



The Insurance Receiver

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FEATURED ARTICLES

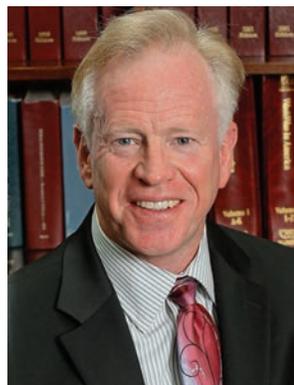
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We're At the Post!

IAIR Members and Colleagues,

As the NAIC gathers in Louisville, this call at the beginning of a race is applicable to horse racing but



also to IAIR's recent and upcoming activities. I'll briefly mention a few of these and the other information that can be found in this edition of The Receiver.

Technical Development Series

IAIR sponsored its fifth annual Technical Development Series on June 5th and 6th in Chicago. The program, co-chaired by Mary Veed and Paige Waters, was entitled "THE DATA CLOUDS LOOK STORMY: Information and Data Management in Receiverships" and interactively presented a host of

data management, cyber risk and liability, privacy and security procedures and laws, and opportunities to utilize advance planning to prepare for these risks. The attendees were actively involved throughout the presentations and it appeared most, if not all, found some kernel of knowledge to take back to evaluate for implementation in their specific operations. See page 13 for a recap of the presented program.



Response to RITF New Charge

IAIR was asked to provide comments to the Receivership and Insolvency Task Force's ("RITF") new charge to evaluate the costs and benefits associated with requiring resolution plans for large insurer groups. An ad hoc drafting group was formed to develop a response. Participating in the drafting with me were Doug Hartz, Frankie Bliss, Bill Latza, Fred Hees, and Nancy Margolis. IAIR's response was submitted on June 19th (see page 19) and can be found on the RITF's page on the NAIC website along with comments from other responders. The IAIR response can also be found on the IAIR website under the Resources/News tab. Sincere thanks to those that assisted in the drafting.

President's Message (continued)

RFP for New Designation Development

An ad hoc group comprised of me, Jim Schacht, Dale Stephenson, Bill Latza, Frankie Bliss, and Nancy Margolis developed an RFP. The RFP was distributed on April 7, 2014 to a number of universities, law schools, and education development firms requesting proposals to assist IAIR in the development of the curriculum and testing program for a new professional designation being considered by IAIR's Board of Directors to supplement the two existing designations. It is intended that IAIR membership will have input into the development of the requirements and curriculum for the designation and a number will be asked to serve as subject matter experts. Responses to the RFP were due on August 11th. The IAIR Board of Directors will be discussing next steps for this project during its August 18th meeting in Louisville.

IAIR Events During the NAIC Meeting

A number of committee meetings are scheduled during the NAIC meeting on Saturday afternoon, August 16th. In addition, Kathleen McCain, Co-Chair of IAIR's Education Committee, has organized another Issues Forum that will be held on Sunday, August 17th, from 1:30 until 5 PM. The schedule and locations for these meetings can be found on the home page of the IAIR website.

Board of Directors Nominations

Dick Darling, Chair of IAIR's Nominations and Elections Subcommittee, is again heading up the

annual efforts to solicit nominations to IAIR's Board of Directors for 2015. An email was distributed to the membership on June 30th by Nancy Margolis that describes the five openings on the Board, the qualifications for candidates, the information that must be submitted, and the September 1st deadline for submitting nominations and information to Dick Darling. This information can also be found in the Announcement section of the IAIR home page.

What's Inside

Many thanks to the efforts of a number of individuals that penned articles for this issue of The Receiver and the endless contributions of time and experience from Frankie Bliss to single-handedly pull everything together and finalize its publishing. I know she can't wait for Michelle Avery to return from maternity leave.

I have included an article, "What is IAIR's Role?", where I ask IAIR's membership to respond to some thoughts on the direction of IAIR and some future possible activities. The Board of Directors will consider the responses and comments as they conduct some strategic planning.

Thanks for these few minutes of your time. If you have some thoughts or concerns you want to share with me, as always, feel free to email me at bboles@txlifega.org, by phone at (800) 982-6362, or just catch me in the hallways or during meeting breaks at the NAIC meeting, but please keep your riding crop in check. I'll try to maintain the pace without significant urging.

Bart

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The Perfect Receiver Part 12 – Who’s Your Daddy?

By Patrick Cantilo, CIR-ML



So despite all of your uncle’s advice to the contrary, you decided to become an insurance receiver. When you announce this triumphantly at the dinner table, your five-year-old asks you innocently: “Who’s your boss, daddy?”

Alas, the answer is not that simple. Putting aside the chain of command of the organization that employs you (do you have a senior partner, a practice director, or Chief Executive Officer to whom you must answer?), the office itself can create conflicting loyalties. In this column rounding out the first dozen in the series, I dare try to bring some order into this inherent chaos.

When seeking appointments as receiver, you are likely to focus your efforts on insurance commissioners and their senior deputies. If you emerge victorious in the ensuing beauty contest, these are the individuals to whom you will answer in the first instance. If they select you, a receivership court is then likely to be required to ratify that selection. Success in that endeavor will then compel you to guard the interests of policyholders and creditors. At a minimum, these three constituencies will be entitled to, and will expect, your loyalty and adherence to their guidance. That guidance may not always be fully congruent.

The commissioner and his or her staff will have a multi-faceted agenda to which you must pay attention in the discharge of your responsibilities. If the commissioner is an elected official, that agenda may even be a bit more complex. Of course, successful conduct of the receivership itself for the benefit of policyholders and creditors will be of paramount importance to the regulators. But also important will be the extent to which your work creates and affects regulatory precedents. Related to this will be how what you do affects insurance regulation in a broader sense. Add to

this the need to avoid political collateral damage and, even more difficult, the desire to achieve political gains, and you have arrived at a recipe for headache-inducing challenges.

Once appointed by the receivership court, your work will be subject to its supervision and to requests for its intervention when your decisions offend other constituencies. Thus it will be important that you understand and address the court’s expectations and inform it sufficiently of your activities.

By law, your job as receiver will be to conduct the proceeding for the benefit of policyholders and creditors in accordance with the applicable priority scheme. To them too, therefore, you will owe an important loyalty.



It is not hard to envision circumstances in which all of these loyalties will clash. Assume, for example, that the company you are liquidating is deeply insolvent but has substantial viable claims against a weak reinsurer in the same domicile, as well as substantial viable claims against politically connected management. Were you concerned solely with the interest of policyholders and creditors, you would undoubtedly pursue these claims with vigor. Insert now the concerns of the regulators that doing so might imperil the reinsurer (and threaten another dreaded domiciliary receivership) and you may be asked to seek less than the total recovery you think is attainable. If you also launch recovery efforts against management, these same officials may whisper quietly to you that you should be restrained in your efforts to avoid adverse political



The Perfect Receiver – Part 11 (continued)

consequences. Further, the court may not be disposed to take on a complex case and may press you to settle without a trial and resource-consuming discovery.

This hypothetical dilemma is far from exotic and certainly can be troublesome for the receiver. Its resolution may require a fair amount of “tap dancing” of such high quality as to make Fred Astaire proud of you. But that is hardly a satisfactory answer to the search for a reliable approach. In the final analysis, the claims on your loyalties from these various constituencies can and should themselves be prioritized and reconciled.

Obvious or not, the differences among these agendas must be borne in mind. Some of the obligations you take on as receiver are the product of established law and not susceptible to compromise. Others are borne of convenience and ambition and should be viewed as more flexible. In our hypothetical, for example, the paramount goal is to make policyholders and creditors whole to the extent reasonably possible. The law does not require that you undertake heroic efforts with low probability of success and disproportionate costs. You are legally vested with the ability to exercise your judgment as to what makes sense in the circumstances. Start therefore by identifying what is a reasonable financial goal for your asset recovery activities.

Once you have a reasonable financial goal in mind, develop a plan for satisfying it so that (in our hypothetical) you have a target recovery from the reinsurer and another for management. Present to the regulators your well-articulated plans for the pursuit of these recoveries, with clear explanations as to why the reinsurer and management should unquestionably be viewed as liable for the amounts you will seek and more. You address the concerns about the reinsurer’s own financial challenges by seeking an amount reasonable under the circumstances that you hope will not “break the bank” while emphasizing that you could easily have sought much more.

