The Insurance Receiver

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International Association of Insurance Receivers

Promoting Professionalism and Ethics in the Administration of Insurance Receiverships

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FEATURED ARTICLES

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Message from Frankie Bliss, IAIR President

Dear IAIR Membership,

It is hard to believe that two years have passed since my election to the IAIR Board and Presidency. Now, 10,456 emails, 103 conference calls, 2000 phone calls, 100 meetings and lots of miles on my car later, I approach the end of my tenure with a mixture of relief, gratitude, and sadness. Relief, simply because I'm ready for a break: We've worked so hard and done so much in a short time. Gratitude, for having the chance to "pay it forward" to an association that has done so much for me over the years, and has afforded me the opportunity to meet so many with such a vast depth of experience. Einstein once said, "The only source of knowledge is experience." IAIR has been a veritable Fort Knox for me. Finally, sadness because IAIR has become such a part of my every day that I can't really imagine what it will be like when I step down. My tenure has allowed me to wean myself from the frantic days when I was a full time receiver without giving up my sense of purpose. Of course, I will not be completely gone and look forward to remaining actively involved in IAIR and the Board as Past-President.

I'm proud of what IAIR has accomplished during my tenure: We have made the organization more responsive and transparent to members. To that end, we have created and launched a new website, hired a new administrator, restructured the committees, and adopted amendments to the Bylaws, to name just a few endeavors.

We have also begun to turn our association's financial crisis around. We have revised our dues structure starting in 2014, which we hope will make membership available to a larger number. As my predecessors have done, we have taken steps to remain relevant and to deal with the challenges our business faces in the current environment.

(continued on page 2)

President’s Message (continued)

Most importantly, we have reaffirmed the collegial spirit that made this association so valuable to me way back when I was a “newbie.” To quote Henry Ford, “Coming together is the beginning, keeping together is progress, working together is success.” Thankfully, we have re-established alliances with the other critical segments of the insolvency arena. This, in no small part, is due to the shared goals and beliefs of IAIR. Special thanks to Jim Mumford at NAIC, Roger Schmelzer at NCIGF and Peter Gallanis at NOLHGA.

I am honored that IAIR is now regularly called upon as an interested party by the NAIC to provide comments and input on issues that are at the forefront of the insolvency and receivership world. Most recently, we have been active participants in the RITF Federal Home Loan Banks (“FHLB”) sub-group and have also been called upon to provide comments regarding the proposed guidance document to accompany the Financial Stability Board’s Key Attributes of Effective Resolution Regimes for Financial Institutions. (See page 18 for a copy of IAIR’s response.)

Our Insolvency Workshops and Technical Development Series continue to grow and draw an engaged audience, and our Issues Forums (and now our Professional Development Series) are the mainstay of our program at the NAIC. We continue to try to develop ways to enhance member benefits and to expand our educational programs. In fact, be sure you check out the agenda for the upcoming 2014 Insolvency Workshop (page 9) taking place in Tempe, Arizona on January 30-31, 2014. Thanks to our co-chairs, Bruce Gilbert and Doug Hartz for their work putting the “Road Trip” together. Plan to arrive in time to attend our “Bon Voyage” cocktail party on the evening of the 29th.

It was just last year that we were excited to announce that a Memorandum of Understanding ("MOU") between IAIR and the ABA Tort Trial and Insurance Practice Section had been approved and that we were working to complete an MOU with the Association of Insurance and Reinsurance Run-Off Companies (“AIRROC”). We can now begin to enjoy the fruits of these labors at the NAIC in DC, where we are jointly sponsoring a CLE program with FORC on Sunday, December 15, and co-presenting our Issues Forum with AIRROC on Monday, December 16.

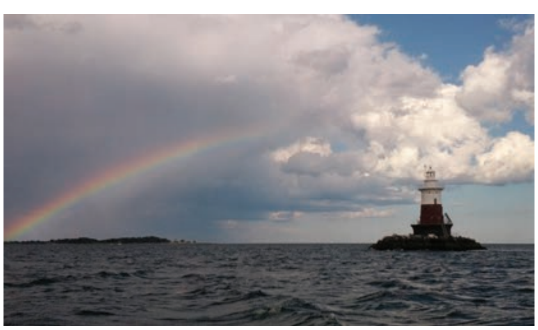
It has been a personal privilege and a professional honor to have served as IAIR’s President. Not wishing to sound like one of the babblers at the Oscars, there are so many I wish to thank for their time and support - you know who you are. Following the leadership rule to “Share the Credit”, I could not have done any of this without the dedication and support of the Board of Directors. Special thanks to my executive team and to our counsel, Bill Latza, who never ceases to provide wise counsel and advice to me, often at a moment’s notice (and not usually during regular business hours!).

The heart and soul of this association is its membership, and our existence and success is only as good as the value we bring to you. As the ship’s bell signals the end of my watch at the helm of this organization, I offer the incoming President my support and wish you all fair sailing.

Adhering to my predecessor’s penchant for speaking in foreign tongues let me simply say,

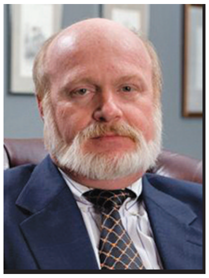
Auguri e grazie mille!

francesca



The Perfect Receiver – Part 10: The Fives Stages of Receivership

By Patrick Cantilo



*I will devote the tenth article in this series to the Five Stages of Receivership. While I admit to borrowing loosely from the theory of Elisabeth Kübler-Ross' seminal 1969 work **On Death and Dying**, I do not* mean to analogize mine to her famous five stages, which you will recall were: denial, anger, bargaining, depression and acceptance.

Instead, while every receivership is different, I submit that their progression can generally be categorized in these five stages: (1) take-over, (2) stabilization, (3) plan development, (4) implementation, and (5) conclusion. Exploration of each of course could consume tomes, but I will inflict upon you but a few sentences for each subject.

The first stage, take-over, will begin with the legal proceeding to place the company in the regulators' control, which may or may not be consensual. Critically important to that step are preparation in advance (know all about the company and its condition), and calibration of the remedy sought to the circumstances. If successful, this will be followed by the "physical" take-over, in which the receiver actually takes control of the company and its affairs. Much has already been written about this important undertaking. I will confine myself to emphasizing the need to immediately impose exclusive control over cash and investments as well as over binding authority.

Often much longer, stage two - stabilization - is much more dependent on the nature of the company and its circumstances. Key goals here are to prevent unintended dissipation of assets and escalation of liabilities, and the establishment of a sufficiently balanced and predictable operating mode to permit the development of a rehabilitation or liquidation plan, as the circumstances dictate. Integral components of this phase are stay or suspension of all litigation except as desired (such as asset marshaling), implementation of a reasonable working relationship with reinsurers, adequate control of claims functions (especially in health and workers' compensation receiverships), and suspension or elimination of unnecessary activities (such as underwriting and marketing).

Perhaps the most critical in some respects, and certainly the one that typically lends itself to the most creativity, the third stage is that in which a plan is developed for the effective conclusion of the receivership, be it rehabilitation or liquidation. For this all-important core of the proceeding, it is imperative to have gained a thorough understanding of the company's affairs and to have gathered the requisite resources. These will include, of course, the right personnel and advisers, but also may require the resolution of threshold legal and financial issues, restructuring of invested assets to enhance liquidity, reformation of liabilities, resolution of certain litigation, and elimination of unnecessary diversions (i.e., non-essential subsidiaries, ancillary regulatory proceedings, tax disputes, etc.). Of course resolution of some of these problems may in fact be part of the plan to be implemented, but in many cases clearing these obstacles is indispensable to determination of whether certain rehabilitation and other options are available at all. The process itself should entail at least in part: (a) a thoughtful formulation of goals (rehabilitation?, sale?, liquidation, etc.); (b) identification of significant constituencies and their relative stakes and priority;

The Perfect Receiver – Part 10: . . . (continued)

(c) identification of available assets, and (d) development of a reasonable time line. For the sake of brevity, I close my discussion of this stage with the old carpenter's admonition: "measure twice and cut once."

Once a plan has been adopted by the decision makers (which almost always includes the court), its implementation - stage 4 - may begin. The great Prussian field marshal Helmuth von Moltke the Elder is credited with the fundamental adage that ***no battle plan survives first contact with the enemy*** and from him too I borrow, for much the same is true for us in this arcane world we have chosen to inhabit. Many of the assumptions on which our plan is based will turn out to have been unduly optimistic, too pessimistic, or simply inaccurate. For like reasons, actuaries will tell you that the only thing that is certain is that liability projections will not be right, though it is hoped that they will sufficiently close to facilitate planning. Those in charge of implementation must therefore be prepared for the unexpected and have no emotional attachment to the precise assumptions on which the plan design was based. The plan must be flexible enough to permit material changes in response to altered circumstances, and frequent and candid reporting to decision makers will avoid later unpleasantness. However, it is the broad elements of the plan that should be viewed as critical and changes in these should not be lightly countenanced. Many constituencies will have based their position on their reliance on these elements and fundamental changes will lead not just to disappointment but to uncertainty about the dependability of the plan's approval. Where changing circumstances compel a material change in the time line, clear communication with, and explanations to, affected constituencies will build goodwill and potentially avoid unnecessary unpleasantness.

Following implementation of the plan, even if changed, stage 5 - conclusion of the proceeding - is in order. A comprehensive report to the court, including a summary of the history of the case and its major milestones, is typical. Inclusion of a final inventory and financial summary is also common. Ratification of steps taken during the proceeding and discharge of the receiver are important components of the closing order. In some cases, a closing report to affected constituencies may also be appropriate.

