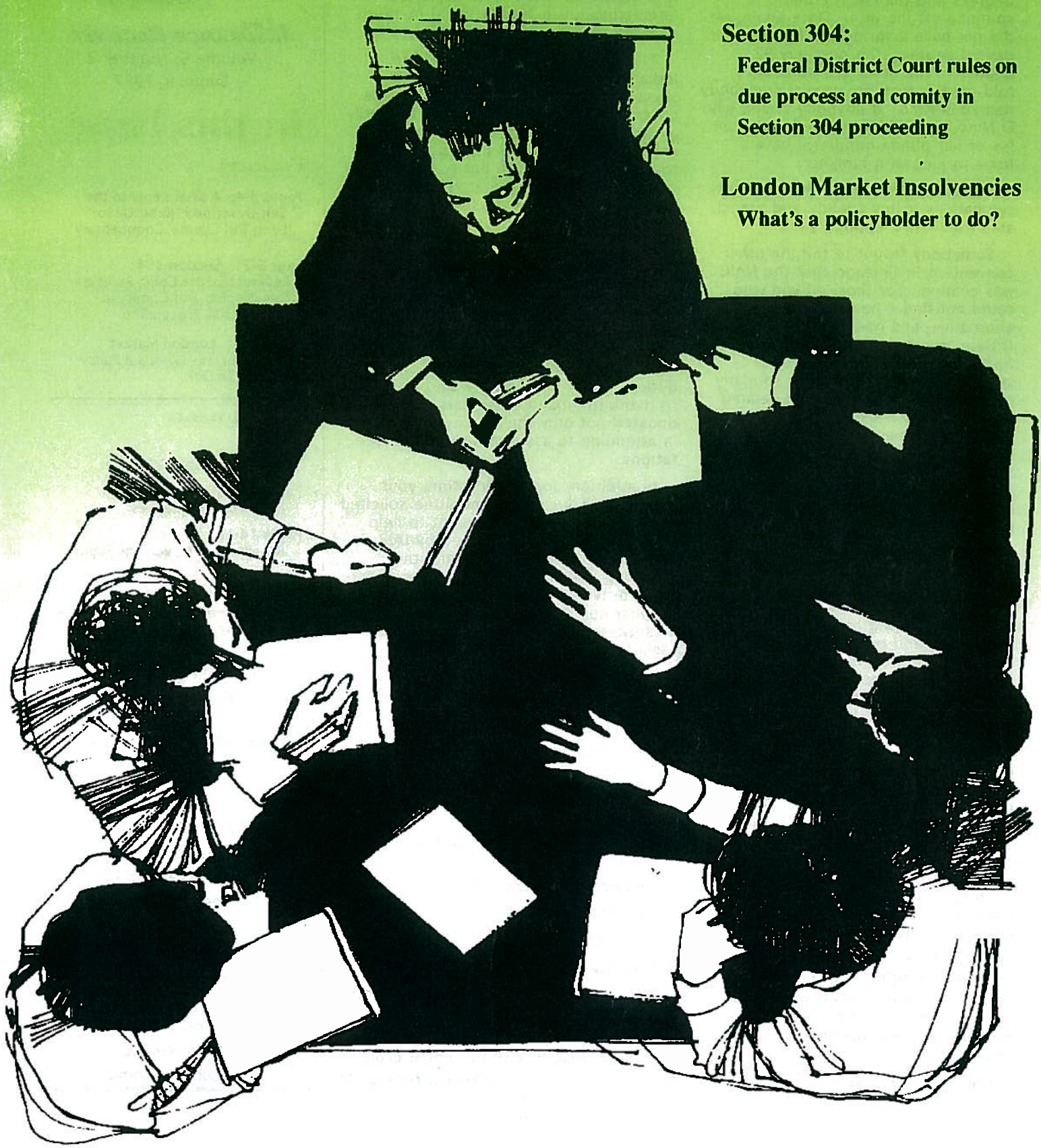
The INSURANCE RECEIVER

Promoting high ethical standards in the administration of Insurance Receiverships.

Volume 6, Number 2 SUMMER 1997



Section 304:
Federal District Court rules on due process and comity in Section 304 proceeding

London Market Insolvencies
What's a policyholder to do?

IAIR President's Message

By Dick Darling, CIR
Chief Operating Officer, Office of the Special Deputy Receiver

Summer! As I write this, it's 95 degrees and the electric meter is spinning off the wall. Once again, we did not have a spring in Chicago, one day 50 degrees, the next day 92 degrees. The other day somebody told me this was because of somebody named El Nino. If anybody knows who El Nino is, would they kindly send me his or her phone number; I have a bone to pick with him/her.

I also want to extend my sincerest sympathies to my friends and associates from Utah, enough said.

Somebody forgot to tell the other convention in Chicago that the NAIC was coming. For those of you who could not find a hotel room, or any alternative, and had to stay out by O'Hare, my sympathies. I do think the NAIC in Chicago was however a success. It was good to see so many of you in and out of the EX 5 related meetings. Some of the charges for EX 5 this year appear to be quite challenging and it should be interesting to see if everything gets done. My sympathies to Mike Surguine (IAIR Board Member) who has to keep track of all the various activities of EX 5.

The IAIR roundtable, co-hosted by Ellen Robinson and Phil Curley (Robinson, Curley & Clayton - Chicago) was again a success. Ellen and Phil were able to bring to the table many new topics and perspectives of interest to all IAIR members. Anyone with suggested topics for the Washington, DC roundtable (co-hosted by Jim Gordon, IAIR Board Member) should send them to Paula Keyes (IAIR Education Chair) in c/o of IAIR Headquarters. Chicago also saw the first IAIR/SOFE seminar. It was a beginning, and IAIR would like to solicit your comments and/or suggestions for future seminars of this nature. Your board would be interested in solidifying our relationship with SOFE for future events as our two organizations have quite similar missions, goals, and interests.

Once again, your board would like to thank the NCIGF for co-hosting our cocktail reception on Monday night. The food seems to be getting better, even if the rooms become harder to find.

Mary Cannon Veed's recap of the Chicago meeting appearing elsewhere in this newsletter should, as usual, be interesting given Mary's usual in-depth analysis of the NAIC's activities.

The IAIR training session held in Indianapolis, Indiana was a rousing success. Many interesting topics were covered and the session, being primarily aimed at staff members of receivership and related type offices, hit upon many topics of interest both basic and complicated. I hope all of the attendees were able to come away with something useful for their professional careers. The board would like to thank the co-chairs of this event. Paula Keyes, Co-chair (Chiltington, Inc. - Orlando), Cynthia Starret (CPA - Indianapolis, Indiana), and Karen Weldin Stewart (RSI - Philadelphia). If any of you have ever participated in the planning and carrying out of a seminar or workshop of this nature, you know how difficult it is. The board would also like to thank the many presenters who donated not only their time but expenses in attending to assist in the fine presentations.

In addition, for the first time your board and Education Committee solicited patron sponsors for this event to help defray the expenses incurred by IAIR. Your board would like to thank the following patron sponsors who so generously provided assistance. This training seminar could not have been completed as successfully as it was without their assistance. They are as follows:

Baker & Daniels

Dave Edwards-Claims/Reinsurance

Leonard Minches/Edwards & Angell

Elizabeth R. Sauer, PC

Fitzgibbons, Tharp & Associates

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Ormond Insurance & Reinsurance Management Services

Peterson Consulting, LLC

Sidley & Austin

Brian J. Shuff, CPA

Wrigley, Johnson & Associates

Your generosity is very much appreciated.

I also recently had the opportunity to attend the NOLHGA Sixth Annual Legal

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The **INSURANCE RECEIVER**
Volume 6, Number 2
Summer 1997

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Mark Your Calendar

IAIR Reinsurance Roundtable
Host: Jim Gordon
September 20 1-4 p.m.
Washington, D.C.

IAIR / NOLHGA Joint Session
November 18-20, 1997
The Brown Hotel
Louisville, Kentucky

NAIC / IAIR Insolvency Workshop
January 29-30, 1998
Hyatt Regency
LaJolla, California

A Brief Reply to the Self-Described "Rebuttal to: 'Long Tail Claims' Commentary"

By: Mark A. Lowder and Melissa S. Kooistra

Having read the most recent reinsurer attack on the Mission liquidation proceedings (deceptively titled a "Rebuttal to: 'Long Tail Claims' Commentary"), a decision was made to make a limited reply so that readers who are unfamiliar with the true and complete history of the Mission liquidation proceedings would not be misled by the article written by Ms. Debra Hall of the Reinsurance Association of America and her colleague, Mr. Anthony Mormino. Indeed, the article has very little to do with claims estimation and a lot to do with the venting of many strangely vehement views critical of the handling of the Mission liquidation, which is described in the article in its most favorable light, as "problematic."