You do the same with respect to your claims against management. At least as to them you begin by devoting substantial efforts to confidential settlement discussions that give them the ability to avoid public embarrassment and costly litigation. You explain to the regulators that this is driven by your sensitivity to the political reality but that, in the end, you are all bound to pursue these claims fully if these negotiations fail. Properly articulated, this explanation should satisfy the regulators that you have been mindful of their concerns and done your best to address them.

With the court, a genuine explanation of the lengths to which you have gone to avoid having to litigate typically will suffice. In addition, when you file your claims, strive mightily to act and appear reasonable, leaving to the defendants the inclination to be shrill, wasteful, and vexatious.

The common elements in this approach focus on quality communications. Be fully informed and well organized and you will be persuasive in the explanations to the regulators, the court, and settlement-discussion counter-parties. In the final analysis, to coin a phrase, “to thine own self be true.” Alright, alright! I stole it from Polonius, but it is applicable. *Your most important loyalty is to policyholders and creditors and your energies should be devoted to reconciling other demands to this paramount obligation.*

So now you can answer your son: “Mommy, of course. She just lets me think sometimes that I am the boss!”



View from Washington

By Daniel F. Lightfoot



With the Congressional primary season well underway and the November midterm elections just around the corner, the 113th Congress continues to make (or threaten) waves for the United States insurance world. The legacy of the Dodd-Frank Act is fueling discussion and debate as federal agencies and legislators work to modernize insurance regulation and improve oversight, while both chambers of Congress revisit reauthorizations before the sun quickly sets on a number of key provisions. All of this plays against a backdrop of potential electoral results and speculation over what will happen if Republicans get control of both houses of Congress.

Terrorism Risk Insurance Act Extension

The Terrorism Risk Insurance Act (“TRIA”), enacted in the wake of 9/11, has safeguarded Americans and the U.S. economy, as a whole, against devastation caused by terrorism by providing for a federal backstop to ensure adequate insurance coverage. Set to expire at the end of 2014, both the House and the Senate have worked to craft proposals to extend TRIA beyond 2015.

The Senate bill S. 2244, the Terrorism Risk Insurance Program Reauthorization Act of 2014, was passed by the Senate in a bipartisan 93-4 vote on July 17. The Senate version extends TRIA for seven more years, while increasing insurers’ co-pay from 15 to 20 percent and increasing the mandatory re-coverage threshold from \$27.5 to \$37.5 billion. The Senate also added an amendment to create a national registry of insurance producers, the National Association of Registered Agents and Brokers (“NARAB II”), which includes a two-year sunset provision.

The House Financial Services Committee unveiled its own version of the TRIA extension bill on June 12, 2014. H.R. 4871 contains some key differences from S. 2244, which will have to be reconciled, namely its shorter extension

period of five years. Another provision would phase in an increase in the program’s trigger amount for non-nuclear, biological, radiological and chemical events, from \$100 million to \$500 million by 2019. The Committee approved H.R. 4871 on June 20 along party lines – 32 (R)/27(D).

However, despite the Senate’s passage of their TRIA reauthorization bill, the House is still largely divided over how to deal with reauthorizing TRIA, with many members believing reforms to the law go too far and others who believe that they don’t go far enough. The House bill continues to lack the votes needed for passage and it is likely that we will not see further action until the lame-duck session in later November and into December.

Notwithstanding their differences, each bill addresses a number of industry concerns, and all constituencies are hopeful that an agreement will be reached to extend the program before it expires at the end of 2014.

Congressional Hearings on Insurance Capital Requirements

In the wake of Dodd-Frank reform, agencies and legislators alike jumped on the bandwagon to impose more regulation on the U.S. banking/ financial service sector to avoid a future financial crisis. However, as the U.S. economy has begun to crawl out of the deep dark hole that was dug in 2008-09, many are scrutinizing a number of Dodd-Frank provisions as hindrances to the long journey to economic recovery.

One such provision that has been the subject of continued debate in Congress is the issue of capital standards imposed on the insurance industry. Section 171 of the Dodd-Frank Act, known simply as “the Collins amendment” after its author Susan Collins (R-ME), broadly defines capital standards requirements for banks and insurance companies. Recently, the insurance industry has critiqued this provision, stating that “bank-like” capital standards requirements for insurance companies are not appropriate due to the fundamental difference between banks and insurance companies.



View from Washington (continued)

In her testimony in front of the Senate Banking Committee in March 2014, Senator Collins supported the insurance industry's contention. Her legislation, S. 2270, which passed the Senate in early June by voice vote, seeks to clarify the difference between bank and insurance capital standards by allowing the Federal Reserve to apply insurance-based capital standards to insurance entities while maintaining "bank-centric" capital standards for banks. The language in the bill would give the Federal Reserve more flexibility to differentiate between capital standards for banks and capital standards for insurance companies, while still providing oversight to prevent future financial crises. The House version, H.R. 4510, introduced by Representatives Gary Miller (R-CA-31) and Carolyn McCarthy (D-NY-04), was the subject of hearings before the Subcommittee on Housing and Insurance in early May 2014, and although the bipartisan House bill remains in committee, it has a good chance of passing.



Two Attempts to "Rein In" the Financial Stability Oversight Council

On June 20, 2014, the House Financial Services Committee passed by a 32(R) – 27(D) partisan vote two measures designed to rein in, at least temporarily, the Financial Stability Oversight Council ("FSOC") created by the Dodd-Frank Act to designate firms as systemically significant (called "SIFIs") and, thus, needing extra federal regulation.

- H.R. 4881 by Rep. Randy Neugebauer (R-TX). The bill as amended places a one-year moratorium on the authority of FSOC to make any determinations that an insurance company or asset manager should be designated as a SIFI (FSOC has already so designated AIG and Prudential) and, therefore, supervised by the Federal Reserve. During the moratorium period, Congress would take a look at FSOC's process.
- H.R. 4387, the "FSOC Transparency and Accountability Act," by Rep. Scott Garrett (R-NJ). This bill would increase scrutiny of FSOC's decisions to designate SIFIs and open FSOC's meetings to non-FSOC members (including members of the House Financial Services and Senate Banking Committees!) It also permits any FSOC member to have one or more individuals on the member's staff attend a meeting of FSOC, including any meeting of representatives of the member agencies other than the members themselves.

Both of these bills passed the Committee without the support of any Democrats. While they could be considered on the House floor, it is extremely unlikely that the U.S. Senate would take them up this year.

Protecting Policyholders: H.R. 4557 - The Policyholder Protection Act

The House Financial Services Subcommittee on Housing and Insurance held a hearing on May 20, 2014, on H.R. 4557, a bill to address protecting policyholders of thrift-affiliated insurance companies. Much like procedural protections that limit insurance-specific funds from being siphoned by an affiliated Bank

Welcome IAIR's Newest Members!



John Alexander

John Alexander is the Director of Supervisory Interventions in the Financial Analysis section of the Texas Department of Insurance. In this capacity, his role encompasses two operations: Troubled Companies and Rehabilitation and Liquidation Oversight. Prior to joining TDI, John was the Chief Operating Officer for Texas Medical Liability Trust, where he was employed for twenty years. John came to Texas in 1988 as a Claims Supervisor with Providence Washington Insurance Company. He holds a CPCU designation, an RPLU designation and an AIC designation. He received his undergraduate degree from the University of Rhode Island.



Theresa Mains

Theresa Mains, P.A., is a Forensic Accounting Consultant, providing internal operational and forensic audits and financial investigations in matters involving employee embezzlement, financial institution anti-money laundering, securities and investor fraud, financial statement fraud, misappropriation of assets, and asset recovery. Prior to opening her own firm, Theresa worked as the Senior Forensic Accountant for Rachlin, LLC and then as an Adjunct Professor at Florida Atlantic University, teaching Fraud Examination.

Theresa received her Juris Doctorate at Florida International University - College of Law, a Master's degree in Forensic Accounting from Florida Atlantic University, a Masters in Psychology from Nova Southeastern University and a Bachelor of Science in Criminal Justice from Florida International University.



