Society of Insurance Receivers

Spring 1994 NEWSLETTER Vol. 3, No. 2

Inside this issue

Cambridge Reinsurance Limited: *A Special Date*

Philip J. Singer
Coopers & Lybrand, London

What's in a date? What makes March 21, 1994 so special? Is it because it's Canberra day in the Australian Capital Territory or the Festival of St. Benedict? Is it because it's vernal equinox day in Japan or the 193rd anniversary of the battle of Aboukir? Is it because it's the beginning of spring (or autumn depending upon which hemisphere you are in?). It could I suppose be all of those things but to me the most significant thing about 21 March 1994 is that this was the day when the joint liquidators of Cambridge Reinsurance Limited put cheques in the post in payment of a sixth and **final** dividend in that liquidation.

The story of Cambridge goes back to 22 April 1985 when Gerry Weiss of Coopers & Lybrand, London and David Lines of Coopers & Lybrand, Bermuda were appointed joint liquidators. At that time the received wisdom was that it would take many years to wind-up the affairs of the company because of the long-tail nature of many cedants' claims. The view was that until all those claims had crystallised it would not be possible to make distributions to creditors for fear of paying away too much too soon leaving insufficient funds available to pay like dividends to later proving creditors. Moreover since a reinsurance company's own retrocessions represent the bulk of its assets it would not be possible in many cases to make recoveries from retrocessionaires until the inwards claims were crystallised since many debtors were also creditors who would pay nothing until the net balance of their account was established.

From the outset the joint liquidators resolved to find a better way of dealing with the liquidation in order to return creditors' funds to creditors' pockets as quickly as possible. There is a time value to money and a liquidator who unduly delays distributing funds to creditors fails them.

Initially creditors were invited to put forward communication proposals but the number of responses from the company's 3,000 or so cedants could be counted on the fingers of one hand. Another way had to be found.

There was also a problem in that Cambridge, like most reinsurance companies, maintained its accounts as though its debtors and creditors were brokers rather than principals and it was therefore necessary to reconstruct the company's accounts on to a principal basis. Having set up the principal ledger it then became practicable to apply set-off and establish whether a creditor was really a creditor or whether in fact he was a net debtor.

The next problem was to find some method of dealing with the problem of the tail. Bermudian insolvency legislation (Bankruptcy Act 1876) in line with UK insolvency legislation requires that "an estimate shall be made... at the discretion of the [liquidator] of the value of any debt or liability... which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value."

The use of the word "shall" implied that there was an imperative upon a liquidator to estimate contingent liabilities but the legislation was silent on how this should be done.

Recognizing that actuaries look into their crystal balls each year and produce IBNR figures for reinsurance companies, we asked our in-house actuaries whether it would be possible to take a global reserving figure and then allocate it down to contract by underwriting year by cedant level. They responded that if we gave them the facts and the best available data they would produce an equitable basis for the estimation of claim values. They then proceeded to develop an actuarial estimation

continued

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methodology which could be applied to contract data. We did this in two stages. Firstly, we wrote to every creditor sending them a "provision of information form" setting out specific data relating to premiums, claims, type of business, contract year etc. for each contract by underwriting year and inviting them to carefully check the data and advise us whether it was in any way inaccurate or out of date. At the same time we also sent each creditor a provisional estimate of their ultimate claim on the basis of the application of the estimation methodology to their contract data.

Approximately 550 creditors responded and their replies enabled us to clean up the record to a considerable extent.

No account was taken of case reserves or IBNR as supplied by cedants since the basis of reporting was extremely variable and in many cases no reports were received at all. Therefore in the interests of equity, rather than try to utilise incomplete data of uncertain quality, this was omitted from the exercise.

A second estimation exercise was then carried out using the updated data and revised estimates were sent to creditors, again with the invitation to carefully check the contract data and amend it as necessary.

Having concluded the exercise and having crystallised creditors' claims by the use of the estimation methodology we were then in a position to declare a first interim dividend on 30 March 1989; less than four years after the commencement of the liquidation. This may seem like a long time, but in terms of a reinsurance liquidation it was unprecedentedly speedy.

Having established the company's inwards liabilities it was then possible to apply those results to the reinsurance programme and establish the obligations of the company's debtors. Where individual companies were both creditors and debtors, set-off was applied to establish the net balance of account.

Following the payment of the first dividend the remaining task for the liquidators was to collect in the company's retrocessions. One would like to think this was a simple task but the fact of the matter is that many reinsurers are not too keen on meeting their obligations and the process took nearly five years to complete. In the interim further dividends were declared from time to time culminating with the payment of the sixth and final dividend.

Total dividends paid amount to 21.2% involving a distribution of approximately $21 million. From start to finish, therefore, the liquidation has taken less than nine years and as far as I am aware is a record for this type of liquidation.

Having shown that it is possible to conclude reinsurance liquidations speedily by the use of estimates, a number of other reinsurance company insolvencies in several jurisdictions are now being dealt with using this approach. Unfortunately it is not so simple in the United States since although the Federal Bankruptcy Code at S502 provides "there shall be estimated for purpose of allowance under this section....any contingent or unliquidated claim, the fixing or liquidation of which....would unduly delay the administration of the case," this provision was not adopted by any state when their insurance insolvency legislation was enacted. However there is hope. Illinois has taken a lead in developing its own estimation statute which its promoters hope will, in time, be adopted across the United States. ■

Principal and Associate Roundtable in Baltimore, Md.

