The Insurance Receiver

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A Message from the President

Francine L. Semaya, Esq.

Dear IAIR Colleague,

As the warm summer nights turn into cool fall evenings, I look back and wonder where the summer went.

It seems like only yesterday that we were welcoming the summer months and looking forward to warm, balmy days and much needed vacations. Unfortunately, Mother Nature did not agree and many of our days were filled with torrential rain and heavy humidity. What happened to those lazy, hazy crazy days of summer we were looking forward to enjoying? It seems our work loads never seemed to ease up despite the fact of a distressed economy.

The year 2009 has proven to be a time of uncertainty, and IAIR has had to navigate through unchartered waters while it stayed afloat of the changing complexion of our industry and the challenges each of us faced on a daily basis. Yet, IAIR's resolve has remained strong and its mission focused.

IAIR continues to be a positive force in the insolvency and receivership community and we have provided our membership with educational and stimulating topics and discussions at our Issue Forums and Think Tanks.

Heartfelt thanks go out to our educational Co-Chairs, Doug Hartz and James Kennedy and our Issue Forums Chair, Michael Cass. Thank you for your dedication and commitment to our Association.

Our Think Tanks continue to stimulate and challenge. In the upcoming session, we have invited Pennsylvania Commissioner Joel Ario and Ms. Holly Bakke, Trustee/CEO Senior Healthcare Oversight Trust and Insurance Company, to continue to explore alternative solutions to the problems facing the Long Term Care industry. Jim Mumford, First Deputy Commissioner, Iowa Insurance Division and David Vacca, Assistant Director, Insurance Analysis and Information Service Dept., NAIC Regulatory Services Division will also be there to reap the benefits of our members' experiences and recommendations on issues dealing with reinsurance recoverables. All members are invited to participate on Monday, September 21, 2009 from 10-12 noon.This is an opportunity to work with insurance regulators and provide timely input and insight to aid regulators with these difficult and challenging issues.

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IAIR's President's Message (Continued)

It is my pleasure to extend a warm welcome to our newest IAIR members: Rommel Adao, CA Department of Insurance; Steven Bazil, Esq., Bazil McNulty; Dennis Cahill, COO of Arrowpoint; John Tighe, President & CEO of Arrowpoint; Colin L. Grey, Grey Wolf Group, Inc.; Stephen A. Hester, Jr., Esq., Hester & Paschkes, Inc.; Arati Shattacharya, Cantilo & Bennett, LLP; Jeanette Smith, of Counsel, Kutak Rock; and Ryan Wolfe, Veris Consulting. We look forward to their participation at our meetings and their involvement in the Association.

As you know our 2010 Insolvency Workshop is just around the corner. As co-chairs of the program, Dennis LaGory and I have already begun mapping out issues and topics that will be of benefit and interest to our members and attendees. If you have a "hot" topic and/or would like to sponsor this Insolvency Workshop, please contact me. Patrick Cantillo is already working on our closing game challenge – more hints next issue. After what is predicted to be a long, cold and snowy winter, we will welcome Spring 2010 with the 2010 Insolvency Workshop to be held on April 21-23, 2010 at the Eden Roc Hotel in Miami Beach, Florida, just steps away from South Beach.

With this in mind, IAIR invites all of you to join us for what will be one of our best Insolvency Workshops ever. We offer our members forums to network with other industry professionals and to establish new business contacts, while sharing experiences from the latest industry trends. The benefits generated from a membership in IAIR and attendance at our meetings flow not only to you, but to each of your constituencies and clients.

Additionally, through our meetings, members are afforded the opportunity to discuss recent technological advances, industry issues and useful determinations for use in receiverships and other areas of our practices. The increased attendance at all of IAIR's events is proof positive of the value of your IAIR membership. Get involved: attend our meetings and seminars; become involved in a committee; write articles for The Receiver; and get to know your fellow receivership community.

On behalf of the Board of Directors, I am pleased to report that IAIR is committed to doing everything it can to ensure that this Association continues to provide programs and opportunities that reflect the membership's interests and needs and to explore emerging issues of benefit to the industry as a whole.

I look forward to greeting you at our upcoming event and meetings.

Very truly yours,
Francine L. Semaya, Esq.
President

IAIR Welcomes New Members

The following members were approved at the Summer 2009 IAIR Board of Directors Meeting:

Steven Bazil is a partner at Bazil McNulty, a Reinsurance Law Firm located in Exton, Pennsylvania.

Ryan Wolfe is a forensic accountant at Veris Consulting in Reston, Virginia.

Arati Bhattacharya is an attorney at Cantilo & Bennett, LLP in Austin, Texas

Stephen A. Hester, Jr. is an attorney at Hester & Paschkes, Inc. in Deer Park, Texas

Rommel Adao is with the California Department of Insurance in San Francisco, California

Colin Gray is involved with insurance and reinsurance recoveries at Gray Wolf Group in Elmhurst, Illinois.

Board Talk – Lowell Miller

By Michelle Avery & Jamie Saylor

Although IAIR Board Member Lowell Miller is a CPA who works for the North Carolina Life Guaranty Association, his path to his current position is likely not what you'd expect.

Lowell Miller

Lowell has spent time all over the US – he grew up in Ohio, went to school in Indiana, started his career in DC and now lives in North Carolina. If you don't know much about Lowell, here's your opportunity to learn more about this soft spoken, English major turned accountant.

After graduating from Goshen College with a degree in English, Lowell set out to Washington, DC with friends to, "see if he could survive as a farm boy living on Capitol Hill." Unfortunately, the job search didn't go as planned and his dream of becoming a journalist was slipping away. As a last resort, Lowell interviewed for a correspondence position at United Services Life Insurance Company. By the time Lowell arrived, the job was filled, but on a whim he took the accounting proficiency test and secured an entry-level position in the accounting department.

That was the beginning of a long career in Insurance - from Baltimore's American Health and Life Insurance and Sun Life America, to Illinois working at Kemper, and then off to Raleigh where he now calls home. Along the road, Lowell passed the CPA exam (completing the transformation to accountant), got married, and had three children – two sons and one daughter – now all in their thirties.

For over ten years Lowell has been working on his own as a contractor for the North Carolina Life Guaranty Association.

Lowell was first introduced to IAIR at an Insolvency Workshop back in the late '90s. He was impressed with the educational content of the program and the knowledge of IAIR's membership. Lowell became a board member three years ago and, as Treasurer, is also a member of the Executive Committee and the Chair of the Finance Committee. Lowell believes that one of the challenges facing IAIR is to increase membership by providing value and believes that the best way to do so is to focus on our organization's educational programs.

And now for the questions you've come to love.

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Board Talk (Continued)

Q: If you could have dinner with any three people in the world, dead or alive, fictional or non-fictional, who would they be and why?

A: James Michener, Ulrich Zwingli and Larry Doby. A diverse group, no doubt, Lowell finds each would have interesting stories and perspectives to share. Lowell attributes much of his love of reading to American author and Pulitzer Prize winner James Michener. Beginning with *Centennial* and its fascinating description of dinosaurs, Lowell has read almost everything he ever wrote. Focusing on religious influence, Lowell would like to meet Ulrich Zwingli, the 16th century minister who led the Reformation movement against the Catholic Church in Switzerland, to hear more about the scope and issues facing the Church during that period. Lastly, to satisfy his love of sports, Lowell would like to meet former Cleveland Indians center fielder and hall of famer, Larry Doby. As the second African American to play in the major leagues, Doby received far less media attention than Jackie Robinson but played a major role in early integration during the 1940s and 1950s.

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

A: Similar to past interviewees, Phil Curley and James Kennedy, Lowell enjoys spending time in California citing San Diego as his favorite meeting location and San Francisco as a close second.

Q: What is your favorite leisure activity?

A: Lowell is an avid reader. He enjoys fiction and tends to read to pass the time when he travels. When not traveling, Lowell enjoys going to sporting events with his family.

Q: What is the last book you read that you would recommend?

A: Lowell recently read, *The Life You Save May Be Your Own*, a short story by American author Flannery O'Connor which deals with the themes of morality and religion. Lowell also has a passion for historical biographies such as *John Adams* by David McCullough and, for a lighter read every now and then, picks up the most recent John Grisham novel.

Q: What is your favorite sports team?

A: Growing up in Ohio, Lowell rooted for the Cleveland Indians. After settling down in North Carolina though, Lowell changed his focus and allegiance to the home teams. Ever since, he's been fulfilling his love of hockey by cheering for the Carolina Hurricanes. On the weekends, you'll find Lowell and his wife in their season seats at NC State football and basketball games.

Q: Where is the last place you vacationed?

A: After recently attending a NOLHGA meeting in Coeur d'Alene, Idaho, Lowell and his wife decided to return to Northern Idaho for vacation. They spent a week in the beautiful lake-town of Sandpoint, Idaho, which is located at the base of the Selkirk Mountains - approximately 60 miles from the Canadian border and 70 miles northeast of Spokane, Washington. This year Lowell is anticipating a vacation a little closer to home - perhaps a trip to the Outer Banks to enjoy the sands of Atlantic Beach and Emerald Isle.

Q: Give us one piece of personal information that your business acquaintances might not know about you?

A: We've already mentioned the thing most people probably didn't already know about Lowell – he graduated as an English major and became an accountant by sheer fate (or as he likes to say, by complete accident).

Thank you to Lowell for his time and cooperation on this article.

Michelle Avery, CPA is an Executive Vice President and Managing Director at Veris Consulting, LLC within the firms forensic accounting practice. Michelle has extensive experience assisting counsel in causation and damage assessments related to failed property/casualty and life and health insurance companies. Michelle participates in the NAIC/AICPA Working Group Task Force.