Mark R. Ossi

Mark Ossi, CPA, CFE, PIR, AMCM is the Deputy Division Director of the Division of Insurance & Financial Oversight at the Georgia Department of Insurance since April of 2012. Mark is responsible for both Financial and Market Conduct examinations as well as the Market Regulation/Analysis section. In August of 2013, the Deputy Receiver duties were added to Mark's responsibilities. Prior to his current position, Mark had served with the Georgia Department as Chief Examiner since 2002. Mark began his regulatory career over 19 years ago at the Florida Department, where he worked in the Property and Casualty



Examination Section before being promoted to a Financial Examiner/Analyst Supervisor in the Managed Care Division. Prior to 1994, Mark worked as an auditor with KPMG and as an Accounting Manager at a small property and casualty insurance company.

Mark graduated from the University of North Florida, where he received a Bachelor of Business Administration in Accounting and a Master of Business Administration. Mark has served as Georgia's SOFE State Chair since 2006 and was elected to the SOFE's Board of Governors in 2011.



Frank Pecht

Frank has been in the (re)insurance industry since 2001 and has held several management positions within consultancy and carrier firms. Frank offers his ProIS, Inc. clients first-hand expertise in a wide scope of technical skills, from underwriting and claims to commutations and forensic accounting. He is dedicated to provide clients with highly specialized services to improve operational efficiency and profitability. Past positions include Vice President of Operations of a small P&C carrier focused on commercial auto, lead auditor for accounting, claims and underwriting inspections, and Senior Vice President of a worldwide (re)insurance consulting organization. Frank has a B.S. in Finance from St. Joseph's University.



Don Wustrow

Don, President of Pro, has returned to the IAIR family. Don has been in the insurance industry for 35 years and has previously served as President of Chillington International, a company purchased by Pro in 2012. He has overall responsibility for managing many of Pro US' outsourcing projects, reducing liabilities and costs through efficient management. In addition to managing the outsourcing team, Don specializes in audits and has provided testimony in arbitration / litigation cases. Don has supported (re)insurance clients in both the public and private sectors, providing management and technical expertise.



Board Talk: Michelle Avery

By Kevin Tullier

As you may have heard, Michelle is out on maternity leave, which allows me the opportunity to interview an IAIR board member and write about it. And since, for once, Michelle has some free time, I get to interview her! So, I'll start with congratulations to Michelle and Matt, on the birth of their healthy and happy new son.



(And before all the moms reading this give me the what-for about what little “free time” a new mom has, Michelle and I are chatting while her son sleeps.)

So, with the tables turned, let's learn about Michelle Avery, the person who's been

interviewing other Board members for Board Talk in the past newsletters.

Michelle is a Managing Director and Executive Vice President at Veris Consulting, and is a certified public accountant. She has been a member of IAIR for approximately seven years and has been an active member in the organization practically from day one. First elected to the board in 2010, she is now at the midway point of her second term, and she'll be up for re-election at the end of 2015. As a board member, she is the chair of the Newsletter Committee, is a member of the Finance Committee and co-chaired the 2013 TDS in Vegas. As Michelle's co-worker and a fellow member of IAIR, I can tell you that she's an invested member and dedicated advocate of the organization.

Prior to starting in the exciting world of insurance accounting, Michelle earned her Bachelor of Business Administration in Accounting from the College of William & Mary in Williamsburg, VA. She was a very busy

student, but not just doing her accounting school work – but more about that later.

After graduation, she accepted an offer to work for the then-smaller regional audit firm of Johnson Lambert. Despite considering offers from the larger, international accounting firms, Michelle chose to work for the firm headquartered in the DC area, which was close to her family in Virginia. But that was only one reason for her decision, she says. To this day, she says, she is extremely happy that she decided to join Johnson Lambert, which offered her big-firm level experience and opportunities in a small firm environment.

At Johnson Lambert, Michelle primarily worked as an auditor during her first few years, including as a member of the audit team of several insurance companies. Insurance firm audits were a specialty of Johnson Lambert, as both founders of the firm were previously in the insurance practice of a big-4 accounting firm (although there were 8 of them when they started Johnson Lambert back in 1986). In addition to audits, Michelle got the opportunity to work on several litigation consulting engagements, which was then becoming a larger part of Johnson Lambert's practice. Michelle recalls how she always enjoyed the litigation work as a younger consultant at Johnson Lambert because it gave her the opportunity to be involved in complex accounting and insurance issues in a dynamic environment.

By 2000, Michelle was a Senior Associate at Johnson Lambert, and litigation consulting had



Board Talk: Michelle Avery (continued)

become a much larger portion of the firm's practice, and Michelle's work as well. A reorganization of the firm that year resulted in the creation of Veris Consulting, a consulting firm that was separate and apart from Johnson Lambert and that specialized in forensic accounting, and, in large part, insurance, reinsurance and insolvency specific matters. Michelle remembers being excited about being a part of the new firm, and is proud to say that besides the reorganization, she has been with the same company since her graduation from William & Mary.

In my time at Veris, I've seen Michelle rise rapidly through the ranks from Senior Manager, to Director, to Managing Director and to now Executive MD and VP. Those of you who have worked with her at IAIR are probably not surprised to hear how valued she is at our firm.

But as good as she is at many things, she's horrible at having attention paid to her and seems to really want to get this interview over with (all future interviewees may get a pass on getting grilled now that the shoe is on the other foot!), so...on to the fun interview questions:

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

Michelle first said that she really enjoyed the conference in San Francisco with all of great things to see and do, but indicative of the changes that kids can bring about, she decided that the recent conference in Orlando was her favorite. Why? She said that she loved being at a place where her family could join her on the trip and be thoroughly entertained while she was at the conference.



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

The Immortal Life of Henrietta Lacks by Rebecca Skloot. Michelle explained that the

book was about the life of a poor migrant from a tobacco farm in Virginia that died from cancer in 1951. But the story doesn't end there. Cells taken from the cancerous tumor that killed Henrietta Lacks have been studied and used extensively since then, including in the development of a cure for polio.

Q. What is your favorite sport? Team?

Anyone who knows Michelle knows the answer to this one. Hockey is her favorite sport to watch, and soccer is her favorite sport to play. She is an avid fan of the Washington Capitals hockey team (She told me I couldn't type "crazy fan" and I told her she couldn't say "consistently disappointed fan" as that would make her look bitter. [..though quite understandable! - Ed.]) and goes to as many Caps games as she can.



Q. What is your favorite leisure activity?

As she mentioned, soccer is her favorite sport to play. Before her daughter was born, it wasn't uncommon for Michelle to play in six recreational leagues at once, including on a co-ed team with her husband – which sometimes meant playing two soccer games on a single night and not getting home from the games until after midnight. Now, the term "soccer mom" has a new meaning for Michelle. She and her husband were still playing before their son was born, but they weren't able to play as much and were sharing time with their daughter on the sidelines. She's taken some time off from soccer during her maternity leave, but is eager to get back on the field.

Q. Where is the last place you vacationed?

One of her favorite places to go, and her last vacation trip, was her family's annual week in Ocean City, NJ. She loves just being at the beach and having her extended family with her.



Board Talk: Michelle Avery (continued)

Q. If you could have dinner with any three other people in the world, dead or alive, fictional or non-fictional, who would you choose? Why?

Michelle said despite asking this question so many times, she never realized how hard it would be to narrow it down to three. Holding her to her own rules, I insisted it had to be three, and only three. She selected the first dinner guest from her own family. She thinks it would be so interesting to learn about her ancestors directly from her own family members, and decided to pick Carl Eggers, her great grandfather, who was a founding member of the American College of Surgeons.

Her second choice was Ben Franklin, who she chose not only for his well-known contributions to American history and today's society, but also because he was from Philadelphia, where Michelle's mother grew up and where she still has family today.

Michelle struggled for her third selection. She said it was funny that as often as she's thought about who her three choices would be, to finally make the final selection out of so many possibilities was tough. I think she was about to name a certain Caps player, but knew I'd struggle with the spelling, so she settled on Buzz Aldrin, the astronaut. When I asked why, she said, "Because he's a famous astronaut." Enough said.

Q. Give us one piece of information that most people don't know about you?

While many may know that Michelle is a proud graduate of William & Mary, Michelle wondered how many knew that she was a collegiate athlete. She started gymnastics when she was three years old and continued with the sport until she finished at William & Mary. She's a very competitive person (that, we all at Veris

know very well!) and says that she enjoyed being able to compete at that level, while also getting her degree.