June 11th in Baltimore

A roundtable for principal and associate members is set for Saturday, June 11 from one to five P.M. at the Hyatt Regency Baltimore in the Baltimore/Annapolis rooms on the second floor.

Two speakers at this date have been lined up.

Sandra Spooner of the Justice Department will be speaking to the group regarding the Justice Department position on the Federal Priority in light of the Fabe decision.

Paul Grim, Esq. of Niles, Barton & Wilmer in Baltimore who argued the "Gordon" case on the Federal Priority will be discussing the "Abstention Doctrine." He also submitted an amicus brief on behalf of the Maryland Insurance Administration and was part of the moot court team that assisted Jim Rishel before the Fabe Supreme Court hearing.

In addition, other topics of interest will be discussed.

President's Column

To: All Members
Re: Highlights of Recent Activities

A receivership's main goals are closing an estate, distributing funds to creditors or salvaging an insurer from rehabilitation status. Unfortunately, these goals are often pushed backstage as efforts are devoted to the multiple obstacles that require overcoming plus the time periods necessary to reach these goals.

Quality information as to successes in achieving these goals is generally not available. The NAIC has recognized this need and is currently promulgating its national data base project.

Commencing with this issue, your Society is undertaking to serve as a source of information concerning receivership progress, particularly the successful closing of an estate, distribution of funds to creditors or salvage of an insurer from rehabilitation. A committee, appropriately named the Achievement Committee, has been formed to gather facts for your Quarterly Newsletter. The committee includes ten members. Two members will cover each of the four NAIC zones while the two other members will cover international receiverships. The head of this committee will, in turn, report to our publications chairperson. Initial appointees are set forth in the committee appointment article elsewhere in this issue.

Our first article on this subject, which features the closing of the Bermuda based Cambridge Reinsurance Limited, appears in this issue. The completion of this liquidation in less than nine years was quite an achievement for the receivers.

Another first time SIR activity is our 1994 training program which will be run jointly with the National Conference of Insurance Guaranty Funds (NCIGF). Members would be wise to save November 13 and 14 for this program which will be run in San Antonio.

Our Annual Conference in December during the NAIC winter meeting promises to be an exciting event highlighting a model liquidation case and a mock arbitration. There will be no fee for SIR members; non-members will be admitted for a $150 fee.

As you may be aware, the Society has been an instant success, attracting over 300 members in our first two years. This success had led to the hiring of Chase Communications as Society Administrator. We have adopted their office as our address for all mail and phone calls, as seen elsewhere in this issue.

Chase Communications is among the nation's leading insurance communications and association management firms. Administrators of 17 insurance organizations, publishers of the Insurance Advocate, International Insurance and hundreds of newsletters, books and other association periodicals, Chase Communications will facilitate our Society's growth. Steve Acunto, President of the firm, is our liaison, assisted by Lynda Warren, Vice President, Association Management,and Mary Costa Leone, Administration Manager. We welcome these professionals to the S.I.R. family.

All your Board members look forward to being with you during the NAIC summer meeting in Baltimore. We will be having a roundtable for "P" and "A" members on Saturday, June 11, and a cocktail reception on Monday, June 13.

Sincerely
Mike Miron

All your Board members look forward to being with you during the NAIC summer meeting in Baltimore.

Mark Your Calendar

May 19 & 20 at Hotel Furama Kempinski in Hong Kong "Insurance Opportunities - Regional and International" being put on by Legal Business in Asia and Coopers & Lybrand. Our own Philip Singer of Coopers & Lybrand-London is one of the moderators.

June 11 Roundtable for principal and associate members and invited guests at the Hyatt Regency in Baltimore, Md. It will be in the Baltimore/Annapolis rooms on the second floor from 1 to 5 PM.

June 12 SIR Board meeting from 1 to 4 PM on the second floor of the Hyatt Regency Baltimore in the Columbia/Frederick rooms.

June 13 SIR cocktail reception from 5 to 7 PM on the third floor of the Hyatt Regency Baltimore in the Chesapeake room.

New Members

Principals

Mr. I. George Gutfreund
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Commerce Court West, Suite 3300
P.O. Box 31
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Ms. Sue Buser
Special Deputy Receiver
Louisiana Department of Insurance
4865 Laurel St.
New Orleans, LA 70115

Mr. Fred A. Buck
President
Buck & Associates
10405 Summerwood Court
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Mr. David Wilson
D.E. Wilson & Associates, Inc.
7997 S. Fairfax Court
Littleton, CO 80122

Mr. Richard Warman
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7 Kenrick Place
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Associate

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Mr. Michael Anderson
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Mr. Carl Reed
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Mr. Amos Nelson
Supervising Insurance Examiner
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Sustaining

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St. Louis, Missouri 63017

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The Resource Group
200 Berwyn Park, Suite 110
Berwyn, PA 19312