Rather than engage in a point by point opposition to all of the inaccuracies, we think it is appropriate to let the numbers speak for themselves with regard to the Mission liquidation and to return to a brief discussion of long tail claims estimation or early estate closure (though, we submit, *early* is truly a misnomer in the context of a property/casualty insurer liquidation). Turning first to Mission, the California Insurance Commissioners who have had responsibility for the Mission liquidation proceedings have collected reinsurance recoverables totaling **$1,431,996,413**, a number which we believe is unprecedented in such an insolvency. Administrative expenses since the 1987 liquidation, including, among other things, payroll, insurance, rent, legal and accounting costs, etc., total $173,866,279, producing a ratio of 8.23 to 1. In other words, for every dollar spent to administer the estates, the Commissioners have collected **$8.23**. A closer look at the commutations concluded post-liquidation reveals commutations with over 344 reinsurers, comprising over 90% of all of Mission's ceded reinsurance business. Notably, only one commutation took place before the Mission receiver filed suit to collect reinsurance recoverables, over two years after conservation.[1] While Ms. Hall and others may not care for the Commissioners' decisions to pursue vigorously reinsurance recoverables as one step to fulfill their statutory duties, their results and the ultimate protection of policyholders and other creditors can hardly be characterized as an "expensive and largely futile crusade against reinsurers."

We would further submit that a fair review of the history of the Mission liquidation proceedings reveals a series of events largely engineered by the reinsurers, which Ms. Hall now offers as "proof" of the Mission receiver's "blatant demonization of reinsurers."[2] And, if one were to read the various court rulings and the Commissioners' legal briefs, not only in the cases mentioned by Ms. Hall, but in others arising from the Mission liquidation, it is likely that scenarios and results would emerge which are quite different from those described in Ms. Hall's article.[3] Indeed, Ms. Hall's article mischaracterizes various cases, placing particular emphasis on *Quackenbush v. Allstate Ins. Co.*, 116 S.Ct. 1712 (June 8, 1996). In this regard, we would first submit that any person who disputes the Mission receiver's interpretation of the Supreme Court's ruling in *Quackenbush* need only read *Feige v. Sechrest*, 90 F.3d 846, 851 (3d Cir. 1996) which plainly confirms the Mission receiver's interpretation. *Feige* is an insurance insolvency case in which the Third Circuit affirmed a district court's decision to abstain on *Burford* abstention grounds and then stay the matter, on the authority of *Quackenbush*, which was specifically discussed. Other courts have similarly affirmed the propriety of abstention following the language in *Quackenbush* regarding deference to state court proceedings.[4] Only time will tell what other courts, and perhaps ultimately the U.S. Supreme Court, will say about the meaning of *Quackenbush*, but it seems Ms. Hall's unwavering views of that "receivership on Wilshire Boulevard" are, at a minimum, decidedly distorted.

Another mischaracterization of the Allstate proceedings is Ms. Hall's portrayal of "procedural abuses" by the receiver. If this charge is leveled at any party, certainly it would be Allstate, who, in four different courts, filed at least ten separate motions, petitions, requests for *emergency* relief, and appeals to prevent the Commissioner and the Receivership Court from adjudicating Allstate's proofs of claim in the Receivership Court forum, contending that all of Allstate's claims and defenses, including affirmative proofs of claim for set-off, must, post-*Quackenbush*, be adjudicated in federal court. Thus far, neither the District Court, the Receivership Court, the Ninth Circuit Court of Appeals, nor the California Court of Appeal have agreed with Allstate. There are matters still pending before the appellate courts so there has not been a final word on where the parties belong with regard to the reinsurance lawsuit. There are numerous other points which could be made here, but suffice it to say that there are two sides to every story.

If nothing else, Ms. Hall seems to have proven Mr. Hartz's point: reinsurers are taking receivers' attempts at early estate closure and it seems, many other subjects, very personally. This brings us to the second subject and true purpose of Mr. Hartz's article: "Long Tail Claims Estimation." The focus of this subject should not be on the expenses incurred in the short term in an effort to find an alternative to keeping estates open for twenty or thirty years, but instead should focus on finding a solution to the problem. By now, everyone in this segment of the industry is familiar with the issues on both sides of the receivership and how long tail claims force estates to remain open for years following the onset of liquidation. Receivers and policyholders both seek to have estate funds disbursed sooner rather than later while reinsurers prefer later rather than sooner. Most receivers surely also have seen how the will of a few reinsurers can force an estate to remain open for years to come.

Although in *Quackenbush v. Mission Insurance Company Trust (Boozell)*, Cal.App.4th (2d App. Dist. 1996), the California Court of Appeal agreed with reinsurers that the current California statutory scheme does not permit claims estimation, and therefore disapproved of the Mission receiver's Final Liquidation Dividend Plan on this ground alone (despite many objections), the court was sympathetic to this problem which plagues receivers nationwide. In issuing its decision, the court found persuasive the Commissioner's policy arguments regarding the need to protect the rights of potential claimants by providing some compensation sooner rather than later (when the reinsurers themselves might be insolvent) and the need to avoid increased administrative expenses of

(Continued on Page 20)

IAIR - Benefit of Membership

By IAIR Director Philip J. Singer

The ability of any organization to provide benefits for its members is directly related to the funds available to provide those services.

Both the Board and members of IAIR share a common desire to see ever increasing benefits of membership. However, this cannot be done without access to increased funds.

The single way to increase funds is to raise membership dues and there could well be an argument for doing this since over the last five years or so membership dues have remained largely unchanged.

Of course, no one wants to see increased fees especially when there is a simpler solution.

If every member of IAIR were to recruit just one new member in 1997, our income would double; if each member recruited two new members, income would treble.

With increased revenues of that order the ability of IAIR to provide significantly increased benefits to its members would be greatly enhanced.

There is a growing recognition that IAIR leads the debate over receiver qualification.

It has been one of the cornerstones of IAIR since its inception that it would promote excellence in all receivership activities and ensure that in due time no Special Deputy Receiver would ever be appointed to that position who was not demonstrably qualified.

Current members with appropriate experience may gain the CIR or AIR designations. However, if IAIR can increase its income then it will not be long before designations will be by examination.

So support your Association, set out this year to recruit one, or even better, two or more new recruits to IAIR.

In order for IAIR to do more for you it is up to you to do a little for IAIR.

A membership application form is enclosed, please photocopy as necessary or request additional forms from the Association office. ♦

IAIR Roundtable Schedule

NAIC Meeting - September 21-24, 1997
Washington, D. C.
IAIR Roundtable -
September 20, 1-4:00 p.m.

NAIC Meeting - December 7-10, 1997
Seattle, Washington
IAIR Roundtable -
December 6, 1-5:00 p.m.

NAIC Meeting - March 15-18, 1998
Salt Lake City, Utah
IAIR Roundtable - March 14, 1-5:00 p.m.

NAIC Meeting - June 21-24, 1998
Boston, Massachusetts
IAIR Roundtable - June 20, 1-5:00 p.m.

NAIC Meeting - September 13-16, 1998
Chicago, Illinois
IAIR Roundtable -
September 14, 1-5:00 p.m.

IAIR / NOLHGA Joint Seminar

A Special Seminar For Receivers and
Life & Health Guaranty Association Professionals

This seminar will present a case study of a company in liquidation and the participant teams will resolve issues presented in its insolvency.

Novemver 19-20, 1997
The Brown Hotel
Louisville, Kentucky
Hotel's Phone Number is (502) 583-1234
Room Rate: $124 / night

Registration forms will be available at the September NAIC in Washington, D.C. and will be mailed to IAIR members at that time.

For more information, contact:
Paula Keyes, IAIR Education Chair at
(407) 895-0288

Dick Klipstein, NOLHGA Executive VP at
(703) 481-5206

The Insurance Receiver

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

The Insurance Receiver is published quarterly by the International Association of Insurance Receivers, 5818 Reeds Road, Mission, Kansas 66202-2740 (913) 262-2749 FAX: (913) 262-0174.

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IAIR Officers: Richard Darling,CIR - President; Doug Hartz, Vice President; Mike Marchman,CIR - Treasurer; Robert Deck,CIR - Secretary.

Directors: Betty Cordial, CIR; Philip Singer, James Gordon, CIR; Lennard Stillman, CIR. Michael Surguine; Robert Craig; & Elizabeth Lovette.

Other News & Notes

by Doug Hartz, Dept. of Insurance - State of Missouri

The last installment of Other News & Notes had an explanation of why interest ought to be added to the claims against an insolvent insurer from the date that the claims mature. At the end of that commentary[1], I noted that something was missing from the review of the matter. The thing that troubled me was the way the results varied (within the facts of the illustration used) between assessing interest on early access (EA) advances and adding interest to the claims. The basic facts of the illustration are summarized as follows. A liquidation estate opened with $400 in cash, one guaranty association (GA) claim of $500 and only one non-guaranty-covered (NGC) claim of $500. Six months later an EA advance of $100 was paid the GA. The $300 left had grown to $600 over the next ten years (at 7% over ten years amounts double) and $100 in administrative cosst were then paid covering all years. Thus, ten years and six months after opening, $500 was ready to be paid as a liquidation dividend to two claimants, each with $500 claims.

The illustration then described the results of the following cases applied to these basic facts. Case A - No interest on claims or the advance, Case B - Interest is assessed on the $100 advance and it grows to $200 after ten years, Case C - Interest doubles both claims as both matured at the same time ten years ago, and Case D - Interest is added to the claims, but the NGC claim matures at $500 ten years later than the GA's claim. Something was wrong in cases C and D. Something was missing. The table below is a recap of the cases and identifies that something.