It is hoped that this formulation of the major phases of the proceeding may help organize the considerable work it demands in relation to the ultimate goal. In case of doubt, refer to rules 2, 4, 5, 8, 9, and 14 of my rules of life: **(2)** *Don't sweat the small stuff;* **(4)** *be careful what you wish for;* **(5)** *no good deed goes unpunished;* **(8)** *never believe your own b.s.;* **(9)** *always assume that your opponent is stronger, smarter and cuter; and* **(14)** *often, no decision <u>is</u> a decision.* *Н*а здоровье

View from Washington

By James Tsai

Congressional gridlock jeopardizes NFIP and TRIA legislation

The ongoing saga of gridlock in Washington had ramifications nationwide in October when the government shut down at midnight on September 30, 2013. Democrats and Republicans were unable to come to an agreement to pass a spending bill for the new appropriations year (and haven't been able to since 2009) which resulted in a disruptive shutdown of the federal government. Meanwhile, the slowly boiling problem of the debt ceiling limit also complicated the situation with a threat of a default on payment of government debt. Things were resolved, temporarily, on October 16, 2013 with legislation that allowed the government to reopen through January 15, 2014 and allow borrowing until February 7, 2014.

This backdrop of a stalled Congress and Executive Branch has made it difficult for much, if any, legislation to move, including insurance measures. Two major federal programs, the Terrorism Risk Insurance Act ("TRIA") and the National Flood Insurance Program ("NFIP") have key legislation that requires passage to either renew or reform it for consumers to be able to deal.

Terrorism Risk Insurance Act

The House Financial Services Housing and Insurance Subcommittee held hearings on the reauthorization of TRIA on September 19 and November 13, 2013. The Senate also held a hearing on September 25, 2013. Without Congressional action, the program is set to expire at the end of 2014.

The industry has rallied and expressed its position that the program is an important backstop to insurance policies that cover various policyholders, which an act of terrorism would affect drastically. Witnesses at the hearings have included Congressional Members who testified to the importance of renewing the program for their districts, academics and non-U.S. industry members such as Sean McGovern of Lloyds of London. While many of the witnesses have generally agreed that the program should be extended, finer points concerning the renewal of the program have included the length of time for renewal, the funding mechanisms and the triggering level for losses from a certified act of terrorism that would allow coverage (currently $100 million).

Even though the program's expiration is more than a year away, there is an urgency to act quickly to allow underwriters and policyholders to react quickly. Multi-year policies that will go into 2014 need to be written soon for those expiring in 2013. Workers' compensation, a mandatory program in all fifty states, must have coverage for terrorism and making the right actuarial assessments is still difficult for terrorism coverage. House Financial Services Insurance and Housing Subcommittee Chair Representative Randy Neugabauer (R-TX) indicated at the conclusion of the November meeting that he was hoping for swift action for the program.

National Flood Insurance Program

With most Superstorm Sandy claims paid by the Federal Emergency Management Agency ("FEMA"), the manager of the NFIP, concerned over previously passed reform legislation, at this time is focusing attention on passing legislation to reform the program.

The House Subcommittee held a hearing on November 19, 2013, entitled, "Implementation of the Biggert-Waters Flood Insurance Act of 2012: Protecting Taxpayers and Homeowners" with Rep. Waters grilling FEMA Administrator Craig Fugate about not informing Congress early on enough about the problems with the program. According to the House Financial Services Committee memorandum for the meeting, the NFIP owed the U.S. Treasury $24 billion as of the end of September 2013. Reform had been sought to the program for a long period due to the costly nature of the program.

The 2012 Biggert-Waters Act, which had been in the works before Superstorm Sandy hit, mandated rate hikes for policies for all policy holders including homeowners, business properties with phased-in rate increases that began earlier this year.[1] The rates have been decried by some as excessive and simply unaffordable to consumers and phase in too quickly.

Senator Robert Menendez (D-NJ) introduced S. 1610 on October 29, 2013, which would seek to delay the implementation of this timeline by a few years. Rep. Michael Grimm (R-NY) introduced the House's version of the bill H.R. 3370 with Maxine Waters (D-CA), the original namesake sponsor of the Biggert-Waters Act, on the same day.

It is not known at this time if and when the measures will move, particularly in the gridlocked-state of Congress.

FIO: September Federal Insurance Advisory Committee Meeting and NRRA Report

The Federal Advisory Committee on Insurance ("FACI"), which advises the Federal Insurance Office, met on September 18, 2013. Director Michael McRaith announced that the FACI's charter was renewed with some changes. Because certain insurance stakeholders were not represented on the current Committee, the renewed FACI charter would now expand to 21 members and seek to include more members. Presentations regarding TRIA's role in the American economy and the need to renew were discussed extensively with presentations from industry members.

FACI Member and D.C. Commissioner of Insurance, Bill White, also gave his report on the National Association of Insurance Commissioners' Special Purpose Vehicles committee's work. The committee had been tasked with examining the use of captive insurance arrangements to transfer insurance risk. There had been concerns that such arrangements are less-than-transparent with avoidance of statutory accounting requirements and other methods that transfer risk that otherwise would not have been possible under state insurance laws. Comments from Commissioner White and fellow Committee member, New York Department of Financial Services Ben Lawsky, were highly anticipated leading up to the meeting. Instead, all that was said was a reference to the released NAIC whitepaper on the topic. [2]

McRaith reported that the Financial Stability Board ("FSB") had named nine globally systemically important insurers (G-SII's), of which three were US-based (AIG, MetLife and Prudential). He said that the International Association of Insurance Supervisors ("IAIS ") continues its work on ComFrame on which the United States has taken a leadership role through his position at the IAIS.

The next FACI meeting will take place in December.

While there was no mention of the widely-anticipated Modernization Report by McRaith at the FACI meeting, FIO did release in October another statutorily-mandated report on the impact of the Nonadmitted and Reinsurance Reform Act ("NRRA"), a part of the Dodd-Frank Wall Street reform legislation.[3] The report concluded that the NRRA had not caused adverse affects on the ability of state regulators to access reinsurance information for regulated companies.

The U.S. and the Rise of International Insurance Regulation

Insurance regulation, traditionally a creature of state laws, has eyed nervously the growing role of federal regulation in programs beyond the NFIP and TRIA with the creation of FIO and the enhanced prudential regulation provisions of Dodd-Frank. Now international bodies may have an impact on regulation of U.S. products, adding another layer to the complex system.

On November 14, 2013, the European Commission, European Parliament and Council of the European Union in Brussels finalized European insurance capital standards, Solvency II. The European Union Council's statement asserted that, "Solvency II is a long-expected major overhaul of the EU insurance regulatory framework and is very important for the insurance industry, supervisors and policyholders in the EU." While Solvency II is an EU regulatory framework, some U.S. stakeholders worry that the standards would create a competitive disadvantage for American companies. The framework requires foreign jurisdictions to work towards equivalence or face discriminatory regulatory standards.

The prior week, FSB, an international association of major financial regulatory bodies, including the U.S. Federal Reserve Board, met in Moscow to discuss vulnerabilities surrounding the global financial system and ending too-big-to-fail. The FSB approved the list of global systemically important banks and "reviewed and welcomed" the IAIS' plan to develop capital standards and group-wide supervisory and regulatory framework for internationally active insurance groups.

On October 25, the Federal Reserve, which has traditionally not done much in the area of insurance regulation, applied for membership with the IAIS, which is in the process of developing the first-ever international capital standard for internationally active insurance groups. The standard would be risk-based and be developed by 2016 with full implementation beginning in 2019.

U.S. stakeholders are monitoring the changing landscape and have concerns that the old order of state-based regulation may be changing very soon.

1 See http://www.fema.gov/media-library-data/20130726-1912-25045-8239/bw_timeline_table_04172013.pdf for timeline.
2 http://www.naic.org/committees_e_cspv_sg.htm
3 http://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/2013%20FIO%20NRRA%20Report.pdf

James Tsai is a public policy specialist in FaegreBD Consulting's insurance and financial services practice group where he assists insurance and other financial services entities with federal legislative, regulatory, public policy, corporate, insolvency and compliance matters. James works on Capitol Hill and federal agency strategy and helps associations, companies and individuals navigate the post Dodd-Frank Act environment.

Welcome IAIR's Newest Members!

Tamara Kopp

Tamara Kopp - Receivership Counsel with the Missouri Department of Insurance, Financial Institutions & Professional Registration Groups. In our last issue, we inadvertently misspelled Ms. Kopp's surname. Our apologies to Ms. Kopp, and we extend another welcome to IAIR.

Roshanak (Roshi) Fekrat

Ms. Roshanak (Roshi) Fekrat is the President of Global Insurance Enterprises. The Company was founded in January of 2001. Previously she worked as a regulator with the State of Alaska, Department of Insurance.

Ms. Fekrat's career began in 1991 where she gained extensive experience in auditing and examination work. Her experience ranges from risk focused examinations, operational audits, forensic accounting, assessing internal controls, monitoring, supervision, financial statements reviews and analysis, reinsurance accounting and analysis, report writing, corporate governance, statutory and GAAP accounting issues, etc.

Having previously worked as a regulator; Ms. Fekrat is well versed in filling the gap between the regulators and the company. Another one of her talents is obtaining complex information and analyzing collected data; in a myriad of cases this has led itself to discovering significant misrepresentation by senior management. During her time with the State of Alaska, due to her talent, the majority of her tasks entailed process improvements and obtaining consensus to draft policy.