Ms. Mary Veed
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Chicago, Illinois 60606

Mr. Ronald Stanziale, Jr.
Senior Vice President
& Chief Financial Officer
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New York City, NY 10005-1843

Mr. Robin Spencer
Lovell White Durrant
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London, England EC1A2DY

Mr. Robert Rosenberg
Latham & Watkins
885 Third Avenue
New York, New York 10022

Mr. Charles Ramsey, CFE
Regulatory Consultant
Ramsey & Associates
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Austin, Texas 78701

Mr. James Owen
McCarthy, Leonard, Kaemmerer, Owen, Laderman & Lamkin
Suite 300
16141 N. Outer 40 Drive
St. Louis, MO 63017

Ms. Myra McDaniel
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San Jacinto Center, Suite 1800
98 San Jacinto Boulevard
Austin, Texas 78701-4039

Meet Your Director

John Massengale has been involved with the insurance industry for more than thirty years. He is a charter member of the Society of Insurance Receivers (SIR) and currently serves as treasurer, chairman of the finance committee and is a member of the board of directors.

John began his insurance career with the Texas Insurance Department and over thirteen years held responsible positions including Chief Financial analyst and Supervising Examiner. After a period of time away from the insurance industry, John returned to the department in 1981 and over the next eight years became heavily involved in the Conservation and Receivership area as well as company licensing. He was the Rehabilitation Advisor for The Conservation of Companies Division, Chief Auditor for the Receivership Division, member of the special Baldwin United Committee established by the NAIC and Admissions Examiner for the Company License Section of the Texas State Board of Insurance.

In 1988 John became president of Resource Managerial Services Inc., a firm providing insurance company examination services, rehabilitation management and liquidation assistance to insurance regulators. Currently he is Managing Partner of Massengale & Associates, a firm providing financial and receivership management services to insurance regulators.

John has conducted a number of training seminars for insurance departments and speech presentations at a number of conferences. He is a member of the NAIC Working Group that created the Troubled Insurance Company manual and authored a number of articles. In 1993 he received the Editors Choice award at the annual meeting of the Society of Financial Examiners for his article *Examiners as Expert Witnesses* published in The Examiner in Spring 1993.

John received his BBA in accounting from Baylor University and the following professional designations, CPA in 1968 (Texas), Certified Insurance Examiner in 1988 and Certified Fraud Examiner in 1993.

John Massengale

Save the Date

Education Committee Report

The Society of Insurance Receivers, "SIR," and the National Conference of Insurance Guaranty Funds, "NCIGF ,"are sponsoring a joint training seminar . The seminar will be held on Sunday, November 13 and Monday, November 14, 1994, at the Palicio del Rio Hilton Hotel in San Antonio, Texas.

There will be two separate tracks— Track I Receivers - Fund Managers; Track II Staff - Claims Managers. These Tracks will be arranged in smaller groups.

The seminar is designed to build communication between Receivers and Guaranty associations and to address challenging areas such as legal issues, technical claims questions, ALAE, reinsurance, global settlements, etc. Track II for staff members will focus discussions around claim hypotheticals which include controversial issues.

Deputy receivers, guaranty association managers, staff members of receiverships and guaranty associations and insurance department staff responsible for guaranty association and receivership issues will benefit from the seminar.

Additional information and registration brochures will be available in the coming months. If you have questions, please direct them to Joyce Wainscott, SIR Training Committee Chair, 911 West 8th Avenue, Suite 301, Anchorage, Alaska 99501, or phone (907) 277-9222, or Holly Bakke, NCIGF Education Committee chair, New Jersey Guaranty Association, 466 Southern Boulevard, Chatham, New Jersey 07928, or phone (201) 966-0966, ext. 539.

Dividend To Creditors

News Flash

Universal Marine Insurance Co. Ltd. was wound up April 11, 1988 by an order of the Supreme Court of Bermuda. Peter Mitchell of Cooper & Lybrand, Bermuda and Philip J. Singer of Coopers & Lybrand, London, both of whom are members of the Society, are the joint liquidators. Being a reinsurance company, the joint liquidators were faced with all the usual problems of crystallising the liabilities. However, using provisions of Bermudian insolvency legislation they have been able to crystallise the company's liabilities earlier than would otherwise be the case by the use of estimates. As a result they were able to distribute a first dividend of 3% to creditors at the end of January.

Denver Roundtable

The SIR roundtable in Denver held on Saturday, March 5 from 12:30 to 5:30 in conjunction with the NAIC's Spring National Meeting went exceedingly well with a lively discussion of many topics. We owe our sincere thanks and appreciation to those individuals who volunteered to kick off discussions on the variety of topics and special appreciation to Doug Hartz, organizer of this successful roundtable.