Q. What is your proudest professional accomplishment?

Although she knew this question was coming (I know...she knew all of them), Michelle didn't have a quick answer. I prodded, knowing it wasn't for any lack of good answers. She wanted to give a vague answer about how she's been able to have a substantive role in some high level cases, but I wouldn't let her off so easily. With Henry starting to squirm, indicating that our interview would likely be coming to an end soon, I insisted she name one thing. Michelle decided that she was most proud being named a Managing Director at Veris, and doing so just before turning 30.

Michelle obviously enjoys juggling the many roles in her life. She says she's happy to have her service to IAIR be one of them. She's looking forward to a vibrant future for IAIR which she says will require her, her fellow board members and

all members to keep the energy up and fresh ideas flowing.

Thanks, Michelle, for taking some time to tell us more about yourself. We, again, wish you congratulations and look forward to having you back for the next Board Talk!



Kevin Tullier, CPA, CFE is a Managing Director in Veris Consulting, Inc's Reston, VA office. With a background in both public accounting and industry, including time as a finance officer of an insurance company, Kevin provides forensic accounting and litigation support services primarily to law firms on insurance-related matters, as well as outsourced accounting services to insurance companies. Kevin can be reached at ktullier@verisconsulting.com.

Issues Forum Recap: Orlando, Florida March 2014 Current Regulatory Issues Before the Florida Regulators

By Kathleen McCain

Belinda Miller, General Counsel of the Florida Office of Insurance Regulation and Mary Schwantes, Director of Estate Management and Deputy Receiver in the Division of Rehabilitation and



Liquidation at the Florida Department of Financial Services, opened the Issues Forum by sharing their views on current issues before the Florida insurance regulators. It was a wide ranging discourse and the attendees were not shy about asking questions and participating in the dialogue.

The discussion started with their experience with the failure of an HMO writing Medicare supplement insurance and the difficulty in working with a federal agency to get confirmation of the amount of the receivable. The conversation then moved to the new amendments to the holding company act pending in Florida and other states. Belinda noted that regulators took a critical look at how the holding company structure could be improved. The holding company amendments were developed to assess whether the whole group is healthy and will require holding companies to file enterprise risk reports.

Another serious issue before the Florida regulators is long term care insurance and the complications that arise in the insolvency of an insurer writing this business. Belinda noted that the lines of business that will be assessed will be the health insurance lines although it is life insurers that wrote the business rather than the health insurers. The potential assessments have caused a lot of debate among those involved. Prompted by a question from the audience, the

conversation then moved to lender placed insurance and Florida's hearings on this type of insurance. The presentation concluded with a discussion on issues near and dear to Florida regulators and guaranty funds - guaranty coverage for flood insurance and the current status of hurricane coverage and reinsurance.

Florida's Team Approach to Liquidations

Wayne Johnson, currently a Senior Director at Risk & Regulatory Consulting, LLC, Sandy Robinson, President, Florida Insurance Guaranty Association and Executive Director, Florida Workers' Compensation Guaranty Association and Sha'Ron James, Director of the Division of Rehabilitation and Liquidation at the Florida Department of Financial Services, participated in a panel that highlighted Florida's team approach to liquidations. The panel began the presentation with a discussion of the goals of the players in a liquidation, the teamwork needed between the receiver and the guaranty funds to take care of the policyholders and the areas where they can work together.



A key objective to teamwork is to understand the other party's role. Here they accomplish this objective through open communication and joint participation in training classes. The receiver works with the guaranty fund pre receivership and they have developed checklists of information needed by the guaranty funds to help insure that everyone has what is needed at rehabilitation and liquidation.



Issues Forum Recap: Orlando, FL... (continued)

They also coordinate communications to third parties, press announcements, scripts, notices and website postings. The receiver and the guaranty funds also have a standard quarterly meeting to focus on issues involved in all Florida insolvencies.

The panel then moved to early access payments. The receiver started a procedure for paying the guaranty funds twice a year if there is money available to make early access payments. As part of the process, the receiver performs a detailed analysis of the remaining liabilities of the receivership and funds available for distribution. The panel then ended with a discussion of closing estates. The receiver provides the guaranty funds with a closure calendar that includes dates of expected distributions. When the only remaining task in the liquidation is to collect reinsurance, the receiver will discharge the receivership. The liquidator still collects the reinsurance on behalf of the guaranty fund and sends the guaranty fund the proceeds. The coordination between the receiver and the guaranty funds touches all stages of the receivership.

The IAIS Observer Session

Alice Kane, a partner at Duane Morris LLP, gave us a first-hand look at the activities of the International Association of Insurance Supervisors ("IAIS"). Duane Morris was granted observer status at the IAIS and Alice spoke about the IAIS Observer Session that she attended in March 2014 and the issues currently being addressed. The IAIS announced its commitment to develop a global insurance capital standard for international insurance groups by 2016 and is on a tight timeline to accomplish this. Alice noted that the IAIS is currently developing three capital standards. The basic capital requirements ("BCR") will be developed by 2014, the higher loss absorbency requirement will be developed by 2015 and the insurance capital standard will be developed by 2016. She then discussed the proposed BCR formula and how it will be applied. Data and other issues that arise in developing the BCR will be addressed in the field testing exercise. The IAIS is looking for volunteers for the field testing and many companies have been invited to join the exercise. The IAIS proposes that the implementation of the BCR would include confidential reporting of outcomes to the supervisors for review by the IAIS. Alice offered her thoughts on how the

implementation of the capital requirements will play out, noting that financial stability is the number one priority for the IAIS.



NAIC News and Updates

Jim Mumford, First Deputy Commissioner with the Iowa Insurance Division ("IID") and Chair of the NAIC Receivership and Insolvency Task Force, closed the program with updates on issues of interest to the NAIC and highlights of NAIC committee meetings. He started with the FHLB discussions with the IID. The FHLB in Des Moines came to the IID to see if they could negotiate language for legislation that could provide uniformity if adopted in Iowa and other states. The FHLB and the IID were able to agree on a seven day stay after the order of liquidation is entered for the FHLB to come after any advances. This will give the liquidator some breathing room to develop a strategy for the advances. The FHLB hopes to get similar legislation adopted in other states. Paul Miller's group is working on the FHLB guidelines to be included in the Receiver's Handbook.

Jim commented on the FIO report, noting that we will see more federal involvement in insurance issues. He thanked Lynda Loomis and NOLGHA for their hard work on the SEC considerations and noted that a new section will be included in the Receiver's Handbook on products registered with the SEC. He ended his remarks with a discussion of the committee work on contingent deferred annuities and separate accounts.

Thanks to all the participants who agreed to speak at the Issues Forum and share their knowledge and expertise with the organization. I look forward to seeing you all at the Louisville Issues Forum and hope you will be able to participate in person. My recap is no substitute for the live program. We are currently scheduled to host the Issues Forum on August 17. Check the most up to date schedule to confirm the time and location. Hope to see you there!



Kathleen is Senior Counsel in the Regulatory and Administrative group of Michelman & Robinson, LLP, in Encino, California.

Michelman & Robinson is a national law firm with offices in California and New York. Kathleen assists insurance companies and related agents with various regulatory, compliance, claims and reinsurance matters.

TDS V Recap: The Data Clouds Look Stormy – Information and Data Management in Receiverships

By Mary Cannon Veed

The 2014 IAIR Technical Development Series (“TDS”) program was held June 5-6 at the Rosemont Doubletree Hotel in Chicago. TDS V focused on data management and data breach in an insurance insolvency environment. On



behalf of my co-Chair Paige Waters and myself, I would like to thank the 20 speakers for their contributions toward a great program.



After a rousing warmup from Bart Boles, the first panel, including Karen Harris of Arnstein & Lehr LLP and Joe Oleksak and Steve Fisher of Plante Moran, tackled the big picture: what obligations are imposed on holders of “protected health information” (“PHI”) – a category that can include receivers of insolvent insurance companies.

HIPAA applies directly to “Covered Entities” – organizations who collect PHI in the course of their work. HIPAA also applies indirectly to “Business Associates” of a Covered Entity, which are individuals or organizations given access to PHI in order to

perform services for the Covered Entity. The Covered Entity is therefore responsible to contractually impose (and enforce) security and privacy obligations on its Business Associates. PHI must be maintained in ways that protect not only its confidentiality, but also its integrity and its availability when needed. As most businesses know all too well by now, if a breach of data security does occur, the Covered Entity has substantial obligations to notify the affected individuals and, to the extent possible, remedy any resulting harm.

