Society of Insurance Receivers

Volume 4, Number 3 | The Newsletter | Fall 1995

In this Issue

Features

Departments

President's Message

By Jeanne Bryant, Tennessee Department of Insurance

I hope everyone has had a great summer, and I am looking forward to hearing stories about wonderful vacations. As you may know, our Executive Director has been changed to Frank Bistrom of Association Services International, Ltd., and Jane Male is the Associate Executive Director. This change was effective July 1, 1995, and we look forward to a long and productive partnership.

I am happy to report that the accreditation standards were passed by two-thirds majority of the principal members. The Accreditation Committee is working on the next steps, and you will be provided with information on how to apply.

I wish to thank all the members of the Accreditation Committee, both past and present, for their hard work in assisting the Society to pass this milestone. These standards will prove to be of increasing benefit as the Society grows.

Later in the newsletter you will see information concerning the upcoming seminar which we are holding in conjunction with NOLGHA. I am sure this seminar will be of great benefit to many receivers. Please read this information as well as the report on the St. Louis Roundtable and the information for the Roundtable that Vince Vaccarello is planning for Philadelphia. It is certain to be an interesting roundtable. See you in Philadelphia!

New Headquarters for SIR

The Board of Directors of the Society of Insurance Receivers, after a review of the past year, has determined that it needed to expand the staff and relocate to facilitate closer communications with the NAIC. To that end they have selected Mission, Kansas as the new location (a suburb of Kansas City, Missouri) and have selected a staff team with broad experience in association management. The change went into effect July 1, 1995.

The new office location allows for timely communications with both the East and West coasts as well as close communications with the National Association of Insurance Commissioners, which is headquartered in the same area.

The new Executive Director for the SIR is Frank Bistrom, CAE with over thirty-two years experience in association management. Associate Executive Director Jane Male, CAE has close to fifteen years experience in association management, Heather Hoesly is the Society's Desktop Publisher, and Amy Fenton, Administrative Coordinator will round out the

continued on page 3

From left to right: Heather Hoesly, Jane Male, Amy Fenton, Frank Bistrom

Our Involvement in INSOL International

by Philip Singer, Coopers & Lybrand and Nigel Montgomery, Davies Arnold Cooper

NSOL International is a worldwide Federation of associations of accountants, lawyers and others who specialize in the insolvency area. The Federation was formed in 1982 and its administrative offices are located in London, England.

The Society of Insurance Receivers recognized from the outset that it should be an international organization whose membership is open to all who are involved or have an interest in the field of insurance insolvency.

In 1993, SIR was admitted to membership of INSOL International. The admission of SIR to membership of INSOL International, apart from being a great honor, truly established it as an international insolvency organization.

There are currently 23 member organizations worldwide with over 7,000 professionals participating as members of INSOL. The member countries include the United Kingdom, the United States of America, Canada, France, Argentina, Hong Kong, Israel, Italy, Hungary, Maylasia, the Netherlands, New Zealand, Australia, Poland, Singapore and South Africa.

SIR's membership in INSOL International is by reference to its principal and associate members, but if any sustaining members would wish to become members of INSOL International the annual fee is $40. Should any sustaining member wish to become affiliated with INSOL, please contact Philip Singer of Coopers & Lybrand, Hilgate House, 26 Old Bailey, London, England, (44-171) 212-6255, fax (44-171) 212-6316.

INSOL International's mission is to take the leadership role in international insolvency issues and policies and to facilitate an exchange of information and ideas among member professionals and other constituencies affected by the insolvency process. The Federation encourages greater international co-operation and communication.

> "INSOL International's mission is to take the leadership role in international insolvency issues and policies..."

The goals and strategies of the Federation are:

- To take the leadership role in the study and evaluation of insolvency subjects of international interest;
- To organize and hold congresses at regular intervals;
- To facilitate and co-ordinate the exchange of both technical and topical information;
- To involve member associations in the activities of the Federation;
- To ensure that the Federation is adequately resourced to achieve its mission and goals; and,
- To involve other constituencies affected by the insolvency process in the activities of the Federation.

The Federation sponsors a World Congress for member professionals at 4 year intervals. The first World Congress was held in 1982 at Cape Cod, Massachusetts, USA; followed by Monte Carlo in 1985; Vancouver, Canada in 1989 and Melbourne, Australia in 1993. Future Congresses are planned for New Orleans , Louisiana, USA in 1997 and London in the year 2001.

SIR has had the honor to be asked by INSOL International to organize a one day seminar at INSOL '97 in New Orleans and a working party of SIR members comprising Philip Singer, Gerry Weiss, Andrew Wilkinson and Jonathan Bank is involved in preparing of this.

The Federation sponsors periodic regional seminars and the next seminar will take place November 2 - 3, 1995 in Hong Kong. The theme of the conference is "Chasing the Dragons—Business protection in China and the New Asia". Delegates will have an opportunity to listen to some of the regions leading authorities on the insolvency and business protection issues facing countries in the New Asia and participate in discussions which will influence the future development of insolvency law there. the conference will include a full social and entertainment program. Further details are available from International Conference Consultants Ltd., 19/F Wing Yue building, 60-64 Des Voeux Road West, Hong Kong, (852-2) 559-9973, fax (852-2) 547-9528.

In conjunction with Chancery Law Publishing, the Federation publishes the *INSOL International Insolvency Review*, a technical

service containing learned articles on any subject concerning international insolvency. The editor is Professor Ian Fletcher, professor of commercial law and head of the Insolvency Law unit, Queen Mary & Westfield College, University of London. Member professionals are entitled to subscribe to the *Review* at a special reduced price and Professor Fletcher is always interested to receive articles for inclusion in the *Review*.

INSOL has been invited by several governments to participate in consultations leading to the introduction of new insolvency legislation and INSOL representatives were recently invited to the United States to meet with White House officials to discuss international insolvency laws.

The Federation undertakes various projects relating to international insolvency. Current projects include a study of the laws relating to liability for environmental waste damage which will be of particular interest to SIR members. The results of various projects undertaken are published periodically in the *International Insolvency Review* and the Federation's newsletter entitled *"INSOL World"* which is available free to members.

Finally, the INSOL Directory is scheduled for publication and distribution shortly and included in the Directory will be a list of all individual members, including the principal and associate members of SIR.

For further information please contact either Philip Singer or the General Secretary of INSOL International at 18-19 Long Lane, London, ECIA 9HE, England, (44-171) 795-4344, fax (44-171) 796-2353.

Philip Singer is a partner in the National Insurance Insolvency Practice of Coopers & Lybrand and one of the Joint Provisional Liquidators of Charter Re.

Nigel Montgomery is the partner in charge of the Insurance Insolvency Department at Davies Arnold Cooper, solicitors to the Joint Provisional Liquidators of Charter Re.

continued from page 1

team structured to help the development of the Society of Insurance Receivers.

Both Jane and Frank have received their Certified Association Executive (CAE) designations, from the American Society of Association Executives. Their experience in developing certification programs for other associations will assist in the success of SIR's certification program that is currently under development.

Our new Society of Insurance Receivers Office is as follows:

Society of
Insurance Receivers
5818 Reeds Road
Mission, KS 66202-2740
Phone: 913/262-2749
Fax: 913/262-0174

Executive Director -
Frank Bistrom, CAE

Associate Executive Director -
Jane Male, CAE

Administrative Coordinator -
Amy Fenton

September 1995 Roundtable

Saturday, September 9, 1995
Theme: "Collecting From Deadbeat Dads"
Roundtable Leader: Vincent Vaccarello, Mutual Fire

Schedule	*Topic*	*Facilitators*
1:00 - 1:10	Introduction	Vince Vaccarello, Chairman
1:10 - 1:30	Making Accounts Accountable	Ellen Robinson, Esq. Mary Veed, Esq.
1:30 - 2:45	New and Imaginative Ways to Collect Reinsurance	Jim Dickinson, Panel Chairman
	Panel Moderator: Stuart M. de Haaff, Esq.	Chadbourne & Parke
	Panelists: Francine L. Semaya, Esq.	Werner & Kennedy
	Paula Keyes	Chilington-Omni Services Inc.
	David Mendelsohn, Esq.	Rudnick & Wolfe
	William F. Costigan, Esq.	Costigan-Berns
2:45 - 3:00	Tax and Accounting Update	Doug Hartz, Receivership & Examination Services Company
3:00 - 3:15	Break	
3:15 - 3:30	What Can or Should be Done from a Regulatory Standpoint	Wm. Gibson, Esq., Deputy Superintendent, New York Department of Insurance
3:45 - 4:15	Brief Introduction to Available P.C. Reinsurance Accounting and Billing Systems	Insurance Data Processing Peterson Consulting
4:15 - 5:00	Open Question and Answer Period	Vince Vaccarello

Note: The Day's Chair, Vince Vaccarello, promises that these sessions will be provocative and stimulating.