Jamie Saylor, CPA is an Executive Vice President and Managing Director at Veris Consulting, LLC. Jamie directs the outsourced accounting practice at Veris from its Reston, VA office.

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Life Insurance Consumers and the Economic Crisis of 2008–2009

By Peter G. Gallanis

As I write in mid-August, the economic "green shoots" of which Fed Chairman Ben Bernanke spoke in the spring seem to be blossoming into the start of an economic recovery.

Commercial credit appears to be recovering; the U.S. equity markets have just finished their strongest month since 2002; home sales are picking up in many markets; and various other economic indicators and indices have either begun to reverse long declines or have dramatically reduced their rate of fall. In short, a consensus is developing, based on not a little evidence, that the long recession is ending and that we are now beginning some sort of recovery.

To be sure, not all economic experts share the view that a recovery has begun, and of those who do believe, many doubt that the recovery will be long or strong. Unemployment remains a serious problem, concerns persist about both residential and commercial real estate, and there may be (as suggested recently in the Financial Times) "unexploded ordnance …litter[ing] the financial landscape." Still, the view is growing that we may be past the most dangerous part of the crisis that began in earnest at the end of last summer and continued through the early spring of 2009.

I sometimes wonder whether the economic crisis of 2008–2009 will be looked back upon by historians and psychologists as a study in the development of societal anxiety. When (If?) that happens, I hope someone brings to bear the tools of "public choice" analysis to examine how—and more important, why—certain actors in society contributed to that anxiety.

"Public choice" theory is widely associated with the "Virginia School" of economics and with 1986 Nobel laureate James M. Buchanan of George Mason University. The theory attempts to explain, among other things, how public decision-making that is contrary to the general interest often follows from rational economic decisions made by actors within the political system and those who interact with the political system.

For example, an elected zoning official may know that the approval of a large development is opposed by a majority of his constituents, but he may be moved to approve the project out of a desire for campaign contributions or other forms of support from interested developers, contractors, labor unions, and the like. In economic terms, the diffuse unhappiness among the general electorate about a "yes" vote on the development may have less negative value to the official than the positive value of concentrated contributions, endorsements, and active campaign support.

Never Waste a Crisis

In the context of the current economic crisis, the public choice explanation of how policy develops can also be seen in the comment by President Obama's Chief of Staff, Rahm Emanuel, that one should "never allow a crisis to go to waste," meaning, in no small measure, that generalized public fear and anxiety have a value that can be harnessed to make possible policy initiatives that (because of costs or other negative long-term implications) could never be implemented in times of calm reflection.

To be fair to Emanuel, few political actors of any stripe, and few who deal with the political process from the outside, view crises much differently. As a

senior official at a conservative think tank told me during what many will always call "AIG Week" (the week beginning Sunday, September 14, 2008, when AIG teetered on the brink of bankruptcy before a federal rescue), "Any time there is a major crisis, you can hear the sound of file drawers opening all over Washington." Moments of crisis inevitably inspire opportunists (many of them well-meaning) to trot out old proposals that normally would gain no traction. Similarly, when the formerly unthinkable (e.g., the failure of AIG) is at hand, many previously unmarketable notions may plausibly be advanced.

Those inspired by rational self interest not to "waste a crisis" include, besides politicians, those who lobby politicians for governmental assistance or relief. They also include others whose standing or livelihood depends on marketing the belief that they are sources of truth, wisdom, and good advice in threatening times. This category includes some journalists, who might hope for front page stories, advancement, and recognition in stories about a crisis, as well as "think tank" scholars and "consumer advocates" who might hope for contributions, grants, and increased influence from speaking loudly and often about elements of a crisis.

So we have seen from political officials a long string of policy responses to the current economic crisis, many of which are well-intended and some of which make sense. Likewise, we have seen a number of stories from journalists and opinion pieces from bloggers and consumer advocates focusing on various elements of the economic crisis.

Notice, however, that the one narrative that is of no use in advancing a new policy proposal, furthering a journalistic career, or increasing contributions to "think tanks" or consumer advocacy organizations is this: **"There's nothing to panic about here."** Stories predicting the impending demise of Western civilization appear above the fold on page one. As they say in the television news business, "If it bleeds, it leads." Stories noting the absence of fires today, if they appear at all, are found between the obituary and religion pages. A public choice theorist might say that it is economically rational—especially in a crisis—for many whose business is influencing societal attitudes to go long on worry and short on calm.

The Supposed Insurance "Crisis"

This phenomenon is easy to see when one looks back at public discussions of the insurance industry—especially the life industry—during the recent crisis. For example, there is the basic tack taken in almost every news story about AIG. Reference is made, almost universally, to "failed insurance giant AIG," and columnists proceed to lump the insurance industry in with other business sectors full of companies that either have failed or have survived only due to federal financial assistance. All this, even though the predominant cause of AIG's challenges was entirely unrelated to insurance activities, and even though a grand total of two insurance companies out of the thousands doing business in the United States ultimately accepted TARP assistance from the Treasury.

Similarly, the blogosphere has been full of accounts of the impending demise of the insurance industry and even assertions that the economy has been causing failures of insurers left and right. A reporter at one national paper—possibly trying to get out in front of the journalistic competition with what he anticipated might turn into a big story—wrote a series of articles earlier this year questioning the strength of the life industry and the ability of regulators and the insurance safety net to protect consumers.

The ultimate questions aimed at by such comments are these: Should consumers have deep concerns about their life insurers, and, could the life and health guaranty system protect consumers if the current economic crisis were to worsen again, resulting in the failures of several major, national companies?

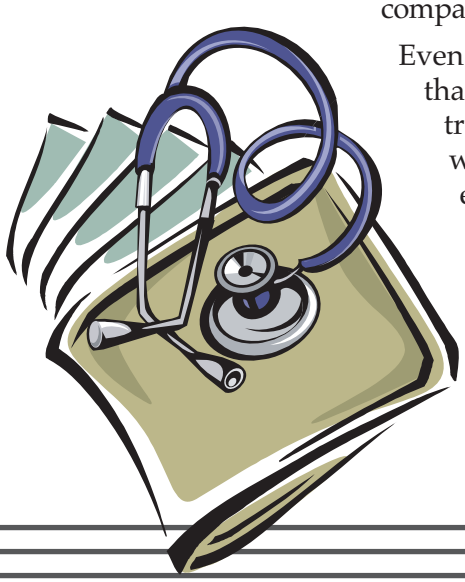
Most commentators who have raised such questions appear unacquainted with the relevant facts and history. As a great Democrat once said, "Let's look at the record."

Life Insurance Consumers and the Economic Crisis of 2008–2009 (Continued)

Since the start of 2008, we have seen, among other events, the virtual disappearance of the investment banking industry as previously known; the government seizure of over 100 banks and thrifts (including quite recently the fifth-largest bank failure in U.S. history); the conservatorship of Fannie Mae and Freddie Mac; the collapse of Bear Stearns and the bankruptcy of Lehman Brothers; the closing of many hedge funds; and the bankruptcies of Chrysler and GM. Against that backdrop and in the same period, it is noteworthy that precisely *zero* life insurance companies have entered liquidation as a consequence of the economic crisis.[1] To be sure, even in good economic times, some companies do fail as the inevitable result of competition and management issues, and some life insurers ultimately may be liquidated before a recovery truly takes hold. But the record shows clearly that the life insurance industry has so far weathered this economic storm better than almost any other sector of the economy.

The Guaranty System & the Four Pillars

On the question of whether the guaranty system is able to protect consumers in the event of a major increase in insolvency activity, the answer from history is clear: the system has already proven its ability to do precisely that, responding successfully to the insolvencies of three major national companies (Mutual Benefit, Executive Life, and Confederation Life) in the early 1990s while also handling the contemporaneous failures of several dozen small to mid-sized companies.



Even aside from that significant track record, were the economy to worsen again, life industry consumers should take comfort from four critically important and related facts.

First, as a consequence of strong regulation, rating agency requirements, and a conservative business culture, life companies reserve against economic downturns more carefully than virtually any other financial entities. Their reported assets tend to be discounted, their liability estimates tend to be redundant, and they do not engage in the sort of financial leverage that proved so risky for the investment banking industry. As a consequence, when a life company fails, the shortfall of assets to liabilities typically ranges roughly from 5% to 15%—a much smaller shortfall than in conventional business bankruptcies. The substantial assets usually remaining in a life company upon liquidation are available to satisfy the company's obligations to policyholders. That means that the failure of a life company with, say, $1 billion of policyholder liabilities (assuming for illustration purposes that all liabilities are covered by guaranty associations) does not produce a need for $1 billion of new funding to protect policyholders; rather, the amount needed typically would range from $50 million to $150 million.

Second, life insurers are not banks and their obligations are completely different from bank deposit accounts. When a company writing life and annuity business fails, its obligations to policyholders, unlike bank "demand" deposits, are not all due on the date of liquidation. To the contrary, most essential liabilities to policyholders (e.g., death benefit payments and scheduled annuity installment payouts) will not come due for years, decades, or even generations after a life company's liquidation date. Using the same example as before, the requirement to fund that $50 million to $150 million can (if necessary) be spread out over the period during which obligations to policyholders come due. It is primarily for that reason that a large, pre-funded insolvency "war chest" (like that normally maintained by the FDIC) is not needed to respond to insurer insolvencies.

Third, insurance liquidation statutes in all states afford claims in respect of insurance policies an *absolute priority* over claims of general and subordinated creditors. Policyholders must be paid first and in full from assets remaining in the failed insurer (which, as noted, are usually substantial) before lower-ranking creditors may be paid anything. There have been cases, some recent, where a life insurer has been insolvent on a balance sheet basis but nonetheless able to make full and timely payments of all policyholder claims from the insurer's assets—all because of that absolute priority rule.

