvency Workshop will feature a new and challenging format. The program will revolve around a case study of a hypothetical property/casualty insurer insolvency.

Participants will be assigned to small work groups with each group having one experienced special deputy receiver or insolvency practitioner to facilitate the discussion.

The workshop moderators will be Leonard H. Minches, Esquire, of Edwards & Angell and **Jeanne Barnes Bryant**, Director of Receiverships, Tennessee Department of Commerce and Insurance.

Participants will discuss such issues as the appropriate use of rehabilitation, initial takeover, coordination with guaranty funds, voidable preferences, fraud, communications, interaffiliate pooling arrangements, and estate closures.

The Introductory Session will include an explanation of the structure of the workshop, introduction of the moderators and faciliators, a review of the fact scenario, identification of issues and assignment of specific problems to the work groups.

In Session One through Five, the work groups will analyze specific issues or problems presented by the fact scenario and propose solutions.

Part of each session will be devoted to discussion in the work groups with the remainder of the session devoted to presentation of the issue and solution to the remainder of the attendees with an opportunity for discussion involving all participants.

At the end of each day, the moderators will summarize the ideas and conclusions put forth by the participants in the previous session.

Schedule

Day 1, Thursday - January 29, 1998

8:00	*Registration & Continental Breakfast*
9:00	Introduction
10:00	*Break*
10:15	Session One
12:00	*Luncheon* "Year 2000 Issues" Arshad Masood Visionet Systems
1:30	Session Two
2:45	*Break*
3:00	Wrap Up of Day One
5:00	*Adjourn*
6:00	Reception (Cash Bar)

Day 2, Friday - January 30, 1998

8:00	*Continental Breakfast*
8:45	Session Four
10:00	*Break*
10:15	Session Five
11:30	Conclusion
12:30	*Adjourn*

Tuition/Registration

Registration postmarked by January 5: $250
Registration postmarked by January 6-19: $300

The registration fee includes continental breakfast on both days, luncheon on Thursday, and a reception on Thursday evening (cash bar).

Complete the registration form and send it with your payment to the NAIC. If paying with zone funds, NAIC grant funds, or credit card, you may fax (*16-889-6840) your registration form. Registration will be confirmed via return fax within 7 working days. Non-refundable travel arrangements should not be made until registration is confirmed.

No registration will be accepted that is postmarked after January 19. **You must be pre-registered.**

There will be no on-site registration. Dress for this workshop is business casual.

Accommodations

The Hyatt Regency La Jolla is offering attendees the following special rate (10.5% tax additional):

$99 s/d - Government employees

$169 s/$189 double - all others

The hotel is located at 3777 La Jolla Village Drive in La Jolla, CA 92122. Phone (619) 552-1234 or fax at (619) 552-6060. Contact by January 5 and reference NAIC/IAIR Insolvency Workshop for the rate.

United Airlines offers discounted fares to the participants of the Workshop, ID code is 518YK. Call 1-800-521-4041 to make a reservation.

Cancellation Policy

All Workshop reservation cancellations must be in writing to the NAIC Education & Training Department. Mail or fax to (816) 889-6840. Upon receipt of your written cancellation, refunds will be issued accordingly:

Through January 5 - $125

After January 5 - No Refund

Refund checks will be processed after January 30, 1998.

Registration Form
1998 Insolvency Workshop

Mr./Ms. _____

Nametag name: _____

Title: _____

Company: _____

Address: _____

City: _____ Zip: _____

State/Country: _____ Fax: _____

Phone: _____

Enclosed is payment to the NAIC for:

____ $250 Postmarked by January 5, 1998

____ $300 Postmarked January 6-19, 1998

Payment method:

[ ] Zone or grant funds (state insurance dept. staff only)

[ ] MC [ ] VISA [ ] American Express

Credit Card Number: _____

Exp. date: _____

Name on card: _____

_____

Authorized Signature

Using above payment methods, fax to NAIC at (816) 889-6840.

[ ] Check or money order enclosed/payable to NAIC*

*** Mail all forms that contain check or money order to:**

NAIC Education Program Dept. 233
P.O. Box 419263
Kansas City, MO 64193-0233

*** Fed Ex/Air Mail Address:**

National Bank
14 West Tenth Street
Attention: Lockbox Department 233
Mailstop M08-010-02-06,
Kansas City, MO 64105