Mission, Cut-Off and the English Way

by Vivien Tyrell, DJ Freeman

With the arrival of the August 18 deadline for creditors of the Mission Companies to file all their claims, those of us working in the common-law jurisdictions of England and certain of its former colonies, have watched the progress of the Mission plan in California with interest and curiosity.

At a time when further states are contemplating adoption of statutory procedures for estimating contingent claims and the NAIC Model Act is under scrutiny it might be useful to consider some common-law experiences in the field of cut-off arrangements in relation to general insurance business.

Contingent Claims–Dealing with the "tail"

While many parallels can be drawn between the US and common-law rules and practices, we differ about the effective definition of "Contingent" and in our methods of dealing with contingent claims.

Liquidation (either by court order or resolution to wind up) imposed a statutory cut-off date whereby creditors claims can be identified as crystallized claims which are payable by the company on the date or as contingent, unliquidated or undetermined (i.e. unascertained) claims. It is generally acceptable principle in both the US and the common-law jurisdictions that crystallized claims which are due and payable by the company will be admitted on the liquidation subject to agreement on the amount of the claim.

The US approach to the treatment of contingent claims differs from state to state. In some states there is a total bar on contingent claims. Others, while allowing contingent claims to be filed, require that before any distribution is made to the creditor, the company's liability must be established.

In England, and its former colonies, contingent claims and those of uncertain value are estimated by liquidators so that the creditors claiming in respect of them are admitted (although not necessarily for their evaluation of the claim) for what ought to be a value that is fair.

When the US liquidator is put in a position (either by regulation or by decision) requiring him to deal with contingent claims, his task is problematic. It is especially so if a large part of the company's business comprises long tail liabilities. The problem arises on a grand scale in the case of the Mission Companies.

> "At a time when further states are contemplating adoption of statutory procedures for estimating contingent claims...it might be useful to consider some common-law experiences..."

The American Definition

Pursuant to the California Insurance Code, creditors of the Mission Companies were required to file all their claims, including their contingent, unliquidated and undetermined claims, by September 12, 1987 ("the 1987 Bar Date"). As significant amounts of the company's liabilities comprised "long tail" risks, the Mission liquidator had a choice either to keep the liquidations open for some thirty years and allow all claims to be run off as they matured or to impose a cut-off date by which all contingent, unliquidated and undetermined claims—properly filed by the 1997 Bar Date—must be amended as liquidated claims or otherwise converted to determined and non-contingent claims. The new cut-off date, August 18, 1995, is termed the "Final Dividend Claims Bar Date". Such claimants (if their claims are allowed) can then participate in a Final Dividend Payment pursuant to a Final Dividend Formula.

Mission Final Dividend Payment Plan applies the California Insurance Code definitions of contingent, unliquidated and undetermined claims:

"Any claim or demand upon which a right of action has accrued at the date of the order of liquidation upon which the liability has not been determined or the amount thereof liquidated."

This reflects the pervasive definition in the US that if the right of action has not accrued, there is not even a contingent claim that the creditor can assert in the liquidation.

The American definitions of unliquidated and undetermined claims are at variance with their common-law equivalents. If at the Liquidation Date, the company's liability to pay has already been established but the claim remained uncertain as to its amount it is not contingent but "unliquidated". A claim which is certain as to its liability and its amount but is not yet due for payment by the liquidation is termed "immature".

The Common-law Definition

In Common-law jurisdictions,

the strict definition of "Contingent" is a claim where the right of action has not yet arisen. The obligation to pay is dependent upon a future event which crystallizes it into a claim. For example, a worker being exposed to asbestos who has not yet contracted asbestosis. The right of action might never arise, i.e. the worker dies before he ever contracts the disease or alternatively, the future event of contracting the asbestosis crystallizes it into a claim.

Approving the judgment of Hoffman J in the case of *Transit Casualty Company v The Policy Holders Protection Board*[1], the Court of Appeal in England identified four categories of claims in the winding-up of an insurance company:

(a) claims which had failed due for payment before, but had not been paid by, the date of the liquidation ("overdue claims");

(b) claims which had become due, because all the ingredients of a valid claim were present, but were not payable until after the liquidation ("Mature claims");

(c) claims based upon insured events which have occurred, but which have not yet to mature by reason of future events ("contingent claims"). For example, there has been an act of professional negligence within the policy period which under the terms of the policy constitutes a triggering event, but no claim has yet been notified; and

(d) claims based upon the loss of the protection of the policy for the period between the date of the liquidation and the date when the policy period would have expired ("unexpired period claims").

Overdue claims can be proved in the liquidation whereas mature claims, contingent claims and unexpired period claims are valued in accordance with Rule 6 and Schedule 1 of the Insurance Companies (Winding-up) Rules 1985 (see below).

It would seem that category (b) must include both claims which might be certain as to their amount but under the terms of the policy are not payable at the Liquidation Date as well as claims where liability had been established but the amount had not yet been determined.

It is understood that in certain circumstances US liquidators are prepared to allow claims based on IBNR where the right of action has not yet arisen. It seems logical that in those cases, US liquidators should be predisposed towards adopting an estimation pro-cess where the reasoning is not based on limiting categories of claims but on attempting to value the company's contingent liabilities.

In the US, three broad options are available:

- An application to court for it to impose a "bar" date before which all claims, both contingent and non-contingent must be liquidated as in the case of Mission;
- A run off of the company's business over many years, closing the liquidation only when the last claim has been liquidated; or,
- A method approaching closer the common-law method, namely devising a mechanism whereby creditors' contingent and otherwise unliquidated claims can be fairly determined and allowed.

The Common-law Cut-off Experience

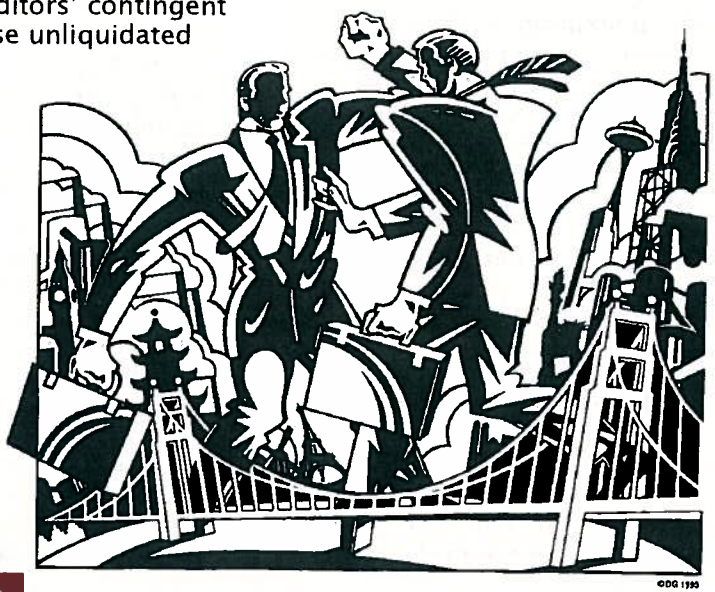
In England and its former colonies, liquidators have adopted appropriate estimation methods to deal with the "tail". Under English legislation, and often under the laws prevailing in its former colonies, if the company is in liquidation, there is an obligation on liquidators to estimate claims which are contingent or for any other reason, do not bear a certain value at the date of the winding up order or resolution. The estimation methods which liquidators are to use are not defined. A liquidator is thrown back onto the case law which tells him that he is obliged to take into account subsequent events, such as claims maturing during his term of office.

Section 6 of the English Insurance Companies Winding-up Rules 1985 deals with the valuation of general business policies:

> *"Except in relation to amounts which have fallen due for payment before the date of the winding-up order, the holder of a general business policy shall be admitted as a creditor in relation to his policy without proof for an amount equal to the value of the policy and for this purpose, the value of the policy shall be determined in accordance with Schedule 1."*

Schedule 1 provides for the valuation of policies subject to contingent claims. There is a specific statutory formula for valuing current policies (described in *Transit* as "unexpired period claims," see above) amounting to a

continued on page 6



Workers' Compensation Alternative Products: Panacea or Problem?

by Dale Stephenson, National Conference of Insurance Guaranty Funds

A number of states have laws which now allow alternative products or programs to traditional Workers' Compensation insurance. Closely regulated self-insured programs, structured like traditional carrier-based programs, are a risk only if the self-insured company becomes bankrupt (deposit requirements protect against this). Twenty four-hour coverage is experimental and is being closely monitored and the statutes carefully crafted. So what could be the problem?