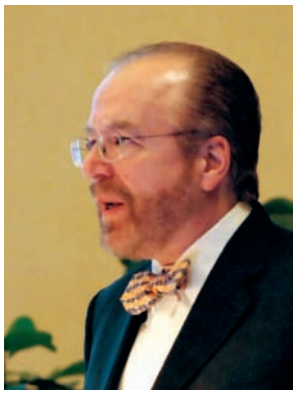
Finally, the financial capacity of the life and health insurance guaranty system is quite substantial, particularly considered in light of the preceding three points. An individual state guaranty association typically is authorized to assess, in any given year, up to 2% of the annualized industry premiums within the state for covered business. In theory, the 52 guaranty associations that serve the United States (one for each state, plus Puerto Rico and the District of Columbia) could assess an aggregate of $8.8 billion in the current year, or almost $90 billion over the next 10 years (conservatively assuming the assessment caps, which have steadily risen over the years, were to remain level). To put that in perspective, the entire net assessments collected by the guaranty system over the past 20 years (the costs to the system for protecting policyholders) total roughly $5 billion—an amount significantly less than the system's assessment capacity for just the *current* year, and much less than what could be assessed (if necessary) over the next 5 or 10 years.

Nothing to Panic About

None of the foregoing is intended to minimize the effects of a very significant recession, both for consumers and for the life industry. Life insurers, like all individuals and businesses with investment portfolios, have seen meaningful declines in the values of their invested assets. By all means, and now more than ever, consumers should pay careful attention to the financial strength of their insurers. The fact remains, however, that life insurance and annuity products are still secure and valuable choices for inclusion in any sound personal financial plan.

Stated another way, and regardless of what some may feel motivated to say elsewhere, in truth there is nothing to panic about here.

1 Two life companies have entered rehabilitation during that period, but the receivers to date have not concluded that liquidation is appropriate. Two other companies entered liquidation because of irregular transactions by company management entirely unrelated to the economic crisis.



Peter Gallanis

Peter Gallanis became President of the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) in 1999. Before that, he served as the special deputy insurance receiver for the State of Illinois and adjunct professor of Insurance Law at the DePaul University College of Law, following thirteen years of private legal practice on LaSalle Street in Chicago.

To submit an article, please contact Maria Sclafani at mcs@iair.org. The deadline for the Winter 2009 issue is October 31, 2009.

Clarifying the Insolvency Clause Trade-Off

By Robert M. Hall

I. Introduction

For many years, a form of "insolvency clause" has been required in reinsurance contracts for the cedent to take credit for the reinsurance in its financial statements.[1]

In such clauses, the reinsurer agrees to pay claims "without diminution" due to the insolvency of the cedent. Stated more clearly, this means that the reinsurer cannot require that the cedent pay the claim first before collecting reinsurance which is typical with indemnity reinsurance. The trade-off, however, is that the clause typically requires the receiver of the cedent to give the reinsurer notice of the claim filed with the estate within a reasonable time and provide an opportunity to investigate the claim and interpose defenses.

The "without diminution" portion of the insolvency clause has been thoroughly explored in case law often involving set off of debts and credits between the insolvent cedent and its reinsurer.[2] The remainder of the insolvency clause, dealing with the reinsurer's rights, has been the subject of little case law. However, considerable clarification is provided by the recent case *In the Matter of the Liquidation of Midland Ins. Co.*, 856 N.Y.S.2d 498 (Sup.Ct. 2008).[3] The purpose of this article is to review the reasoning and conclusions of the court with respect to the reinsurer's rights under the insolvency clause.[4]

II. The Insolvency Clause Language

Midland Insurance Company is being liquidated under the law of the state of New York. Insurance Law § 1308 (a)(3) provides that the insolvency clause:

> [M]ay provide that the liquidator . . . of an insolvent ceding insurer shall give written notice of the pendency of the claim . . . and that during the pendency of such claim any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claims is to be adjudicated any defenses which it deems available to the ceding company, its liquidator, receiver or statutory successor.

Everest Reinsurance Company (hereinafter "Everest") provided treaty and facultative reinsurance containing compatible language in the insolvency clauses. For instance, the treaty provisions stated:

> In the event of the insolvency of the reinsured Company [Midland], this reinsurance will be payable directly to the Company, or to its liquidator, receiver, conservator or statutory successor on the basis of the liability of the Company without diminution because of the insolvency of the Company or because the liquidator . . . has failed to pay all or a portion of any claim. It is agreed however, that the liquidator . . . shall give written notice to the Reinsurer of the pendency of a claim against the Company indicated [sic] the policy or bond reinsured which claim would involve a possible liability on the part of the Reinsurer within a reasonable time after such claim is filed in the liquidation proceeding . . . , and that during the pendency of a [sic] such claim, the Reinsurer may investigate such claims and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defense or defenses that it may deem available to the Company or their [sic] liquidator . . . . The expense thus incurred by the Reinsurer shall be chargeable, subject to the approval of the court against the Company as part of the expense o[f] conservation or liquidation to the extent of a prorata share of the benefit which may accrue to the Company solely as a result of the defense undertaken by the Reinsurer.[5]

III. Nature of the Action

As is typical with insurance company liquidations, the receivership court issued an anti-suit injunction prohibiting any suit or other proceeding against the estate:

> [C]laimants, plaintiffs, and petitioners who have claims against Midland are permanently enjoined and restrained from bringing or further prosecuting any action at law, suit in equity, special proceeding against the said corporation or its estate, or the Superintendent . . . , as Liquidator

> thereof, . . . from in any way interfering with the Superintendent, . . . in the discharge of his duties as Liquidator thereof, ...[6]

Everest Re sought to lift this injunction so that it could sue for breach of the reinsurance contracts and for injunctive relief on the bases that:

> [T]he Liquidator (standing in the shoes of Midland) did not provide Everest with timely notice of claims that would trigger Everest's reinsurance obligations; denied Everest the opportunity to participate in the defense and settlement of claims; did not provide information about claims as it requested; and did not provide access to Midland's records. Everest seeks a judgment declaring that it is not required to indemnify Midland as [a] result of those alleged breaches, and Everest seeks a permanent injunction restraining the Liquidator from engaging in any settlement negotiations for claims, unless Everest is given an opportunity to have meaningful access to Midland's records and to participate in those settlement negotiations.[7]

This was a very ambitious effort given that it would stop the liquidator's claim allowance and payment efforts in its tracks, at least with respect to those claims reinsured by Everest.

IV. Impact on Reinsurers of Claim Allowance Procedure

Midland was placed in liquidation in 1986. In 1997, the receivership court adopted a procedure for allowance of claims. The procedure called for the liquidator to notify the claimant of the recommended disposition of the claim. The claimant could object to this disposition and the objection was heard by a referee. Once that procedure was finished, the liquidator would make an *ex parte* (i.e. without notice to reinsurers) recommendation to the court which would rule on the recommendation. Under these procedures, reinsurers had no notice of or involvement in the allowance or approval of claims they would have to pay.[8]

In October of 2005, the liquidator determined that the estate was in a condition to make distributions to class 2 creditors i.e. policyholder-related claims and those of guaranty associations. Also in that year, the liquidation bureau began notifying reinsurers of claims that might impact their coverage and after allowing a claim, sent notice to reinsurers giving them 30 days to intervene and assert defenses.[9] As a result, these informal notification procedures went beyond the formal procedures ordered by the court in terms of fulfillment of the liquidator's obligations under the insolvency clause.

V. Court Ruling on Everest's Motion

The idea of lifting an anti-suit injunction with respect to an insurer in liquidation is a very serious matter indeed. The liquidator would be buried by suits, and thereafter default judgments, before the estate could be put in order, assets marshaled and claims reviewed. Absent the most extreme circumstances, a receivership court would be very unlikely to do so. Stated differently, Everest faced long odds on its motion.

Nonetheless, the court articulated the standard tests to lift an injunction, namely "a likelihood of success on the merits, irreparable harm absent the relief or absent an adequate remedy at law and the balancing of the equities in the movant's favor."[10] More specifically, "Everest must demonstrate by a preponderance of the evidence that the facts show a likelihood that its reinsurance contracts were breached and that it suffered actual injury."[11]

A. Inadequate Notice

Everest claimed that the liquidator violated the contractual obligation to provide notice of claims "within a reasonable time by failing to give notice of filed claims for 15 years. This lack of timely notice, Everest claimed, deprived it of the ability to post proper reserves and participate in the investigation and defense of claims.[12]

The liquidator countered that "timeliness" is measured from an indication that the claim would involve reinsurers. The liquidator started assessing reinsurer impact in 2004 and reported to reinsurers in 2005 thus giving them several years to investigate. In any case, the liquidator argued, the reinsurers were notified of allowed claims 30 days before they were submitted to the court for approval.[13]

The court acknowledged that Everest's contractual rights might be impaired by late notice but found that a single lawsuit was not a proper vehicle to make fact-specific determinations on multiple claims. The court found that Everest had not yet demonstrated sufficient prejudice resulting from any late notice to justify adjudicating the issue in a single proceeding. Signaling its ultimate direction, the court observed that the answer to the problem

of late notice and inability to investigate is to provide reinsurers with additional time to review and investigate prior to submitting claims to the court for approval.[14]

B. Inadequate Access to Records

Everest's contracts contained clauses requiring Midland to provide free access to books and records at all reasonable times. The liquidator acknowledged Everest's right to access records but the parties disputed the reasonableness of the scope and duration of the request for access (which seemed unusual if accurately characterized in the opinion). The court found that Everest had demonstrated neither prejudice from any lack of access to records nor a likelihood of success in proving that Everest denied access to records at reasonable times.[15]

C. Inadequate Association in Defense and Control of Claims

A limited number of facultative certificates contained language allowing Everest to "associate" with Midland in the "defense and control" of claims which might impact Everest's reinsurance. The liquidator contended that this amounted, merely, to a right to consult with and advise Midland and that, in any case, the "defense and control" language was superseded by the insolvency clause.