The table works as follows: starting at the Dividend Percentage (DP) column and working to the right, the DP comes from taking the Amount Deemed Available (DA), which varies by how the EA advance is treated, over the sum of the GA and NGC claims (at the dividend date), which vary by whether interest is added and their age from maturity. The Gross Dividend to GA and the Dividend to NGC each come from taking the DP times the GA and NGC claims (each as valued at the dividend date).

Cases E and F were added to the table below to reflect how cases C and D would work without the error of not accounting for the advance. Cases G and H show the results if interest is added to both the claims and to the advance.

Cases C, E and G are based on both claims maturing six months into the liquidation. Cases D, F and H all assume that the NGC claim matures ten years later. Case J shows the result if the error of not accounting for the advance had been made in Case A. Finally, Case K assumes that an interim distribution of $50 to each claimant is made instead of an advance of $100 to the GA.

The statutes only provide for EA to the GA. Advances are not the same thing as dividends. A liquidation dividend is paid to all claimants in a priority class. EA advances must be treated as assets until applied to a dividend. While both are distributions (a decrease or credit to cash), only a dividend may be applied against claims (a decrease or debit to a liability), and an advance must not be applied to the claim, but should be shown as an increase or debit to an asset. That was the something missing in cases C and D in last issue's illustration.

Claims and dividends on those claims relate to each other in the same way that income is related to taxes on that income. A tax credit is not applied against income. It is applied to the tax. An advance should not be applied to a claim. In cases C and D the EA advances should be treated as an asset in the DA column. Even if interest is added to the claims, any EA advance needs to be deemed an asset to determine the amount available for distribution, any EA should not lower the value of the GA's claim, and any EA must be applied against the gross dividend to the GA.

It is an illusion to ask, as was done last issue, if it is better to assess interest on advances or to add interest to all of the Class 3 claims. The two are independent. It is like asking, is the glass half-full or half-empty? The glass is too large. If advances are made, then interest should probably be assessed. If there are claims that have matured (or will do so) significantly later than other claims, then interest should likely be added to the claims from the date they mature.

We discount to present value for claims that will mature in the future. Why not augment to present value claims that matured long ago in the past? The table at the left is very revealing. It shows the equity that results by adding interest to the claims and the advances. Conversely, it shows the inequity of failing to take interest into account.

For example, looking at cases G and H, in H the GA gets $267 while it gets only $150 in Case G. If in Case G there is simply a failure to account for the NGC claim maturing ten years later, then the result is that the GA is shorted $117.

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Interest added to either Advances, Claims or both	Case I. D.	Amount Deemed Available	GA Claim Value at Dividend	NGC Claim at Dividend	Dividend Percentage	Gross Dividend to GA	Less Amount of Adv.	Net Dividend to GA	Dividend to NGC
Neither	A	$600	$500	$500	60.0%	$300	$100	$200	$300
Advance	B	$700	$500	$500	70.0%	$350	$200	$150	$350
Claims (Error)	C	$500	$800	$1,000	27.8%	$222	$0	$222	$278
Claims (Error)	D	$500	$800	$500	38.5%	$308	$0	$308	$192
Claims	E	$600	$1,000	$1,000	30.0%	$300	$100	$200	$300
Claims	F	$600	$1,000	$500	40.0%	$400	$100	$300	$200
Both Same Age	G	$700	$1,000	$1,000	35.0%	$350	$200	$150	$350
Both Diff. Age	H	$700	$1,000	$500	46.7%	$467	$200	$267	$233
A w/ (Error)	J	$500	$400	$500	55.6%	$222	$0	$222	$278
A w/ Interim	K	$500	$450	$450	55.6%	$250	$0	$250	$250

IAIR Education Session

By Paula Keyes, Education Committee Chair

The Education Session sponsored by IAIR on June 26th and 27th in Indianapolis was a great success!! The three concurrent tracks were interesting and informative. Responses from the attendees included the following comments:

"We need to do this every year."

"The roundtable format in the accounting track kept a typically boring topic very interesting."

"I appreciated the opportunity to network with others at the reception on Thursday evening."

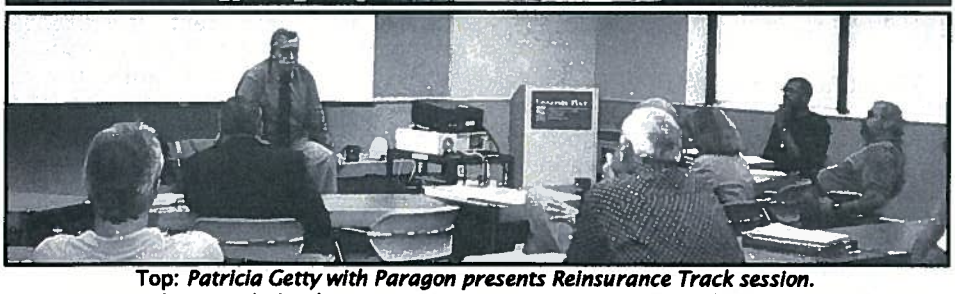
Education and networking are what IAIR is all about and this forum provided both. It also attracted some new faces to the session, and hopefully, they will come back for more now that they have been introduced to the organization.

Despite some minor setbacks (bad weather forced some attendees and one presenter to cancel at the last minute) and the need to rearrange presentations to accommodate late arriving luggage (which included the presenter's speech), the program ran smoothly.

The facility at University Place Hotel and Conference Center was first rate and Indianapolis has certainly grown up a lot in the last five years.

Thank you to the committee members for their hard work, particularly Karen Weldin Stewart and Cynthia Starrett, and to all of the presenters for their time and effort.

If anyone wants to help with the planning for the 1998 Claims Session, please contact Paula Keyes at 407-895-0288. ♦



Top: *Patricia Getty with Paragon presents Reinsurance Track session.*
Above: *Dale Stephenson, NCIGF presents Accounting Track session.*

Section 304:

On February 5, 1997, the United States District Court for the Southern District of New York held that bankruptcy courts have the authority under section 304 of the Bankruptcy Code (11 U.S.C. §304) and principles of international comity to issue a preliminary injunction order giving effect in the United States to the automatic stay provision under the English Insolvency Act without violating the due process rights of United States creditors of the foreign debtor, and that the bankruptcy judge abused his discretion in refusing to grant injunctive relief with respect to creditors that had not received prior notice of the preliminary injunction hearing. *In re Singer (United Standard Insurance Company Limited)*, Case No. 96 Civ. 5802 (HB) (S.D.N.Y. Feb. 5, 1997).

In May 1996, a petition seeking the compulsory winding-up of United

Federal District Court Rules on Due Process and Comity in Section 304 Proceeding

Standard Insurance Company Limited, a London market insurance company, was presented in the High Court of Justice of England and Wales, and Philip J. Singer and Christopher J. Hughes of Coopers & Lybrand were appointed Joint Provisional Liquidators of United Standard. Under section 130 of the English Insolvency Act 1986, the appointment of the Provisional Liquidators operated to automatically (and without notice to creditors) enjoin the commencement or continuation of all actions against United Standard and its property.

In June 1996, proceedings ancillary to those in the High Court were commenced pursuant to section 304 of the Bankruptcy Code ("Section 304") in the United States Bankruptcy Court for the Southern District of New York.

Section 304 authorizes a "foreign representative" appointed in a "foreign proceeding" to commence an ancillary case by filing a petition in the United States Bankruptcy Court. Under Section 304, a Bankruptcy Court may (a) enjoin (i) the commencement or continuation of actions against the foreign debtor and/or its property and (ii) the enforcement of judgments against the foreign debtor, (b) order turnover of the foreign debtor's property to the foreign representative, and (c) "order other appropriate relief."

Bankruptcy Judge Jeffry H. Gallet issued a preliminary injunction with respect to those creditors of United Standard that had received notice of the preliminary injunction hearing.

However, he refused to grant injunctive relief with respect to creditors that had not been identified and hence had not received prior notice. The Provisional Liquidators argued that the stay of proceedings under English law is fully consistent with the automatic stay provision of the Bankruptcy Code (11 U.S.C. §362), which also operates without notice to creditors. Thus, under principles of international comity, a preliminary injunction could be issued in a section 304 proceeding without notice.

Although Judge Gallet found the English and U.S. systems to be sufficiently similar to justify extending comity to English law, he held that he could not grant an injunction against creditors that had not been identified (and hence had not received notice), because to do so would violate their due process rights of notice and an opportunity to be heard under the U.S. Constitution. Judge Gallet determined that this would be repugnant to the laws of the United States.

The Provisional Liquidators appealed Bankruptcy Judge Gallet's ruling. United States District Judge Harold Baer, Jr. agreed with the Provisional Liquidators' arguments that the bankruptcy court had the authority under section 304 of the Bankruptcy Code to enter a preliminary injunction against unidentified creditors in order to give effect to English law and that comity was appropriate in this case.

Judge Baer began by defining comity as the "'recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws'" (*quoting Hilton v. Guynot*, 159 U.S. 113, 164 (1895)). Judge Baer determined that comity is particularly important in the context of foreign bankruptcy proceedings, and exceptions to the comity doctrine are narrowly construed where the foreign proceeding is in a sister common law jurisdiction such as the United Kingdom (*citing In re Brierley*, 145, B.R. 151, 163 (Bankr. S.D.N.Y. 1992)).