The first two hours of the roundtable were devoted to topics relative to life receiverships. Jack Blaine and Dick Klipstein provided the group with a very clear discussion of what is now viewed as being the role and evolution of NOHLGA with regard to receiverships. David E. Wilson, Frank O'Laughlin and Larry Grayber gave an overview of the takeover, coordination and buyer's perspective, respectively, and provided all of us with something of a case history in regard to a smaller life receivership. Many attendees assumed initially that the receivership being discussed was merely a made-up composite example life receivership, when we were discussing an actual life receivership, called (ironically) Old Faithful, which occurred in Wyoming (which explains the name). We are extremely thankful to Wyoming Commissioner John P. McBride for his discussion of the Commissioner's perspective in relation to how a receivership should be conducted, which can be summarized as — control costs! Robert Deck, the venerable receiver from Missouri, presented the topic of ceding commissions with regard to blocks of business which are transferred out of the receivership. Yes, ceding commissions, and questions of to whom they belong, produced what was probably the most lively discussions of the day. Mark Tharp and Brian Shuff presented topics on accounting and reporting and handling rough spots in life receiverships. We owe great apologies to Bernie Spaulding, who prepared for a presentation on general coordination and we simply ran out of time.

The rest of the afternoon was devoted to general receivership topics, and was the first roundtable session open to both principal and associate members. Nebraska Insurance Department Acting Director Robert Lange, gave an overview of the problems and issues that arise with regard to risk retention companies in receivership and thereby started an interesting discussion of the nettlesome issues which have to be addressed by state insurance departments when one of these federal animals becomes insolvent. James A. Guillot, kicked off a discussion of handling early access distributions with

Hugh Alexander and Doug Hartz.

Julius Bannister and Trever Jones from London.

SIR cocktail party guests.

Denver Principal and Associate Roundtable.

Top left:Robert Lange, Nebraska acting director speaking (right).

Top right: James Guillot (right).

Middle left: Jo Ann Jay Howard (right).

Middle right: Kathleen Nieweem (right).

Mike Marchman, Deputy Receiver, GA.

Kevin Harris, NCIGF.

Doug Hartz, chair of Denver roundtable.

a focus on life receiverships. We just couldn't get completely away from life receiverships. Kathleen Nieweem gave an update on where things are with the National Receivership Database, and initiated the discussions of this very important topic. Jo Ann Jay Howard then presented a discussion of issues in dealing with a class-action lawsuit outside of the receivership proceeding on behalf of consumers toward the recovery of premiums which were either not due to or never made it to the insolvent insurance company's accounts.

The afternoon was closed by Kevin Harris, general counsel for NCIGF, with a discussion of the intervention by the guaranty funds in a case where the commissioner overseeing a receivership allegedly settled a lawsuit against an accounting firm for much less than what the guaranty funds, which (as usual) were largest claimants expecting a distribution, believed could have been recovered in settlement or litigation. The ensuing discussion regarding this topic was surprisingly benign. Either this was because Mr. Harris presented the topic with such great expertise and finesse that all were overcome, or it was late in the day on a Saturday and everyone just wanted to go enjoy a beautiful early spring evening in Denver, Colorado. Perhaps it was both. ■

Good News For Owners of Real Estate

By William Maher

This is good news for owners of troubled real estate portfolios. Not only are there buyers for multi-million dollar real estate portfolios, but prices have been increasing over the last year. Receivers of insurance companies should find this particularly encouraging, as the potential recovery of investments in real estate is substantially increased while the time frame of that recovery is shortened. The other good news is the strong market acceptance of Real Estate Investment Trusts, which is infusing new capital into the marketplace and allowing some developers to pay down on burdensome debt obligations.

Pooled Sales

Pooled sales of real estate portfolios, including performing and non-performing mortgage loans and real estate, were pioneered by the Resolution Trust Corporation ("RTC") as a way to liquidate billions of dollars of otherwise illiquid and unsalable real estate assets. With the interest of investors established through numerous pooled sales by the RTC, even large, well-capitalized banks and insurance companies have now started to utilize this technique to dispose of large blocks of real estate assets.

Evidence of the real estate turnaround in certain markets can be found by looking at the large recent transactions initiated by major financial institutions. For example, Travelers Insurance Company recently sold real estate mortgage loans and individual properties with an original contract value of $634 million to a private investment group. That sale netted $300 million in proceeds, representing 47% of original contract value. Other recent portfolio sales have been made by First Chicago, Shawmut Bank and Chase Manhattan Bank.

Recent sales prices of large pooled sales have ranged from 40% to 55% of original contract or book value. Because original book value may not be a reliable measure of market value, investors often focus on a RTC-originated concept known as Derived Investment Value ("DIV"). DIV is the present value of cash flows using a standard set of assumptions regarding asset performance, including the likelihood, timing and cost of a borrower going into bankruptcy. The resulting annual cash flows are discounted at a rate that reflects the asset risk ranging from 13% for investments in regional shopping centers to 20% for investments in unimproved land.

The DIV methodology tends to generate conservative estimates of value, generally less than 50% of original contract value. While initial RTC pooled sales attracted offers that were generally less than the DIV, recent portfolios have sold at prices as much as 20-30% over the DIV. The inherent indication is that investors are now assuming that they can buy a group of assets at a premium over the DIV and still earn a profit by selling the individual assets in a position faster and/or for a higher price than was assumed in the DIV analysis. For example, while the DIV may assume that a foreclosure leads to a borrower filing for bankruptcy, an investor may assume that a deed in lieu transfer can be arranged, thereby reducing the legal costs and the time to obtain ownership of the asset.