A Magna Cum Laude graduate of the University of Alaska, Ms. Fekrat obtained her Bachelor of Science with emphasis in Accounting. To satisfy her passion for education, she has qualified as a Certified Public Accountant, Certified Financial Examiner, and Certified Internal Auditor. Ms. Fekrat is a member of the Board Of Governance of the Society of Financial Examiners. In her capacity she has served as a volunteer on the SOFE's Executive Committee from 2008 through 2012, Chaired the 2010 & 2011 Career Development Seminar, and the 2010 Future Site committee.

Christopher Joyce

Christopher Joyce is Deputy General Counsel for the Massachusetts Division of Insurance, where he assists in managing the departmental administration and operations of the Division of Insurance's Office of General Counsel. As Deputy General Counsel, Mr. Joyce also assists in the formulation and development of policy relating to the Division of Insurance's regulatory mission, and oversees the administration of the Division's active receiverships, including the receiver's administrators and outside counsel. Prior to his appointment as Deputy General Counsel, Mr. Joyce was Counsel to the Massachusetts Commissioner of Insurance in regard to domestic and ancillary receiverships of insurance companies. Before working with the Division of Insurance, Mr. Joyce was in private practice. Christopher Joyce received his J.D from New England School of Law and his undergraduate degree from the University of Massachusetts.

Eric Scott

Eric Scott is a Senior Manager at Risk and Regulatory Consulting in Tallahassee, Florida where he works in the Troubled Company and Receivership Practice. Mr. Scott will be a Special Deputy Receiver on RRC receivership engagements. Previously, Eric was a Senior Attorney at the Florida Department of Financial Services' Division of Rehabilitation and Liquidation, where he represented the Receiver in insurance company delinquency proceedings including civil trials, hearings and mediations and also managed asset recovery efforts for the Department. Mr. Scott began his legal career in private practice and then was Assistant State Attorney for the Second Judicial District, Wakulla, Franklin and Gadsden Counties. Eric Scott received both his J.D and undergraduate degrees from the University of Florida College of Law.

International Association of Insurance Receivers

Promoting Professionalism and Ethics

2014 IAIR INSURANCE INSOLVENCY WORKSHOP

Shortening the Receivership Road Trip

January 29 - 31, 2014
Tempe Mission Palms | Tempe, Arizona

Room Block is Now OPEN, Reserve Your Room at our Guaranteed Rate.*

PRELIMINARY CONFERENCE AGENDA

WEDNESDAY, JANUARY 29, 2014

6:00 pm - 7:30 pm	Opening Night Reception

THURSDAY, JANUARY 30, 2014

7:15 am - 8:00 am	Registration & Continental Breakfast
8:00 am - 8:15 am	Welcome and Introduction
8:15 am - 9:30 am	Accounting, Reserving, and International Considerations
9:30 am - 10:15 am	FGIC Resemblances and Differences from the Usual Course
10:30 am - 10:45 am	Networking Break
10:45 am - 11:45 am	Captives and Risk Retention Groups
12:15 pm - 1:15 pm	Lunch and Luncheon Speaker
1:30 pm - 2:30 pm	ELNY Discussion
2:30 pm - 3:15 pm	Hard Asset Issues That Keep Estates from Being Closed
3:15 pm - 3:30 pm	Networking Break
3:30 pm - 4:45 pm	Construction Defect, Toxic & Mass Torts, and Minors' Claims
4:45 pm - 5:45 pm	Florida Department of Financial Services
6:00 pm - 7:30 pm	Cocktail Reception

FRIDAY, JANUARY 31, 2014

7:30 am - 8:00 am	Continental Breakfast
8:00 am - 9:00 am	Title Insurance
9:00 am - 10:15 am	Guidance from the Bench - Judicial Perspectives on Insurance Receiverships
10:15 am - 11:30 am	Networking Break
10:30 am - 11:30 am	Records Retention
11:30 am - 11:45 am	Program Wrap Up

*The room block is open only until **January 8, 2014**. The Tempe Mission Palms has advised that the cutoff date and guaranteed rate will not be extended.

SPONSORSHIP OPPORTUNITIES

Platinum Level Sponsor - $3,000

- Sponsorship of Thursday evening reception or Thursday lunch
- Full page ad in the Insolvency Workshop Program Journal
- Signage at entrance to reception/lunch
- Listing of sponsorship in the Insolvency Workshop Program Journal distributed to attendees
- Full page ad in the next issue of *The Insurance Receiver*
- One complimentary registration

Gold Level Sponsor - $2,000

- Sponsorship of Wednesday evening reception or networking breaks
- Half-page ad in the Insolvency Workshop Program Journal
- Signage at entrance to reception/networking breaks
- Listing of sponsorship in the Insolvency Workshop Program Journal distributed to attendees
- Acknowledgment in the next issue of *The Insurance Receiver*

Silver Level Sponsor - $1,000

- Sponsorship of Thursday and Friday breakfasts
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- Signage at breakfast
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Lanyard Sponsor - $750

- Design and distribute lanyard with your firm's name and logo available to attendees at time of registration.
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- Acknowledgement in the next issue of *The Insurance Receiver*

Tote Bag Sponsor - $500

- Your firm's name and logo on IAIR tote bag distributed to attendees at registration.
- Listing of sponsorship in the Insolvency Workshop Program Journal distributed to attendees
- Acknowledgement in the next issue of *The Insurance Receiver*

Other Promotional Sponsor - $500

- Bring any promotional item for distribution to attendees at workshop.
- Listing of sponsorship in the Insolvency Workshop Program Journal distributed to attendees
- Acknowledgement in the next issue of *The Insurance Receiver*

Deadline for Sponsorships is January 6, 2014

Board Talk: Bill Latza

By Michelle Avery

Having written this column for some time now, I am long overdue to interview this month's feature, William (Bill) Latza. Bill serves as IAIR's legal counsel and has done so for over 20 years.

Bill Latza

I felt it was about time to recognize Bill's hard work and to thank him for the countless hours he volunteers in that role. Bill originally became involved through assistance he provided during the initial development of IAIR's predecessor organization, SIR, and he never looked back. He not only acts in the capacity of legal counsel and serves on the Internal Audit, By-Laws and Governance committees, as a glutton for punishment, he also currently serves on the 2014 Insolvency Workshop planning group.

Bill grew up in small town of just 1,000 people southeast in Nebraska. He attended the University of Nebraska-Lincoln and graduated with a degree in business administration with a concentration in economics. Deciding to leave the mid-west, Bill journeyed across the pond, where he spent a year studying at the London School of Economics having received a graduate fellowship. Bill returned to the States and decided to pursue his law degree from Georgetown University.

Recognizing at the time that jobs were few and far between in the law profession, Bill moved to New York, without one. At the time, willing to take any opportunity that came his way, despite his preconceived view that it was "boring," Bill interviewed for a position with a New York law firm, specializing in insurance. He got the job, worked with that firm for four years and subsequently moved to Stroock & Stroock & Lavan LLP, where he has remained ever since.

Bill spends his time at Stroock as a regulatory lawyer which he believes "requires a certain peculiar type of masochism." He has spent over 30 years in the regulatory arena and as such finds himself doing transactional based law on a routine basis. He has spent time participating in reinsurance arbitrations, reinsurance transactions and loss portfolio transfers, sponsored demutualizations, performing directors & officers liability work, and, on the day I interviewed him, dealing with FATCA compliance and working with investment company managers pertaining to reinsurance trusts.

Bill took the time to share perspective about his thoughts on IAIR, his career experiences, and his background. I enjoyed speaking with Bill and hearing about his experience which are rooted in, what he would describe as, "good mid-western values, hard work and common sense." I'm sure you will agree.

Q: What is the most important issue you see facing IAIR during your term on the Board?

A. "In a word – relevance. I think that we are at a point for a variety of reasons where the insurance insolvency process is changing. There is a challenge for any organization to maintain its relevance through change." Bill spoke of the great strides the organization has made recently with respect to its visibility to the industry and standard setters. This includes the recent MOUs with several organizations, the revision to the IAIR mission statement and even the topics to be addressed at the upcoming Insolvency Workshop. "We as an organization have achieved momentum and we must continue that effort in the coming year."

Q: What is the last book you've read that you would recommend to others?

A. Inside of a Dog: What Dogs See, Smell, and Know by Alexandra Horowitz

Bill describes this book as fascinating. Written by a behavioral psychologist, this non-fiction work, if she's right, turns everything we think about how and why dogs behave the way they do on its head. Having heard Bill's enthusiasm for the work, I will certainly be putting it on my "must read" list.

Board Talk: Bill Latza (continued)

Q: What is the biggest accomplishment of your professional career?

A. Bill modestly spoke about his career achievements but the sense of pride he feels comes through as he discussed several cases that resulted in wonderful outcomes for clients who found themselves in complex circumstances with a lot at stake.

True to form, rather than boast of the ins and outs of the engagement in which he represented a reinsurer of what was, at the time, the largest loss portfolio transfer ($1.5 billion), Bill talked about the relationships that were built with team members from Toronto and Bermuda with whom he remains close. He told me of checking in to the Hamilton Princess and in the course of three days, never once setting foot in his hotel room. After the deal closed, he was able to retire to his room for some much needed R&R only to find someone else in his bed - the hotel apparently, not concerned about his whereabouts, but yet happy to make a profit on his hiatus, didn't think he was coming back and rented his room.

Also on his list of highlights, Bill, in a mere sentence said, and oh yeah, "there was the work I did on the FIGC rehabilitation." If you aren't aware, take a moment and ask him about his experiences with the prepackaged proceeding of a $3 billion insolvency. There are certainly some lessons in that one.

Q: What is your favorite NAIC or IAIR conference location?