Judge Baer held that since the automatic stay provisions under English and U.S. law operate alike and since the Second Circuit has found that the automatic stay under U.S. law does not violate due process (*citing Fidelity Mortgage Investors v. Camelia Builders, Inc.*, 550 F.2d 47, 55 (2d Cir. 1976), *cert. denied*, 429 U.S. 1093 (1977)), the bankruptcy court had the authority to enter a preliminary injunction against the unidentified creditors without violating their due process rights.

Moreover, as Judge Baer noted, due process protections were included in the Provisional Liquidators' proposed preliminary injunction order which contained procedures to notify subsequently identified creditors and to permit those creditors to seek relief from the injunction in the bankruptcy court.

Judge Baer further held that Bankruptcy Judge Gallet's reliance on the Due Process Clause constituted the application of an erroneous legal standard and therefore Judge Gallet had abused his discretion in denying the requested preliminary injunction with respect to unidentified creditors.

Judge Baer vacated that part of Bankruptcy Judge Gallet's order denying injunctive relief and remanded the case for further proceedings consistent with his opinion.

On March 5, 1997, Judge Gallet again refused to grant injunctive relief with respect to creditors that had not been identified.

While he recognized Judge Baer's ruling, Judge Gallet concluded that the failure to provide notice to unidentified creditors constituted "prejudice and inconvenience" to those creditors, a discretionary basis for denying injunctive relief under § 304(c)(2) of the Bankruptcy Code.

The Provisional Liquidators have taken an appeal of this decision to Judge Baer, which appeal is presently pending.*

Comment:

Although not expressly provided for under section 304, injunctive relief similar to the automatic stay under section 362 of the Bankruptcy Code has been granted in numerous section 304 proceedings.

However, prior to *In re Singer*, no court had squarely addressed the issue of whether the due process rights of creditors are violated by giving effect in the United States to an automatic stay provision under foreign law.

** Chadbourne & Parke LLP represents the Provisional Liquidators of United Standard, with Peter R. Chaffetz and Thomas R. Clark on the brief.* ◆

LONDON MARKET INSOLVENCIES -

WHAT'S A POLICYHOLDER TO DO?

by R. Mark Keenan, Esq. And Maryanne Spratt, Esq.

In the last several years there has been an unprecedented number of insurance company failures in the London Market, leaving in their wake billions of dollars in liabilities and policyholders grasping for ways to pursue their claims.

This article will address the current status of this growing problem, some of the peculiarities of English Insolvency Law and some ideas on protecting your rights as a policyholder.

The London Market Insolvencies

The London Market insolvencies involve British-based insurance companies (not Lloyd's or Lloyd's syndicates):

(1) Kingscroft
(2) Walbrook
(4) Lime Street
(5) Mutual Re
(6) Andrew Weir
(7) London & Overseas
(8) Mentor U.K.
(9) Bryanston
(10) English & American
(12) Orion
(13) Pine Top
(14) Pacific & General
(15) St. Helens2

1. R. Mark Keenan is a partner at the law firm of Anderson Kill & Olick, P.C. with offices in New York City, San Francisco, Washington, D.C., Philadelphia, Newark, Tucson and Phoenix. The firm regularly represents policyholders in insurance coverage dispute. Maryanne Spratt is a legal assistant at the same firm.

2. A more detailed list of the foreign insolvent companies is annexed hereto as Appendix A.

The first five (collectively known as "KWELM" for the first letter in their names) all provided coverage for insurance underwritten by their sister company, H. S. Weavers L.C. (Underwriting) Ltd., which at one time was known as "London's leading U.S. liability insurance market."

All of these companies have been placed in provisional liquidation under the auspices of the British High Court. Accordingly, all actions or attempts to collect funds from these companies have been stayed by judicial order. There is guaranty fund protection under British law L.C. which protects "overseas poicyholders," paying up to 90% of the policyholder's claim. The bad news is that the fund (known as the Policyholders Protection Plan) will not protect corporations - just individuals and partnerships. However, these companies still have billions of dollars in assets. The liquidators of KWELM, Andrew Weir and Bryanston, for instance, all expect an eventual pay-out to creditors in the range of thirty to sixty cents on the dollar.

A. British Schemes of Arrangement

In most cases, payments to creditors will be made through the new and increasingly popular alternative to compulsory liquidation, the Scheme of Arrangement. A Scheme of Arrangement is a compromise or arrangement under English law (section 425 of the 1985 Companies Act) between the company and its creditors to run-off the company's liabilities (at less than 100 cents on the dollar). It is the functional equivalent of a Chapter 11 Bankruptcy Reorganization Plan in the United States. For a proposed Scheme to become final and binding it must first be approved by 75% of the voting creditors (measured by value of their claims), including contingent creditors, and sanctioned by order of the English court.

Schemes of Arrangement offer creditors quicker payment and a more cost effective alternative than English compulsory liquidation, which has several drawbacks. First, liquidation is a very lengthy process. Court-appointed liquidators are constrained by detailed provisions of English insolvency law and potential personal liability if they improperly pay one creditor in preference to another. These stringent requirements inevitably cause a liquidator to wait until all liabilities, including contingent liabilities, have been established (which may take decades) before payments to creditors are made. Second, all claims must be paid in English pounds (established at the date of the initial liquidation filing) which subjects policyholders to the risks of currency fluctuations. Third, assets controlled by liquidators must be pooled in a Bank of England account incurring high investment costs. Fourth, investment options are limited. For instance, cash assets can be invested only in UK Government Securities. Finally, dispute resolution procedures for claims can be litigious and, therefore, quite costly.

Schemes of Arrangement avoid many of these pitfalls. Under the Scheme, claims are paid faster and in the currency of the policy. Regulations concerning the pooling and deposit of assets are less restrictive. Investment policies are flexible and claim resolution can be simpler and cheaper.

B. How Does the Scheme of Arrangement Work?

Once a policyholder's claim becomes "fixed" (or what the British call "crystallized"), the "fixed" claim is approved for payment - which will be made on an installment basis. A fixed claim is a claim for a sum certain which has been approved or agreed upon by the Scheme administrators, i.e., it is a definable loss covered under a policy as compared to a potential future loss or an existing loss which has been contested.

In order to protect against preferential treatment of creditors whose claims become fixed in the early years of the run-off to the detriment of those policyholders that have contingent long-term claims that won't be fixed until later, approved claims are paid out on an annual installment basis. For example, in the first year after approval of the Andrew Weir Scheme, an interim payment percentage of 10% was established. If a policyholder had an approved fixed claim of $500,000, the policyholder's first payment was $50,000. In the second year the installment percentage was increased to 15%. Policyholders who received 10% in the first year got an additional 5% ($25,000) plus interest. This procedure of incremental increases in payment percentages will continue through the life of the run-off and at the end of the run-off the policyholder can expect total payments of about 45 cents on the dollar.

C. What About Policyholders with Contingent or Contested Claims?

As previously stated, policyholders are prohibited from instituting or continuing any proceedings against the insolvent London Market company.

However, under the most recent Schemes of Arrangement, the Scheme Administrators have agreed to be bound (subject to certain reservations) by any judgment or settlement obtained by a policyholder against other (solvent) insurance companies on the same insurance policy as the insolvent company. This is a very common circumstance in the London Market, since those companies frequently issued policies where they participated, on a percentage basis, with numerous other insurance companies on the same policy.

In most cases Scheme administrators will agree to "follow the fortunes" of the settlement with the solvent members of the London Market. For example, if Lloyd's has 60% of a $10 million policy and KWELM has 20% and Lloyd's settles for $3 million, the KWELM administrator should grant the policyholder an approved claim of $1 million.

Once judgment or settlement is reached, Scheme Administrators are given a six-month period to review the judgment or settlement. If approval is not granted after the six-month review period, the injunction is lifted and the policyholder can litigate the matter in any court of proper jurisdiction to resolve the dispute. In many of the Schemes, there is a further enticement for the Administrator to agree to a settlement or judgment. For instance, under the KWELM Scheme, if litigation ensues and the policyholder prevails (showing that settlement with the solvents should have been followed), the Scheme Administrator is required to pay the policyholder's reasonable attorneys' fees.

D. What Should Policyholders Do?

If an insurance company is part of the London Market and has become insolvent, here are a few things a policyholder can do to protect its rights:

1. Review your policies and determine what coverage was or could be affected.

2. Obtain replacement coverage. The insolvent company will not cover claims incurred after an insolvency petition is filed in the English court.

3. Communicate with the provisional liquidators - a claim will not be paid unless they know who you are.

(Continued on Page 10)

LONDON MARKET INSOLVENCIES -

WHAT'S A POLICYHOLDER TO DO?

(Continued from Page 9)

4. If you are an individual or partnership - see if you have guaranty fund protection under the Policyholders Protection Plan.

5. If a Scheme of Arrangement is proposed, review and analyze it. This is the key document which, if approved, binds all creditors to its terms and sets out the procedures necessary to protect your rights.

6. Cast your vote for (or against) the Scheme. Your vote is one way to put the liquidators on notice that you are a claimant in the liquidation.