From the point of view of an insurance company or other financial institution with a large portfolio of illiquid real estate assets, a pooled sale makes sense when the proceeds from the sale exceed the likely value (on a present value basis) of working out and selling assets on an individual basis. Many such institutions lack the expertise and/or do not want to invest the time and money into the workout process. Thus, a pooled sale is often the preferable and financially superior alternative to holding the real estate as a long-term investment.

Even receivers of insolvent insurance companies can benefit from pooled sales, especially in light of the recent strengthening in prices for those transactions. A pooled sale provides immediate liquidity, eliminates an expensive and burdensome workout period that could extend for years, and eliminates contingencies as to whether the values of individual assets will ever recover. Of course, for any specific situation, the type and quality of the assets will determine whether a pooled sale is the preferred disposition approach.

There are generally three types of buyers for pooled sales of real estate assets.These include investment banks, private groups often led by wealthy individuals and certain other financial institutions such as GE Capital. Each buyer will have different investment requirements. Nonetheless, the increasing amount of interest and capital in the pooled real estate market is pushing up prices paid for pools of real estate assets.

Real Estate Investments Trusts

The other good news for the real estate industry, and potentially for insurance receivers, is the large inflow of capital into Real Estate Investments Trusts,

or REITs. REITs have been around for a long time, but are finding new favor among investors searching for higher yields than those available from bonds and money market funds. REITs are currently being structured to yield a 6-8% yield based on proven cash flow from a pool of properties. REITs are also popular because, unlike limited partnerships, investments in REITs are widely traded and therefore are a liquid investment. In spite of a fourth quarter decline, the trading prices of many REITs have climbed during 1993, further adding to the appeal of REITs.

REIT investors look for a strong management company with a significant financial stake in the REIT. Accordingly, REITs are not a preferred vehicle for an insurer that wants to sell real estate assets without retaining a significant financial interest in the REIT. However, REITs can raise money to reduce the debt load of existing assets and to acquire new properties. Therefore, insurance companies may see some of their loans paid off by borrowers that form REITs and may be able to sell some properties to REITs, particularly retail and multi-family residential properties. With money to invest, REITs are starting to bid up the prices of certain assets, particularly well-performing multi-family residential properties.

Summary

In summary, the recent good news about real estate is increasing prices for pools of loans and properties and the rise in popularity of REITs, which are bringing greater liquidity to the real estate marketplace. This is a major change from the last five years, which were marked by limited liquidity, overbuilt markets and rapidly declining values. However, this good news is relative; one industry source estimates that there will be $20 billion invested in real estate in 1993, compared to $180 billion in 1988. For liquidators and rehabilitators of insurance companies, however, the ability to more quickly sell a pool of real estate assets at a reasonable price should make their job substantially easier. ■

William Maher is a Partner with Ernst & Young's Real Estate Consulting Group. Based in Washington, D.C., Mr. Maher has recently assisted the Departments of Insurance in Pennsylvania and Kentucky.

Publications Committee Report

Deanna Delmar, Chair

The Membership Directory Subcommittee, chaired by Larry Warfield is in the process of preparing a membership directory for distribution to all members. In addition to listing members alphabetically, it is anticipated that members will be listed geographically and by areas of receivership experience. You will shortly be receiving a data input form which must be filled out and returned to SIR Membership Directory, c/o Steve Acunto, Box 9001, Mt. Vernon, N.Y. 10552 on or before July 30th, 1994. **Failure to return your data input form by that date will result in your listing in the directory being limited to name, address and telephone number.**

The Newsletter Subcommittee, Managing Editor, Morty Mann, has added an Editorial Board, consisting of Morty Mann, Mike Cass, Contributing Editor and Deanna Delmar, Publications Chair. The Editorial Board will work closely with Steve Acunto, our new Administrator, to provide you with informative, sometimes provocative, but hopefully always interesting news of interest to SIR members. Several new features are being added, including a regular column listing achievements of note, such as estate closings, distributions to creditors, early access distributions and successful rehabilitations. This column will be written by Jim Dickinson, Chair of the Achievement Subcommittee. A "Letters to the Editor" column will serve as an open forum for members' opinions. "Spotlight on Members" written by Mike Cass (U.S.) and Philip Singer (International) will introduce several members selected at random each issue. The various committee chairs will report on their committees' activities and the Chair of the immediately preceding Roundtable will provide a brief report.

New deadlines for publication have been established. The newsletter will be mailed to all members on May 1, August 1, November 1 and February 1 each year. Items to be considered for publication must be submitted to Morty Mann at least 30 days prior to the publication date. The Editorial Board reserves the right to reject or edit any article submitted.

The Editorial Board welcomes your suggestions and comments on how to make the newsletter responsive to you and a vital benefit of your SIR membership. ■

Other Committee Reports

Achievement Subcommittee Report

Jim Dickinson, Chair

The Achievement Subcommittee was formed as a newsgathering arm of the Society of Insurance Receivers (SIR). SIR's goal is to publish in our quarterly newsletters information relevant to positive accomplishments by receivers. These activities would normally consist of such activities as the closing of an estate, a distribution to creditors or the salvaging of an insurer from rehabilitation. Jim Dickinson of Kentucky is chairman and the following are the zone representatives.