A. Without hesitation, Bill replies, "Vegas – it's Disneyland for grown-ups." Given that Bill has only missed four NAIC meetings since 1982, I trust that his perspective on Vegas having something for everyone proves it to be a perfect vacation destination for all.

Q: Where is your favorite vacation destination?

A. As a self-proclaimed foodie, it is not surprising that Bill's favorite vacation involves a beautiful destination with fabulous food. He described a recent vacation in which 15 friends rented a villa in Tuscany. Sharing the company of wonderful people in a destination of such beauty, Bill described the trip's biggest stress as deciding "where to eat – what hillside town to eat in" each lunchtime.

Q: If you could have dinner with any other people, living or dead, who would you choose and why?

A. Bill has managed to select 3 very interesting people, none still living, from three different and very unique times in history.

First from the Renaissance era, **Leonardo Da Vinci**. Viewed as the archetype of the Renaissance Man, one of limitless curiosity, Da Vinci was not only a painter of the highest fame and admiration during his time and still today, Da Vinci was also a scientist and an inventor with a breath of knowledge and curiosity that is astounding.

Prime Minister of the UK during World War II and again 5 years later from 1951-1955, **Winston Churchill**, would be Bill's second invitee and would likely provide great insight in part, bridging the gap from Da Vinci's day to present. Churchill was not only one of the greatest leaders of the 20th century, he was also an artist, a writer and a winner of the Nobel Prize in Literature. Bill thinks he would be "hugely entertaining."

And last, **John Wilkes Booth** who, on April 14, 1865, assassinated President Lincoln would certainly add an interesting dynamic to round out the dinner party. Bill landed on Booth stating "it would be interesting to explore what drives a man to do what he did." Booth was likely on Bill's mind given the timing of our interview feel on the 50th anniversary of the assassination of another president, John F. Kennedy.

Q: What is one piece of information that most people don't know about you?

A. In college as Chair of the student union speaker bureau, Bill had access to some amazing people who visited Nebraska's campus. He had the unique position of playing host on many occasions and by host, I mean visiting the local watering holes. Not many can say they have been drinking with Gene Rodenberry, best known as the writer of the original Star Trek series, or Tom Wolfe, father of the new Journalism movement. Bill can, and he can even say he was taught to drink martinis by Vietnam War and Civil Rights journalist and historian, David Helberstam. Now that is an impressive list of drinking buddies.

Bill, thank you for taking the time to share such a diverse and interesting background with wonderful insight and depth.

Michelle Avery, CPA is an Executive Vice President and Managing Director at Veris Consulting, Inc. within the firm's forensic accounting practice. Michelle has extensive experience assisting clients in causation and damage assessments related to failed property/casualty and life and health insurance companies. Michelle is a Board member of IAIR and a member of the AICPA's NAIC/AICPA Working Group Task Force. Michelle can be reached at mavery@verisconsulting.com.

Issues Forum Recap: Indianapolis, Indiana August 2013

By Kathleen McCain

We met in Indianapolis, Indiana for the August 2013 NAIC/IAIR meeting. I was back home again in Indiana and it was bigger and busier than I remembered . . . and I know those of you from Indiana are humming along with me and Jim Nabors. Speaking of humming, the topics and comments by all the speakers at the Issues Forum prompted a lively discussion and debate with members of the audience.

Roger Schmelzer, President of the National Conference of Insurance Guaranty Funds, welcomed the attendees to Indianapolis and provided highlights of the goings on in Indianapolis during the weekend we were there. Some of them involved food - a local food festival at the park across the street from the convention and another featuring creations at local restaurants. The other event was the Indy Fringe Festival that lasted ten days. The festival was put on by a group of performers that travel as a circuit putting on hour long shows on lots of topics. They were scheduled to make 384 performances at several venues while in Indianapolis.

Liquidations in the Digital Age or It's Not Just About Paper Anymore

The program started with a panel whose participants talked about the changing face of liquidations in the digital age. The panelists discussed some of the issues, challenges and pitfalls they witness as they navigate the transition from paper files to data in recent liquidations. Roger Schmelzer, the moderator of the panel was joined by Dave Edwards, President of the Western Guaranty Fund Services, Sandy Robinson, Executive Director at American Guaranty Fund Group and Al Willis, Assistant Division Director, Florida Division of Rehabilitation and Liquidation.

Dave Edwards began the discussion by describing where record management and file transfers in liquidations had been. File transfers were hard copy files that were boxed, inventoried and delivered to the guaranty funds. The files came from different locations (company, TPAs, MGAs) and were sent to the various guaranty funds. As Dave described, it was a simpler time – the guaranty funds knew what they were getting when the boxes were delivered. Al Willis then talked of data challenges for the liquidator and how important the IT departments in receivership offices have become. When taking over a company, every company system has to be located and understood, access to the systems and data have to be provided to many sources and it all has to be done in short time. Sandy Robinson followed with a discussion of claims files and the types of records needed to begin the guaranty fund process of paying claims. She presented examples of solutions implemented by the Florida guaranty funds to work around challenges in getting claims paid. Roger ended the presentation by suggesting a need for more pre-liquidation planning and communication. He stressed that strong relationships between the receivers and guaranty funds should be the new paradigm in insolvencies.

The Federal Home Loan Banks

Julie Spiker, Deputy General Counsel, Federal Home Loan Bank of Pittsburgh; Shaney Loken, Federal Home Loan Bank of Atlanta; and Jon Griffin, Chief Credit and Marketing Officer, Federal Home Loan Bank of Indianapolis, presented an overview of the Federal Home Loan Banks ("FHLB)". The presentation was a follow up to their article in the Summer 2013 issue of the *Insurance Receiver*, again with the goal of helping the receivership community gain a better understanding of their purpose. They discussed who they are, what they do and why they do it.

Julie Spiker and Jon Griffin explained what the FHLB purpose is, what insurance company membership in the FHLB means and how loans are provided to insurance companies. Shaney Loken gave an in depth presentation of the FHLB involvement in the Shenandoah Life Insurance Company receivership, the first insurance company failure of a FHLB member company. She commented that there was good communication between the FHLB and the Shenandoah receiver and thought they were able to work cooperatively and effectively throughout the receivership. She also affirmed that the lessons learned from Shenandoah resulted in changes in some of the FHLB collateral requirements. Jon Griffin then provided a case study of the FHLB involvement in the Standard Life Insurance Company rehabilitation. He echoed the comments of Ms. Loken regarding the FHLB efforts to work cooperatively and constructively with the rehabilitator. All of the speakers commented that the insurance company failures were very different from what they knew about bank failures.

The discussion was then opened up for questions and comments from the attendees and a lively question and answer session began. A recurring theme of the comments was how extraordinarily lucky the FHLB has been because they have never lost any money in any bank or insurance company failure. Attendees asked whether the FHLB position (particularly the over collateralization requirements in the security agreements that results in payment in full under the agreements) was fair in comparison to the position of all the other claimants who would more than likely end up taking haircuts on any payment received or receive no payment at all at the end of the day. Other comments included the receivers' perspective on working with the FHLB in the receiverships. While they agreed that the relationship was professional and cooperative, the actual details of the FHLB requirements put the receivers in very difficult positions. The receivers were required to maintain collateral for FHLB advances throughout the receivership thus tying up millions of dollars that could not be used to pay claims or pay the FHLB due to substantial prepayment penalties, noting that the FHLB appeared not to have any discretion to be flexible.

The panelists responded that they understood the frustration expressed by the receivers but that the FHLB policies applied to all members and those policies had to be applied evenhandedly. They reminded the attendees that the FHLB is not just another creditor but rather that the FHLB is established by the government. The FHLB mission is to protect the FHLB capital and the over- collateralization is designed to protect the members. They stressed that early and continuing communication throughout the receivership process was key and noted that they would continue to lend to insurance companies.

A Receiver's Perspective on the Federal Home Loan Banks' Legislation or How to Train for a Marathon

Paul Miller, Special Deputy Receiver and CEO of the Office of the Special Deputy, followed the presentation by the FHLB. Mr. Miller is the chair of the FHLB Legislation Subgroup of the Receiver and Insolvency Task Force and gave an update on the activities of that subgroup. The subgroup has been charged with studying the legislation proposed by the FHLB that recommends amendments to state receivership laws that would allow the FHLB exemptions from stay and voidable preference provisions for their security agreements with insurers. Mr. Miller compared the work of the subgroup to training for a marathon; it demanded perseverance, overcoming challenges, chafing and team work.

The subgroup polled regulators, reviewed information from the FHLB and studied recent insolvencies where the FHLB was involved. Mr. Miller spoke to us about what they had learned; the concerns raised by regulators and the response by the FHLB to those concerns; and the experience gained from recent insolvencies.

Primary concerns expressed by regulators include the potential harm to other claimants; the excess collateral requirements of the FHLB security agreements and the illiquidity of the FHLB stock creates a financial strain on receiverships; and that the FHLB has never lost any money in any insurance insolvency. Further, there is no evidence that current receivership law is inadequate to address the FHLB issues and if the legislation is passed it could open the floodgates to other credit legislation. The FHLB, on the other hand, contends they are seeking certainty regarding their collateral in receiverships and the proposed legislation would allow them to reduce the stay periods and provide greater flexibility in lending. Mr. Miller then discussed the lessons learned from Shenandoah and Standard Life and the development of best practices as a result.