What about a life and health carrier writing the medical and indemnity coverage and a surplus lines carrier writing the employers liability coverage? Is it a problem? Consider what happens if either of these carriers becomes insolvent. Surplus lines have no guaranty fund coverage in almost all states. In many states, workers' compensation is excluded from coverage by the life & health guaranty statute and the life and health carrier is not a member company in the property and casualty guaranty fund. Which guaranty association would (or legally could) provide coverage? The answer may be neither one.

Workers' Compensation claimants rank very high on the list of "hardship" claims defined for insolvency processing. The potential for explosive negative impact upon the public image of guaranty funds, receivers and departments of insurance is immense. The damage to individual claimants if payments are discontinued is not something that any of us want to consider.

Alternatives to traditional products may be economically attractive or support and provide for competitive incentives to all companies involved in the process, however, careful consideration must be given to the total picture to avoid a nasty surprise in case something goes wrong. All departments of insurance, receivers and guaranty funds should be encouraged to look closely at their laws and make sure that there isn't a hole left in the coverage for Workers' Compensation claimants in case of an insolvency.

NOLGHA and the NCIGF will present an issue paper on this situation to the Workers' Compensation Task Force in September, 1995. Cooperative effort, careful analysis and considered action is in the best interest of all involved.

Mission, Cut-off

continued from page 5

return of premium representing the unexpired portion of the policy. It is however, the losses arising under past occurrence policies which give rise to contingent and unascertained claims which must be valued by the liquidators, according to paragraph 2(2)(b) of the Schedule, making a "just estimate" of that value.

Why Must a Cut-off be Imposed?

There have been some 14 examples in recent years of cut-off arrangements in insurance insolvencies aimed at reducing the period of the administration of the estate and bringing forward the final dividend payment date.

In making his just estimate the common-law liquidator must take account of the principles expounded in the antique authority of *Macfarlane*[2]. This indicates that losses occurring after the Liquidation Date can be used as evidence of the value of such a contingent claim.

Macfarlane held a policy of fire insurance of the Northern Counties of England Fire Insurance Company Limited dated May 8, 1878 for the sum of £500. The company was wound up on December 13, 1879 and within the period of the policy. On January 22, 1880, the insured premises burned down, giving rise to loss for the full amount of the policy. the judge, Jessel MR, forcibly said that the law in relation to bankruptcy (and similarly corporate liquidation) as to contingent liabilities was plain, and that the liability contingent at the date of the adjudication (the Liquidation Date) which ripens into a debt curing the bankruptcy is provable. He allowed Macfarlane to prove for the full amount of £500.

The most recent endorsement of Macfarlane principles was given by Mr. Justice Hoffmann, in the case of *Transit Casualty Company & Another v. The Policyholders Protection Board & Others*[3] when he concluded that the same principles would apply in determining what was a just estimate as would apply in the general law of insolvency. The *Macfarlane*

continued on page 16

Pari Passu

by Nelson Burnett, State of Alabama, Department of Insurance, Receivership Division

Hear Ye, Hear Ye the Court of Common Candor is now open. May readers savor and Editors waive our indicted statements.

Many years ago Samuel Butler shared with us that all of the animals except man know that the principal business of life is to enjoy it. Let's at least on this page, get back to that principal business. You folks do not spend all your time writing learned "how to" treatises, analyzing convoluted financial records, following the fortunes of reinsurers and serving on NAIC committees.

Here, in this small space we are going to propel, human interest things and share a few of the extra-curricular vital stats. We aim to pontificate and explicate, to rehabilitate rosily and liquidate laudably, "spin doctor" your after hours words and actions. Incontrovertibly every SIR member, every "Butler man" of every gender, fully possesses the gifts, talents, blessings, love and laughter, Pari Passu. This page will be aimed at the implementation, encouragement and development of your powers, to laugh a little, love and pray a lot.

Progressive people, presentations, permanently programmed Pari Passu, are our game. Pari Passu is our name. No preferences, protagonists equally praised or damned, insurance, reinsurance insolvency people whether SIR members or not. We shall not proclaim nor publish as Orwell that, "...some are more equal than others." We are not into von Hayek's, "...striving after this mirage of social justice." We are just going to take notice with Henry James, and, "...note and enjoy noting."

So, Barbara Cox, NCIGF, your splendid, creative logo, musical staffed *"Notes"* is not being plagiarized, just praised. Thank you Barbara, Dale and Kevin.

Has anyone done business with **Dr. Bill Chen**? He is the amicable genius CEO of New Era Life of Houston. It is a pleasure. Ask NOLGHA, Alabama, Georgia, Utah and Indiana Commissioners and Receivers.

Karen Stewart, first President of SIR is making her abilities, talents and presence felt, working with Len Stillman on the Southern American Insurance Company Liquidation in Utah.

Susan Martin, Esq., I cannot see you in a green badge! You started receivershipping right after I did, we are vested! But there is precedent, Debra Anderson made the transition most successfully and so can you. Happy trails, Susan. Sure this will be a more manageable venture but what is the NAIC going to do without you? Susan's new position will be as counsel for National Home Life Insurance Company.

Regardless of this news in other parts of the newsletter, this is a personal priority item...Frank Bistrom, you may want to give this squib added emphasis, but SIR has a new Executive Director, **Frank Bistrom, CAE**, and new staff **Jane Male, CAE, Heather Hoesly** and **Amy Fenton**, all of Association Services International, Ltd. in Mission, Kansas.

We are all familiar with and appreciate the ambidextrous job-

juggling talents of NCIGF honcho, **Dale Stephenson**, who truly doeth all things well. But maybe this time he has exceeded his capacity. This new grandfather took a new wife July 22, 1995! Double congrats Dale! Miss Judi, you have all our sympathy and very best wishes—remind him, wives, particularly brides, are exempt from all assessments.

To get this column launched, I have spent too much space on its introduction and not enough on sophisticated readers. This is *your* page, send me news, data or dirt on yourself, our friends and neighbors—do it by phone (205) 263-7057, fax (205) 262-4691 or mail. Join the fun, *Pari Passu is you.*

Meet Your Colleagues

Robert L. Greer

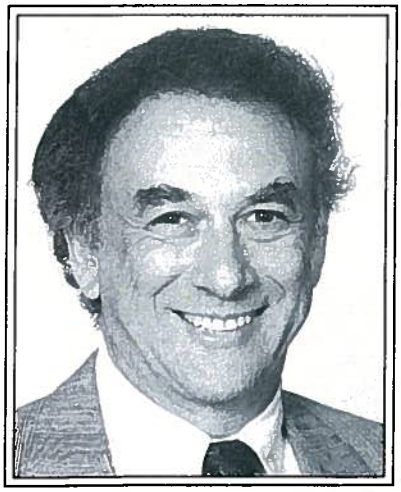
Principal Member

Robert L. Greer is Assistant Deputy Receiver for the West Virginia Department of Insurance, Office of the Receiver. He has worked with the Receiver in West Virginia in Charleston since 1987. In addition to his work in West Virginia, Bob is affiliated with Vista Consulting Group and has completed receivership consulting to both the California and North Carolina Insurance Departments. Bob has been part of the estate management team for such insolvencies as Blue Cross Blue Shield of West Virginia, Inc., George Washington Life Insurance Company, Intrepid Insurance Company, Quality Insurance Company and Mountaineer Fire & Casualty Insurance Company.

Bob is a graduate of the Ohio State University and the West Virginia College of Law where he served as Executive Editor for the West Virginia Law Review. He is a member of the American Bar Association and West Virginia State Bar.

Bob has served as chairman of the Model Act Issues Working Group which just completed a comprehensive review and revision to the NAIC's "Insurers Rehabilitation and Liquidation Model Act". He also was actively involved in the First & Second Editions of the NAIC Receivers Handbook.

For the Society of Insurance Receivers, Bob has served as moderator and speaker at several programs. These include the February 1992 NAIC Workshop on "Dealing with Guaranty Associations and Managing of Multi-State Insolvencies and Ancillaries." Bob was also involved in the NAIC/SIR Insolvency Workshops in 1994 and 1995 on the topics of "The Model Act", "Model Act Claim Procedure" and "Takeover Scenarios".



Martin Minkowitz

Sustaining Member

Martin Minkowitz is a partner and member of the insurance practice group of Stroock & Stroock & Lavan. In that capacity, he has practiced in all aspects of corporate and regulatory matters. Marty currently serves with his fellow partner Bill Latza as counsel to SIR.

Prior to joining Stroock, Marty was the Deputy Superintendent and General Counsel of the State of New York Insurance Department for more than seven years. As General Counsel, Marty was responsible for the legal interpretation, enforcement and compliance with the state insurance statutes and regulations; the prosecution of all violations of the statutes; and the imposition of fines for failure to comply with the insurance law.