The next panel, made up of three speakers who dealt with the launch of the Lumbermens insolvency, described the formidable mechanics involved in transitioning a company with the legacy of dozens of affiliates, business units and TPA’s – and a lot of antiquated hardware – to a receivership footing. Chris Kennedy, Lumbermen’s Estate Trust



Officer, and Chris Freund, Director of Data Management at Lumbermens, described the twin processes of packaging data for distribution to guaranty funds in an extremely short timeframe, and rationalizing, streamlining and selectively modernizing the company’s own electronic architecture. Andrew Holladay, CIO at NCIGF, described how the priorities of the liquidator and the guaranty funds, while superficially different, were really aligned due to the



TDS V Recap... (continued)

entities' shared interest in effectively resolving claims and protecting policyholders.

Warren Daniel of PricewaterhouseCoopers and Chuck Salmon addressed "E-Hurricane Warning Signs." After summarizing typical statutory and regulatory requirements for safeguarding data, they discussed recommended steps that entities (including receivers) should take to prevent and recover from hacker assaults on their "Crown [Data] Jewels" – the reservoirs of information whose exposure would cause the most harm to the entity and the people who rely on it. The

first defense is a risk analysis: what could happen, how much harm could specific threats cause, and what protection is available to mitigate it? Next, they recommended formation of a "Computer Emergency Response Team" that could be quickly deployed to respond to an attack, and a documented advance plan, regularly updated, for what should be done.



Next Pete Thomas, Chief Risk Officer of Willis Re, provided an insightful overview of reinsurance, discussing the types of reinsurance that are commonly available, and the scope of coverages that can be obtained, offering his thoughts on the impact

that reinsurance can have in a receivership proceeding. Pete set the stage by providing a primer on the development of the reinsurance industry in the late 20th century, noting the remarkable decrease in the number of reinsurers as a result of mass tort litigation and other "Big Law" exposures. Pete then explored the ways in which reinsurance and insurance differ – and what is critical for those engaged in receivership proceedings to understand about how reinsurance recovery works.



The lunchtime keynote speaker was Paul Miller, Special Deputy Receiver & Chief Executive Officer of the Illinois Department of Insurance, who provided his own perspective on Illinois' unique



structure for dealing with insolvencies of domestic insurers. He stressed the importance of setting clear expectations for a receivership office like OSD, and discussed how those expectations were met when a "big one" – Lumbermen's – "went down." He emphasized the importance of making effective use of legacy personnel, and coping with the flaws of legacy systems.

After lunch, Bill Barbagallo and Peter Venetis, both of PriceWaterhouseCoopers, presented "Weathering the Storm: Is Your Cyber House Up to Code?" which explored the ways in which cyber threats and attacks have impacted the development of additional security requirements and the increasing market for cyber insurance. Bill and Peter first discussed notable cyber-attacks, such as those on eBay, Sony PlayStation, the New York Times,



and of course, Target. Next, the SEC's disclosure guidance document was analyzed, with the proscribed risk assessment and evaluation required under that guidance. Following the SEC, Bill and Peter presented the NIST Cybersecurity Framework for improving infrastructure cybersecurity. The presentation closed with a discussion of the types of cyber insurance evolving in the marketplace and the possible use and need for such insurance.

TDS V Recap... (continued)



The next presentation was offered by Brian Casey of Locke Lord, who described the multiple uses and hazards of social media by companies, including insurers, noting the developing role that social media plays in business communications, and the potential market conduct and trade practice laws that could be applicable to a company's social media communications. Brian reviewed recent developments in the regulations and court rulings that would render social media communications (including LinkedIn profiles in at least one state [NY]) subject to claims of misrepresentation. He then also discussed the potential employment law ramifications of employees' use of social media. Finally, Brian provided an overview of e-discovery issues that are impacted by social media, Bring Your Own Device options now being utilized by employers, and other developing technologies that complicate e-discovery rules. Brian concluded his program by providing some guidance on how best to develop a risk management and regulatory compliance plan that will provide written procedures governing the use of social media and means to communicate with policyholders, other insureds and the public.



Following Brian's presentation, John Kloecker of Locke Lord and Dave Wasson, Cyber-Insurance Practice Leader for the Hays Companies, closed the day with an in depth discussion of the risks of cyber liability in the insurance industry and those otherwise engaged in providing financial services, including an assessment of whether general liability policies and other more standard policies (D&O, E&O,

Business Interruption) would respond to losses arising out of these risks. Dave Wasson then provided an overview of the different types of cyber risk insurance that are now available in the market, how such policies are underwritten and priced, and the types of coverage issues that can arise from the cyber risk products currently being placed.



The second day of the program opened with a bang, as Jim Mumford, First Deputy Commissioner from Iowa, provided his welcome observations about a number of topics, including the impact of federal and international accounting and financial standards activity on insurance regulation. Jim made note of the changes to the reporting requirements of the Insurance Company Holding Systems Act and discussed how insurers can take best advantage of the information now being reported.



The next panel continued the theme of "leakage" between international accounting standards and domestic insurance operations. Kelly Cruz-Brown of Carlton



Fields Jordan Burt and Aaron Lunt, head of regulatory affairs at the Warranty Group explained the current status and future expectations for Own Risk Solvency Assessments ("ORSA"), which are gradually being demanded for insurers in the US, and have a parallel in the European Union's "Solvency II" initiative. ORSA demands that US insurers develop an Enterprise Risk Management framework and use it to conduct a thorough assessment of what events or circumstances could have material effects on the financial condition or liquidity of both individual insurers and holding company groups. The results of the assessment are provided confidentially to regulators. In theory, better risk analysis will reduce the likelihood of loss to policyholders as a result of catastrophic misadventures by less-regulated insurer affiliates. While those reports could potentially provide a roadmap to a liquidator intent on director and officer liability, the extent to which they would be available to liquidators, or usable in evidence, is highly controversial.



The last panel of the program featured Chad Anderson of Western Guaranty Fund Services and Doug Hartz of Insurance Regulatory Consulting Group, who took on the



TDS V Recap... (continued)

charged subject of “Pre-Receivership Planning” or, in lay terms, how soon should, must, or can guaranty funds and associations begin to interface with possibly insolvent insurers and their regulators. Today’s highly electronic insurers accumulate vast amounts of data that must be absorbed by guarantors before they can respond properly to covered claims. If they only begin to do so when a liquidation order is entered, unacceptable delays in payment may occur, and huge costs may build up when unfiltered information is delivered en masse. Chad and Doug argued that co-ordination efforts should begin as early as the commencement of a run-off or, in any case, during any but the most promising rehabilitation.

Again, thanks are due to the numerous presenters who brought their varied and significant expertise to us, as well as to Bart Boles who orchestrated the audio-visuals (with a few of his memorable “extra” bits) and Nancy Margolis who kept the organizational wheels turning in spite of many challenges.



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. Mary also often assists clients confronted with troubled and insolvent insurers, in addressing insurance regulatory issues. Ms. Veed also maintains an active litigation and arbitration practice.

View from Washington (continued)

Holding Company, the proposed legislation permits state insurance regulators to provide protection to policyholders by “cordoning off” insurance-specific assets of a thrift-affiliated insurance company. The language mandates that state regulators must give approval before assets are drawn from insurers to provide funds to struggling entities of the Thrift Holding Company.

The National Association of Insurance Commissioners (“NAIC”) supports the bill, and there was testimony in support by the Property Casualty Insurers Association of America, the National Association of Mutual Insurance Companies and the American Council of Life Insurers. The Policyholder Protection Act has received bipartisan support in the House, and a Senate companion will be introduced soon.

RITF and Resolution Plans (Scott Kosnoff)

The NAIC’s Receivership and Insolvency (E) Task Force recently solicited comments on its new charge:

Evaluate the benefits and cost associated with requiring resolution plans for large insurance groups. Develop guidance on resolution plans for states with large

insurance groups and address related issues developing in the federal and international standards.