NAIC News and Updates

Jim Mumford, First Deputy Commissioner with the Iowa Division both informed and entertained the attendees with his insider's view of the NAIC. He closed the program by providing updates of NAIC committee meetings and other issues important to the NAIC community. The activities of the Financial Stability Board ("FSB") is a recurring topic of Mr. Mumford's presentation. In August, the FSB issued proposed guidance on the application of the Key Attributes of Effective Resolution Regimes for Financial Institutions. Mr. Mumford commented that he is not convinced that the FSB is not sold that the United States has a good system. He also thought that a few provisions of the proposed guidance were significantly different than the existing system. He reminded us that the FSB always has questions about the uniformity of the United States state based system. He warned that the time for comments to the proposed guidance was short and that we should not turn our backs to what was happening at the FSB

Mr. Mumford then addressed the Receivership and Insolvency Task Force's evaluation of the addition of a section to the Receiver's Handbook on use of loans to insurers through the various Federal Home Loan Banks. He also spoke about the work of the SEC consideration subgroup, the review of the critical elements of IRMA and commented briefly on the beginning of payouts in the Executive Life of New York liquidation.

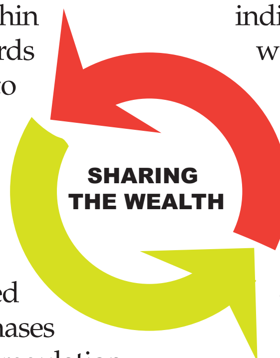
Thanks to all the participants who agreed to speak at the Issues Forum and share their knowledge and expertise with the organization. Thank you also to those who helped me organize the Forum. I look forward to seeing you all at the NAIC and IAIR meetings in Washington D.C. We will be presenting a joint Issues Forum with AIRROC and expect to see you all there in person. My recap is no substitute for the live program. We are currently scheduled to host the Issues Forum on December 16. Check the most up to date schedule to confirm the time and location. See you there!

Kathleen is Senior Counsel in the Regulatory and Administrative group of Michelman & Robinson, LLP, in Encino, California. Michelman & Robinson is a national law firm with offices in California and New York. Kathleen assists insurance companies and related agents with various regulatory, compliance, claims and reinsurance matters.

Sharing the Wealth of Warning Signs

By Bart Boles

Hindsight is 20/20 and no one knows this better than the receivers, guaranty associations, and consultants that constitute IAIR's membership. They have unique access to the operational and transactional information within a failed insurance company's records that often provides insight into subtle warning signs that caused or contributed to its eventual demise. IAIR's members have a wealth of accumulated knowledge of such warning signs that could and should be shared with those involved in the early phases of troubled insurance company regulation.



This sharing could enhance a financial regulator's ability to quickly hone in on a specific issue and, if the regulator's remedial actions are unable to restore the company to a sound financial footing, provide early identification of matters that will facilitate expeditious handling of various receivership activities. IAIR's Education Committee again seized the opportunity to share its members' vast knowledge by sponsoring a professional development program for insurance examiners and other financial regulators on August 23, 2013 in conjunction with the Indianapolis NAIC meeting.

The half-day program was provided at no charge to in excess of seventy regulators from six different states. It featured four presentations on various aspects of insurance company operations that might indicate significant issues brewing below the surface. It was intended that IAIR's sharing of its members' experiences through such programs could be used by regulators to tweak certain aspects of examinations.

The first panel presented an overview of operational issues involving claims, information technology systems, and accounting items that have been found to be indicators of brewing problems and pointed out aspects that are vital to future rehabilitation and liquidation activities. Dale Stephenson described the differences in claims among the various lines of business, the role of the guaranty funds, and areas where neglect and/or abuse in the claims adjudication process are indicators of larger issues. Jenny Jeffers followed with her thoughts on where there are indicators of problems within the security, systems, procedures, and personnel of a company's information technology systems and how such systems are vital to receivership operations. This panel's last presenter, Jan Moenck, was delayed due to flight cancellations, so I used her notes to present some aspects of a company's corporate governance, procedural documentation, "red flag" transactions, cash flow and liquidity position, the presentation of assets and liabilities in the financial statements and the design, conversions, and reliability of the accounting system that warrant closer scrutiny.

Michael Fitzgibbons followed the first panel with an hour-long presentation on the changes in the management and control of an insurer as it moves from an active insurer through administrative action(s) to liquidation. His remarks focused on the control measures that must be exercised to avoid loss of data/records, loss of funds, alterations in transactions, and inaccurate financial statement reporting from the perspectives of the transfer of authority and the interested parties that may be harmed, and to what extent, if any, responsibility is inadvertently neglected.

Reinsurance often provides several warning signs that an insurer is struggling - so the next presenters, Kathleen McCain and Evan Bennett, shared their insights. They provided a general overview of reinsurance, standard uses and treaty terms. They then proceeded to walk through the procedures and areas of focus for a reinsurance examination, including reporting, accounting, collections and collateral. They mentioned the necessity to have detailed communications with the reinsurance, intermediary, and company staff knowledgeable of the reinsurance program in order to fully evaluate the treaties' terms versus actual processes being utilized.

Sharing the Wealth of Warning Signs (continued)

The program wrapped up with Mary Cannon Veed, Doug Hertlein, and Wayne Johnson walking through the "Wide, Wide World of Weird and Wacky Warning Signs." They described, with real world examples, some of the seemingly meaningless - but later found to be relevant - warning signs such as unusual expenses, the use of endless acronyms in transactions, closely held or family owned entities, turnover of key management or personnel simultaneously or at key points in time, or uncommon uses or parties to surplus notes, unusual or nonsensical transactions, multiple operating locations, extreme segregation of duties, lack of written agreements, excessive use of outsourcing, high volume of contested claims, the "black hole" mailroom… and then they ran out of time before they had exhausted all of their material.

It appears that all the participants walked away from the program with a number of thoughts to keep in mind while performing their examination and analytical work. Receivers acknowledge the significant timesavings they realize by initially focusing on any of these signs that are identified by the regulatory team. These warning signs won't appear on black and white checklists as they are somewhat fuzzy, but they might trigger the common sense smell test that cries out for a little more review.

IAIR's Education Committee accepts the goal of an insurance company receivership is to maximize the recovery to its creditors; however, the prevention of future failures through sharing of acquired knowledge is a worthy side effect.

Bart Boles is the Executive Director of Texas Life & Health Insurance Guaranty Association and also serves on the Boards of Directors of IAIR and the National Organization of Life & Health Insurance Guaranty Associations (NOLHGA). He has worked in various aspects of insurance company receiverships and guaranty associations since 1987.

Exciting Technology Changes At IAIR

By Nancy Margolis

We're pleased to announce that IAIR has a new website located at http://iair.org. IAIR's Board of Directors and website committee worked very hard over the past several months to select MemberClicks to develop and host our new website. MemberClicks has been providing membership software to small-staff organizations throughout North America and Europe since 1998 and offers IAIR updated technology to handle our membership, including registration for IAIR events, dues payments and even social communities. MemberClicks will make it easier for me to communicate with you, and for you, the membership, to communicate with each other. Our new site is just another step in our attempt to improve transparency, allowing you to see what is going on at IAIR and easily become involved. If you've already checked out the site while it was under construction, you will see that we also have a brand new "look" to the IAIR website (long overdue). With social networking support, simple tools for staying in touch, space for sharing documents and photos and resources to support committees, we can also use the new website to help market our association and highlight great work being done.

This is an exciting time for IAIR. Coming off our successful State Training programs in Indianapolis and Houston in August and April, and getting ready for our Insolvency Workshop in January, this new website will give us improved functionality and terrific member tools. You should have received an email from IAIR in mid-November providing you with your username and temporary password. If you didn't receive it, please contact me at nancy@iair.org and I will send it to you. If you didn't receive the email, it's because my email is being quarantined or placed into a "junk" filter or because you are not a current member. Please check your spam folders and accept both the address and domain in order to keep receiving your emails. (If you didn't receive it, you may not have paid your 2013 dues, which will prevent you from accessing the members-only information on the IAIR website and from updating your profile.) Finally, keep an eye out for your membership renewal information which will be coming to you shortly via the new IAIR website.

If you have any questions at all, please don't hesitate to contact me. I look forward to hearing from you.

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Promoting professionalism and ethics in the administration of insurance receivership

September 18, 2013

Jim Mumford (IA), Chair of Receivership and Insolvency (E) Task Force
National Association of Insurance Commissioners

RE: Comments on *Key Attributes of an Effective Resolution Regime*

Dear Mr. Mumford:

The International Association of Insurance Receivers ("IAIR") appreciates the opportunity to provide the National Association of Insurance Commissioners with comments regarding the Financial Stability Board's ("FSB") proposed Consultative Document on the Application of the *Key Attributes of Effective Resolution Regimes for Financial Institutions* to non-bank financial institutions.

Formed in 1991, IAIR is the educational and credentialing organization for professionals working with financially troubled and insolvent insurers. Our membership includes insurance receivers, guaranty association executives, and private industry professionals. As IAIR's membership is primarily involved in resolving troubled insurers, this letter will respond to the *Questions for Consultation* related to Appendix II, *Resolution of Insurers*. We hope you will find these comments helpful in formulating your official comments.

As a general matter, we recognize that some insurers – on their own, because of their activities, or as one part of a systemically significant group of companies – might represent a risk to the global financial system. We also recognize that "traditional" insurance activities are unlikely to cause or amplify systemic risk. Consequently, our view is that the integrity of the insurance promise need not be compromised for some greater good. The highest good is the assurance that policyholders, claimants and beneficiaries are paid in accordance with the terms and conditions of the pertinent insurance contracts. It must always be crystal clear that the Key Attributes apply only in the case of an institution that is so interconnected, because of its "non-traditional, non-insurance" ("NTNI") activities, that its resolution in accordance with the Key Attributes and the draft Annex is necessary to mitigate risk to the global financial system. Even where the Key Attributes do apply, the assets supporting the contractual obligations of "traditional" insurance activities must remain available to protect policyholders, claimants and beneficiaries.[1]

With these principles in mind, we offer the following comments to the *Draft Implementation Guidance: Resolution of Insurers:*

[1]We have not considered, and therefore do not address, this proposed regime's potential for conflict and redundancy with the resolution authority for SIFIs under Dodd-Frank. Further, our comments should not be construed either as an endorsement of the Key Attributes or an indictment of the existing state-based system. In providing these comments, IAIR does not take a position on the relative merits of the existing US system as compared with any federal or international systems.