The court found that the insolvency clause did not supersede Everest's right to associate in the defense and control of claims. However, it also found that Everest had not yet demonstrated prejudice and for this reason, had not demonstrated likelihood that the liquidator had breached Everest's contractual right to associate.[16]

D. Inadequate Opportunity to Investigate and Interpose Defenses

At the outset of the examination of this topic, the court acknowledged that the insolvency clause in the relevant reinsurance contracts granted Everest the right to investigate claims and interpose defenses.[17] The liquidator contended that it could meet its obligations in this regard by providing Everest 60 days notice after deciding to allow the claim and before submitting to the court for approval. However, such a procedure was insufficient for Everest:

> Everest wants the Liquidator to place it in a position where it can make a reasoned determination whether to investigate a claim or interpose a defense. Everest wants to participate in the handling and settlement of claims submitted to Midland and to raise and resolve coverage defenses that may exist. Everest believes that it is entitled to be involved in the Liquidator's decision-making process of whether to allow or disallow a claim, and to participate in the Liquidator's settlement negotiations with policyholders.[18]

The liquidator made the somewhat contrary arguments that: (1) the follow the settlements clause in the reinsurance contracts require Everest to accept the liquidator's claim allowances; and (2) Everest can raise defenses that the liquidator should have asserted in a collection action by the liquidator against Everest. The purpose of the first argument is to counteract the second.

The court steered a middle ground affirming Everest's contractual rights but cautioning that such rights did not give Everest "an all-encompassing" right to be involved in the liquidator's internal process of adjusting claims. Everest's right to interpose defenses does not "imply a right to negotiate or settle claims with policyholders."[19]

The court went further and identified the point in time at which Everest's interposition rights should be exercised:

> Thus, the only logical approach is to permit Everest and other reinsurers to exercise their contractual interposition rights after the Liquidator has allowed the claim, but prior to the Court's approval. This approach strikes a balance between the contractual, permissive right of a reinsurer granted under Insurance Law § 1308 (a)(3) with the intent of Article 74 of the Insurance Law to provide a uniform, efficient approach to liquidation proceedings, with finality to policyholders and creditors. This approach also ensures that the expense of interposing a defense is initially borne only by the reinsurer asserting it, as set forth in the insolvency clause. The Liquidator would not be placed into a position of having to decide which defenses to interpose if several reinsurers interpose different defenses. In adjudicating an interposed defense, the Court would have occasion to approve any application from a reinsurer to charge the expenses of interposing a defense to the insolvent estate, which is also permitted under the insolvency clause. Interposition rights to a claim are extinguished once the court has approved (and consequently

adjudicated) a claim notwithstanding the fact that the liquidation proceeding is ongoing.[20]

E. Failure to Meet Standards for Lifting Injunction

The court emphasized that the estate was at the front end of approving claims that would impact Everest and that as a result, the adoption of an appropriate claim allowance procedure could avoid damages to Everest. On this basis, the court found that Everest had not demonstrated a likelihood of success on the merits or the lack of an appropriate remedy if the anti-suit injunction was not lifted.

F. Revisions to Prior Order

The court found that the prior order concerning claim allowance by the liquidator and approval by the court (*see* § IV, *supra*) had to be altered to protect Everest's contractual rights:

To give effect to the contractual interposition rights of Everest (and other similarly situated reinsurers), this Court is constrained to modify the procedures for judicial approval of allowed claims, to permit reinsurers to assert defenses available to Midland or to the Liquidator to any claim allowed by the Liquidator which is either partially or wholly reinsured, and to establish a process in which those defenses can be adjudicated as part of the judicial approval process, involving a hearing before a referee equivalent to that provided where an objection is filed to the Liquidator's disallowance of a claim. Otherwise, the Liquidator is placed in a position where compliance with Justice Cohen's order could result in a violation of Midland's reinsurance contracts, jeopardizing recovery.[21]

The court ordered the liquidator to formulate new rules and procedures and to recommend them to the court for review and approval.

VI. What did Everest Accomplish?

Everest failed in its initial goad to lift the anti-suit injunction and sue Midland's liquidator directly for breach of contract and for injunctive relief. However, this was an unlikely goal to achieve and, in any case, it was merely a means to a more important goal. This goal was the enforcement of rights given to reinsurers in the insolvency clause as a trade-off for not requiring the liquidator to pay claims before reinsurance is collected which is the proper procedure for indemnity reinsurance. Everest was successful in achieving this goal.

In general, the court affirmed the rights of reinsurers contained in the insolvency clause and that such rights are not subordinated to but must be read in conjunction with such matters as the right of the liquidator to control the claim approval process and follow the settlement rights and obligations. More specifically, the court affirmed the following rights:

- The reinsurer has the right to receive notice of claims pending in the receivership which impact the reinsurer in a sufficiently timely fashion for the reinsurer to protect its interests;
- For those contracts with a "defense and control" clause, the ability to exercise those rights at a time necessary for the reinsurer to protect its interests;
- Access to the liquidator's records at reasonably times;
- A reasonable time period for the reinsurer to review claims and interpose defenses before claims are submitted to the receivership court for approval.

For all of these reasons, this case brings significant clarity to the insolvency clause which is the primary contractual and statutory determinant of liquidator – reinsurer interaction.

Robert M. Hall

Robert Hall is a former law firm partner, a former insurance and reinsurance executive and acts as an expert witness and insurance consultant as well as an arbitrator and mediator of insurance and reinsurance disputes. The views expressed in this article are those of the author and do not reflect the views of his clients.

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1 T. Darrington Semple, Jr. and Robert M. Hall, The Reinsurer's Liability in the Event of the Insolvency of a Ceding Insurer, 21 Tort & Ins. L.J. 407 (1986) also available at the website: robertmhall.com.
2 Id.
3 This version of the opinion bears the legend: "This opinion is uncorrected and will not be published in the printed official reports."
4 The author thanks counsel for Everest Re, Vincent Proto of Budd Larner, P.C, for providing background and context for the decision.
5 856 N.Y.S.2d 498*12.
6 Id.*2-3.
7 Id.*4.
8 Id.*3-4.
9 Id.*14,17.
10 Id.*11.
11 Id.
12 Id.*13-4.
13 Id.*14.
14 Id.*15.
15 Id.*16.
16 Id.
17 Id.
18 Id.*18 (internal citations omitted).
19 Id.*24.
20 Id.*25.
21 Id.*28.

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View from Washington

By Charlie Richardson

We're obviously in the midst of a vibrant debate over the shape of the insurance regulatory marketplace.

We have to start – and probably end, at least for this year – with Treasury's proposal for systemic financial regulatory reform announced June 17th, see http://www.financialstability.gov/docs/regs/FinalReport_web.pdf. It is expressly intended to "build a new foundation for financial regulation and supervision that is simpler and more effectively enforced, that protects consumers and investors, that rewards innovation and that is able to adapt and evolve with changes in the financial market." Notably, the proposal ventures into new areas that Treasury has not previously addressed, including insurance regulation. While the proposal does not go so far as to push a federal charter for insurance companies, it potentially subjects certain insurers to greater federal regulation and leaves the door open for more.

Impact on the Insurance Industry

Except for a few specific references, insurance gets relatively scant express attention in the proposal compared to banking. In fact, only two out of the 88 pages that set forth the reform proposal are dedicated to the insurance industry. However, much of the language of the proposal is broad enough that insurance could be swept into several of the initiatives. In those instances, we will have to await further development of the proposal before we know the exact impact on the insurance industry; some of the initial House and Senate hearings have already touched insurance.

Systemic Supervision. There are three primary elements of systemic supervision that could impact insurance companies or their holding company systems – the establishment of the ONI, the identification of Tier 1 Financial Holding Companies ("FHCs"), and the closure of perceived loopholes in bank regulation.

- Office of National Insurance ("ONI"). Treasury seeks to create the ONI in order to monitor all aspects of the insurance industry and be responsible for identifying any trends or gaps that could give rise to a future crisis, but does not ascribe any regulatory authority to the ONI. (In fact, the proposal mirrors Congressman Paul Kanjorski's Insurance Information Act of 2009, H.R. 2609, which earlier called for the establishment of a federal Office of Insurance Information.) Additionally, the ONI would recommend to the Federal Reserve Board ("FRB") any insurance companies or insurance holding company systems that it believes should be deemed to be Tier 1 FHCs. Further, in the international arena, the ONI would be the single regulatory voice of the U.S. insurance industry, wielding the authority to enter into international agreements. Treasury's proposal does not suggest displacing the current state-based system of regulation in exchange for a federal regulator. Instead, Treasury will support proposals to "modernize and improve" the current system of insurance regulation, consistent with six principles:
- Effective systemic risk regulation – Treasury will consider additional regulation, beyond the scope of the current proposal, if that would help further reduce systemic risk.
- Strong capital standards and an appropriate match between capital allocation and liabilities for all insurance companies – Any new insurance regulatory regime should include strong capital standards and appropriate risk management.
- Meaningful and consistent consumer protection for insurance products and practices – Any new insurance regulatory

regime should enhance existing consumer protection and address any gaps or problems under the existing system.