In soliciting comments (which were due on June 20), the RITF asked interested parties to “consider including comments, for example, on the scope of ‘large insurance group’, the expected benefits for the insurance regulator to receive resolution plans, the cost to the insurance group to develop the resolution plan, and the type of information the Task Force might consider requiring in the resolution plan.”

The RITF’s new charge was a clear response by state regulators to Dodd-Frank, which requires systemically important financial institutions to submit plans demonstrating that they could be resolved under existing insolvency law (without the need for a Title II resolution under Dodd-Frank). The charge presents interesting and important questions that should give rise to a lively debate. Stay tuned.

Daniel Lightfoot is an advisor with FaegreBD Consulting, assisting clients in the insurance and financial services industry with federal legislative, regulatory, public policy, and compliance matters. Daniel works with federal agencies and helps companies, associations and individuals navigate the complex federal legislative environment on Capitol Hill.

The NCIGF Offers Counsel on International Safety Net Standards

By Roger Schmelzer

Working with the property and casualty insurance trades, the NCIGF has been engaged in promotion of the U.S. safety net structure among international regulators. This has been an important project because the rest of the world does not necessarily view policyholder protection the way we do in this country.

Policyholder protection schemes do not exist everywhere and, in many cases, where they do exist the lines covered are limited. Twenty six countries have a scheme that covers all or part of the insurance sector. Those that do have a comprehensive coverage for the entire insurance sector are few in number and can be divided into sector-wide schemes (Korea, Spain, United Kingdom) and effective sectoral coverage by means of multiple schemes (Canada, France, Japan, United States).¹

The NCIGF has developed four specific public policy elements for international regulators to consider in their review of policyholder protection mechanisms. As the below demonstrates, similarities with the American system are the exception.

NCIGF Proposes: The primary purpose of policyholder protection schemes should be policyholder protection, not providing rescue or “bailout” financing for financially troubled companies.²

- In Canada, France, Japan and Korea, for example, the Policyholder Protection Scheme (“PPS”) can provide financial support in the resolution of both life and non-life insurers, and in the UK, the Financial Services Compensation Scheme (“FSCS”) can provide financial assistance to an insurer in financial difficulties if certain conditions are met. In Canada, an insolvent insurer, as well as the succeeding company, can be a recipient of financial support from PPSs. In Germany, the PPS cannot provide financial support in the resolution of an

insurer. Similarly, in the United States, PPSs do not provide rescue or “bailout” financing for financially troubled companies.

NCIGF Proposes: The United States system is post-funded and has a proven track record protecting policyholders, while promoting more efficient use of insurer capital. (International bodies and other countries often exhibit a bias in favor of pre-funded policyholder protection schemes.)

- Many schemes are *ex ante* funded (Canada, Denmark, Estonia, France, Germany, Israel, Italy, Japan, Korea, Norway, Poland, Portugal, Spain and Turkey), charging an annual levy which can vary depending on the level of funding. A large number of *ex ante* schemes have the power to impose additional contributions (*e.g.*, Canada, Denmark, France, Germany, Korea and Poland). The Estonian scheme can take out a loan in the event of insufficient funding, which would be funded *ex post*. The Japanese schemes are able to tap government funding if the funds are depleted and the annual levy proves to be insufficient. In Spain and Switzerland, *ex ante* funds are collected from policyholders, not insurers. Hong Kong recently decided to establish a policyholder protection scheme with *ex ante* funding, with scope for recourse to possible additional levies.³

NCIGF Proposes: Policyholder protection schemes should have a role in planning for the resolution of Global Systemically Important



The NCIGF Offers Counsel... (continued)

Insurers (“GSIIs”) and internationally active insurance groups (“IAIGs”). Furthermore, a policyholder protection scheme should be notified in a timely manner when it appears possible that an insurer will enter into resolution.

NCIGF Proposes: In its Key Attributes of Effective Resolution Regimes, the Financial Stability Board (“FSB”) promotes coordination and collaboration among the stakeholders involved in an insurer resolution. In doing so, however, the FSB appears to assume, incorrectly, that all protection schemes are operated by a public authority. International bodies and protocols should be clear that statutorily established, nongovernmental policyholder protection schemes (such as the United States system) should play the same role as their public counterparts in insurance resolutions governed by the Key Attributes.

The NCIGF will continue to work closely with the P/C industry and regulators to further establish itself as the “trusted expert” on safety net public policies as they are shaped around the world.

- ¹ In some countries, the scheme covers just non-life policies (Australia, Denmark and Norway) or just life policies (Austria, Germany and Greece). A number of countries are adopting policyholder protection schemes. For instance, Hong Kong intends to establish a policyholder protection scheme, with sectoral coverage through two schemes (including coverage of small and medium sized enterprises) in 2012 or 2013. Many countries have schemes which cover only a specific line of non-life insurance. Ten Motor third-party liability (MTPL) and motor guarantee funds are the most widely protected line-specific scheme (Austria, Belgium, Czech, Germany, Denmark, Estonia, Finland, France, Greece, Hungary, Israel, Italy, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Spain, Switzerland and Turkey) given the large, potentially catastrophic, exposure for policyholders in the event of an insurer insolvency, while work accident schemes are also present (Belgium, Finland and Portugal). Other specific schemes provide compensation for annuities (Estonia: only for the mandatory second pillar of the pension system, mandatory patient insurance (Finland), private health (Germany), hunting (Italy) and third party liability (TPL) (Australia, Poland, Turkey). *OECD's Policyholder Protection Schemes: Selected Considerations (May 2013)*, p. 9-10.
- ² *IAIS' Issues Paper on Policyholder Protection Schemes (October 2013)*, p. 20
- ³ *OECD's Policyholder Protection Schemes: Selected Considerations (May 2013)*, p. 32-33.



Roger Schmelzer is President & CEO of the National Conference of Insurance Guaranty Funds (“NCIGF”). The NCIGF is a nonprofit association that provides national assistance and support to the nation’s property and casualty guaranty funds. Roger and the NCIGF support the state-based property/casualty guaranty fund system through a range of public policy, educational and operational initiatives.



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Promoting professionalism and ethics

June 19, 2014

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

Re: Charge to Evaluate the Benefits and Cost Associated With Requiring Resolution Plans for Large Insurance Groups

Dear Mr. Mumford:

The International Association of Insurance Receivers (“IAIR”) is pleased to submit this response to the call for comments by the Receivership and Insolvency (E) Task Force (“RITF”). We appreciate this opportunity.

Formed in 1991, IAIR is the educational and credentialing organization for professionals working with financially troubled or insolvent insurers. Our membership includes government insurance receivers and regulators, guaranty association executives, private sector professionals and others interested in how financially troubled or insolvent insurers are addressed.

The RITF has sought public comment on the following essential charge recently given to it:

Evaluate the benefits and cost associated with requiring resolution plans for large insurance groups. Develop guidance on resolution plans for states with large insurance groups and address related issues developing in the federal and international standards.

Insurance is unlike other businesses; in particular, an insurer’s promises differ fundamentally from the promises made by banks. The failure of an insurance company can cause serious harm to policyholders and others whose promised benefits under an insurance policy or contract may go unsatisfied, leaving them facing significant financial and property losses, and/or the inability to continue to receive essential benefits. The challenge is to minimize those risks and mitigate

those potential harms. With that challenge in mind, we offer comments in the following areas:

1. A resolution plan should not be required where it would be redundant with existing insurance regulation. Coordination with the Own Risk and Solvency Assessment (“ORSA”) reporting requirements, in particular, would avoid wasteful duplication and enhance the resolution plan.
2. A resolution plan should not be required unless the particular insurer presents solvency risks for which a tailored resolution plan would usefully augment the existing state-based system.
3. Public confidence in insurance should remain justified. The goal of a resolution plan should be to make good on the insurer’s promises to its existing policyholders, claimants and beneficiaries.
4. A resolution plan should not be required where mechanisms for coordination of the state-based system already exist.
5. A resolution plan must be prepared, maintained and reviewed in absolutely the strictest of confidence.

1. Risk-Focused Regulation

We believe the existing state-based insurance regulatory system is up to the challenge: state insurance regulators now have more tools than ever before to identify and deal with risks to insurer solvency. The risk-focused surveillance cycle embodies many of those tools, and in some instances a carefully tailored resolution plan could augment state insurance regulators’ on-going supervisory plan for a particular insurer.