7. Team up with other policyholders in the same situation to increase your clout during liquidation proceedings. If you are a substantial creditor, you may even want to join the creditors committee.

8. Monitor the liquidation proceedings in the U.K. to protect your rights.

9. Pursue other remedies such as drop-down claims from your other insurance companies.

There are also several steps that will make it more likely to have the provisional liquidators of the insolvents "follow the fortunes" and agree to be bound by the settlement with the solvent London Market:

1. Have the solvents agree to assist the policyholder in pursuing its claims against the insolvents and to waive any confidentiality provisions in that regard.

2. The settlement figure should provide an allocation for each of the insolvents. This is usually done by determining a gross figure or the maximum a solvent would be liable for under a policy. The settlement would provide the actual amount paid by the solvent. The ratio of the gross figure to the actual pay-out would be used to determine the allocation of the insolvent carrier. (See Lloyd's/KWELM example, supra.)

3. The settlement figure should show a per policy allocation for solvent/insolvents.

4. When the time is ripe, the policyholder should invite a representative of the liquidators to the settlement discussions, because it helps in binding them to the eventual settlement.

There is nothing to prevent a policyholder from attempting to settle with the insolvents on a basis totally independent of any settlement with the solvent London Market. Practically speaking, however, the Scheme Administrators are more likely to follow the lead of the solvent London Market than reach a settlement themselves.

With respect to certain insolvent London Market insurance companies, there also are several markets for purchasing approved claims. Lazard Freres & Co. has offered to purchase established liabilities that have been approved in certain London Market insolvencies (i.e., KWELM). Additionally, Quantum Consulting, Inc. will offer to purchase established claims for KWELM, Weir, English & American, among others.

APPENDIX A

INSOLVENT LONDON MARKET INSURANCE COMPANIES

Ajax Insurance Co.

Andrew Weir Insurance Company Limited

Anglo American Insurance Co., Ltd.

Atlantic Universal Insurance Limited

Bercanus Insurance Company Limited

Bermuda Fire & Marine Insurance Co. Ltd. (BF & M)

BNIB Insurance Company in Bermuda

British Commercial Ins. Co. Limited (Insolvent Voluntary Liquidation in 1959)

British National Insurance Company Ltd.

British & Overseas Insurance Company Limited (dissolved)

Bristol Insurance Company Limited

Bryanston Insurance Company Limited

Capital Insurance Company Ltd.

Cavalier Insurance Company Limited

Chancellor Insurance Company Limited

Charter Reinsurance Company Limited

Continental Assurance Company of London Limited

The Cotton Trade Insurance Assn. Ltd.

Dart Insurance Company Limited (predecessor in interest to Kingscroft)*

Dart & Kraft Insurance Company Limited (predecessor in interest to Kingscroft)*

Desert Insurance Company Limited

Dover Insurance Company

El Paso Insurance Company Ltd.*

English & American Insurance Co., Ltd.

First International Assurance Co., Ltd.

Hawk Insurance Co. Ltd.

Hull Underwriters Association Ltd. (predecessor in interest to London & Overseas)

ICS Reinsurance Private Ltd. and RMCA Reinsurance Ltd.

Kansa General International Insurance Company Ltd. and Kansa Reinsurance Company Ltd.

Kingscroft Insurance Company Ltd. (formerly: Kraft; Dart; Dart & Kraft)*

Kraft Insurance Company Ltd. (predecessor in interest to Kingcroft)*

Lime Street Insurance Company Ltd. (formerly Louisville)*

London and Overseas Insurance Company (formerly Hull Underwriters Association Ltd. (being jointly administered with Orion Insurance Co.)

London United Reinsurance

Louisville Insurance Company Ltd. (predecessor in interest to Lime Street)*

Ludgate Insurance Company Limited (in Run-off)

Medway Brokerage & Insurance Limited

Mentor Insurance Co. (Bermuda) Ltd.

Mentor Insurance Company (U.K) Limited

Merlin Insurance Company (in the Cayman Islands and in Bermuda)

Municipal General Insurance (MGI)

Municipal Mutual Insurance (UK)

Mutual Reinsurance Company Ltd.*

National Employers Mutual General Insurance Assn. Ltd. ("NEMGIA")

Norad Reinsurance, Ltd.

North Atlantic Insurance Co., Limited (formerly British National Insurance Co., Ltd. , British National Life Insurance Society Limited) in England

Northumberland General Insurance Co.

Orion Insurance Co. PLC (formerly Ralli Brothers Limited) (being jointly administered with London & Overseas Insurance Co. PLC)

Pacific & General Insurance Co., Ltd.

Pine Top Insurance Company Limited

Ralli Brothers Company Limited (predecessor of Orion)

River Plate Reinsurance Company Ltd.

Scan Re Insurance Ltd.

Slater, Walker Insurance Company Ltd.

SNL Insurance, Ltd.

St. Helen's Insurance Company Limited

Stockholm Re: (formerly known as National Underwriters [Reinsurance] Ltd.)

Trinity Insurance Company Limited

United Standard Insurance Co., Ltd.

Walbrook Insurance Company Limited*

* companies collectively known as KWELM ♦

IAIR President's Message *(Continued from Page 2)*

Seminar in Orlando, Florida. I was very impressed and the topics were extremely interesting and relevant. The conference materials, made available to all participants, are extremely interesting reading and will be of assistance to me and our staff in the future. I would highly recommend the entire IAIR membership to consider attending this event in the future. If you are interested, I would suggest you contact NOLHGA in Herndon, Virginia in order to be placed on future mailing lists.

Upcoming seminars/workshops in the planning process include the bi-annual IAIR/NOLHGA Workshop, November 1997 - Louisville, Kentucky, IAIR/NAIC Insolvency Workshop - LaJolla, California - January 1998, and the IAIR/NCIGF bi-annual seminar, Spring 1998 - Monterey, California. More information regarding these events will be forthcoming, and it is strongly suggested that reservations be made early. These events are proving to be so popular that they are frequently sold out well in advance.

The IAIR designation programs continue to grow. The Accredited Insurance Receiver/Certified Insurance Receiver designations are receiving much additional interest, and new applications continue to be approved quarterly. Your board strongly recommends that all members review and/or apply for these designations. An integral part of the designations are continuing education credits, for which all of the above noted seminars/workshops qualify. If you currently do not possess the application materials, please feel free to write IAIR Headquarters in Mission, Kansas for a copy. Your board feels that at some point in time, accreditation by IAIR will be a significant stepping stone to your recognition as a professional and recognized practitioner in the insolvency field.

New membership continues to increase. As you know, our mission of education and professionalism as well as our accreditation standards can certainly be assisted by increased membership to allow us to accomplish the goals and directions of your organization. Just as an example, as many of you know, the funding for our seminars/workshops, as well as our newsletter, comes almost exclusively from membership dues and advertisements in "The Insurance Receiver," as well as our annual directory. An advertisement in one of these two publications is a relatively inexpensive way to let the receivership industry, with whom we all associate, know of your services and expertise in this area. Individuals or organizations wishing to participate in our advertising program should contact Frank Bistrom, CAE, IAIR's Executive Director at (913) 262-2749.

IAIR's newsletter "The Insurance Receiver" is one of the more informative frequently published forums for information concerning IAIR and receivership issues. This newsletter is extremely expensive to produce and your board would certainly like to increase its size. Unfortunately, the expenses associated with producing this newsletter are directly related to the size of our membership and IAIR's income. Speaking of the newsletter, your board and publications committee are always interested in you comments and suggestions for improving same. Additionally, articles for appearance in the newsletter are always being solicited by our publication committee. Such items may be sent to Publications Chair, Doug Hartz (IAIR's Vice President), c/o IAIR Headquarters in Mission, Kansas. Unfortunately, until we can afford to increase the size of the newsletter, we will continue to have a backup of interesting and relevant articles for publication.

When I became President of your organization in December of 1995, I made two promises. The first was to try to increase IAIR membership, a promise that has had some, but limited, success. The second was to open up your association to increased participation by all members. In that area, I think, we have had significantly more success with more recent by-law changes and some exciting new changes currently being worked on by your board.

Hopefully, by the December newsletter and the annual meeting, all members will receive information relative to significantly increased participating and voting rights by all members of IAIR, including increased and enhanced participation on the board by all membership segments. It is my fervent belief that an organization such as IAIR must be open and responsive to all of its members, regardless of their current position, experiential qualifications, or membership status. Your By-laws Committee (Bob Greer, Chair) is in the process of making some exciting proposals to your board, which we hope to share with you shortly.

The September NAIC in Washington, DC is rapidly approaching. Again, IAIR will hold its cocktail reception on Monday night and, as usual, we are continuing to solicit additional patron sponsors for the reception. Anyone interested in participating should contact Frank Bistrom, Executive Director, at the number indicated above.

Perhaps of interest to many of you is that your IAIR Board and Education Committee are looking at the possibility of holding one or more seminars/workshops outside the United States. With airfares falling rapidly, the feasibility of this type of event is becoming increasingly possible. Phil Singer's (IAIR Board Member-Coopers & Lybrand, UK) recent presentation at INSOL International in New Orleans, and its success, proved the significant interest of the international insurance insolvency community in IAIR's activities.