- Increased national uniformity through either a federal charter or effective action by the states – Increased consistency in the regulation of insurance should enhance financial stability, increase economic efficiency and result in real improvements for consumers.
- Improve and broaden the regulation of insurance companies and affiliates on a consolidated basis, including those affiliates outside of the traditional insurance business – Any new regulatory regime should address gaps in current insurance holding company regulation that permit non-insurance affiliates to threaten the solvency of the insurance companies.
- International coordination – Improvements to the existing system of insurance regulation should enhance the international competitiveness of the American insurance industry.
- **Identification of Tier 1 FHCs.** Large insurance holding companies will be considered for Tier 1 FHC status. (After all, the AIG meltdown is a primary impetus behind forming a systemic risk regulator.) In order to recommend to the FRB certain firms that should be identified as Tier 1 FHCs, the new Financial Services Oversight Council will have authority to require periodic reports from any U.S. financial firm that meets minimum size thresholds yet to be established, including insurers and insurance holding companies. (The proposed "Bank Holding Company Modernization Act of 2009" suggests that the FRB would be able to request information from any United States financial company that has (i) $10 billion or more in assets, (ii) $100 billion or more in assets under management or (iii) $2 billion or more in gross annual revenue.) The proposal invites legislation that would set forth specific factors that the FRB must consider in identifying Tier 1 FHCs. A firm deemed to be a Tier 1 FHC will be subject to heightened regulation by the FRB with respect to capital, liquidity and risk management, among other things. The FRB would also have authority to require reports from, conduct examinations of and address systemic risk concerns with respect to all subsidiaries of a Tier 1 FHC, including those that have another primary functional regulator (such as insurance companies).
- **Closure of Bank Regulation Loopholes.** Currently, under the Bank Holding Company Act ("BHCA"), any company that owns a bank must register as a bank holding company and is subject to supervision and regulation by the FRB. However, certain firms, including insurance holding company systems (such as AIG), have taken advantage of perceived loopholes in the BHCA by which certain depository institutions are not deemed to be "banks;" they have, therefore, avoided certain restrictions and regulation under the BHCA. The Treasury proposal seeks to close such loopholes and would bring firms that own a depository institution under greater regulation by the FRB and would give them five years to come into compliance with the nonbanking activity restrictions of the BHCA.
- **Consumer Protection.** Treasury's proposal suggests that the jurisdiction of the Consumer Financial Protection Agency ("CFPA") will extend to firms that provide "other consumer financial products and services," without explanation of how broadly this language will be applied. Treasury officials initially indicated that no decision had been made whether insurance products would be subject to the authority of the CFPA. When asked if the CFPA's authority would extend to the sale of annuities and homeowner's insurance, Treasury Secretary Geithner explained that the Administration is "redrawing the boundaries of authority" for consumer protections and that "not all products respect these boundaries neatly." The legislation sent to the Hill on June 30, however, specifically excluded from its scope the "business of insurance … other

than with respect to credit insurance, mortgage insurance or title insurance."

- **Crisis Management.** Treasury's proposal contemplates a resolution regime that would allow for the orderly resolution of firms whose failure threatens the stability of the financial system. This resolution authority could be invoked only after consultation with the President and upon written recommendation by two-thirds of the members of the FRB and of the FDIC Board. If a failing firm includes an insurance company, the ONI would consult with the FRB and FDIC Board on insurance specific matters. Treasury would generally appoint the FDIC as receiver of the holding company, but the proposal specifically preserves the state law consumer protections provided to insurance policyholders. (Treasury's proposed legislation makes clear that the FDIC's resolution authority would not extend to insurance companies, but the proposed "Bank Holding Company Modernization Act of 2009" does not explicitly exclude insurance companies from the scope of FDIC resolution authority if an insurer is itself, or is owned by, a Tier 1 FHC.)

Charlie Richardson

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A Market for Policyholder Creditor Claims in the Insurance Insolvency Context

By Michael C. Singer, President, ARGO Partners

An insurance company that is unable to meet its obligations to its policyholders enters a long and painstaking process of receivership.

During this process assets must be harvested and complex liabilities resolved in an effort to Where the liabilities are associated with long term exposure losses, such as environmental damages or exposure to health agents like asbestos, the receivership can quite literally go on for decades. This process is bound to exhaust the attention of all but those with an intimate, professional interest in the proceedings.

Policyholders, to whom the whole receivership process is ostensibly dedicated, have essentially no ability to impact the pace or promise of receivership proceedings. Policyholders are often a diverse group, many of whom find the duration and unpredictability of insurance insolvencies a genuine hardship. For such policyholders and others, an early "exit" could well make sense if a well-functioning market for the transfer of policyholder claims could be established.

Investors have attempted to provide liquidity to policyholders in a number of insolvency proceedings with some measure of success. Table 1, below, lists some of these proceedings:

TABLE 1

Involvement of Investors in Receivership Proceedings as Liquidity Providers to Claimants

Ambassador (VT)	Amwest (NE)
Belvedere (Bermuda)	Employers Casualty (TX)
Frontier Pacific (CA)	KWELM (UK)
HIH (Australia)	Integrity (NJ)
Midland (NY)	Northumberland (Canada)
PHICO (PA)	PIE (OH)
Pine Top (IL)	Reliance (PA)
Southern American (UT)	South Eastern (FL)
UIC (UK)	Union Indemnity (NY)

This success has been constrained, however, by the lack of information generally available to creditors and the public. This lack of information relates not only to the nature of the data provided (typically, insufficient to gauge the real economic position of the receivership) but to its irregular dissemination. Finally, the mechanism by which this information is distributed is sometimes archaic (more of which below). Investors in this market operate in what can be characterized as "a black box," doing their best to offer an "exit" to policyholders despite limited information relating to the key issue of the timing and amount of future dividends.

Exiting policyholders have included:

- Entities in liquidation or run-off themselves
- Distressed claimants in need of cash to ease their economic hardship
- Older individual policyholders who fear their health will not permit them to wait out the receivership
- Small corporations that have neither the time nor the inclination to follow a proceeding unrelated to their business
- Large corporations seeking to reinvest cash in their own business at what they perceive to be a significantly higher return
- Parties willing to bet that they would fare better with a sale to an investor than continuing as a policyholder.

The lack of available information stands in marked contrast to the kinds of information now made available over the Internet as a matter of course to creditors and the public (including claim buyers) in bankruptcy proceedings. The contrast in the type, frequency and mechanism of dissemination between bankruptcy and insurance insolvency proceedings, as presented in Table 2, on the following page, is striking.

A Market for Policyholder Creditor Claims in the Insurance Insolvency Context (Continued)

TABLE 2

Contrast in Type, Frequency and Mechanism as of August 2009 (with examples)

SECTION A –TYPICAL EXPERIENCE

	Type	Frequency	Mechanism	Comment
Financial Statements				
Bankruptcy	**Full disclosure**	**Monthly**	**Internet**	
Insurance Receivership	Limited disclosure, with exceptions	Irregularly, with exceptions	Various	See Examples in Section B
Schedules of Creditors				
Bankruptcy	**Full contact data**	**Shortly after filing**	**Internet**	
Insurance Receivership	Limited contact data	Irregularly	Courthouse Visit	
Allowed and Disputed Claims				
Bankruptcy	**Full disclosure**	**Timely**	**Internet**	
Insurance Receivership	Limited disclosure	Irregularly	Courthouse Visit	
Professional Costs				
Bankruptcy	**Detailed reports**	**Regularly**	**Internet**	
Insurance Receivership	Limited disclosure, with exceptions	Irregularly, with exceptions	Courthouse Visit	

SECTION B – SPECIFIC EXPERIENCE

	CA	IL	PA	NY	TX
Financial Statements					
Assets Only	Yes (filed annually)	Yes (filed quarterly)	Yes (filed quarterly)	Yes (filed irregularly)	Yes (filed regularly)
Assets + Liabilities	Yes (filed annually)	Yes	Yes (filed quarterly)	Yes (filed irregularly)	Yes (filed regularly)
Docket Information					
Paper Docket	Yes	Yes, some	Yes	No	Yes, some
Electronic Docket	No	Yes, some	Yes	No	Yes, some
ED – remotely accessible	No	Yes, some	Yes	No	Yes, some
ED – filings attached	No	No	Yes	No	Yes, some

The current situation is problematic for receivers. The trading of claims is an alien notion for many of them. Once they have had a chance to study the matter, however, they often come to see the merits of allowing creditors an early exit. The caveat is that they also quickly recognize that the information they provide to the transacting parties is insufficient. This has led receivers on a number of occasions to try to intervene in the transaction process itself – trying to dictate the terms (including price) upon which a claim would change hands. Such intervention is inefficient and an impediment to a well-functioning market.

A Market for Policyholder Creditor Claims in the Insurance Insolvency Context (Continued)

The answer is not to compensate for insufficient information by trying to exert control over an arms-length transaction but rather to provide as much information as possible to the transacting parties so they can use the market to their maximum, mutual advantage.

In Table 3, the kinds of additional information that would help sellers and buyers alike in transacting business are identified.

A change in perspective on the part of receivers can result in a substantial change in outcome for seller and buyer alike. The cases described below show the market is eager for information and can use it to very good effect.

TABLE 3
Helpful Additional Information

Financial Statements – Full Disclosure on a timely basis
Schedule of Creditors – Full Disclosure shortly after filing
Allowed and Disputed Claims – Full Disclosure on a timely basis
Professional Costs – Detail presentation with explanation of service
***ALL WEB ACCESSIBLE**

Reliance – In the Reliance case in Pennsylvania, possibly because of its size, the Pennsylvania Liquidator made a decision early in the proceedings to offer information to creditors and the broader public. On the website of the liquidator, a detailed docket with documents in PDF attached is presented. Financial statements are filed on a regular basis as part of the status reports. A significant percentage of the outstanding claims on a dollar basis has changed hands.

Amwest – In the Amwest case in Nebraska, as investors began to purchase claims from creditors, the Nebraska receiver issued a status report. The status report was available on the website of the case and provided an estimate of the ultimate amount policyholder creditors might expect to receive at the conclusion of the case. The receiver and the Court had some initial concerns about whether the transfers should be allowed absent assurances there was adequate disclosure to creditors. Ultimately, investors agreed to make sure that selling claimants be directed first to the Amwest website and that satisfied the receiver. With the availability of information over the web and this additional disclosure included in the form of purchase agreement, the transfers were permitted. The volume of transfer interest increased tenfold with the disclosure of more information to all parties.