It seems likely that a useful resolution plan would address many of the same risks as are addressed in Form F and the ORSA report. Consequently, the RITF might consider a size threshold that would not require a resolution plan from any insurer not required to submit an ORSA report, although regulators ought to have authority to require a resolution plan from any insurer the risk-focused surveillance cycle finds to exhibit a comparatively high risk of failure. Furthermore, it seems likely that size is positively correlated with the expertise and resources necessary to prepare a useful resolution plan.

Finally, state insurance regulators already have broad authority under many insurance regulatory statutes and regulations to resolve a troubled company situation without a judicial receivership, with or without the troubled company’s continued existence. This should be the goal of a resolution plan. These statutes and regulations include, *inter alia*, the hazardous financial condition, risk-based capital and similar NAIC models, and we see little to justify a duplicative

requirement. Instead, the state insurance regulators could be given explicit authority, for example, to require addressing resolution as part of a risk-based capital corrective action plan.

2. Targeted and Tailored Requirement

To be clear, we are not advocating any inflexible requirements. To the contrary, we believe that resolution plans should be required of those insurers, but of only those insurers, where the benefits are likely to outweigh the costs to the insurer and to the reviewing state insurance regulator. It is evident that any resolution plan must be capable of being regularly monitored by the state insurance regulators and include objective benchmarks and timelines. In some cases, it may be appropriate to require that policyholders and other creditors will receive as much in a resolution as they would in a liquidation and an ORSA-type stress test might be appropriate. We note that information of the type called for in Items (e), (f) and (g) of the Reserve Board and FDIC 2013 Model Template for §165(d) Tailored Resolution Plans would be useful to have in advance of any insurer receivership. Should the RITF decide to develop specific guidelines, we would be pleased to provide comment and technical support.

3. Promises Kept

Our long-standing and deeply-held belief is that nothing should compromise the obligation to policyholders, claimants and beneficiaries in the distribution of assets of an insolvent insurance company. However, Section 165(d) of Dodd-Frank suggests several issues. Helpful starting points for RITF consideration might be (i) Chapter 11 of the NAIC Receiver's Handbook for Insurance Company Insolvencies, (ii) the February 18, 2014 Joint Submission of NOLHGA and NCIGF Regarding FDIC'S Single Point of Entry Resolution Strategy, and (iii) IAIR's September 18, 2013 Comments on Key Attributes of an Effective Resolution Regime.

4. Existing Multi-State Mechanisms

Extensive and effective mechanisms already exist to identify and address solvency risks to multi-state insurers. These cover the entire life cycle of insurers, from the zone examination system to the guaranty association systems. Minimally, the preparation, maintenance and review of any resolution plan should incorporate, and not duplicate, the work of the NAIC's Financial Condition (E) Committee and its Financial Analysis Working Group. We submit that the goal of the RITF with respect to this charge should be to augment and enhance, not to duplicate or supplant, existing mechanisms for interstate coordination and cooperation, which proved their worth in the financial crisis and which state insurance regulators themselves have continuously improved. Development of a resolution plan cannot occur in a vacuum. Liquidation, including guaranty association protections, must be considered in the development of a resolution plan.

5. Confidentiality

Absolute confidentiality is vital for two reasons. First, for resolution plans to be of any real use, insurers must be confident that the information contained in them, or which might be ascertainable from them, will not become available to competitors or adversaries.

Second, public confidence is fundamental to the business of insurance. Undermining that confidence could result in, and has resulted in, the very insolvencies that resolution plans would seek to avoid.

We hope these comments will prove helpful as the RITF deliberates its charge. As always, IAIR stands ready to assist the RITF, and we encourage you to draw upon our experience. Again, thank you for the opportunity.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Bart A. Boles". The signature is fluid and cursive, with the first name "Bart" being the most prominent.

Bart A. Boles, President

What is IAIR'S Role?

By Bart Boles

What is IAIR's role? This simple question can provoke a variety of responses based on one's perspective and experience.

The purpose of this article is to solicit your views, as I have continued to ask myself this question while seeking to ensure that the direction of IAIR reflects the vision shared by the majority of its members. In order to grease the whirring wheels in your minds, I'll add some lubricant based on IAIR's mission statement in its governance documents, and some viewpoints developed through conversations with an IAIR founder, several former IAIR Presidents, and a few long-time IAIR members. Then I'll list what I hope are a few thought provoking questions for you to consider.

IAIR'S Mission from Governance Documents

To assist as you begin to contemplate the question of IAIR's role, Section 2.2 of IAIR's Bylaws contains the following mission statement.

The mission of the Association is:

- (a) To establish a professional organization comprised of individuals who provide services associated with the affairs of insurers that are in receivership or otherwise financially troubled and in need of restructuring;
- (b) To develop educational and training programs to enhance the qualifications of professionals working in the field of insurance company receiverships and restructurings and to provide a forum for discussion of ideas, experiences and subjects of common interest to them;
- (c) To establish ethical and professional standards for professionals retained to conduct or advise in the affairs of insurers that are in receivership or otherwise financially troubled and in need of restructuring; and
- (d) To recognize, through accreditation, the attainment by its members of expertise and proficiency in such pursuits.

Are IAIR's current activities furthering this mission or has IAIR strayed? I'll share some

thoughts on mission fulfillment.

I believe the first two parts of IAIR's mission statement continue to reflect the original intent in the formation of IAIR: to create an organization comprised of those consultants and regulators practicing in the area of troubled insurance companies where receivership issues, processes, techniques and strategies could be shared, discussed, refined and resolved. The IAIR events held in conjunction with the NAIC meetings provide forums for the continuation of this type of interaction but meeting conflicts regularly prevent attendance by many interested insolvency practitioners, especially regulators. The open and full exploration of topics between regulators, receivers and guaranty funds can further the goal of insurance consumer protection shared by most of the professionals participating in a rehabilitation or liquidation.

The second item of the mission statement also discusses the development of educational and training programs. IAIR's annual insolvency workshop, the technical development series programs, the professional development events for financial regulators, and joint programs with our association partners (TIPS, AIRROC) have continued to present first hand expertise on current issues to attendees in an interactive setting. It's been suggested that IAIR could do more to assist receivers and regulators with the delivery of benefits and the protection of consumers by sharing insights and information regarding the advanced planning and preparation needed when a potential liquidation is looming. Our role is not to point fingers or assign blame, but rather to recognize and impart ever evolving helpful procedural adjustments based on our members' collective hindsight, experience and involvement in myriad receiverships. Would any such efforts be better received and more useful if documented as a white paper or preparation guide, rather than through our educational programs and presentations at NAIC?



What is IAIR'S Role? (continued)

The third item of the mission statement deals with ethical and professional standards development. The standards have been in place for quite some time but, more important than the fact that they exist, they are continually practiced by IAIR's members, which fosters our goal to maintain these standards throughout the receiver community.

The final mission statement item deals with an accreditation process that recognizes the attainment of expertise and proficiency of IAIR members. The current Certified Insurance Receiver ("CIR") and Accredited Insurance Receiver ("AIR") designations involve a rigorous application process to confirm the significant experience and knowledge requirements to achieve one of the designations. There are also continuing education requirements to maintain a designation. IAIR is currently exploring the development of an additional designation to supplement our existing ones. The curriculum, training and testing elements of the designation are still being developed.

Questions to Ponder

On its face, it would appear that IAIR is fulfilling all aspects of its mission, but are there ways this could be improved?

- What should be the role of IAIR in the insurance world?
- What additional activities should IAIR pursue to ensure it remains relevant and recognized?
- How important is the dialogue and exploration of issues between IAIR's receiver and

guaranty association/fund members?

- How can IAIR best serve its members?
- Is it more important for IAIR's educational programs to focus on:
 - (1) Continuing the refinement of the expertise of its experienced receiver members;
 - (2) Attracting new members that have minimal receivership experience;
 - (3) Exposing regulatory members to the challenges and issues encountered in receiverships and the tools for addressing such challenges;
 - (4) Promoting effective coordination and planning throughout troubled company and receivership proceedings;
 - (5) Utilizing the memorandums of understandings with other organizations to enhance IAIR's presence? Which organizations?

Where Do We Go From here?