22. Are the general resolution powers specified in KA 3.2, as elaborated in this draft guidance, together with the insurance-specific powers of portfolio transfer and run-off, as specified in KA 3.7, sufficient for the effective resolution of all insurers that might be systemically important or critical in failure, irrespective of size and the kind of insurance activities (traditional and 'non-traditional, non-insurance' (NTNI)) that they carry out? What additional powers (if any) might be required?

As the FSB itself notes, and IAIR wishes to emphasize, not all resolution powers set out in the Key Attributes are suitable for all sectors and all circumstances. Indeed, the approach adopted for banks is likely not appropriate for insurance companies primarily engaged in "traditional" insurance activities. IAIR believes that the Key Attributes should apply only in the case of an institution that is so interconnected, because of its "NTNI" activities, with the global financial system that its resolution in accordance with the Key Attributes and the draft Annex is both necessary and appropriate. Even (or perhaps especially) then, the assets supporting the contractual obligations of "traditional" insurance activities must remain available to protect policyholders, claimants and beneficiaries.

23. Should the draft guidance distinguish between traditional insurers and those that carry out NTNI activities? If yes, please explain where such a distinction would be appropriate (for example, in relation to powers, resolution planning and resolvability assessments) and the implications of that distinction.

As mentioned in response to question 22, there exists a major difference between "traditional" insurance activities and "NTNI" activities and the potential impact the failure of an insurance company engaged in such activities will have on the market. Every state has a receivership law that embodies certain core principles: to protect the interests of insureds, claimants, creditors, and the public. Where "NTNI" activities are an especially significant aspect of an entity's business, however, it might be that the FSB's core resolution principles are appropriate. This might be the case, for example, when the failure of such an entity is a risk that was explicitly contemplated by the counterparties who dealt with it. Policyholders, claimants and beneficiaries under traditional insurance policies had no such contemplation and are in a uniquely vulnerable position recognized in law. It is important to acknowledge that sophisticated mechanisms already exist to resolve insurance company failure in an orderly manner. In the case of insurance failure, both management and regulators have time well before run-off/liquidation is even considered to explore various options that may prevent insurance company failure and to engage in specified actions, including development of an ongoing supervisory plan as contemplated by the NAIC's Financial Condition Examiner's Handbook.

The underlying premise of the application documents seems to be that a G-SII will be subject to group supervision, with all the cross-sector and cross-border asset transferability that implies. When resolution is called for, however, we consider that those who need the protection of "traditional" insurance ought not be forced to sacrifice any portion of that protection for the benefit of "NTNI" obligees elsewhere in the global financial system. We therefore believe that assets supporting "traditional" insurance activities ought never to be used to satisfy "NTNI" obligations.

24. Are the additional statutory objectives for the resolution of an insurer (section 1) appropriate? What additional objectives (if any) should be included?

Additional objectives should be the protection of policyholders by assuring the continuity of coverage for long duration contracts and non-cancelable or guaranteed renewable contracts (*e.g.*, life, annuity and certain health). Policyholders must also be assured of indemnity for short-duration contracts (*e.g.*, property and casualty), as well as contractual events in long term contracts (*e.g.*, death of a policyholder).

25. Is the scope of application to insurers appropriately defined (section 2), having regard to the recognition set out in the preamble to the draft guidance that procedures under ordinary insolvency law may be suitable in many insurance failures and resolution tools are likely to be required less frequently for insurers than for other kinds of financial institution (such as banks)?

26. Does the draft guidance (section 4) adequately address the specific considerations in the application to insurers of the resolution powers set out in KA 3.2? What additional considerations regarding the application of other powers set out in KA 3.2 should be addressed in this guidance?

IAIR believes the scope of application to insurers still has the potential to be too broad. As the NAIC has noted on many occasions, insurance regulators possess an array of statutory and remedial tools to identify and supervise troubled insurance companies. Among such tools are risk focused examinations and the associated tools set forth in the Financial Condition Examiner's Handbook, the Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition, risk-based capital laws, and the Receiver's Handbook for Insurance Company Insolvencies.

27. Does the draft guidance deal appropriately with the application of powers to write down and restructure liabilities of insurers (paragraphs 4.4 to 4.6)? What additional considerations regarding the application of 'bail-in' to insurers (if any) should be addressed in the draft guidance?

28. Is it necessary or desirable for resolution authorities to have the power to temporarily restrict or suspend the exercise of rights by policyholders to withdraw from or change their insurance contracts in order to achieve an effective resolution (paragraph 4.9)?

IAIR does not believe policyholders would consider themselves protected by any governmental authority that restricts or suspends policyholder rights. At a minimum, such rights should not be adversely affected without notice and an opportunity to be heard. We believe that the power to restructure insurance liabilities must be constrained by due process and an independent tribunal. Protecting policyholders in this way could help to prevent the very "run on the bank" that such restrictions and suspensions are in part intended to mitigate.

Additionally, any restructuring of policy values and restriction of policy benefits beyond what is contemplated by the policy could potentially trigger guaranty associations' obligations prior to liquidation. Temporarily restricting policyholder access could be beneficial to conducting a thorough financial assessment of the company, but consideration should be given to hardship withdrawals when the surrounding facts and circumstances create an immediate and severe financial need for the policyholder. The hardship factors would involve exposure to significant economic loss that requires immediate relief and for which no other economic resource is reasonably available to the policyholder to meet that loss, such as funding for essential life sustaining medical care, non-reimbursed catastrophic personal property losses, eviction from a residence, educational costs, and severe financial difficulties created by unemployment of the policyholder. Clear, well-documented hardship criteria and procedures supported by due process have worked well to limit withdrawals from annuity contracts, thereby preventing a "run on the bank" stemming from policyholder alarm fueled by uncertainty.

29. Are there any additional considerations or safeguards that are relevant to the treatment of reinsurers of a failing insurer or reinsurer, in particular to: (i) the power to transfer reinsurance cover associated with a portfolio transfer (paragraphs 4.7 and 4.8); and

(ii) the power to stay rights of reinsurers to terminate cover (paragraph 4.10)?

The insurance portfolio and associated reinsurance program must be carefully evaluated to identify if a transfer is appropriate and in the best interests of policyholders, claimants and beneficiaries. The NAIC's Life and Health Insurance Guaranty Association Model Act contains the right for a Guaranty Association to succeed to the rights of the insolvent insurer under a contract of reinsurance. Without the reinsurance being transferred to the Life and Health Guaranty Associations, they may be unable to arrange for the policies to be assumed by a new carrier, because that carrier may not be willing to accept the risks without the reinsurance. In the property and casualty context, reinsurance is often the biggest asset of a property and casualty insolvent insurer and the greatest source of funds to pay claims to policyholders and third party claimants, so the transfer of reinsurance may be neither appropriate nor advisable.

30. What additional factors or considerations (if any) are relevant to the resolvability of insurers or insurers that carry out particular kinds of business (section 8)?

We recommend that additional consideration be given to the review and analysis of reinsurance program(s): the financial stability of the reinsurers should be evaluated, determinations made as to whether collateral is being held by the financially troubled insurer for its benefit, and whether such collateral needs to be increased.

31. What additional matters (if any) should be covered by recovery plans or resolution plans for insurers or insurers that carry out particular kinds of business (section 9)?

Many of the items in 9.3 may be related to or effect one another. For one example, items (vi), (viii) and (x) all implicate alignment of assets with liabilities. As previously noted, we consider that obligations to those who depend on the promise of "traditional" insurance are the obligations that deserve primary consideration in the resolution of an insurance enterprise.

32. Are the proposed classes of information that insurers should be capable of producing (section 10) feasible? What additional classes of information (if any) should insurers be capable of producing for the purposes of planning, preparing for or carrying out resolution?

No further comment.

33. Does this draft Annex meet the overall objective of providing sector-specific details for the implementation of the Key Attributes in relation to resolution regimes for insurers? Are there any other issues in relation to the resolution of insurers that it would be helpful for the FSB to clarify in this guidance?

Although this Annex provides further sector-specific details for the implementation of the Key Attributes in relation to insurers, the receivership process and the body of law which has been developed over decades should be reviewed for key processes and used as tools in the furtherance of these guidelines.

We again thank you for the opportunity to opine in this matter. IAIR would be pleased to respond to any questions on the foregoing and welcomes the opportunity to assist and participate in further discussions.

Respectfully submitted,

Francesca G. Bliss
International Association of Insurance Receivers, President

Resolution of Troubled Insurers: Protecting Policyholders in the 21st Century

By William D. Latza and Andrew P. DeNatale[1]

In the more than two decades since state regulation of insurance was taken to task by Congress[2] and the National Association of Insurance Commissioners ("NAIC") first propounded its Financial Regulation Standards[3], financial condition regulation of insurers has taken enormous strides forward. From the risk-based capital regime, through risk-focused examinations to the own risk and solvency assessment process, regulators today have a wealth of tools to identify and monitor risks to insurer solvency. Yet the regulatory system remains biased toward viewing insolvency as regulatory failure, with the consequence that when policyholders are most in need, they are abandoned entirely to the conventional receivership process.