Marty is a nationally recognized authority on workers' compensation. He has served as General Counsel for the State of New York Workers' Compensation Board where he drafted and advocated the Board's legislative program and made important contributions to improving the benefits and rates of injured workers.

Marty has lectured to diverse audiences such as the American Bar Association, NCOIL and NAIC and has written extensively on insurance and workers' compensation issues and is the co-author of several legal texts.

He received his B.A. in 1961 from Brooklyn College, and LL.B. (1963) and LL.M. (1965) from Brooklyn Law School. In addition to the New York State Courts, Marty is admitted to practice in all four Federal Districts in New York, the United States Tax Court and the United States Supreme Court.

Diane Perkins

Associate Member

Diane Perkins is the Reinsurance Manager for the Office of the Special Deputy Receiver (OSD) in Chicago.

Diane attended North Texas State University in Denton, Texas and began her insurance career as accounting supervisor for Northwestern National Insurance Company in Austin, Texas. Following this she was given an opportunity to become involved in forming a new company, Association Casualty Insurance Company in Austin. Diane was instrumental in starting the company, served as controller and managed the company's reinsurance issues. Upon leaving this position, and before starting her own business, she also served as controller of Texas Insurance Company in Austin.

For the next eight years Diane worked for several states as a Rehabilitation/Liquidation consultant. She worked on several large liquidations (Transit Casualty, Pine Top) and during this time was heavily involved in reinsurance audit, billing and collection activities.

These years as a consultant prepared Diane well for her next position, that of managing the Property and Casualty Reinsurance Department for the Texas Department of Insurance, Liquidation Division. This involved overseeing the reinsurance issues for 425 companies in liquidation.

In 1991 Diane accepted an offer from the OSD and relocated to the Chicagoland area. She has spent the last four years managing a large reinsurance staff and directing all reinsurance related activities. Diane reports to the COO and fellow SIR member Dick Darling.

Professionally, Diane has been very active. She has served as a speaker at insurance/reinsurance seminars and is currently working toward her ARe designation. She is a charter member of PIA of Austin and was a member of the Eanes Professional and Business Association. She also served as President of the Insurance Women of Austin.

Diane is divorced and has a married son who lives in Austin with his wife and son. She travels extensively and has enjoyed exploring the wide variety of activities offered in Chicago.

Vivien Tyrell

Sustaining Member

Vivien Tyrell is a lawyer and authorized insolvency practitioner. She has been a partner in City of London Solicitors, D J Freeman, for ten years.

Vivien graduated from Somerville College, Oxford University, in jurisprudence, qualifying as a lawyer in 1980 and specializing in insolvency since 1982. She gained her first insolvency authorization in 1989. Her insolvency work is both contentious and non-contentious.

She has practiced insurance insolvency law since 1987 and is the author of three cross-border schemes of arrangement (plans) for international reinsurance companies, one of which was the first "divorce" of two liquidations operating in separate jurisdictions. Her work has involved dealing with the "familiar looking" laws of Bermuda, Israel and Mauritius.

She was involved for three years running one particular multi-action asset repatriation case. This involved the development of special interrogation procedures and freezing assets in the United States, Channel Islands, Germany and Hong Kong. She also advises directors in insolvent situations and, acting for the funding party, has unwound various joint venture arrangements.

She is married to, barrister, Glen Tyrell and has a delightful two and a half year old son, Edward. They go skiing, sailing and flying in hot air balloons.

Committee News

Accreditation Committee

The Accreditation Committee has developed an application for the AIR and CIR designations in conformance with the accreditation standards resolution, approved by a vote of the principal members as of August 10, 1995, and a copy of this application was included with the materials sent for he vote on the accreditation standards resolution. Anyone who wants to apply for this designation can now

- call or write to the new SIR Headquarters and request a copy of the application, or
- send in the application form supplied for the vote which may be used at this time.

Regarding the continuing education requirements for the designations, the Education Committee is working on a list of the qualifying insolvency related conferences that have been held over the last three years. We will publish this list as soon as practical after it becomes available.

Education Committee

The Committee has finished arrangements for the SIR/NOLGHA joint conference, "Building Bridges" to be held in Reston, Virginia, November 16 - 17, 1995. Victor Palmeri, Deputy Receiver for Mutual Benefit Life and Confederation Life, will be the featured speaker during the luncheon on November 16.

This joint conference will be in a format similar to the very successful SIR/NCIGF Conference held in San Antonio last November. The registration fee of $135 and the hotel costs will be about the same as last year's conference. The airfare should be less expensive for most attendees, as Reston is just outside Washinton D.C. and there are numerous discount fares to either the Dulles or Baltimore airports.

This training will be beneficial to any receiver or staff that deal with life and health insurance insolvencies. It will first cover many of the operating philosophies of NOLGHA and then explore the more controversial issues in group discussion formats.

We expect all attendees, and especially the more seasoned professionals, to benefit substantially from this training and networking opportunity. A brochure and agenda of topics, speakers and facilitators will be available in the near future.

The Committee has also committed to another joint Conference with NCGIF, November 1996 and arranged for a joint reception by SIR and NCGIF on Monday, September 11 from 5:30 to 7:30 p.m. in conference rooms 414 and 415. The committee is also exploring the idea of having a two-hour, one topic conference jointly sponsored by SIR and NCGIF to be held in connection with the December, 1995 NAIC meeting in San Antonio.

Meetings Committee

St. Louis Round Table

A well attached Round Table meeting occurred in St. Louis.

The Illinois Office of Special Deputy SIR members, Dick Darling and Ed Hahn, presented a well organized seminar, "How To Manage Records and Property In A Receivership".

Kevin Harris, SIR member, pitching in for Charlie Richardson on "Fabe Updated", presented a meaty synopsis.

SIR member, William O'Bryan, presented a two subject discussion both of which have adverse effects on receivership closing goals. The first involved an ancillary allowance of a claim reported after its bar date, where the domiciliary was closed. The second subject involved denials of structured settlement cases of an individual non allocated type annuity.

Robert Greer presented a timely topic of accelerating receivership closure and methods for securing guaranty fund acceptance of a reconciled amount of claim even if all claims had not been closed.

Copies of the hand outs are available. The next Round Table is to be held Saturday afternoon, September 9, 1995.

Philadelphia Round Table – "Dead Beat Dads"

Our September Round Table will not concern itself with the majority of reinsurers, who are legitimate, well-intentioned and principled business people who honor their obligations, and whose disputes or arguments concerning whether or not payment is owing or the amount of payment due are generally reasonable or well-founded. There will always be disputes. That's why we have courts and, unfortunately, too many lawyers ready to litigate.

Our Round Table, however, will deal with those companies which appear to have entered or were in the reinsurance business because of its cash flow potential, low (?) loss ratios, etc., who unfortunately came to realize—perhaps too late—that the payment of claims was in some way, directly or indirectly, associated with their collection of premium.

Their actions reflect that they look at a receivership as though it is someone other than the insurance company they initially reinsured, and from whom they obtained premium, promptly and without dispute.

Some of them seem to know and pull every trick, stunt and excuse in the book. Their big hope appears to be that somehow or another the Estate will be closed before they are in some fashion—legal or otherwise—compelled to pay; or that some way or another they will earn enough money on

the claims they should have paid so that, by the time they pay, it will have cost them nothing;

Their requests for audit, arbitration, and fruitless negotiations, coupled with question after question about the meaning (well established as it may be) of certain phrases and contract provisions, supporting documentation, etc., never seem to end.

Who are these reinsurers? We know who they are! The question is what can we do and, what are we going to do about it?

Can we be as innovating and imaginative as they are? Can we make them promptly pay what they fairly owe? And, can we do it in such a fashion that it has in no way been profitable for them to attempt to unjustifiably withhold or deny payment?

This Round Table will be your opportunity to see and question just how imaginative we are or can be.

It will also be your opportunity to hear—from a regulatory standpoint—both what can and what ought to be done with respect to these "dead beat dads".

Government has found a way to make "dead beat dads" pay by taking their driver's licenses. Is that a solution to our own particular and peculiar brand of "dead beat dads"? Perhaps there should be security deposits required of these "dead beats" when acceptable complaint ratios are exceeded?

If insurance departments maintain computer consumer complaint ratios, etc., with respect to policyholders' complaints against insurance companies, why shouldn't they do the same with respect to the complaints of insurance companies (policyholders) against their own reinsurance companies (insurers)? After all, if a reinsurer proves to be unwilling to pay promptly or is unreliable or not dependable, a company could easily lose a great deal of its surplus and become insolvent. Then what?

As we all know, reinsurance receivables, in many cases, form the bulk of both our surplus and, later, the receivership estate assets, and for that reason must be pursued promptly and vigorously.

Nominations & Elections

The Board of Directors will have three positions open for three yerar terms beginning immediately after the 1995 Annual Meeting.