Please feel free to contact me by phone (800-982-6362) or email (bboles@txlifega.org) with your own ideas about IAIR. Your confidential information will be anonymously shared with the IAIR Board of Directors as we follow a simple process akin to strategic planning for the evaluation, prioritization and development of future activities and events. IAIR can only remain the preeminent authority and resource for the issues and techniques involved with troubled companies and receiverships if its members actively voice their views for the course to be followed.

Thank you and I look forward to hearing from you.

The Insurance Receiver is intended to provide readers with information on and provide a forum for opinions and discussions of insurance insolvency topics. The views expressed by the authors in the Insurance Receiver are their own and not necessarily those of the IAIR Board, Newsletter Committee or IAIR's Association Manager. No article or other feature should be considered as legal advice.

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William Latza, Esq. and Martin Minkowitz, Esq., Stroock & Stroock & Lavan LLP



IAIR Bulletin Board



Congratulations to Bruce W. Gilbert, Executive Director of the Nevada Insurance Guaranty Association (“NIGA”), and a member of the IAIR Board of Directors, on achieving the designation of Accredited Insurance Receiver – Claims/Guaranty

Funds. Bruce began his insurance career in 1980 as a multi-line adjuster, working his way up to Sr. Casualty Adjuster and Claims Manager for insurers such as the Doctor’s Company and California Casualty Management Company. He came to NIGA from the Sierra Insurance Group, where he was Claims Manager for two insurance companies in a four-state region, and their workers’ compensation TPA, and was responsible for claims activities as well as audit, regulatory and legislative matters.

After receiving an AAS degree in Criminal Justice and Law Enforcement, Bruce earned his B.S. in Political Science from Willamette University in Salem, Oregon.

He also studied as an exchange student at the International College of Commerce and Economics in Saitama, Japan and later served as a Director and three terms as President of the Japan America Society of Nevada.

Bruce will officially receive his designation at the Summer NAIC National meeting in Louisville, Kentucky



Andromeda Monroe, IAIR member since 2011, is practicing all aspects of insurance regulatory law with Monroe Law, P.L., which she formed in August 29, 2013 and has been conducting business as such effective October 1, 2013.

AIRROC/IAIR Joint Issues Forum Washington, DC November 17, 2014

AIRROC and IAIR will present their second joint Issues Forum to be held in conjunction with the Fall Meeting of the National Association of Insurance Commissioners. The Forum will include an update on the activities of the various NAIC committees as well as an insider perspective on insurance issues that are hot in Washington.



In lieu of our usual reception at NAIC, Frost Brown Todd, LLC has been generous enough to host us at their Derby Pie and Bourbon tasting event on Sunday, August 17th, immediately following our IAIR Issues Forum. Sounds like fun!!



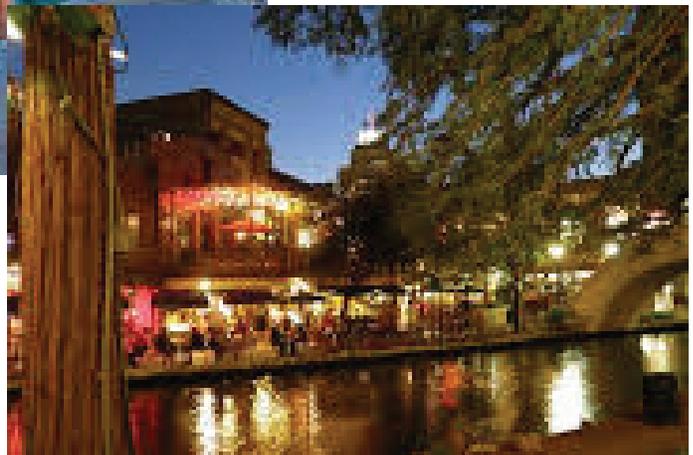


DON'T MISS IT!

The next IAIR Insolvency Workshop will be held in San Antonio at the Omni La Mansion on the Riverwalk.

So...

for **SAVE the DATE**
February 25 - 27, 2015



Many more details to come soon.



International Association of Insurance Receivers

SPONSORSHIP PROGRAM

The International Association of Insurance Receivers was founded in 1991, and continues to be recognized today as the professional association providing those involved with insurance receiverships and financially stressed or troubled insurers with a forum to exchange information, develop best practices, establish and maintain accreditation standards, and educate its members and others concerning the administration and restructuring of such insurers.

The International Association of Insurance Receivers is proud to be able to offer three levels of participation to sponsors interested in expanding their participation in IAIR events and maximizing the potential of their exposure to insurance receiver professionals and others interested in this growing industry. Each level of participation includes the value-added benefits described below to enhance the opportunities of focused engagement with IAIR members and others attending events throughout the year, and those who visit the IAIR website.

OUR MISSION

- To assemble individuals interested in the affairs of insurers which are financially stressed or troubled or are in need of restructuring or in receiverships;
- To establish ethical and professional standards in the conduct of the affairs of such insurers;
- To provide its members with professional education and development relevant to such pursuits; and
- To recognize, through accreditation, the attainment by its members of expertise and proficiency in such pursuits.

P PLATINUM SPONSORSHIP

is available for \$7,500 per year.

- Credit against IAIR dues for up to 2 representatives of Sponsor.
- Credit against IAIR Workshop registration fees for up to 3 representatives of the Sponsor.
- Posting of the Sponsor's logo at the bottom of the IAIR Home Page with a link to the Sponsor's website.
- Speaker role annually for a representative of the Sponsor (or its designee) at one of the IAIR Issues Forums or an IAIR Workshop, or an article in *The Insurance Receiver* (with IAIR to have final approval on the speaker/author and topic).
- Two full page ads each year in *The Insurance Receiver*.
- Space on a materials table for the Sponsor at all IAIR events.
- Recognition of the sponsor on the IAIR website, in each issue of *The Insurance Receiver*, and at all IAIR events.

G GOLD SPONSORSHIP

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- Credit against IAIR Workshop registration fee for one representative of Sponsor.
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- One full page advertisement each year in *The Insurance Receiver*.
- Space on a materials table for the Sponsor at all IAIR events.
- Recognition of the sponsor on the IAIR website, in each issue of *The Insurance Receiver*, and at all IAIR events.

S SILVER SPONSORSHIP

is available for \$1,500 per year.

- Credit against IAIR dues for one representative of the sponsor.
- A 10% discount on IAIR Workshop registration fees for one representative of the Sponsor.
- Posting of the Sponsor's logo at the bottom of the IAIR Home Page with a link to the Sponsor's website.
- Space on a materials table for the Sponsor at all IAIR events.
- Recognition of the sponsor on the IAIR website, in each issue of *The Insurance Receiver*, and at all IAIR events.

If you are interested in participating as an IAIR sponsor, advertiser or wish to receive information about IAIR membership or committee participation, please contact Nancy Margolis, Esq., Association Manager, International Association of Insurance Receivers, telephone 610.992.0015 • nancy@iair.org



SAVE *the* DATES

Fall NAIC Meeting

November
16-19
2014

Washington, DC
Washington Marriott
Wardman Park

IAIR Insolvency Workshop

February
25-27
2015

San Antonio, TX
Omni la Mansion

Spring NAIC Meeting

March
28-31
2015

Sheraton Phoenix Downtown &
Hyatt Regency & Convention
Center

INVITATION TO JOIN - If you haven't done so, be sure to join one or more of the IAIR committees that catch your eye. You can express an interest and join by reaching out to the committee chair, self-selecting the committee on the www.iair.org webpage, or speaking with Nancy Margolis. And, if you aren't sure, join us for a committee meeting in Orlando to see what it's all about. Everyone is welcome so pick something and get involved!

IAIR 2014 Committee Chairs

Executive Committee

Chair: Bart Boles

Audit Committee

Chair: Evan Bennett

Ethics Committee

Co-Chairs: Joe DeVito and
Mike Fitzgibbons

Education Committee

Co-Chairs: James Kennedy and
Kathleen McCain

Finance Committee

Chair: Donna Wilson

Governance Committee

Chair: Dennis LaGory

Membership and Promotion Committee

Co-Chairs: Betty Cordial,
Bruce Gilbert
Mary Cannon Veed

Newsletter Committee

Chair: Michelle Avery

Receivers & Guaranty Funds Relations Committee

Co-Chairs: Lynda Loomis and
Wayne Wilson

Website Committee

Co-Chairs: Jenny Jeffers and
Dale Stephenson



www.iair.org