This need not be so. Free-market capitalism demands the failure of enterprises unfit to compete, and the challenge for the state-based system of insurance regulation is to minimize or prevent the public harm resulting from those failures. Integration, or at least closer coordination, of the regulatory and receivership functions can be the means to minimize the consequences of insurer failure. If one views insurer failure as simply part of the natural life cycle of insurers, then one sees many opportunities for resolving troubled companies in ways less injurious to policyholders and the public than conventional receivership proceedings. Whether the regulatory process is used to prepare an insurer for formal receivership, or formal receivership is employed in aid of a restructuring approved by regulators, years of progress have resulted in a state-based system more able than ever before to protect policyholders, claimants and beneficiaries threatened by insurer insolvency.

At the heart of this system lies the risk-focused surveillance cycle, comprising five elements: risk-focused examination; financial analysis; review of internal and external changes; prioritization; and development of an on-going supervisory plan.[4] Each element informs the next in a virtuous circle. The risk-focused surveillance cycle produces more and better information than ever before about potential causes of insurer failure, and so presents opportunities to create new and better alternatives. Key points at which restructuring or receivership expertise could helpfully inform the process are the financial analysis and supervisory plan elements.

Financial Analysis[5]

In a risk-focused examination approach, examination fieldwork considers solvency risk areas in addition to risks associated with fair presentation of surplus. This informs the work carried forward by the financial analysts, which in turn informs the fieldwork on subsequent examinations, and so forth. The end result of the financial analysis process is a financial analysis of each insurer specifically tailored to concerns about that insurer as a result of its unique investments, underwriting, reserving and operations. There are two levels of financial analysis procedures.

Level 1 procedures are to be performed annually and quarterly on all domestic insurers. These procedures require review of the statutory Annual and Quarterly Financial Statements and review of reports and information for the insurer on NAIC I-SITE, such as Analyst Team System Reports, Scoring System Reports, Insurance Regulatory Information System ratios and Financial Profile Reports. Other materials to be reviewed are the Audited Financial Report, Statement of Actuarial Opinion, Management Discussion and Analysis, holding company filings and examination reports. If there are new or unresolved concerns following completion of the Level 1 procedures, or if the domestic insurer is not merely a single-state insurer, then Level 2 procedures are to be undertaken.

Level 2 procedures are designed to identify potential areas of concern regarding the financial position and operations of the insurer primarily through the use of ratio and trend analysis. At first, Level 2 procedures use only information contained in the statutory Annual Financial Statement, and focus on selected key areas, such as investments, reserves, reinsurance, income, surplus, affiliate transactions, use of managing general agents and so forth. Should new or unresolved concerns exist, additional Level 2 procedures may be undertaken. These additional procedures are designed to focus on those areas of the Level 2 procedures, where specific concerns exist and may require additional information. If there are new or unresolved concerns upon completion of additional Level 2 procedures, then a report is to be prepared recommending further regulatory action.

Examples of further action given in the NAIC Financial Analysis Handbooks include targeted examination and enhanced reporting. They also include meetings with management, requiring business and corrective action plans and engaging experts.

Supervisory Plan

A supervisory plan is to be developed and updated at least annually for the on-going regulatory oversight of each insurer.[6] The supervisory plan should outline the type of surveillance planned, the resources dedicated to oversight and communication or coordination with other states. The template contained in the NAIC Financial Condition Examiners Handbooks suggests that the plan discuss prior problem areas, such as solvency issues, as well as current concerns, high-risk areas, changes in risk profile and management, assessment of management strengths and weaknesses relative to corporate governance and risk management. A template plan would specifically address financial analysis monitoring, planned meetings with management and examinations.

Any corrective action plan growing out of the financial analysis element of the risk surveillance cycle would, of course, be part of the ongoing surveillance plan. Additionally, certain NAIC model laws and regulations provide for restorative plans. The risk based capital models require risk-based capital plans of insurers that fall to company action level risk-based capital.[7] Administrative supervision is authorized under the administrative supervision model.[8] A business plan may be required under the hazardous financial condition model.[9] Each of these alternative plans can serve as the path to resolution of a troubled insurer outside of a conventional receivership proceeding.

The FGIC Example

An example of a recent successful and unconventional rehabilitation of an insurer is the rehabilitation of Financial Guaranty Insurance Company ("FGIC"), a monoline financial guaranty insurance company that entered into formal rehabilitation in the State of New York in June of 2012. As described more fully below, FGIC was able to enter[10] and exit[11] its rehabilitation proceeding in just over one year and the insurer, whose deficit had reached $3.7 billion, is currently paying claims (albeit not wholly in cash) for the first time since 2009.

The FGIC experience shows that early and decisive regulatory intervention can greatly reduce the harm of insurer insolvency. The exact means by which policyholders are best protected in any given case will, of course, depend on the unique characteristics of each troubled insurer situation. As a financial guarantor, FGIC's policy liabilities were sophisticated long-term non-life liabilities, requiring specialized claim handling, intelligent exercise of control rights and sophisticated surveillance. Additionally (i.e., in addition to its self-reported policyholders' surplus deficit), FGIC had a multi-billion-dollar exposure to counterparty termination claims under credit default swap transactions.[12] FGIC's policy liabilities had a wide range of maturities, with some guarantied obligations currently in default and others, with maturities as much as forty years hence, not in default. FGIC was a New York domestic financial guaranty insurance corporation, so its policyholders had no guaranty fund protection, it was not subject to a risk-based capital statute and Section 1104(c) of the New York Insurance Law[13] did not apply to it.[14]

Since 1983, FGIC had issued insurance policies guaranteeing the payment of principal and interest on, among other things, municipal bonds, residential mortgage-backed securities, asset-backed securities, collateralized debt obligations and collateralized loan obligations.

The foreclosure crisis began in late 2006 and the broader financial crisis began in earnest with Lehman Brothers' bankruptcy in 2008. All financial guarantors faced severe solvency challenges. In late 2007, FGIC's business and financial condition began to deteriorate as the result of, among other things, significant losses relating to securities backed directly or indirectly by U.S. residential mortgage loans. As a result, FGIC began paying claims far in excess of historical levels and its loss reserve liabilities increased dramatically. FGIC's policyholders' surplus deficit ultimately deteriorated to approximately $3.7 billion.

In January 2008, FGIC voluntarily ceased writing new policies and stopped paying dividends or other distributions to shareholders. FGIC also undertook certain loss mitigation measures to improve its financial position and restore its statutory surplus position. Notwithstanding these measures, on November 24, 2009, the New York State Insurance Department ("NYSID")[15] issued an order under Section 1310 of the New York Insurance Law (the "1310 Order") requiring FGIC to suspend all claim payments, prohibiting FGIC from issuing any new policies and requiring FGIC to submit a plan to cure its financial impairment.[16]

Following the issuance of the 1310 Order, FGIC attempted to implement a surplus restoration plan through consensual agreements with its creditors. When these efforts were unsuccessful, FGIC determined to pursue other avenues to return to solvency. After working with its financial and legal advisors, FGIC ultimately determined that a court-sanctioned rehabilitation process was the appropriate course of action.

Instead of simply falling into a rehabilitation proceeding without an exit strategy, FGIC worked with its legal and financial advisors before the commencement of formal receivership proceedings to craft a plan of rehabilitation that would restructure FGIC's policy claims and return FGIC to statutory solvency. The plan would involve not only input from the company, its management team and its regulators, but also certain of its large policyholders.

The rehabilitation plan was designed to address, among other things, FGIC's inability to pay claims that would come due over the life of the policies. FGIC's problems were complicated by the fact that certain policyholders had claims that were already due and payable, while other polices may not have claims for another forty years (the remaining term of some of the policies, co-terminus with the guarantied obligations). Additionally, because FGIC possessed a knowledgeable and capable management team, FGIC proposed that its rehabilitation plan be implemented by current management outside of the court-supervised rehabilitation proceeding.

FGIC proposed its plan to the New York Liquidation Bureau ("NYLB")[17] in early 2011. The NYLB spent the following year working with its own advisors and FGIC to review and analyze the proposed plan prior to commencing the rehabilitation proceeding.

On June 11, 2012, the Superintendent of Financial Services of the State of New York (the "NY Superintendent") filed a petition with the New York State Supreme Court (the "NY Court") seeking entry of an order of rehabilitation under Article 74 of the New York Insurance Law. On June 28, 2012, the NY Court granted the NY Superintendent's petition and placed FGIC into a court-supervised rehabilitation proceeding. Shortly thereafter, in September of 2012, the NY Superintendent filed a proposed rehabilitation plan that was primarily based on the plan FGIC and its advisors had provided to the NYLB in early 2011.

The primary purpose of FGIC's rehabilitation was to return FGIC to solvency fairly and equitably. Article 74 of the New York Insurance Law provides a rehabilitator with broad discretion as to how to accomplish this goal. FGIC determined that the best avenue for it was to restructure its policy obligations in a way that maximized the immediate recovery to its near term policyholders, while preserving sufficient assets to provide a similar recovery to those policyholders whose claims would not materialize until sometime in the future.

FGIC's rehabilitation plan, therefore, provided for the modification of FGIC's policies so as to obligate FGIC to pay only a certain percentage of each allowed policy claim in cash. The remaining policy obligations were treated as deferred payment obligations to be paid over time based on then available assets. As an accounting matter, and so long as no new business were written, FGIC's restructured policy liabilities would never exceed its assets. The amount of the initial payment was calculated to ensure that holders of all policy claims, whether outstanding as of the filing of the plan or thereafter arising, would receive the same ultimate percentage cash payout on account of their claims. From time to time, FGIC would reevaluate the percentage of the policy claims it could pay in cash, increasing the payout amount as appropriate.