All nominations are subject to receipt by the Nominations Committee Chair of a signed indication of a willingness to serve if nominated and elected. The appropriate nominees will be subject to a vote by the principal membership at the SIR annual meeting. Proxies for those unable to attend will be mailed in late October.

The Nominations deadline was August 10, 1995. The Nominations Committee included a request for nominations with the material sent for the vote on the accreditation standards resolution.

Publications Committee

Readers may have noticed that this issue contains mostly material from an international perspective. This was not entirely by accident. For one thing, the name of our society will probably soon be changed changed to the International Society of Insurance Receivers, or ISIR, and a bit of focus on things international seems appropriate for this issue. For another thing, some of our most vexing problems, as insurance company receivers, have some international aspect to them. Thirdly, our upcoming Philadelphia Round Table deals almost entirely with reinsurance collections, which all too frequently involves international matters.

On other matters, we have in this issue, the first in a series on the Federal Insurer Reorganization and Liquidation Act (FIRLA) proposal since there have been a few questions brought to the editors attention on this proposal. Further down this line, broader than state and smaller than international, in the next issue we hope to have an article on Interstate Compacts and Deputy Receivers—Nothing to Fear but Fear Itself—since the interstate compact is now a reality between the states of Illinois, Nebraska and New Hampshire.

The Publication Committee needs two new assistant editors to work on the feature articles. One will be Assistant Editor - Feature Articles Legal, and the other, very appropriately entitled, Assistant Editor - Features Articles Non-Legal. What could be easier? These are, of course, volunteer positions, but I believe if you ask anyone on the Publications Committee, they will gleefully tell you what a rewarding experience it is.

Achievement Subcommittee Report

Reporters: Northeastern Zone, Allessandro Iuppa (ME), William Taylor (PA); Midwestern Zone, Ellen Fickinger (IL), Brian Shuff (IN); Southeastern Zone, Robert Greer (WV), James Guillot (LA); Western Zone, Mark Tharp (AZ), Jo Ann Howard (TX); International, Philip Singer (England), John Milligan-Whyte (Bermuda)

In this report we have stated contact persons from Illinois and Maryland submitting accomplishments for their respective states for the first time. Our readers can readily understand that the Illinois Office of the Special Deputy is a large (and complex) operation from the number of receiverships it is administering and the positive results it is obtaining.

We welcome other state receivers who have not communicated to-date to report their accomplishments. Those states who have previously reported, please continue to follow-up with subsequent news or events to let everyone know of these results you are achieving in your state.

continued on page 12

Committee News

continued from page 11

Receivers' Achievements by State–(1994 Through the First Quarter, 1995)

Illinois (Mike Rauwolf, State Contact Person)

Disbursements by Receivership	Disbursements during 1994	Disbursements during 1st Qtr 1995	Total
American Mutual Reinsurance Co.	$ 13,309,065	$ 2,643,150	$ 15,952,215
Centaur Insurance Company	1,337,228	187,266	1,524,494
Equity General Insurance Company	210,161	- 0 -	210,161
Industrial Fire & Casualty Ins Co.	147,259	211	147,470
Intercontinental Insurance Co.	800,184	- 0 -	800,184
Medcare HMO, Inc.	2,406,949	571,219	2,978,168
Millers National Insurance Co.	807,538	7,293	814,831
Multicare, Inc.	111,731	- 0 -	111,731
Pine Top Insurance Co.	286,145	7,829	293,974
Provident Insurance Co.	318,099	- 0 -	318,099
Reserve Insurance Co.	743,104	(29,142)	713,962
Security Casualty Company	574,116	(213,464)	360,652
Unity, HMO Corporation of Illinois	191,352	- 0 -	191,352
Sub-totals	$ 21,242,931	$ 33,174,362	$ 24,417,293
Plus eleven (11) estates where disbursements for each estate were below $100,000	70,303	127,053	197,356
Totals	$ 21,313,234	$ 3,301,415	$ 24,614,649

Estates Closes

	Year Action Commenced	Insurance Category	Dividend % or Amount
Cooperative Health Plan Inc.	1988	HMO	100% - Guaranty Association $211,915 - Enrollees & Noncontracted Providers $8,589 - Contracted Providers
Unity HOM Corporation of Illinois	1991	HMO	100% - Enrollees & Providers 25% - Class A Stockholders 75% - Class B Stockholders
Provident Insurance Company	1991	Life	100% - Policy Holders & Timely Filed General Creditors 33% - Late Filed General Creditors
First Chicago Insurance Group (not licensed)	1990	P&C	None

Maryland (James Gordon, State Contact Person)

Receivership: Eastern Indemnity Company of Maryland

Disbursements Made to:	Amount
Various Insurance Guaranty Funds	$ 1,842,499
Policy/Contract Creditors	2,382,932
General Creditors	47,246
Total	$ 4,272,677

Alaska (Joyce Wainscott, Deputy Receiver)

Pacific Marine Insurance Company of Alaska made a partial distribution to creditors in the amount of $1,092,090.21 in May of 1995.

Pennsylvania (William Taylor, State Contact Person)

Disbursements made to Various State Guaranty Funds/Associations	Amount
Summit National Life Insurance Company	$ 20,153,300

Estates Closed	Year Action Commenced	Insurance Category	Dividend Percentage
Gateway Insurance Company	1974	P&C	69% (Policyholders)

Other Developments

Ellen Fickinger (IL) reported that under the supervision of the Office of the Special Deputy, the following three companies in rehabilitation were managing the run-off of their business, achieving the following results to-date:

	Payments - Inception to Date		
Receivership	Losses & LAE - Direct	Reinsurance Payments	Letters of Credit Drawdowns
American Mutual Reinsurance Co.	$ 18,949	$ 69,456,745	$ 9,613,386
Centaur Insurance Company	49,156,400	4,945,493	13,876,555
Merit Casualty Ins Co.	2,327,694	- 0 -	- 0 -

In addition, it was reported that The Heartland Casualty Company was released from conservation on March 20, 1995. Alsom FAB, Inc. and Underwriters Management Company, both subsidiaries of Prestige Casualty Company were released from conservation in late 1994.

Jim Dickenson (KY) reported that the Kentucky Supreme Court has upheld the transfer of business of Kentucky Central Life Insurance Co. to Jefferson-Pilot Life Insurance Co. and the transaction was completed on May 31, 1995. The closing took place after final details were negotiated involving Kentucky insurance officials, Jefferson-Pilot and the National Organization of Life and Health Guaranty Associations (NOLGHA).

Under the plan, Jefferson-Pilot will acquire approximately 300,000 Kentucky Central life insurance policies and $868 million in cash and securities. Of the $868 million, $110 million will be provided by NOLGHA. Jefferson-Pilot pledged an additional $250 million of its own assets to enhance the reinsurance plan. Kentucky Central Life will be left with $140 million in real estate assets which will eventually be sold to pay creditors, including the NOLGHA. The transfer of Kentucky Central Life business to Jefferson-Pilot had been blocked by Kentucky Central Life Stockholders and its board of directors who had legally challenged the transaction arguing that the company should be rehabilitated without the transfer of its business to Jefferson-Pilot.

James Gordon (MD) reported that C. Graham Perkins, the principal owner of Eastern Indemnity Company of Maryland, was convicted by the State of Maryland of theft and misappropriation of funds and was sentenced to 15 years in prison, 10 years suspended, and was ordered to make restitution of $640,529.

Nine persons have been indicated by the Federal District Courts of New Jersey and Maryland for criminal activity involving Trans-Pacific Insurance Company and other parties. Eight persons have been convicted of various counts including money laundering and theft. Leonard Bramson, one of two principal owners, was sentenced to 9 years without parole for mail fraud and money laundering. He was also ordered to make restitution of $3,600,000. His brother, Martin Bramson, was arrested by the Liechtenstein police authorities in January, and had in his possession at the time of his arrest in excess of $3,000,000 in gold and various currencies. The US Justice Department has filed a formal extradition request. Bramson has opposed extradition.

James Owens (MO) reports that the supervising court in the Transit Casualty Company liquidation has approved the allocation of $341.4 million for payment to approved policy holders and claimants. Transit is considered to be the largest property and casualty insurer insolvency in the United States. Its liabilities are estimated to be in excess of $4 billion, of which $2 billion consist of long-tail environmental claims. The Liquidator and his staff to date have collected cash receipts of approximately $600 million which includes $420 million of reinsurance recoveries. Reinsurance had been placed by the former management with approximately 900 reinsurers, most of which are located outside the United States.