Your comments or suggestions regarding this type of event would be greatly appreciated. They may be sent to me directly c/o IAIR Headquarters.

In closing, I would like to wish all of you and your families a very happy and productive summer (hopefully, you have a vacation planned), and I hope to see as many of you as possible at the Washington NAIC. ♦

WANTED

Your Articles for *the Newsletter*

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

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

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

Meet Your Colleagues

Belinda H. Miller

Belinda H. Miller is the Director of the Division of Rehabilitation and Liquidation of the Florida Department of Insurance. She began with the Division before becoming a lawyer in 1986. She has been a Deputy Receiver of the estates under the Divison's administration since 1993.

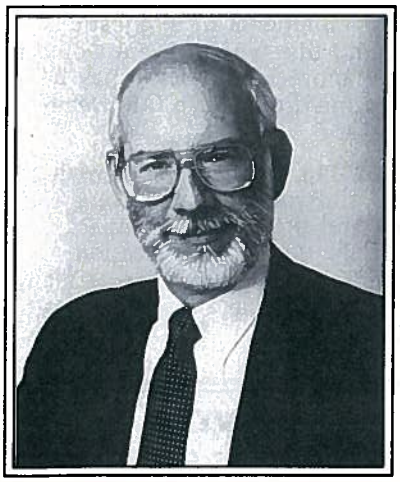
Belinda holds a B.A. from Emory University in International Studies, and a law degree from Florida State University. She is a member of the Tallahassee Bar Association as well as The Florida Bar.

As Director, Belinda juggles the responsibilities of administration of 54 active receivership estates. She oversees a staff of 89 employees.

Estates include property & casualty companies, life & health, HMOs, MEWAs, self insurance funds, and a few entities that were never licensed.

Her experience includes the management of complex litigation, asset sales, collection of reinsurance, proof of insolvency, and dealing with company employees as the leader of the "takeover team."

Belinda lives near the coast in Wakulla County, Florida where she enjoys fishing, swimming, and playing with her six-year-old daughter.



Karl Rubinstein

Karl Rubinstein is the senior partner of Rubinstein & Perry. A transplanted Texan, he lives in San Diego, California. He received a B.A. (English) degree from Texas A&M University in 1966 and a J. D. degree (Magna cum laude) from Saint Mary's University (San Antonio) in 1968. He served as a Judge Advocate with the USAF from 1968 to 1973 when he resigned his Captain's commission and joined the litigation department of a business law firm in Dallas, Texas. In 1976, he became a founding partner of the firm from which Rubinstein & Perry evolved.

Karl became involved in insurance insolvency matters in Texas beginning in the mid-1970s and in 1983 was chosen as Chief Counsel for the Arkansas Insurance Commissioner in the Baldwin-United matter. He was a principal architect of the successful rehabilitation plan for the insurance subsidiaries of Baldwin.

In 1986 he was designated as a California Special Deputy Insurance Commissioner to handle the litigation aspects of the insolvency of the Mission Insurance Companies. He was instrumental in the rehabilitation plan for Mission American Insurance Company and the lead counsel in a series of reinsurance litigations by which more than $1.3 billion has, to date, been recovered for the estates.

In 1990 he became Chief Counsel for the California Commissioner in the Executive Life case. He has also been involved in a number of other large insurance insolvencies.

In December 1996, he was designated as a Special Insurance Examiner for the California Insurance Commissioner with respect to Golden Eagle Insurance Company and since January 1997 has been the Deputy/Conservator and Chief Executive Officer of Golden Eagle.

Karl and his wife, Nancy, are avid scuba-divers and sailors, but Karl advised that he hasn't gotten in much practice since last December when the Golden Eagle assignment resulted in an "alt-ctrl-del" of his leisure time.

Melvin J. Dillon

Melvin Dillon is President of M.J. Dillon Company, an insurance consulting firm which has been active in managing insolvencies and assisting insurance commissioners since 1985. Melvin is currently liquidating three companies and has completed assignments in six others.

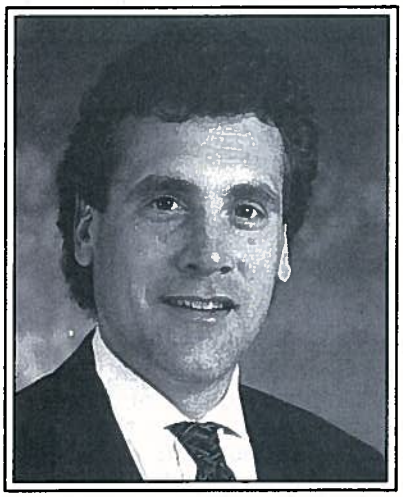
His estates have included most segments of the industry, life casualty, HMOs and an MGA. The insolvency activities have involved him in both domestic and foreign insurance and reinsurance which has been both demanding and intriguing. He also has managed substantial litigation concerned with agency and broker fraud.

On the more positive side of the insurance business, Melvin is President of an active local insurance agency, Dillon-Pritchard Agency, Inc. participation in the agency keeps him abreast of industry activities and trends which are very helpful in his insolvency responsibilities.

There is also time for insurance and reinsurance arbitration. He is a member of ARIAS-US, a professional arbitration society.

As retired President of State Capital Insurance Company, a regional property and casualty company, Melvin brought some 35 years of industry experience to the insolvency arena. His background includes underwriting and marketing management of property and casualty business for a major company and 20 years of executive management with a regional company. Other activities have included serving as Chairman of the North Carolina Insurance Guaranty Association.

Melvin graduated from the University of Richmond and the Executive Program of the University of North Carolina. He has enjoyed lecturing and instructing in both insurance and management. There is spare time for the family, gardening and of course, golf!



Stephen W. Schwab

Stephen heads the Insurance Practice Group of Rudnick & Wolfe. His introduction to insurer insolvency came in February, 1988 when the firm was appointed senior outside counsel in the rehabilitation of an Illinois-domiciled reinsurer. Since then the group's practice has grown to include the representation of receivers (and reinsurers) in 22 receiverships in nine different states, as well as Western States Guaranty Fund Services. The group's practice includes all of the litigation, transactional and regulatory aspects of domiciliary and ancillary receiverships.

When asked what he enjoys most about this aspect of his practice, Stephen said, "Insurer receiverships is a fascinating area of the law. It is challenging, requires the full range of legal scholarship and offers opportunities to make and change the law in very creative ways." Stephen has demonstrated his interest in legal scholarship by publishing an extensive list of articles and book chapters on various receivership subjects, ranging from a general overview of receivership procedures and law to focused articles on the issues of set-off and claims estimation. He and others in the Practice Group currently are working on a book about insurer rehabilitations.

Stephen sees substantial change for receivership practitioners in the future. "The very nature of the products insurers and reinsurers are issuing today is going to make our jobs much more challenging - and intellectually rewarding - in the future. There has been a noticeable thinning among the ranks of receivership practitioners over the last five years. Clients are demanding that their lawyers not only be good legal technicians, but that they thoroughly understand the operational and financial sides of the business, as well. They need a lawyer who, e.g., can identify and solve issues involving sophisticated financial products, innovatively marshal assets through shell sales and other media, and wind up estates faster." Stephen says this explains why he obtained the Associate in Reinsurance degree in pursuit of a full CPCU, and requires that all of the other members of the firm's insurance practice group either have substantial in-house experience or pursue professional insurance and reinsurance education.

An inveterate punster and preacher's kid, Stephen says, "In this business it is necessary to receive before you give." ♦

Receivers' Achievement Report

Ellen Fickinger, Chair *Reporters: **Northeastern Zone** - William Taylor (PA); **Midwestern Zone** - Ellen Fickinger (IL), Brian Shuff (IN); **Southeastern Zone** - Roger Hahn (FL), James Guillot (LA); **Western Zone**, Mark Tharp (AZ), Jo Ann Howard (TX); **International** - Philip Singer (England), John Milligan-Whyte (Bermuda)*

Our IAIR achievement news by state received from reporters covering the third and fourth quarters of 1996 is as follows:

RECEIVERS' ACHIEVEMENTS BY STATE

Arizona (Mark Tharp, Contact Person)

Receivership	Year Action	Insurance Category	Dividend Percentage
United Life of North America	1992	LIFE	95.13%
Western Employers Ins. Co. of America	1995	P&C	100%
National Annuity Life Ins. Co.	1994	LIFE	14.1%

	Amount	
Great Global Assurance Company	$10,000,000.00	Early Access
National Annuity Life Insurance Company	$90,948.00	Life SGA
United Life of North America	$1,116,827.52	
Western Employers Ins. Co. of America	$6,544.00	AZ SGA
	$474,351.09	Domiciliary Receiver (CA)

Colorado (R.A. Valladaries, Contact Person)

Receivership	Year Action	Insurance Category	Dividend Percentage
American Woodmen LIC	1992	LIFE Class 1	4.49%
		LIFE Class 2	95.51%

Disbursements

	Amount	
American Woodmen LIC	$61,432.36	Kansas SGA
	$302,355.15	Colorado SGA
	$21,212.50	Missouri SGA

Delaware (Richard C. Cecil, State Contact Person)

Receivership	Year Action	Insurance Category	Dividend Percentage
Pacific American Ins. Co.	1984	P&C	35.96%
Ancillary Receiverships			
Allied Fidelity	1989	Surety	100%
Ideal Mutual	1989	Surety/WC	100%
Transit Casualty	1989	Surety/WC	100%

Disbursements for 3rd and 4th quarters of 1996

	Amount	
Pacific American	$1,655,941.87	SGAS
Pacific American	$240,000.00	Policy Level Claims
Allied Fidelity	$13,845.57	SGAS
Allied Fidelity	$882.22	Ins. Dept. & Admin.
Ideal Mutual	$34,695.00	Guaranty Funds
Ideal Mutual	$11,752.11	Ins. Dept.
Transit Casualty	$67,440.32	Guaranty Funds
Transit Casualty	$12,584.03	Ins. Dept.