Northeastern Zone	Allessandro A. Iuppa, Maine
	William S. Taylor, Pennsylvania
Midwestern Zone	Kathleen S. Neiweem, Illinois
	Robert Johnson, Iowa
Southeastern Zone	Robert Greer, West Virginia
	James A. Guillot, Louisiana
Western Zone	Mark D. Tharp, Arizona
	Jo Ann Jay Howard, Texas
International	Philip J. Singer, England
	John Milligan-White, Bermuda

These members will be responsible for identifying a contact person in each insurance department as well as making periodic inquiries for news of positive accomplishments.

Bylaws Committee

Vincent Vaccarello, Chair

The Bylaws Committee, composed of: Francesca Bliss, Robert Greer, Douglas Hartz, William Latza, Michael Miron, Kathleen Neiweem, Vince Vaccarello and Joyce Wainscott, met during the recent SIR/NAIC Receivers seminar and unanimously adopted a number of recommendations for change which were later presented to the Board during its Denver NAIC meeting. The Board adopted all but two of these recommendations. The Bylaws Committee will now, with the assistance of SIR's attorney, Bill Latza, prepare formal Bylaws language consistent with earlier adopted recommendations. Upon the Board's acceptance of the formal Bylaw language, the Board will determine which of those changes it can or should adopt and which of those can or should be referred for review and adoption at the next annual meeting.

Nominatons Committee

Vincent Vaccarello, Chair

The Nominations Committee, composed of: George Piccoli, Karen Weldin Stewart and Vince Vaccarello, are currently in the process of reviewing potential nominees for Board positions. Sometime during the month of June, the Committee will meet and at that time review the background qualifications, etc. of those nominees in preparation for an official Nominations Committee report to the Board at the September NAIC meeting.

SIR/NCIGF Operations Committee

Tom Wrigley, Chair

Activities of this committee are suspended until the NAIC Model Act Task Force completes Section 46, Priority of Distribution, of the Rehabilitators and Liquidators Model Act. A meeting has been set for April 21, 1994 in Seattle with NCIGF to reinitiate this effort. Mark Fernal, CPA, Executive Director of the Wisconsin Guaranty Fund will be chairing the sub group of the NCIGF Operations Committee and Mike Marchman will interface with SIR.

Society of
Insurance Receivers

MEMBERSHIP APPLICATION

Please complete both pages and mail to SIR office

Note: Non-US members: additional forms required, write to SIR office.

NAME:_____ TITLE:_____

INSURANCE DEPARTMENT:_____
or
COMPANY:_____

BUSINESS ADDRESS:

Building/Suite: _____

Number and Street: _____

City: _____State and zip _____

Country: _____

Telephone number: (____)_____ Fax number: (____)_____

HOME ADDRESS:

Building/Apt. number: _____

Number and Street: _____

City: _____State and zip _____

Country: _____

Telephone number: (____)_____ Fax number: (____)_____

DEGREE(S) ACHIEVED: _____

_____

DESIGNATION(S) ACHIEVED: _____

_____

"A" - Associate Members*

Are you now or have you been employed by an "Agency"? (Any unit or agency of government, by whatever name designated, and any other entity having responsibility for the administration of a financially impaired insurance company or companies.)

YES _____ **NO** _____

If yes, state how long and in what capacity.

"P" - Principal Members*

If you have been a "Receiver" (the person, by whatever title designated, with principal operational management authority over the entire estate and affairs of an insolvent or impaired insurance company and having the powers and duties under applicable law of a receiver, limited to a Special Deputy, appointed in a delinquency proceeding, within the meaning of the Insurers Rehabilitation and Liquidation Model Act, as amended from time to time, adopted by the National Association of Insurance Commissioners), please state how long and which receivership(s). **Please furnish a copy of the Court Order naming you as receiver which should also demonstrate that you have had administrative control for six months.**

YES _____ **NO** _____

"S" - Sustaining Members

Are you presently or have you been contracted by any Agency or Receiver to perform some service involving an insolvent or impaired insurance company?

YES _____ **NO** _____

If yes to any of the questions above, please state the name of the Agency and the Receivership(s), and the assigned duties.

I have read the By-laws and wish to support the furtherance of the purposes and objectives of the Society. I agree to be bound by the decision of the Board in its consideration of my application for Membership and in its determination of my category of membership. I request my application for membership. My filing fee is enclosed (joining January 1st thru June 30th - US$100-Principal and Associate Members, US$125-Sustaining Members; joining July 1st thru December 31st - US$60 for Principal and Associate Members, US$75-Sustaining Members which are the fees for the balance of that year) if my application is accepted. I understand that if my application is not accepted the fee will be returned.

Signature _____

Date _____

The ABC's Of Reinsurance Collections

by Paul Walther, CPCU

Reinsurance recoverables are often the most significant asset available to the policyholders and creditors of an insolvent company. It is therefore incumbent upon the Receiver to exercise his or her best efforts to realize the maximum value of such asset and to do so in an expeditious manner. Although the fundamental aspects of the reinsurance collection process are rather simple, the implementation of those principles may involve a great deal of complexity and time-consuming effort in order to achieve the desired results.