Vince Vaccarello (PA) advised that a long standing lawsuit by Mutual Fire, Marine and Inland Insurance Company against Alexander & Alexander Services, Inc. and Shand Morahan & Co. was settled in March 1995 and was approved by the Commonwealth

continued on page 15

What is a FIRLA? (part I)

by Robert F. Craig, Kennedy, Holland, DeLacy & Svoboda

Something in excess of three years ago a task force was formed under the auspices of the Committee on Commercial Financial Services of the ABA's Business Law Section. The self-established charge of this Task Force on Insurance Insolvency[1] was to design an alternative approach to the administration of insurance insolvencies. The product of that effort is a proposal for a federal insurer insolvency statute initially identified as the Federal Insurer Reorganization and Liquidation Act (FIRLA) and more recently identified as IRLA. A summary of the FIRLA/IRLA approach follows.

The current state law system for rehabilitation/liquidation of insurance companies has been criticized for reasons including:

- Lack of specialized courts.
- Lack of multi-state jurisdiction for the receivership court.
- Frequent competition between states resulting from initiation of ancillary proceedings.
- Inconsistent statutory framework for administration, claims allowance, guaranty fund participation, etc.
- Inability of all parties in interest to participate in the process.
- Lack of meaningful judicial precedent and consistency.

The underlying premise of FIRLA is that the perceived shortcomings of the current state by state system for insurance company rehabilitation/liquidation can be efficiently and effectively improved upon through use of the existing federal bankruptcy courts under an insolvency statute based on the Bankruptcy Code containing modifications which accommodate the specialized intricacies of insurance company insolvencies.[2]

The application of the principles of the Code to the insurance company rehabilitation/liquidation process would centralize the rehabilitation or liquidation in the Bankruptcy Court which is vested with broad nationwide jurisdiction and would eliminate the necessity of multiple receiverships as exist under the current state law system. This system would provide uniform procedural and substantive rules which should add a significant degree of certainty and predictability which may be lacking in the state law system.

FIRLA is not designed as a new chapter of the Bankruptcy Code, but rather as a separate statutory structure which relies on the basic concepts and provisions of the Code. Under the FIRLA model a case is commenced by the filing of a petition in the United States District Court. If the District Court grants the petition, then the case is referred to the Bankruptcy Court for administration.

FIRLA Goals

1. Lack of Specialized Courts.

Even there may be exceptions in jurisdictions experiencing large numbers of insurer insolvencies, the perceived lack of expertise in courts charged with the administration of an insurer insolvency stems from two distinct sources:

- The use of courts of general jurisdiction with a broad spectrum of substantive jurisdiction from divorce to criminal to personal injury cases; and
- Use of courts and statutory systems which are litigation oriented and which may be ill equipped to deal with the administration of an ongoing insolvency process—which includes significant non-litigation aspects.

The bankruptcy courts are designed to deal with complex disputes and the resolution and adjustment of debtor/creditor/equity holder relationships. At the same time, the mechanisms of the bankruptcy process provide a full array of tools to deal with the various administrative aspects of a liquidation or rehabilitation. As discussed below, to the extent there are issues specific to the insurance industry it is proposed that additional expertise will be provided through the integration of the appropriate regulator's office as a principal player in the case, much the same as the debtor in possession in other cases, and committees or guaranty funds and other interested parties.

2. Lack of multi-state jurisdiction for the receivership court.

The jurisdictional grant of FIRLA follows that given the US District Courts to administer the Bankruptcy Code. That grant creates the multi-state jurisdiction needed to effectively administer the estates of insurers engaged in multi-state business.

3. Frequent competition between states resulting from initiation of ancillary proceedings.

Under FIRLA the Bankruptcy Court would be vested with exclusive jurisdiction over the insurer and the insurer's assets wherever located and by whomever held. In addition the Bankruptcy Court had nationwide ser-

vice of process and specific venue rules. The broad jurisdiction focuses and centers all issues and disputes in one court, which is experienced in dealing with commercial and financial matters, the liquidation of assets and the reorganization of companies.

Upon the filing of any case, FIRLA provides for a broad based injunction modeled after section 362 of the Code which generally enjoins all actions against the insurer, all efforts by creditors to collect any debt or claim, the continuation of the commencement of suits against the insurer, the exercises of any right of setoff, etc. The stay is pervasive in scope and effectively without jurisdictional limit within the US

The advantages of broad jurisdiction and a stay are generally not available to the liquidator of an insurance company under existing systems. The state court charged with liquidation of an insurance company under existing systems does not have interstate jurisdiction and any service or process is limited to a particular state's long arm statute and due process.

The current system of state liquidations often requires the liquidator to incur substantial expense to obtain extraterritorial compliance with the stay in various non-domicillary jurisdictions in which the company has assets or to obtain turnover of books and records, etc. Through the use of the federal bankruptcy courts those costs will be minimized.

4. Inconsistent statutory framework for administration, claims allowance, guaranty fund participation, etc.

At the present time the two prevalent schemes for rehabilitation or liquidation of an insurance company are the Uniform Act and the Model Act. While in substance and effect they are the same, there are versions enacted in different states and different procedural and substantive rights from state to state. Enactment of FIRLA would eliminate those variations. In addition the classification of claims and identification of categories of insurance products and their priorities could be made consistent throughout the system minimizing expensive litigation on classification questions.

5. Inability of all parties in interest to participate in the process.

Current insurer insolvency statutes provide limited to nonexistent official capacity to parties in interest other than the liquidator. Groups with a substantial stake in the administration and outcome of a rehabilitation or liquidation have difficulty obtaining an official level of involvement. The FIRLA model would remedy this and provide for both automatic and discretionary creditors' committees to represent the interests of various groups impacted by the delinquency proceeding.

> "FIRLA is not designed as a new chapter of the Bankruptcy Code, but rather as a separate statutory structure..."

6. Lack of meaningful judicial precedent and consistency.

The Bankruptcy Code has now been in effect since late 1979 resulting in a substantial body of case law addressing the panoply of issues which can arise in the course of the administration of an insolvent estate. FIRLA is based in large part on the Bankruptcy Code and uses many of the same terms and statutory provisions of the Code and accordingly the existing Code case law could serve as an interpretive base for FIRLA. There is no comparable body of case law available to the courts or the participants involved in an insurance company rehabilitation/ liquidation today.

continued on page 16

Committee News

continued from page 13

of Pennsylvania in May 1995. Under the terms of the settlement, Mutual Fire would receive payment of $12 million in cash and an additional $35 in the form of a six year zero coupon note having an discounted value of $25.9 million. In addition, another defendant, Evanston Insurance Company agreed to direct payment to Mutual Fire of $4.6 million of trusteed funds held by First Fidelity Bank N.A.

The action by Mutual Fire against the defendants had involved claims for damages due to an alleged breach of contract by the MGA, Shand Morahan. The allegations against Alexander & Alexander were related to its ownership of the MGA.

Robert Greer (WV) reported that three former officials of George Washington Life Insurance Company were found guilty by a Federal Court jury and were ordered to pay the estate of George Washington Life the amount of $13.6 million as the result of breaching their fiduciary duties and being found guilty of professional negligence.

As earlier reported in the SIR newsletter, several other named defendants consisting of the company's outside auditors and counsel had settled prior to the trial for a total of $7,416,000. The recent verdict against the three former officials of George Washington Life is currently the subject of an appeal with motions having been filed for a new trial.

Correction

In the previous issue of the SIR newsletter, it was incorrectly reported that the Iowa National Mutual Insurance Company receivership had made a payment of $31,329,663 to the Iowa Insurance Guaranty Fund.

It should have been stated that this payment was made to various guaranty funds in those states where the insurer was authorized to transact its business.

What is a FIRLA?

continued from page 15

[1]Neither this summary nor the FIRLA/IRLA proposal have been approved by the House of Delegates or the Board fo Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the ABA. This Task Force is not sponsored by the Tort and Insurance Practice Section, Public Regulations of Insurance Law Committees. The positions stated in this paper do not necessarily reflect the views of the ABA or any of its sections or committees, including TIPS.

[2]At the same time some have voiced reluctance to merely modify the existing bankruptcy laws because of specialized relationships intertwined in the insurance paradigm which the current Code provisions do not accommodate. There is further concern over the lack of expertise in the current federal framework for administration by panel trustees and others perceived to be without the experience to effectively manage the insurer rehabilitation/liquidation process.

Other regulated, specialized and highly complex industries are currently accommodated under the Code, some with specialized provisions formulated to address the vagaries of the industry, such as stockbrokers, commodity brokers and railroads. The complexities of political subdivision and public agency insolvencies have been addressed by the inclusion of Chapter 9 of the Code which, to the extent thought necessary, modifies generally applicable Code sections which "don't work" in the context of a municipal insolvency.