(Continued on Page 16)

Bill Taylor (PA) provided an additional update on **Fidelity Mutual Life Insurance Company ("FML")**. Policyholder death benefits and annuity payments continue to be paid at 100%. Crediting rates are at or above policy guarantees. It is not anticipated that any guaranty association assessments will be needed to rehabilitate this company. As of 12-31-96, FML showed a statutory surplus of $12,664,000.

The Commonwealth Court has approved a second petition to further modify the court-ordered moratorium restricting cash access and the exercise of policy options. The hardship criteria was expanded and the limit per policyholder was increased. All policy options may now be exercised except those which would effect a complete surrender of the policy.

The terminated agents are continuing their litigation to obtain payment of full commissions in cash as an administrative expense. The Rehabilitator continues to meet with the Policyholder Committee to resolve their objections to the Second Amended Plan which was filed in June of 1996. The primary objection of the Policyholder Committee concerns the proposed compensation to policyholders for Impairment in stock rather than cash.

The Impairment concept was intended to compensate cash value policyholders for the lack of access to their cash values during the rehabilitation period. It is expected that a court-approved bid process will be initiated in 1997 to select an outside minority investor to assist in recapitalizing the company through a stock subsidiary.

Mark Tharp (AZ) reported that previously, on December 15, 1994, the Receivership Court approved a Settlement Agreement between the Receiver and former officers and directors of **Farm and Home Life Insurance Company** for $78.8 million, payable over a seven-year period. Subsequently, certain other non-settling Respondents in the

(Continued on Page 16)

ORMOND INSURANCE AND REINSURANCE MANAGEMENT SERVICES, INC.

SERVICES OFFERED

- ❑ **Administration of MGA, Primary or Reinsurance Books of Business**
  data processing, accounting, underwriting claims, regulatory filing, rehabilitation strategies. . .
- ❑ **Arbitration and Litigation Support**
  expert testimony, discovery work, case management, depositions, litigation assistance, reconstruction of records, arbitration panel member. . .
- ❑ **Audits and Inspection of Records**
  pre-quotation, contract compliance, aggregate exhaustion, reserve adequacy. . .
- ❑ **Commutation Negotiations**
  reserve determination, present value calculation. . .
- ❑ **Contract Analysis**
  analysis of reinsurance contracts, analysis of primary or excess coverage, contract drafting. . .
- ❑ **Reinsurance Recoverable Administration**
  reporting, collections, letter of credit control, security review. . .
- ❑ **Special Projects for Rehabilitators, Liquidators, and Insurance Company Management**
  reconstruction of premium and loss history, loss development analysis, reserve determination. . .
- ❑ **Statutory Accounting**
  annual and quarterly statement preparation, diskette filing, premium tax returns. . .
- ❑ **Client Representative**
  settlement conferences, attend informational meetings, monitor activities of defense counsel. . .
- ❑ **Reinsurance Data Systems**
  main frame and PC systems in place for processing of underwriting, claims and accounting for assumed, ceded or retrocessional business

ORMOND INSURANCE AND
REINSURANCE MANAGEMENT SERVICES INC.

140 South Atlantic Avenue, Suite 400
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Telephone: (904) 677-4453
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John B. "Jay" Deiner
Executive Vice President
Secretary & General Counsel

A.L. "Tony" DiPardo
Senior Vice President

William T. "Bill" Long
Senior Vice President

Receivers' Achievement Report (Continued from Page 14)

Illinois (Mike Rauwolf, Contact Person)

Receivership	Year Action	Insurance Category	Dividend Percentage
Cadillac Ins. Co.	1989	Life & Health	0%

Disbursements for third quarter 1996

	Amount
American Mutual Reinsurance	$1,267,510.00
Centaur	$216,957.00
Equity General	$29,794.00
InterAmerican	$3,216,149.00
Merit	$86,688.00
Pine Top	$64,608.00
Sub-Total	$4,881,706.00
Plus eight (8) additional estates where disbursements for each estate were below $10,000.	$14,960.00
Total	**$4,896,666.00**

Disbursements for fourth quarter 1996

Receivership	Amount
American Mutual Reins.	$1,454,183.00
Centaur	$111,341.00
InterAmerican	$19,958,422.00
Intercontinental	$323,133.00
Medcare	$278,066.00
Merit	$67,128.00
Millers National	$190,999.00
Pine Top	$60,327.00
Prestige	$1,362,710.00
Security Casualty	$831,945.00
Sub-Total	$24,638,254.00
Plus four (4) additional estates where disbursements for each estate were below $25,000.	$29,678.00
Total	**$24,667,932.00**

Maryland (Lisa Forry, State Contact Person)

Receivership	Year Action	Insurance Category	Dividend Percentage
Eastern Indemnity Co. of Maryland	1984	P&C	27.645%

Disbursements

	Amount	
Eastern Indemnity Co. of Maryland	$25,460.88	Texas SGA
	$62,853.17	Louisiana SGA
	$54,520.70	Maryland SGA
	$37,318.18	District of Columbia SGA
	$54,144.28	Michigan SGA
	$234,297.21	

(Continued on Page 17)

(Continued from Page 14)

litigation filed an appeal with the Receivership 'court which appeal was dismissed on April 1, 1996.

The nonsettling Respondents filed a Petition for Review with the Arizona Court of Appeals seeking reversal by the Arizona Supreme Court, which was denied on July 2, 1996. The 90 day period during which the non-settling Respondents had to file a Petition for Writ of Certiorari expired on October 1, 1996, thereby finalizing the settlement agreement. The Receiver has now collected approximately $32 million of the $78.8 million. During the fourth quarter of 1996, the former professionals entered into settlement agreements with the Receiver which will result in additional cash payments of $13,250,000 to the **FHLIC** estate during 1997.

Additionally, in October of 1996, the Receiver of **FHLIC** negotiated an arbitration settlement with an affiliated ceding company, resulting in a $4 million payment to the estate. On October 15, 1996, the Receiver and the Arizona Life and Disability Insurance Guaranty Fund tendered the final installment to Metropolitan Life Insurance Company, culminating the three-year plan for annuitants representing approximately $93 million of contract balances.

Further, during the third quarter of 1996, **FHLIC** applied for and was deemed tax exempt, commencing January 1, 1994.

During the fourth quarter of 1996, the Receiver of **FHLIC** settled claims against the United States of America under I.R.C. 815 (Phase III) resulting in a payment to the estate of approximately $894,000. Further, on December 31, 1996, the Receiver of **FHLIC** made an early access distribution of $24 million to the Arizona Life and Disability Insurance Guaranty Fund.

Mark Tharp (AZ) further reported developments concerning **American Bonding Company** and their plan for Rehabilitation. On December 20, 1996, the Receivership Court heard the Receiver's Proposed Plan of Rehabilitation and parties objecting to the Plan. One objecting party was allowed additional time to brief its objection. On February 27, 1997 an order was signed approving the Plan of Rehabilitation as filed.

(Continued on Page 17)

Receivership	Amount	
Eastern Indemnity Co. of Maryland	$681,460.42	Policy Level Claims
Trans Pacific Ins. Co.	$45,101.60	Policy Level Claims

Disbursement made to General Creditors

Receivership	Amount	
Eastern Indemnity Co. of Maryland	$47,246.21	General Creditors
Trans-Pacific Ins. Co.	$ 344.00	General Creditors
Land Title Research of Maryland Inc.	$3,276.54	General Creditors
Trans-Pacific Ins. Co.	$553,887.97	Collections due to Civil Litigation & Criminal Prosecution

New Jersey (John Kerr, Contact Person)

Disbursements made in fourth quarter of 1996

Receivership	Amount	
Integrity	$351,000.00	SGAS
	$448,000.00	Policy Level Claims

Pennsylvania (William S. Taylor, Contact Person)

Receivership	Year Action	Insurance Category	Dividend Percentage
Pine Grove Mutual Ins. Co.	1994	P&C	100% Class B, C, D

	Amount	
American Integrity Ins. Co	$133,487.00	Early Access
Corporate Life Ins. Co.	$309,573.00	Early Access
Rockwood Ins. Co.	$5,576,761.00	Early Access

A Brief Reply to the Self-Described "Rebuttal to: 'Long Tail Claims' Commentary"

(Continued from Page 3)

However, the court felt that the Commissioner's arguments should more properly be addressed to the Legislature.