In addition to the issuance of deferred payment obligations, FGIC also sought to reduce its policy obligations by entering into certain novation and commutation agreements with third parties. These agreements would allow FGIC to terminate its obligations thereunder and preserve more assets for its remaining policyholders.

Finally, a cornerstone of the FGIC plan was the method of the implementation. Although the rehabilitation plan would be implemented through the payment of deferred payment obligations over a number of years (maybe decades), FGIC's proposed plan provided that it would not need to remain in its court-supervised rehabilitation proceeding once the plan was approved. This would allow FGIC's experienced management team the flexibility they needed to implement the plan without court supervision (but subject to the terms of the court-approved plan and the supervision of the regulator), while relieving the New York regulators of the burden of micromanaging the plan implementation.

On June 13, 2013, the NY Court approved FGIC's rehabilitation plan. On August 19, 2013, FGIC's rehabilitation plan went effective and the rehabilitation proceeding was terminated. As a result of the plan, FGIC returned to solvency. The initial cash payments made to policyholders under the plan was 17%, with hopes that payment percentages would increase over time.

Protecting Policyholders in the 21st Century

Each troubled insurer presents unique problems. The risk-focused surveillance cycle contains within it the means to identify and monitor problems and their causes like never before. The next step is to solve those problems and resolve troubled insurer situations. Among other things, the FGIC experience teaches that coordination between the regulatory and receivership functions of government helps, and lack of coordination hinders or delays effective resolution. Other lessons include:

Adversary approaches distract from the tasks at hand.

Regulators and regulated must trust one another enough to work together in the best interests of policyholders. The landscape is littered with the consequences of fraud and mismanagement, and those responsible deserve punishment. However, the staff of every troubled or insolvent insurer need not be presumed corrupt. Indeed, staff often possesses necessary and irreplaceable knowledge and expertise. Regulated and regulator must earn one another's trust, preferably before trouble arrives.

Engage experts.

As the NAIC Financial Analysis Handbooks point out, unresolved concerns should lead to further regulatory action, including engaging experts. Regulators may need to obtain specialized skills not available among current employees. Similarly, a troubled insurer may need (or may need to be told) to obtain assistance.

The use of a chief restructuring officer ("CRO") in Chapter 11 cases under the federal Bankruptcy Code provides some useful guidance. Typically, the CRO will be an outside restructuring expert retained by a company in financial distress. The retention of a CRO by the debtor is not specifically provided for in the Bankruptcy Code; but is often viewed as a more constructive alternative to the formal appointment of a Chapter 11 trustee, who is a disinterested party that displaces the debtor's management, takes control of the debtor's assets and manages its business and Chapter 11 case.

Despite the lack of specific statutory basis for the retention of a CRO, the practice is quite common in situations where (i) there is a need for crisis management and/or (ii) where the creditors and other parties in interest have lost faith in the ability of the existing management to operate the business or prepare timely and accurate financial information. CROs have been successfully retained in many large Chapter 11 cases, including Enron, WorldCom, Adelphia and ResCap, where the use of the CRO was critical in expediting the Chapter 11 process. The CRO model was also successful in the FGIC case, and helped to create the mutual trust between regulator and regulated that was so critical to success.

Consider all stakeholders.

Policyholder protection is, of course, the primary concern. Furthermore, the traditional paradigm is that few if any creditors have standing in an insurance receivership, so that policyholder committees, for example, are not often recognized. However, stakeholders excluded entirely from the resolution process retain the power to hinder, delay or even overturn the outcome through objection and litigation. Moreover, tempered by the statutory priority scheme, the prohibition of sub-classes and other legal requirements, a creative rehabilitation plan can allocate necessary financial losses to those most able to bear them and who may in fact have explicitly considered credit risk when choosing to transact with the insurer.

Remember the holding company system.

Tax assets and intercompany receivables, along with value residing in subsidiaries and affiliates, may materially enhance the prospects for a successful resolution. Placing a parent company into bankruptcy, and the timing of both the petition and the emergence, may have significant positive and/or negative effects. Cooperation and coordination among insurer and non-insurer estates can maximize assets available for distribution. Merging members of an inter-company insurance pool, as was done in the Reliance situation, or otherwise restructuring intercompany reinsurance arrangements may achieve benefits by centralizing estate administration and giving all policyholders equivalent priority in the distribution of the pooled assets supporting the insurance writings.

Think of formal receivership as a means, not an end.

FGIC's regulators were in frequent contact with its CRO and other members of FGIC management. Periodic detailed meetings, supported by examination and analysis, kept the regulators informed of progress and plans. Consequently, formal receivership would have added little or nothing to administration of the company or the prevention of preferential payments. However, formal receivership was essential to the success of the plan that was devised. A central feature of the plan was the restructuring of FGIC's policy obligations, and the judicial process was needed to achieve that. Once the plan had been approved by the court after due process, the need for the receivership had ended.

In summary, the state-based system of insurance regulation possesses the tools and the means to treat insurer insolvency not as regulatory failure but as simply the next phase of policyholder protection in the cycle of an insurer's life.

1 The authors are partners in the New York office of the law firm Stroock & Stroock & Lavan LLP, which acted as counsel to Financial Guaranty Insurance Company prior to commencement of its formal rehabilitation proceeding, in particular in connection with developing the rehabilitation plan proposed by the insurer to the New York Liquidation Bureau. The views expressed are solely the authors' and do not reflect the views of Stroock & Stroock & Lavan LLP or of any past, present or future client. The authors gratefully acknowledge the assistance of their Stroock colleagues Daniel P. Ginsberg, special counsel, Matthew G. Garofalo, associate, and Vincent L. Laurenzano, non-lawyer insurance finance consultant, in the preparation of this article.

2 *E.g.*, Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 101st Cong., 2d Sess., Failed Promises: Insurance Company Insolvencies (Comm. Print 1990).

3 The NAIC Policy Statement on Financial Regulation Standards was adopted in June 1989. Nat'l Association of Ins. Commissioners, The NAIC Financial Regulation Standards and Accreditation Program 1 (2013).

4 *See generally,* Nat'l Association of Ins. Commissioners, Financial Condition Examiners Handbook (2013).

5 See generally, Nat'l Association of Ins. Commissioners, Financial Analysis Handbooks (Health, Life and P/C & Title) (2013).

6 *Id.*

7 *See generally,* Nat'l Association of Ins. Commissioners, Risk Based Capital (RBC) for Insurers Model Act (Model Regulation Service, Model 312).

8 *See generally,* Nat'l Association of Ins. Commissioners, Administrative Supervision Model Act (Model Regulation Service, Model 558)

9 *See generally,* Nat'l Association of Ins. Commissioners, Model Regulation To Define Standards And Commissioner's Authority For Companies Deemed To Be In Hazardous Financial Condition (Model Regulation Service, Model 385)

10 In the Matter of the Rehabilitation of Financial Guaranty Insurance Company, Index No. 401265/2012 (Sup. Ct., N.Y. Co.) (Order of Rehabilitation, June 28, 2012).

11 *Id.* (Plan Approval Order, June 13, 2013 and Notice of Effective Date and Initial CPP, August 19, 2013)

12 *See* N.Y. Ins. Law §§ 6901(e)(2), 6904(b)(1)(F), 6905(a).

13 Although New York has not adopted the Model Regulation To Define Standards And Commissioner's Authority For Companies Deemed To Be In Hazardous Financial Condition or the Administrative Supervision Model Act, Section 1104(c) in part provides,

"The superintendent may suspend the license, restrict the license authority, or limit the amount of premiums written in this state of any accident and health insurance company, property/casualty insurance company, co-operative property/casualty insurance company, title insurance company, mortgage guaranty insurance company, reciprocal insurer, Lloyds underwriters or nonprofit property/casualty insurance company…, if after a hearing on a record…, the superintendent determines that such insurer's surplus to policyholders is not adequate in relation to the insurer's outstanding liabilities or to its financial needs."

14 *Compare* Corrective Order 01-2009 (amended by letter dated June 2, 2009) (Triad Guaranty Insurance Corporation) issued by the Illinois Insurance Department under authority of 215 ILCS 5/186.1 and 50 Ill. Adm. Code 1250.10.

15 On October 3, 2011, New York State's Insurance and Banking Departments merged to become the New York State Department of Financial Services. *See* Chapter 62 of the Laws of New York, 2011.

16 Section 1310(a) in pertinent part provides,

"Whenever the superintendent finds from a financial statement, or a report on examination, of any domestic stock insurer that (i) the admitted assets are less than the aggregate amount of its liabilities and outstanding capital stock…, he shall determine the amount of the impairment and order the insurer to eliminate the impairment within such period as he designates, not more than ninety days from the service of the order. He may also order the insurer not to issue any new policies while the impairment exists."

The order was also issued under authority of then Section 201 of the New York Insurance Law, which in pertinent part provided,

"The superintendent shall possess the rights, powers and duties, in connection with the business of insurance in this state, expressed *or reasonably implied* by this chapter or any other applicable law of this state." (Emphasis added.)

17 Although its establishment and function are not mentioned in the statute, the NYLB is a standing office and staff that acts for the NY Superintendent in his capacity as the court-appointed receiver of impaired or insolvent insurance companies. It has been held by New York's highest court to be separate and distinct from the regulator and, indeed, not even a state agency. Dinallo v. DiNapoli, 877 N.E.2d 643 (N.Y. 2007).

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