To be continued in the Winter edition of *the Newsletter*

WANTED

Your Articles for *the Newsletter*

If you have an article you would like to submit for publication in *the Newsletter*, please type it in either MS Word 6.0, or Wordperfect 5.0 or 5.1 and copy it to an IBM formatted 3.5" floppy disc. Mail it to SIR Headquarters, attention Heather.

Article must be received by the first of the month, one month prior to publication date.

All submissions become property of SIR and may or may not be chosen for publication.

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

Mission, Cut-Off

continued from page 6

principles were imported into and underlay Rule 4.86 of the general English Insolvency Rules 1986. This permits the liquidator to revise any estimate previously made to take account of any change of circumstances or information being received.

Types of Cut-off

The estimation mechanisms adopted by commonlaw liquidators usually involve two types of cut-off:

(1) the final filing date which is a future and certain date for creditors physically to have submitted their claims, and

(2) the less certain estimation date, which is chosen to draw the line at which the liquidator will admit claims maturing after the Liquidation Date at their full amount.

Where a company has any significant amount of longtail business, an estimation cut-off date as in (2) is essential. This is effectively a shifting of the statutory cut-off date (the Liquidation Date) to a date which assists the liquidators in achieving the estimation. Creditors must be stopped from insisting on the liquidators admitting their claims in full as they mature, otherwise the liquidators will be forced to go back each time they receive notice of a mature claim and recalculate amounts due to creditors. Without an estimation cut-off, their work can never be complete as they will be obliged to continue to do the recalculation process up until the last matured claim is notified.

The cut-off can be achieved by Court directions as in the cases of *Cambridge Re and Universal Marine* in Bermuda and *United Re and Dublin Re in Eire.* Alternatively, it can be implemented by an agreement binding on all creditors under a scheme of arrangement.

Typical Features of Common-law Cut-off

The cut-off arrangements devised by liquidators in common law jurisdictions can be broadly divided into:

(1) those involving the use of a sophisticate actuarial methodology for estimating creditors' contingent and unascertained claims; and,

(2) those which place more reliance on the creditors' estimates which are checked and balanced by the liquidators' claims agreement procedures and an adjudication or mediation process.

Examples of the former include *Cambridge Re* (Bermuda), *United Re and Dublin Re* (Eire), *Mentor* (Bermuda), *RMCA and ICS* (Bermuda), *Halvanon* (England), *Freemont* (England), and *Israel Re* (Israel) and the latter include *Universal Marine* (Bermuda), *Med Re* (England), *Reinsurance Company of Mau-ritius* (England and Mauritius) and *St. Helens* (England).

The provisions found in schemes of arrangement or court directions establishing an estimation procedure vary according to the different types of insurance written and the varying manner in which the company's books and records are kept. There are however four main aspects related to the estimation of contingent claims:

(1) An estimation cut-off date—as this is the date to which the Liquidation Date is effectively shifted, it is the date which is most convenient for the liquidators to achieve a fair estimation of contingent claims. It is often important to wait a number of years to see how claims develop, but there comes a point, which must be the optimum point for claims development, before the integrity of the claims information coming

through becomes poor. The mere fact that a company is in liquidation causes a decline in the quantity and quality of claims reporting.

Liquidators have typically admitted creditors' claims in full where they have matured i.e. became established as to liability and amount and notified to the company on or before the estimation cut-off date. Strictly speaking the liquidators are estimating such claims at 100% of their value.

Estimation in the purest sense then takes place of those claims which remain contingent or unascertained at the estimation cut-off date. This pure estimation process has been achieved by using actuarial methodologies or otherwise by the liquidators applying general principles.

(2) **Actuarial or general principles estimation**—in the case of Halvenon, creditors agreed in the form of a scheme of arrangement to adopt a sophisticated actuarial methodology which involved the creation of data triangles using premiums, paid losses, unpaid losses plus notified outstanding claims extracted from all the business recorded as transacted up to the estimation cut-off date. Twenty-eight different classes of business were analyzed. Unusual developments such as major catastrophes (i.e. Hurricane Alicia 1983) were extracted and projected separately. An element of subjectivity was introduced into the methodology by the actuaries exercising judgment in the projection of individual underwriting codes.

In the cases of Med Re and Reinsurance Company of Mauritius general principles of estimation are deployed. The liquidators check the information in the records of the company against creditors' own details of liquidated losses and creditors' own estimates of their contingent claims bases on their notified outstandings and IBNR reserves. Creditors themselves are invited to substantiate their figures by providing data triangles, chain ladder statistics and actuarial reports.

> "It is understood that in certain circumstances US liquidators are prepared to allow claims... where the right of action has not yet arisen."

(3) **Provision of information/ Claim forms**—the success of an estimation, be it actuarial or using general principles, depends on the quality of the claims information provided. To enable liquidators to agree creditors' claims and to carry out the estimate, creditors are sent quite detailed forms containing the liquidators' own figures in relation to each contract and inviting creditors to fill in the gaps. The information provided enables the liquidators to confirm that all contracts in relation to inwards and outwards business are identified and the unsettled balances are recorded accurately. The forms encourage provision of information up to the current date (i.e. past the estimation cut-off date) as this is often helpful in carrying out the pure estimation of claims which remain contingent or unascertained after the estimation cut-off date.

(4) **Filing cut-off date**—the aims of the estimation process are fairness and speed. A strict timetable is usually set for the provision of information or claim forms to be returned to the liquidators. Where there is a disagreement between the liquidators' own figures and those shown on the forms, and attempts to agree the figures fail, the dispute is referred to an adjudicator or a mediator (usually not acting as arbitrator to avoid the possibility of appeal to the court). His decision or recommendation must be given within the confines of the timetable.

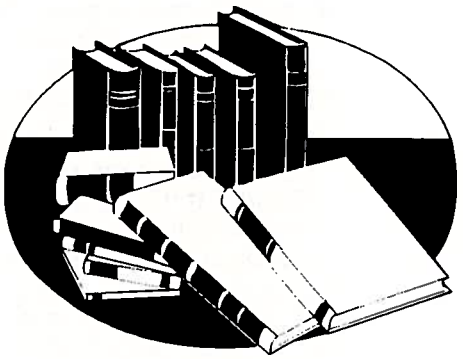
Conclusion

In setting the Final Dividend Claims Bar Date the court in the case of the Mission companies has required that all contingent, unliquidated and/or undetermined claims previously filed by the 1987 Bar Date must be amended as liquidated claims or otherwise converted to determined and non-contingent claims by using specific court approved instructions.

Provided a claim is certain as to liability, a creditor can still file in respect of it if the amount is undetermined by the Final Dividend Claims Bar Date provided the amount is determined actuarially calculating the present value of the claim in a reasonable manner. The liquidator is to check the calculation and agree to them and may use the advice of an independent actuarial firm. This is some-

continued on page 18

Other News & Notes



There are two areas that we should take note of below—changes in the persons involved and changes in the inflow of receiverships. there seems to be a general opinion, among receivers that the rate of new insurer insolvencies has slowed. Should we not be rejoicing based on this apparent fact? When you work in this area, it is a real test to be pleased at this prospect. Yet, if we are true to the overriding goal of our work, the protection of policyholders and equitable apportionment of unavoidable losses, we must be pleased. A listing covering about 18 months of new receiverships, at least what I am aware of, is provided on page 19. This list is not exactly a mere handful. Further, the list seems to belie the belief that things are slowing down. Nevertheless, the list is not what was seen in 1989-90 and the locations and type of companies is much changed from what would have been in the list at that peak period.

The key here, and this merely echoes the last issue's Loquacious Liquidator feature, is that there is yet much work to be done on estates that are open from days gone by.

Recently, much has changed in our area of insurance regulation and I believe the rate of change will continue. Such change brings opportunity. The opportunity here is for us to find and implement better ways of moving estates toward the payment of policyholder level claims and ultimately to closure. And, by the way, the payment goal is really the more important of the two. His Loquaciousness was attempting to move us toward this opportunity to do good work and away from the view that there is less work to be done. At about the turn of the century, last, William James put it this way, "if I...proposed to you to join my North Pole expedition...this would probably be your only similar opportunity, and your choice now would either exclude you from the North Pole sort of immortality altogether or put at least the chance of it into your hands. He who refuses to embrace a unique opportunity loses the prize as surely as if he tried and failed."

Changes in the Persons Involved

There are changes that have broad implications on the direction of insurer insolvency and these have to do with movements of persons involved in the area. Many of these are covered in the Pari Passu department by Nelson Burnett, but some later breaking news came to light just as we were about to "go to press" with this issue. The most significant news is that Jim Schacht is leaving the Illinois Department and the OSD to become the Director of

Mission, Cut-Off

continued from page 17

what removed from the procedures used by commonlaw liquidators. Mission appears to be essentially a 'Bar Date' case where the actuaries may only work out a present day value in cases where liability is established. Estimation in the commonlaw sense applying an estimation cut-off to value contingent claims in the widest sense is not featured in mission.