Following the court's suggestion, the California Department of Insurance recently sought an equitable means of resolving these competing interests by the introduction of Senate Bill (SB) 663. The Department's effort was stringently opposed by the RAA who had hired seemingly every lobbyist in town to defeat the Bill before it even made it out of committee. Ironically, SB 663 contained provisions previously lauded by the RAA in other states: a voluntary commutation process and a provision for arbitration in an involuntary commutation process. This latter procedure would be invoked upon the earlier of the passing of five years since the date of liquidation or the commutation of 75% of all reinsurance agreements relating to the estate. Yet, the RAA continued on its current crusade, opposing every effort which may permit estates to be closed earlier than twenty or thirty years down the road.

It is clear that with reinsurers opposing efforts toward long tail claims estimation at every turn, there will be no immediate solution to the problem. It is unfortunate and seems that until a more reasonable approach is taken by the reinsurers and particularly the RAA, which appears to be impossible under the current circumstances, receivers everywhere are in for a long haul on the road to early estate closure.

[1]There is still some active litigation involving reinsurers or others similarly situated from which additional recoveries are expected.

[2]Fortunately or unfortunately, depending on one's perspective, we will not take a trip down that road in this *brief* reply.

[3]Some of those cases have been the subject of earlier articles by the Commissioners' counsel and those interested in following this dialogue may find this a useful place to look. *See, e.g., Mealey's Litigation Reports: Insurance Insolvency*, Vol. 7, No. 23 (May 1, 1996) and *Mealeys Litigation Reports: Reinsurance*, Vol. 7, No. 4 (June 26, 1996).

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Key features of the Plan include:1) Claims process that provides for an adjudication time line; 2) Special Master provision providing an independent and cost-effective forum to adjudicate certain claim matters including those stayed by the receivership order; 3) A mechanism to allow special deposits held by various state insurance departments to be accessed and dedicated for benefit of the respective state's policyholders' claims; 4) Cancellation of exposure for unaccounted bond powers, and 5) The allowance of Class 1 through 4 (senior creditor Obligations) to be paid per provisions of the plan of rehabilitation; subordinate creditors are subject to a formal proof of claim process and payment in full of senior creditor obligations.

With regard to claims against **American Bonding Company**, it was reported that payment of obligations under surety bonds and commercial insurance policies were temporarily suspended. A claims moratorium was imposed in November 1996. During this moratorium, Class 1 expenses have been paid. This initial moratorium is expected to be lifted some time in the second quarter of 1997.

Prior to the moratorium and since the inception of the receivership, ABC has paid gross loss and loss adjustment expenses totaling $18,714,366. Payment of obligations under bond and insurance policies is projected through the year 2003.

Thus far, in many instances, litigation in connection with **ABC** has been stayed pending the implementation of the rehabilitation plan.

The Receiver has selectively initiated and defended litigation to enable the Receiver to meet its cash flow projection benchmarks necessary for the rehabilitation plan to succeed.

Mark Tharp (AZ) also advised that, during the third quarter of 1996, **AMS Life Insurance Company** applied for and was deemed tax exempt, commencing January 1, 1995. Further, during the fourth quarter of 1996, the Receiver of **AMSLIC** settled claims against the United States of America under I.R.C. 815 (Phase III) resulting in a payment to the estate of approximately $30,000.

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Receivers' Achievement Report *(Continued from Page 17)*

Philip Singer (UK) and Chris Hughes of Coopers & Lybrand, as the Joint Scheme Administrators of **ICS RE** and **RMCA RE**, report that a third dividend will be declared before the end of June 1997.

A first dividend of 50% was paid to creditors effective July 31, 1996, a little over two-years after the Schemes of Arrangement, under which the affairs of these companies are being wound up, became effective.

A second dividend of 10% was declared December 20, 1996, for a total of 60%. The Schemes of Arrangement, which provide for the estimation of creditors' claims, became effective April 26, 1994 following sanction by the High Courts of Singapore and England.

As such, the length of time it will take to conclude the run-offs will be a function of reinsurance collections which it is hoped will be concluded before the end of next year.

Further reported by Philip Singer (UK) is news that the joint liquidators of **St. Helen's Insurance Company Limited** have paid four dividends to creditors of **St. Helen's** in less than two years. The four dividends, each 10%, were declared on February 11, 1995, December 15, 1995, October 4, 1996 and January 27, 1997.

The winding up of the affairs of **St. Helen's** was accelerated following the approval by creditors of the Scheme of Arrangement to estimate the company's tail of liabilities.

It is hoped that the liquidation can be concluded before the end of the year when a final dividend will be paid.

Philip Singer (UK) brings good news to the creditors of the insolvent **KWELM** insurance companies. Creditors are to be allocated a further $158m, bringing the total cash set aside to date for creditors to more than $1,080m. The fourth payment will start to be made this summer, four years after a Scheme of Arrangement was agreed upon by the creditors of the insolvent companies.

The latest increase averages 2% across the five companies, taking the new level to between 10% and 16%, with an average total payment percentage to date of 12%.

The administration now estimates that the possible overall liabilities of the KWELM companies, including a "special margin" of $4.1 billion, are in the region of $9.2 billion.

Insurance claims made upon the companies can be expected to arise over an extended period of years because of the long-tail nature of much of the business they wrote for some 100,000 policyholders. ♦

A Brief Relpy to the Self-Described . . .
(Continued from Page 17)

[4]*Fireman's Fund Ins. Co. v. Quackenbush*, No. 92-15861, 1996 U.S. App. LEXIS 19493 (9th Cir. 1996); *Sierra Club v. City of San Antonio*, No. 96-50636, 1997 U.S. App. LEXIS 9346 (5th Cir. Apr. 30, 1997); *Amerson v. State of Iowa*, 94 F.3d 510 (8th Cir. 1996); *Tucker v. Murphy*, No. 96-1557 C/W 96-2195 Section "C"(1), 1997 U.S. Dist. LEXIS 3582 (E.D. La. Mar. 21, 1997); *R&B Group, Inc. v. BCI Burke Co.*, No. 96C2620, 1997 U.S. Dist. LEXIS 554 (N.D. Ill. Jan. 14, 1997); *Ameritech Michigan, Inc. v. Strand*, No. 5:96-CV-166, 1996 U.S. Dist. LEXIS 17665 (W.D. Mich. 1996).

Welcome!

We wish to welcome the following new members since the 1st of the year through July 20, 1997! We will regularly list our new members in each issue of The Insurance Receiver in the future.

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If you would like additional staff members from your firm to join IAIR, use the enclosed application.

Other News & Notes *(Continued from Page 5)*

The same would apply in Case E, the GA loses $100. It may be that this reflects the real cost of not estimating claims. Comparing Cases A and B to Case G, regardless of whether interest is added to the claims, if interest is added to the advance, then the NGC claimant is $50 better off. As an advance must be treated as an asset, should it be the only asset of the estate that does not increase over time?

Yes, the rights and liabilities of all parties are fixed at the liquidation date. But, does that not mean the present value of those rights and liabilities? To collect reinsurance by commutation, claims that will mature and be paid in the future must be discounted. To commute, the time value of money must be taken into account. An estate does not open with the cash assets that it will eventually have from recoveries and investments; these accrue over time. If the assets have to be discounted back to present value to be liquidated or are going to increase from their current value through investment, then why shouldn't the claims also have the time value of money taken into account?

Still looking at cases A, B and G, if interest is added to the claims and advances, then the DP goes from 70% to 35%. This reflects the very real costs of keeping estates open for too long. Looking at Cases A and E, if interest is added only to the claims and not to advances, then the DP goes from 60% to 30%. If you take interest on the claims into account, then the illusion of a great DP is exposed.

In many liquidations a great DP is being achieved simply by longevity, instead of effective management, and the error of accounting for the time value of money only on the asset side of the balance sheet. The DP is actually a very poor measure of performance for a liquidation, although many receivers and SDRs tout the DP when it looks good, inasmuch as the DP is determined more by how quickly the department of insurance located the insolvency and acted to prevent further deterioration of the company.

An interim dividend, like any liquidation dividend, is paid to all claimants in a priority class. In Case K both the GA and the NCG got $50 ten years ago. The present value of that, under the 7% return on investment assumption, is $100 each. Add that to the $250 final dividend and each got a present value of $350. Now look at Cases B and G, and ask, is the same present value of $350 for each claimant achieved? Now, look at Case E, where interest is not added to the advance, and note that when the advance's present value of $200 is added to the $200 final dividend, the $400 going to the GA shows that the NGC claimant getting only $300 is shorted $50.

The time value of money also relates to the expenses of a liquidation and the cost benefit analysis that should be performed in relation to the planned asset recovery actions. A $1.00 expenditure made ten years ago must produce a $2.00 recovery today to be considered cost effective.

In the above examples the $100 in "administrative cost" that was "paid covering all years" could not have been $10 per year (which actually has a present value $138 over ten years), rather it would have had to have been about $7.24 per year.

That last installment should have also had my standard disclaimer, which was my oversight due to my focus on ensuring that all the other disclaimers were correct, and which goes as follows: "The views expressed here are not intended to represent statements, opinions or positions of the Missouri Department, any particular receivership, or IAIR, and to the extent that some views may be expressed merely to generate discussion those views may not even be those of the author." ♦

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