Conclusion

Full disclosure and availability of financial, policyholder creditor and allowed/disputed claim information in the context of an insurance insolvency would reduce policyholder creditor hardship. Experience suggests that such information would lead to an increase in the volume of transfers by making it easier for buyers and sellers to locate each other and to evaluate trading opportunities. Receivers may find the concept of a market in policyholder creditor claims initially foreign but careful examination of the concept suggests the possibility of an early exit would appeal to many creditors. Receivers are encouraged to take the steps necessary to implement a supportive framework for market trading in the service of those an insurance solvency proceeding is meant to serve.

Michael Singer

Michael Singer is the founding principal of Argo Partners. Prior to forming Argo Partners in 1992, Mike had extensive experience in investment banking, as President of R. D. Smith & Company, as Senior Vice President of Jefferies & Company and as Vice President of The First Boston Corporation. Mike has an MBA from Columbia University and a BS in Chemical Engineering from University College, London.

Receivership and Insolvency Task Force Update

By Mary Cannon Veed

One of the charges of the Receivership and Insolvency Task Force (the "Task Force") this year is to study the timing and collection of reinsurance recoverables owed to insurers in receivership.

IAIR and a number of other interested parties submitted comments in the first phase of that work, and two IAIR officers presented IAIR's comments at the Task Force meeting during the Summer NAIC. [IAIR's submission is reprinted below.] At this early stage, the comments seemed to fall into three categories: 1) lists of the excuses frustrated receivers hear for reinsurer's non-payment; 2) suggestions for "Best Practices" on both sides; and 3) suggestions for legislative or regulatory change. The list of excuses is all too familiar to most IAIR members, and not likely to get any shorter. But some interesting and worthwhile suggestions for the other two categories were received from IAIR and other commentators. They include:

Best Practices:

- (IAIR)(Paragon)(Reliance): If reinsurance assets are significant, ensure that the receivership has experienced reinsurance collection staff or consultants involved early, and make the necessary investments in IT and other infrastructure to support them.
- (IAIR and others): Receivers should avoid allowing a lengthy gap to develop between the company's last reinsurance accounting and the receivership's first one. Receivers should also take steps to communicate, early and often, the status of inwards claims that may affect reinsurance, both because the treaty insolvency clauses require such communication and because, without it, reinsurers won't pay, or won't pay timely.
- (IAIR): Look for IAIR designations in retaining SDR's and other staff so the estate does not have to pay for the staff's learning curve.
- (IAIR) Reinsurers should familiarize themselves with receivership operations to forestall expensive miscommunication and misunderstanding.
- (IAIR): Receivers should structure their operations, when possible, with a view to eventually being able to sell their portfolio of uncollected reinsurance, and to maximize its value at that time.
- (IAIR): Receivers should think twice before publicly attributing a failure to management dishonesty or ineptitude, or to reinsurer bad faith. Such early-stage statements can come back to haunt the receiver in the collection process.
- (IAIR): In determining claims bar practices, receivers should keep in mind both realistic timetables for when the estate can actually determine claims and pay dividends on them, and on the impact of unnecessarily barred claims on potential reinsurance recoveries.
- (IAIR): Receivers should communicate early and aggressively with reinsurers and other parties regarding the progress of the receivership and their expectations for results and timetable. It was suggested that regular information sessions at NAIC meetings might be effective.
- (IAIR): Receivers should think hard about whether to maintain the insurance claim reserving process, since reinsurance commutations will become difficult or the balances recovered will be too low, if reserves are not kept up to date.

Receivership and Insolvency Task Force Update (Continued)

Suggestions for Changes:

- (IAIR): A joint NAIC/RAA protocol for consultations between reinsurers and guaranty funds and receivership claims departments in connection with the adjustment of inwards claims to provide practical effect to the insolvency clause.
- (IAIR): The Task Force could develop its own "best practices" for the orchestration of resolutions to offset questions: which disputes must be resolved in the receivership court, which may be resolved by litigation or arbitration, and how to prevent potential offset issues from stymieing collection of reinsurance that exceeds probable offsets - including the use of refund agreements to reassure reinsurers that they will not lose the effective use of setoff if they pay current obligations currently.
- (Reliance): Affirmation of the principle that refunds of amounts found subject to setoff should be paid as an "expense" of the estate.
- (Many commentators): Require solvent insurers to maintain decent reinsurance records, include complete and accessible copies of wordings, accounting statements that report inception-to-date as well as current period balances.
- (Reliance): Demand more security.
- (Paragon): Regulatory efforts for contract uniformity.
- (Paragon): Crack down on systematically unresponsive brokers and intermediaries through an NAIC-sponsored clearinghouse.
- (RAA): Survey its members to collect information regarding the aging of reinsurance balances due to or claimed by insolvent estates and the reasons for their non-payment. (A survey conducted by the Task Force reported that 85% of reinsurance receivables due receivership estates were more than 90 days past due. The RAA asserts that these numbers are inflated, and in any case the delays may not be attributable to widespread reinsurer stonewalling. On the other hand, several receivers submitted comments suggesting that reinsurer stonewall tactics are endemic.)
- (Reliance): Involve domiciliary state regulators in considering discipline for dilatory or resistant reinsurers, such as: market conduct inquiry, blacklisting, denial or withdrawal of accreditation, etc.
- (Reliance): Amend Fair Claim Settlement Practices regulations to include reinsurance claims and to allow receivers to directly enforce them.
- (Several commentators): Adopt or enforce interest and penalty rules for overdue reinsurance balances.

Reprinted below is a letter IAIR submitted to the NAIC in June 2009 discussing IAIR's views of the issues facing the Receivership and Insolvency Task Force and the industry overall.

Mary Cannon Veed

Mary Cannon Veed, a partner in Arnstein & Lehr's Chicago office, practices in the area of insurance structuring, finance and regulation, including insurance company insolvency, reinsurance, and alternative risk transfer. She has extensive experience in the U.S. and abroad in representing policyholders as well as receivers, reinsurers, and cedants. Ms. Veed is the current Secretary of IAIR.

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BY EMAIL dvacca@naic.org

The following is submitted on behalf of the International Association of Insurance Receivers (IAIR). IAIR was founded in 1991 in order to provide individuals who were involved with insurance receiverships an organization through which they would receive education, exchange information, and enhance the standards followed by those who work in this professional area. The following is submitted as an initial response to the Task Force's request for specific examples of the types of routine issues or delays that can arise in the collection of reinsurance recoverables held by insurers in receivership, as well as whether there are possible related solutions to address timing and collection concerns.

IAIR's membership is diverse, and includes insurance receivers and their staff, insurer and reinsurer representatives, and many individuals and entities who provide legal, accounting, actuarial and consulting services to insurance receivers, or have other interests in receivership. This submission is meant for informative purposes only, and does not purport to represent the views of any individual member or group of members.

No two failed insurers are quite alike, and no two receiverships confront quite the same challenges and opportunities, particularly when dealing with reinsurance recoverables. This means two things for a review such as the Task Force is undertaking: first, that there is no "one-size-fits-all" program for optimizing receivership reinsurance operations, and second, that as much attention must be paid to predicting how new challenges might arise from today's operations as to how to avoid the pitfalls experienced in yesterday's. Nevertheless, some common patterns can be observed.

Learning curve: Fortunately, insurance failures are relatively rare events. Unfortunately, because of this fact, not all insurance departments or their receivership bureaus, and few reinsurers, have had much experience dealing with the complex issues that emerge from an insolvent insurer. Even departments and reinsurers with significant experience can be surprised when they encounter new or different issues from an insurer or cause of insolvency. Strategies and skill sets necessary for dealing with large, sophisticated property/casualty insurers with multi-line businesses are very different, for example from those used to handle smaller or personal lines insurers. Insurers who fail because of downgrades in their asset portfolio need different handling than those whose downfall are basically faulty or cash flow underwritings. And the mechanics and even the vocabulary of health and life insurance receivership are something else again.

Receivers and reinsurers not infrequently consume valuable resources reinventing the wheel, unaware that other parties in other states or even countries may have had experience, or even established precedent, which could shorten the new estate's learning curve. To minimize time and money spent on unnecessary conflict and changes of plan, both receivers and reinsurers should take full advantage of the formal and informal training and referral network that now links many states and several countries by way of IAIR. In selecting Special Deputy Receivers, hiring executive staff, or locating specialist expertise,

receivers should look for IAIR designations, and should invest in IAIR training for their operating staff.

The same should be said for reinsurers and brokers personnel. The receiver, no less than the reinsurer or cedant, is bound by an obligation to conduct the reinsurance affairs of the insolvent company in utmost good faith. While his primary concern is the protection of creditors, he may find it difficult to collect reinsurance if he has not honored that obligation. While there are plenty of legitimate reasons for tension to arise between reinsurers and receivers, some of the stumbling blocks result from misunderstanding and unjustified distrust of the receivership process. Well-informed reinsurers can make useful contributions to the success of the receivership, and protect their own positions at the same time, but ill-informed and confrontational tactics rarely pay off.

Many receivers misunderstand reinsurance, and many reinsurers misunderstand the receivership process. The time to learn better is not in the chaotic aftermath of a failure. Regulators, potential receivers, and potentially affected reinsurers should identify sources of receivership expertise in advance of need, and cultivate the development of that expertise in their own staff.

Communications

Communication between the receiver and the reinsurer are critical. One can not be successful without keeping reinsurers informed and developing a pattern of transparency.