Rather than the "ABC's," perhaps a more appropriate acronym might be the "IRC's" of reinsurance collections as indicated by the following ingredients in the recovery process.

1. Inspection

In order to ascertain the amounts which may be due from reinsurers, a detailed inspection must be made of the company's records to determine the number and nature of reinsurance agreements (treaties and facultative certificates), including the identification of reinsurers which may have current or future obligations under those agreements. The inspection effort should also include research as to whether cut-through or assumption endorsements are in place which might establish a direct obligation by a reinsurer to a policyholder or claimant who may have preferential access to reinsurance funds.

In view of the critical nature of this inspection process, a concerted effort should be made to research the knowledge of company personnel before they leave the Receiver's employment. Such process should also include an analysis of the company's Data Processing systems before the Receiver undertakes a conversion effort.

During the inspection effort, it is often helpful to develop a "time line" or a flow chart to diagram the history of a reinsurance program, and determine the evolution of coverage and reinsurer obligations during a company's history, particularly for the years immediately proceeding the Order of Receivership.

2. Investigation

Commensurate with the inspection activity, an investigation will be necessary to determine the extent of open balances and outstanding loss reserves which may be applicable to the contracts and reinsurers identified from the Inspection effort. In addition to the analysis of the company's records, the Receiver should take active measures to determine the nature and timing of premium and reports to be submitted to intermediaries and/or reinsurers. Such determination should also include inquiries as to open balances and reserves due from those parties, and whether they have retained funds which are properly assets of the Receivership and which should be returned to the estate.

3. Reconstruction/Reconciliation

To the degree that such inspection/investigation generates a significant variation between the figures recorded by Receivers and Reinsurers, the Receiver must then proceed with the necessary reconstruction and/or reconciliation of the accounts to support current and future reinsurance billings. That effort should also take into account various adjustments which may result from such elements as offsetting balances and portfolio returns resulting from policy cancellations.

Depending on the age of an estate, as well as a company's source of business, such effort may require a great deal of analysis and time-consuming energy to develop such support, particularly if the Receiver must contend with open litigation issues. As a result, the Receiver may have to seriously consider the cost/benefit relationship inherent in such process and determine whether the reconstruction/ reconciliation effort will ultimately be worth the amount of reinsurance recovery, or whether, in fact, it may be more appropriate, alternatively to attempt a negotiated settlement of open obligations.

4. Communication

Perhaps the most important aspect of the reinsurance collection process is the establishment of an early and effective line of communication with the various parties to a reinsurance agreement. Although we have positioned the communication element as an important ingredient toward the end of the collection process, there is a need for such communication throughout all phases of the process.Clearly, communications are necessary to develop the information derived from the inspection/investigation phase and in developing the support for reinsurance billings which result from the reconstruction/ reconciliation effort.

Nevertheless, communication takes on an added measure of importance in negotiating the ultimate settlement of a reinsurer's obligations. In that regard,

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it may be necessary for the Receiver and/or representative to not only engage in a personal dialogue with an intermediary which may have been responsible for the placement of the company's original program, but perhaps, more importantly, to establish direct contact with the reinsurers with whom the intermediary placed those obligations.

Such direct contact may be necessary to expedite the flow of funds, particularly if an intermediary is unable or unwilling to represent the company/Receiver once the premium flow (hence, the intermediary's commission income) has been cut off. Furthermore, the intermediary is not a signatory to the reinsurance agreement which sets forth the terms and conditions of the relationships between the company and its reinsurers. Direct communications may therefore be helpful and, in fact, necessary in order to reconfirm the rights and obligations of the Receiver and the reinsurers and help facilitate a resolution of open or disputed issues which may have an adverse bearing on the collection of reinsurance funds.

5. Commutation

Finally, an effort which may assume a significant element of importance is the commutation of a reinsurer's relationship with the company/Receiver. Commutations may not only be agreeable to the reinsurer which seeks to cut off future liabilities, but may be of benefit to the Receiver whose fiduciary responsibilities include maximizing cash flow, as well as an expeditious conclusion of the liquidation process.

Commutations may further benefit a Receiver by resolving a troublesome relationship with a reinsurer which is unwilling to fund its obligations on an ongoing basis. Such "bird in hand" philosophy may also be appropriate in dealing with a reinsurer which may, itself, be financially troubled, and may not be around to pay losses at some future point in the liquidation process.

In negotiating a commutation, it is extremely important that the Receiver obtain advice and counsel from a qualified actuary in determining an adequate IBNR component of the settlement to account for the anticipated development of future claims.

Although the fundamentals of the reinsurance collection process may be well understood, the implementation of those fundamentals may require the Receiver to enlist outside help in realizing the maximum possible return from a company's reinsurance agreements. The importance of reinsurance receivables should not be underestimated and the Receiver should therefore acquire and devote the necessary resources to maximize recovery of that critical asset. ■

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Coming Unstuck

The recent history of London market insurer insolvencies is well known, as is the view that more chapters will be written in the months and years ahead. Peter Chaffetz and Gisela L. Colón review the legal implications.