Bad or absent information makes bad decisions. One of the early consequences of an insurance failure, often commencing well before the actual receivership proceeding, is the collapse of information exchange between the company and its reinsurance partners. When reporting does occur, its quality may not be sufficient. When receivers do attempt reinsurance collections, they often have to play catchup. Sometimes it simply can't be done because the company's accounting mechanisms were not maintained, and receivership systems do not capture the information required under the reinsurance contracts. In other cases, expensive systems must be built-and defended- in order to demonstrate the estate's entitlement to the funds demanded. Determining how many of the estate's scarce resources should be allocated to correcting and maintaining reserves, reconciling accounts, and responding to inquiries is one of a receiver's trickiest decisions. This decision often must be made beginning within the first few weeks of the receivership proceeding, but will have a continuing direct impact on reinsurance collection throughout the life of the estate. When an insolvent company possesses significant reinsurance recoverable assets, time and money invested in maintaining the information and communication systems that support realization of those assets is well spent, and any notion of "best practices" should reflect that fact.

Another form of communication, to which reinsurers are entitled by their contracts, is information regarding the receiver's plans to allow claims affecting the reinsurance, and the reinsurer's right to participate in that process provided by statues and the reinsurance agreements. But these rights co-exist uneasily with the real world. See below under "Structural Issues" for a discussion of this point.

On a more general note, receivers in recent years have considerably improved their communications with policyholders and guaranty funds. But less thought has gone into ways of giving reinsurers the vital information affecting their interests. Keeping reinsurers informed, not only of the state of their own accounts, but of the receiver's priorities and

hoped-for timetable, can build a base of credibility for the receiver's processes which will pave the way for collections.

Receivers' tactical decisions:

- Receivers make a number of tactical decisions about the direction of the receivership that have important effects, deliberate or otherwise, on the success of later reinsurance collection. There is nothing wrong with a decision that limits or forfeits potential reinsurance collections if it is deliberate and fully informed. Reinsurance is often the largest asset of a receivership estate. Best practices of receivers should strive to avoid unintentional negative effects on these crucial resources. For instance,
- Receivers sometimes err by accepting, without sufficient investigation, outgoing management's claims that reinsurers are treating the company unfairly or dishonestly. If these claims are merely a means of offloading responsibility or diverting attention from management's own lapses, the receiver is apt to become entangled in unnecessary disputes and give the reinsurer avoidable defenses.
- Conversely, receiverships sometimes are launched with a focus on owners' and management's extravagant pay scale, private jet or curious business decisions, but receivers may discover that these concerns are either unfounded or immaterial to the company's failure. Making claims of mismanagement and dishonesty against management and company owners can provide reinsurers with excuses to postpone payment, or avoid it altogether. On the other hand, if management really did act foolishly or dishonestly to the detriment of reinsurers' interests, reinsurers may be able to avoid payment even if the receiver's lawsuit does not provide them a roadmap; the receiver might as well collect what he can from management and its insurers.
- Rushing to commute reinsurance before claims have fully developed can have adverse consequences. Conversely, holding off commutations pending full claim development, when reinsurers are undergoing their own financial stress, can be just as fatal to full recovery.
- Imposing early claim liquidation cutoffs can result in dramatically fewer claims, but the disappearance of reinsurance recoverables. Whether this is a good idea depends on how much reinsurance is in question, and how concentrated the pool of claimants is.
- In the interest of prioritizing service to policyholders and keeping administrative costs low, receivers sometimes suspend or neglect reinsurance accounting. This can be a false economy.
- Adopting streamlined or abbreviated claim handling procedures that disenfranchise reinsurers can be a fine idea to save administrative expense where reinsurance is scarce or dubiously collectible; but shortsighted if the reverse is true.

Structural Issues:

Insolvency Clause: Virtually every reinsurance treaty has one, but confusion and disagreement reign concerning its application. Reinsurers rarely exercise the rights the clause literally grants them, nor would they generally benefit from doing so. They would probably have more use, however, for better claim information provided on a regular basis. On the other hand, failure to comply with the clause potentially jeopardizes reinsurance recovery. Receivers are not consistent in applying the clause, and there is not consensus about the quantum or timing of information release to the reinsurer, or the extent to which the receiver may publicly break ranks with a defending reinsurer or actively espouse the

policyholder's position. Reinsurers' role in claims handled by guaranty funds is also unclear. Presently this probably introduces avoidable risk into the receivership, and complicates collections. Development of a joint NAIC/Reinsurer protocol for the application of the insolvency clause, while not simple, might afford worthwhile clarity.

Arbitration: Probably no issue in reinsurance collection has been more extensively, and unproductively, litigated than the apparent conflict between a reinsurer's right to demand arbitration of reinsurance disputes and the exclusive jurisdiction of the receivership forum. While these disputes continue, no reinsurance is collected. Recent caselaw and practice may be coalescing around the idea that reinsurance claims against insolvent estates should proceed in the receivership forum, whereas collection of reinsurance due the estate may proceed in arbitration or other courts. The gaping hole in this division of labor is the handling of setoff. As with the insolvency clause, uncertainty on this point arguably does more harm to reinsurance collection than either candidate resolution. The uncertainty cannot be resolved, at least in the short term, by legislation, even if it were widely adopted, because reinsurance contracts and their wordings may continue in force for many years. But a concerted effort to develop "best practices" for receivers could inject a welcome degree of consistency and improve the defensibility of receiver's decisions.

Setoff: Reinsurers' rights to offset certain balances against others are now widely established by statute, caselaw or both. What is less clear is how the set offs should work, and when they should be applied. In particular, reinsurers who expect that they will ultimately have cognizable claims against the estate, or larger such claims than have presently developed, tend to postpone paying inwards claims pending adjudication of their claims against the estate. They may fear that, if they pay more than they ultimately would have owed, after offset, they will receive only dividends from the estate instead of the effective full value they would receive by exercising setoff. Receivers generally do not tackle their own inwards reinsurance until policyholder claims are finalized, and the effect of any reinsurance spiral can be judged. Gridlock ensues. The Task Force may wish to explore the use of clawback agreements, akin to those used by guaranty funds, permitting a reinsurer who pays a receiver's claim in good faith to recover his money to the extent a claim in his favor is subsequently adjudicated by the receiver. Protected against loss of setoff rights, reinsurers would have fewer legitimate reasons to postpone payment of accounts this are presently due.

Life Reinsurance. There is very little binding precedent for the handling of reinsurance in life receiverships. Clarity, and the protection of policyholders, might be enhanced if there were clear understandings between the reinsurance and receivership communities over issues such as the transferability of reinsurance in guaranty-association assisted assumption transactions, the obligations of assuming carriers to the former company's reinsurers, and the application of recapture provisions in receivership.

Please feel free to contact us to discuss further. We look forward to working with the Task Force on these issues.

Respectfully Submitted,

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Issues Forum Recap

Mike Cass, once again, put together a wonderful line up of presenters for the Summer Issues Forum held during the June NAIC meeting in Minneapolis, Minnesota.

Hopefully you didn't miss it, but if you did, we have provided a summary of the event below.

Jaki Gardner, Assistant Commissioner Financial Institutions - Insurance/Actuarial Minnesota Department of Commerce – opened the IAIR Issues Forum with a discussion regarding Minnesota's approach to solvency regulation.

History

In at least the last 12 years, Minnesota has not experienced a domestic insurer insolvency, with the exception of a small fraternal. In that case, the financial problems were detected soon enough that there was sufficient value in the company to move the policyholders to another domestic fraternal with no loss of value to the policies, plus the Minnesota receivership was able to pay off all creditors and a dividend to all policyholders.
Ms. Gardner stated that this example of regulatory action and the result typifies the philosophy that solvency regulation and oversight is a continuous activity that starts with an "Early Warning System" and ends with policyholder protection. While the Minnesota Department recognizes the reality that an insolvency could occur, Ms. Gardner avowed that it is their mission to continually review their analytical tools to utilize the most current and appropriate methods of detecting and identifying companies in need of regulatory intervention, by taking a hands-on approach, that will lead to a "win-win" result – saving policyholder value, and preventing an insolvency.

Solution

Minnesota has a solvency scoring system that allows the analysts to identify downward trends in operations of a company, with triggers that are tied to regulatory actions. These actions range from letters requesting information, to meetings with the company's board of directors to provide recommendations, to hiring outside consultants to perform reviews of management and operations. Generally, the communications and actions are initiated by the Minnesota Department's internal Supervisory Action Review Committee ("SARC"), which is responsible for regular roundtable discussions of their domestic companies' financial condition. This "team of experts" determines the appropriate approach to working with a troubled company in order to develop the best course of action. The most recent two cases have resulted in mergers.

Ms. Gardner affirmed that Minnesota continues to consider insolvency as the least favorable option for a troubled company. Whatever the cause and depth of the troubling condition, insolvency is costly, time consuming, and there are no winners. The objective of regulation is to protect consumers, and she believes the best way to do that is to keep companies operating to serve the policyholders. To that end, Minnesota continues to be solution oriented.

Next, Pennsylvania Insurance Commissioner Joel Ario described what it was like to receive that "call in the middle of the night" regarding the liquidity crisis at AIG. Of important concern was the potential downgrade implications for member companies of AIG, including those domiciled in Pennsylvania. The liquidity crisis was followed by a capital crisis with all of the day-to-day bankruptcy issues that required consideration.

Commissioner Ario believes the strength of AIG was and is in the subsidiary insurance companies that held the AIG group together through the crisis. In his opinion, no super

Issues Forum Recap (Continued)

regulator is required for AIG and that multiple regulators is a better approach to address systemic risk. In the case of AIG, there are 19 different regulators addressing any concerns.

Commissioner Ario then turned to long term care insurance and the implications of rehabilitating an LTC insurer. He said that most problems relate to insurers setting initial rates too low, leaving regulators in the position of either allowing rate increases or creating solvency problems, especially in cases where the insurer does not have other options for spreading the costs. The Commissioner approved a non-profit trust to handle the run-off of one LTC company and is working with the trustees, who include four former insurance commissioners, to develop options for using a combination of rate increases and creative pooling of risk to protect policyholders in cases where liquidation can be avoided. He said that triggering the guaranty funds is another way to spread risk, but does create arbitrary caps on benefits, especially in the 20 or so states that still have a $100,000 limit for LTC.

Tom Thompson went on to discuss the benefits of a review of a company's reinsurance portfolio. Whether due to simple coding miscues or more complex contract application issues, reinsurance premium and claim processing errors cost insurance companies millions of dollars each year.

On June 13, 2009, Tom Thompson, founder of Reinsurance Results, Inc. (RRI), shared with the IAIR Issues Forum the benefits of these types of reviews and characteristics of companies and programs that frequently give rise to missed recoveries. Tom suggested that companies that are good candidates for a review tend to have:

1. Purchased a variety of different types of reinsurance contracts.
2. Experienced change in personnel, brokers, reinsurers, contract terms or business mix.
3. Lacked in-house reinsurance expertise.
4. Utilized the broker market more often than direct writers of reinsurance.

Tom also touched on some fundamental reinsurance concepts that - if not adhered to - will lead to processing errors. The first concept dealt with the application of premium and loss in a consistent manner with the reinsurance attachment. Does the contract attach on a "losses occurring," "policies attaching," or "losses incurred" basis? Knowing the differences and applying the premium and losses correctly will help companies avoid processing errors.

The second concept involved clearly prioritizing the order in which the reinsurance contracts are applied. Applying the reinsurance in the incorrect order may lead to an over payment of premiums or an under cession of claims.

Finally, specific premium and loss processing error examples were presented involving profit sharing, the calculation of subject premium bases, and the treatment of loss adjustment expenses. Most companies are usually not aware of the complexities that may be involved in what appear to be relatively simple calculations.

Reinsurance is often one of the most important assets in an estate. An audit of a company's historical premium and claim transactions can help to maximize the return on this investment.

Finally, Michael Steinlage, of Larson King, LLP, ended the program with a review of perennial issues for reinsurers in insurance receiverships. The topics covered included reinsurance acceleration, non-consensual substitution, and offset and recoupment. Mike also addressed the outcome of recent challenges to the exclusive jurisdiction of receivership courts in the context of reinsurance disputes. The presentation concluded with a discussion of potential federal regulation of reinsurance, with insight drawn from insurance collapses of the past, including the failure of HIH Insurance.

Don't miss the next Issues Forum open to all IAIR members at the upcoming NAIC meeting on Monday, September 21, in Washington, D.C.

Everybody Wants a Piece of the Data!

By Jenny L. Jeffers, CISA, AES

This is the third in a series of articles regarding the importance and criticality of Information Systems processing during the liquidation of an insurance company.

This article will discuss the distribution of data to the appropriate entities. The existing IT staff of the liquidated company can contribute greatly to the the receiver staff's understanding of the systems and the availability of possible data sources. They can also be helpful in formatting and preparing the data to be sent to the guaranty fund utilizing the UDS Formats.

This sounds like a pretty easy job – just use the data we collected from the various sources from the last article:

- Multiple systems exist due to acquisitions
- Companies in a group function independently
- Companies in a group share the same System – only one company is going down
- Policies are managed by an MGA
- The Company and/or the MGA utilizes TPAs to process claims

First let's consider claims data that we have collected.

Once the data has been collected, the first course of action is to review the data for completeness. Many times, the data will be missing information due to inadequate system controls on one or more of the systems. Missing data, such as policy effective and expiration dates, date of loss, jurisdictional state, claimant number, claimant name, unique claim number, line of business/coverage codes, must be determined and included, if at all possible, prior to creating UDS records to be sent to the guaranty funds. If these data are not available in the systems or from the sources listed above, the data may be able to be found in the physical files or imaged documents and entered into the data records prior to the data transmission.

For anyone unfamiliar with UDS – Uniform Data Standard - it is the format to be utilized by receivers and guaranty funds to transmit data back and forth. There are several record layout definitions that are approved by the NAIC and currently implemented in the large majority of states. The data types to be sent by the receiver to the guaranty fund are:

A Records – Open Claims – one record for each claim/claimant/coverage that is open at the time of the liquidation date. These records should be sent out as soon as possible.

B Records – Unearned – Return Premium – indicating those policies where money is due back to the policyholder because of the early cancellation of the policy due to the liquidation. These records are usually sent later in the liquidation process. It is usually a good practice to utilize the existing company systems to calculate the unearned premium to be returned. Unpaid premium should be considered when this calculation is made. Another consideration is whether the premium was paid by - and therefore due back to - the policy holder, an MGA or a premium finance company. This is information that may or not be available in the policy systems. Often, the premium is paid in full by the MGA or premium finance company but is being paid in installments by the insured. In such cases, the return premium is due back to the MGA or premium finance company rather than to the insured. There are indicators on the B Record to signal the guaranty fund as to whom the payment should be made.

E Record – Closed Claims – one record for each claim/claimant/coverage that has been

Everybody Wants a Piece of the Data! (Continued)

closed prior to a specified cutoff date – usually a receiver sends these payment records back at least 2 years.

F Record – Claim Notes – this record contains the notes that have been entered into the claim system by the adjustors as the claims were being adjudicated. These notes can include diary dates (dates on which reviews are to be done), court dates, requests for additional information, information regarding phone calls to the insured or other relevant parties, etc.

G Record – Payment History – includes a record for each payment (both loss and expense) that has been made on all open claims since inception. This information allows the guaranty funds to avoid making duplicate payments, control payments to avoid going over policy limits and to respond to questions regarding payments made to claimants and insureds. A separate file can be sent for the payment history for closed claims.

The file layouts and the rules for each of these record types is described in detail in the UDS manual, which can be downloaded on the NCIGF (National Council of Insurance Guaranty Associations) website – http://ncigf.org/uds/uds-manual. The UDS manual gives complete instructions for the provision of data to the guaranty funds from receivers AND the return of information from the guaranty funds back to the receiver via C Records:

C Record – Loss, Expense and UEP Payments made by the funds, as well as Return Premium payments, claim open and close transactions and claim movement (location of the files) from one entity to another.

Records A, E, F and G should be sent to the Guaranty Funds of all states with open claims at the time of liquidation.

If the company's IT Department personnel are being retained, they can be very helpful in producing the UDS records. The IS Specialist associated with the liquidation should provide the UDS Manual to the IS personnel and train them in the importance of delivering complete and accurate information to the guaranty funds as soon as possible. This is essential in order to assure a smooth transition and to minimize time elapsed between payments made by the company and payments to be made by the guaranty funds. The data may come from different systems and the IT personnel will be a good resource for knowing where to find each required piece of data for each UDS record type.

Certain data elements are the primary identifiers of the information going out and this same information will be used as key fields in the data coming back to the receiver from the guaranty funds. Therefore, great care should be taken to make certain that these data elements are transmitted correctly. The primary identifying data elements are:

- NAIC number of the company in liquidation
- Policy number
- Claim number – unique number assigned to this claim – the receiver MUST make sure that this number is unique. If claims were being handled by more than one entity (TPA or MGA or systems) there could be duplicate claim numbers in the complete data set. If this occurs, the claim numbers must be modified to make each claim number unique for this receivership.
- Claimant number – for most lines of business, a claim can have more than one claimant.
- Coverage Code – this indicates the line of business and coverage under which this claim is being paid. The company's coverage codes will need to be mapped and converted to the UDS uniform coverage codes that are defined in the UDS Manual. This is usually the most difficult process in the development of the UDS data. Some companies keep very detailed coverage codes – it is possible that several codes may fall under one single UDS

Everybody Wants a Piece of the Data! (Continued)

coverage code. The multiple coverage codes can be rolled up into the UDS coverage code and the collective reserve reported on an A Record. The problem sometimes comes when the data comes back from the guaranty fund and the additional level of detail is needed. A decision regarding how this will be handled should be agreed upon between the receiver and the guaranty funds prior to the initial transmission of data. If a coverage was written by the company which is not found in the UDS Coverage Code Table, the receiver can contact NCIGF and a new code can be implemented. This should only occur when there is no match at all for a coverage code.

Data that is returned as C Records with transactions from the guaranty funds will include the fields listed above for matching to the claims records in the receiver's database. Careful control of these important fields is the only way to enable the matching of payment records.

Along with, or following, the transmission of the A Records (the first records to be transmitted), the physical and/or imaged files should be sent to the appropriate Guaranty Funds as well. These files SHOULD NOT be provided to the guaranty funds prior to the transmission of the electronic records.

Electronic records are uploaded to the NCIGF secure UDS site and are electronically made available for download by the appropriate guaranty funds.

The utilization of UDS is vital to the successful processing of information between the receiver and the guaranty funds.

The next article will discuss the transmission of the information back to the receiver and the completion of the data circle.

Jenny L. Jeffers, CISA, AES

Jenny Jeffers, CISA, AES is Managing Member of Jennan Enterprises, LLC in Tallahassee Florida providing IT Services including regulatory IS examinations for states and contracting firms around the country as well as IS services for liquidators and guaranty associations. She is currently serving on the Website Committee of SOFE and is the chair of the AES (Automated Exam Specialist) Committee for SOFE. Jenny is a past Education Committee Chairman for IAIR and is a current member of the Education and Website Committees for IAIR and the ASWG (Audit Software Working Group) for NAIC.

IAIR would like to extend a special thank you to the National Council of Insurance Guaranty Funds for their co-sponsorship of the June, 2009 Reception.

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