Unlike insolvency proceedings in most other industries, the London insurance insolvencies are truly international in scope as it is the wave of insurer liability arising out of U.S. environmental claims, savings and loans failures and other large claims on U.S. policies that has pushed London market companies into insolvency.

In broad outline, the U.S. and UK have similar insolvency procedures for insurance companies. In both countries, the thrust of the proceedings is to require all creditors to pursue their claims against the insolvent estate in a single forum.

In both countries a liquidator is appointed to marshal the insolvent's assets for equitable distribution to all creditors.

One problem presented by the London market insolvencies is that, while the companies must be liquidated (or as now appears to be the preferred alternative, run-off through a consensual 'scheme of arrangement') in England and English law, a very large portion of the claims arise under the laws of the several United States. Under these circumstances it is impossible for a single court to oversee all aspects of the proceedings. This situation presents a variety of legal and practical problems which are only now being worked out in some of the major insolvencies.

If a claim fails to be dealt with under section 304 of the United States bankruptcy code, for example, upon commencement of a liquidation or provisional liquidation in England, the High Court issues a stay of all proceedings against the company. However, the English court has no jurisdiction to enjoin proceedings in the U.S., where typically the insolvent is party to hundreds of ongoing cases and faces potential claims from thousands of American policyholders. The pending cases will be at all stages

of maturity and most will involve other, similarly adjusted London market insurers who are still solvent and able to defend.

For historical reasons, the U.S. bankruptcy courts have no jurisdiction over American insurance companies, which are usually liquidated or rehabilitated by the state in which the company is domiciled. However, insurance companies domiciled in other countries may be subject to an "ancillary proceeding" under section 304 of the U.S. bankruptcy code. This law empowers U.S. bankruptcy judges to exercise jurisdiction in aid of foreign insolvency proceedings.

The provisional liquidators of a number of London companies have now successfully invoked section 304 to obtain broad, preliminary injunctive orders staying proceedings against their respective companies pending the formulation and acceptance of a scheme of arrangement in the UK. Typically the courts have granted injunctive relief for three to six months, subject to extensions until a scheme of arrangement is agreed by the creditors and sanctioned by the High Court of England. At that point, the bankruptcy court will be requested to grant a permanent injunction enforcing the terms of the scheme in the U.S.

Permanent Injunction

Although there are bankruptcy courts throughout the U.S., most proceedings under section 304 have been filed in the United States Bankruptcy Court for the Southern District of New York. In most cases, that court has accepted jurisdiction over these cases based on the insolvent's residual interest in trust funds posted in compliance with regulations of the New York Department of Insurance. The court has also found that it has the power to grant nationwide injunctive relief in a single section 304 proceeding.

On December 14, 1993, Judge Prudence Abram of the United States Bankruptcy Court of the Southern District of New York granted a permanent injunction implementing the scheme of arrangement of the KWELM companies in the U.S. In light of that ruling, the approval of permanent injunctive orders to enforce future schemes of arrangement appears likely.

Importantly, while the bankruptcy court has the power to stay claims and even to adjudicate a limited range of disputes between the provisional liquidator and potential claimants, the valuation and allowance of claims must occur in the country of domicile.

There is also an impact of insolvency on pending U.S. claims, the most immediate being on the ongoing litigation of a provisional liquidation.

Generally, once provisional liquidators have been appointed, the insolvent insurer ceases payments to the U.S. counsel handling its pending cases. As the insolvent will typically be in arrears on its legal fees when it enters provisional liquidation, U.S. counsel can be expected to petition to be relieved from the representation. This creates a host of other problems.

First, without the co-operation of U.S. counsel, it can be difficult for the provisional liquidators to even identify the pending cases to which the company is party, much less the identity of the plaintiffs and other parties who require notice of the insolvency and of any proceedings under section 304. Moreover, the withdrawal of U.S. counsel leaves the insolvent unrepresented in the case and without any ready means for assessing the status or progress of the various litigations. The London Market Claims service will also stop providing claims information and such key claims documentation as 'private letters' or lawyer status reports. Even the most basic policy information, such as the percentage participation on various risks may be difficult to ascertain.

Reactions of U.S. counsel to the insolvency of their clients have varied. Some have been co-operative, providing detailed information about the matters they have been handling and full access to their files. Others have sought to use their control over the client's files to gain leverage for the payment of their past due fees. Some have attempted to assert rights under state law creating an 'attorney's lien' over the files of a client which has not paid its bills. For their part, the provisional liquidators have sought to compel access to counsel's files through the broad discovery powers available in proceedings in the bankruptcy court. The extent of that power and whether it is sufficient to defeat the attorney's lien is an issue that remains unresolved in section 304 cases commenced to date.

Ultimately, methods will be developed for companies in provisional liquidation to access their U.S. litigation exposure. Such an assessment is essential, set only for the fair estimation of individual claims, but also to permit the provisional liquidators' actuaries to develop the reserve estimates that are a prerequisite to determining the timing and amount of payments to creditors and to advising reserve information to reinsurers. ■

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