What at first appeared to be an arrangement quite similar in principle to the cut-off mechanisms used under the commonlaw, on closer observation reveals itself to be really quite distinct.

Editors note: For those of us who don't frequent "across the pond" or do crossword puzzles, Eire is Ireland. Also, there is a problematic provision in, even in the most recent redo, the NAIC Model Act providing that a final dividend cannot be paid to a former insured until litigation against the former insured has been concluded. The value of the former insider's claim can be estimated and approved, but the dividend must wait and be based on the lower of the estimate or the amount concluding the underlying litigation. Editorially speaking, should we not allow the liquidator to estimate and have those estimates stand allowing for closure of estates? At least in the NAIC Model Act, should we?

[1] *[1992] Lloyds Law Review258. This was approved by the Court of Appeal and House of Lords in re Ackman v Policyholders Protection Board [1992] 2. Lloyds retorts 321*

[2] *Also called* In re Northern Counties of England Fire Insurance Company 1880 CH337

[3] *See footnote 1 above.*

Insurance Regulatory Practice for Coopers & Lybrand, effective August 1995. We wish him all the best with this change and the opportunities it opens. I cannot say it better, so I will quote from Bert Schoenburg's Column in the *State Journal Register*, Springfield, Illinois, August 7, 1995:

> *"I enjoy the department; I enjoy regulation; I enjoy insurance," said Schacht. But, "after 30 years, you think it's time to find something else to do—some new challenges." Schacht was paid $120,000 in non-state funds. As special deputy receiver, it's been his job to regulate insurance companies that get into financial difficulty.*

> **"He who refuses to embrace a unique opportunity loses the prize as surely as if he tried and failed."**

Mr. Schacht has long been a part of the foundation of the Insolvency (Rehabilitators and Liquidators) Committee of the NAIC. His leadership was a certainty, no matter what other changes occurred in and around that committee of the NAIC. Be sure that this change portends other changes and opportunities. It certainly raises some interesting questions about the direction of the Insolvency Committee.

It is intuitive that after a peak like that experienced in 1989-90 there would follow a valley. The question is how deep, long and dry is that valley? And when the peaks rise again, which of us will be there to assist the climb? In the US, there have been peaks about every 8 to 10 years (1967-68, 1975, 1989-90), each due to a variety of different factors, and it seems that each round has been approached as new territory by new climbers.

To a certain degree, the two areas of changes noted here, people and inflow, may be related. Many may perceive the valley to be too dry and leave; but, it may not be as dry as it appears and the droughts may only be localized.

However, the current shifts of deeply experienced persons away from the area of insurer insolvency, and current proposals to radically change the very structure of how insolvencies are administered, raise questions about continuity. In the past decades there has not been a great deal of continuity. How much knowledge is being retained and how much is being passed on to the next generation of person who will handle future insolvencies? One of the purposes of the SIR is to pass on this knowledge so that the next set of peaks is not encountered by completely new climbers.

How ready will we be when the next peak comes?

Changes in the Inflow of Receiverships

Receiverships since January 1, 1994

Company	Type	Dom.	Order type	Date
State Casualty Ins. Co.	P&C	GA	Insolvency	01-06-94
Employers Casualty Co.	P&C	TX	Insolvency	01-06-94
Gen. Aviation Ins. Co.	P&C	TX	Insolvency	01-11-94
Employers National Ins. Co.	P&C	TX	Insolvency	02-11-94
Employers of TX Lloyd's	P&C	TX	Insolvency	02-11-94
Employers National Ins. co.	P&C	OK	Insolvency	02-14-94
Corporate Life Ins. Co.	L&H	PA	Liquidation	02-15-94
River Forest Ins. Co.	P&C	IL	Insolvency	03-18-94
Professional Medical Ins. Co.	P&C	MO	Insolvency	04-07-94
Consumers United Ins. Co.	L&H	DE	Liquidation	05-05-94
Manatee Ins. Co.	P&C	FL	Insolvency	05-20-94
Monarch Life Ins. Co.	L&H	MA	Conservation	06-09-94
Nat'l Heritage Life	L&H	DE	Conservation	06-20-94
Gold Bond Lfe Ins. Co.	L&H	AL	Liquidation	06-27-94
Consolidated National Life	L&H	IN	Liquidation	07-21-94
Presige Ins. Co.	P&C	IL	Insolvency	07-26-94
Premier Alliance Ins. Co.	P&C	CA	Insolvency	08-02-94
Amer. Educators Life	L&H	AL	Liquidation	08-10-94
Highland Mutual Ins. Co.	P&C	PA	Insolvency	09-01-94
AIM Ins. Co.	P&C	CA	Insolvency	09-08-94
Confederation Life Ins. & Annuity Co.	L&H	GA	Rehabilitation	09-12-94
Home Owners Warranty	P&C	VA	Liquidation	10- -94
Ala. Life Ins. Co.	L&H	AL	Liquidation	10-07-94
Confederation Life US	L&H	MI	Conservation	10-12-94
Summit Nat'l Life	L&H	PA	Liquidation	11-01-94
United Republic Life	L&H	UT	Liquidation	11-18-94
Merit Casualty Co.	P&C	IL	Rehab.	12-18-94
Beverage Retailers Ins. Co.	L&H	VT	Insolvency	12-22-94
North Amer. Phys. Ins. RRG	L&H	AZ	Receivership	01-05-95
Nat'l Amer. Life	L&H	PA	Rehab.	01-31-95
Amer. Bonding Ins. Co.	P&C	AZ	Rehab.	02-02-95
Nat'l Pacific Ins. Co.	P&C	GU	Receivership	02-02-95
Abington Mutual Ins. Co.	P&C	MA	Receivership	06-05-95
Interstate Guaranty Ins. Co.	P&C	GA	Liquidation	08-11-95

Mark Your Calendar

SIR Meeting – September 9-11, 1995

Philadelphia, PA, Marriott Hotel

Sept. 9	Board Meeting	9:00 - 12 noon	Conf. Rm. 413
	Round Table Chair: Vince Vaccarello	1:00 - 5:00 pm	Conf. Rm. 414 & 415
Sept. 10	Committee Meetings	8:00 - 12 noon	Conf.Rm. 413
Sept. 11	SIR/NCIGF Reception	5:30 - 7:30 pm	Conf. Rm. 414 & 415

NOLGHA Annual Meeting – October 15-17, 1995

Seattle, WA, Four Seasons Hotel

Call 703-481-5206 or fax 703-481-5209 for registration details

NCIGF Annual Meeting – November 9-10, 1995

Call 317-464-8119 of fax 317-464-8180 for registration details

SIR/NOLGHA Seminar – November 16-17, 1995

See page 3 for details

SIR San Antonio Round Table – December 2, 1995

Chair: Stephen S. Durish
Details to follow

SIR/NAIC Insolvency Workshop – January 25-26, 1996

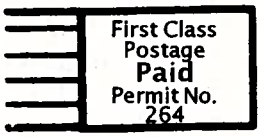
Albuquerque, NM, Hyatt Regency

Details to follow

the Newsletter is published quarterly by the Society of Insurance Receivers, 5818 Reeds Road, Mission, Kansas 66202-2740 (913) 262-2749 FAX: (913) 262-0174. Frank Bistrom, CAE, Executive Director; Jane Male, CAE, Associate Executive Director. **Editorial Board:** Doug Hartz, Publications Committee Chair; Morty Mann, Managing Editor; Michael Cass, Assistant Editor. **Officers:** Jeanne B. Bryant, President; Doug Hartz, Vice President; John Massengale, Treasurer; Robert Deck, Secretary. **Directors:** Michael Marchman, Richard Darling, Thomas Wrigley, Betty Cordial, Michael Miron, Philip Singer, Michael Surguine.

Society of Insurance Receivers
5818 Reeds Road
Mission, Kansas 66202

Address Correction Requested



Society of Insurance Receivers
5818 Reeds Road • Mission, Kansas 66202-2740
913 / 262-2749 • Fax: 913 / 262-0174

SIR Classified

RECEIVERSHIP SECTION SUPERVISOR

Annual Salary up to $58,312

This position is responsible for overseeing the monitoring of Missouri insurance company receiverships. An employee in this position is responsible for managing the review of plans of operation of Missouri and foreign insurance companies placed into receivership to assure maximum cost efficiency. In addition, the employee is responsible for developing a standardized reporting format to provide the Division with the information necessary to monitor the progress of receiverships. This position also participates in the development of receivership legislation, policies, statutes, rules and regulations.

Qualifications:

- Five years of professional experience in insurance auditing/accounting and receivership work or with a CPA firm auditing insurance companies, of which two years must have been in a managerial/supervisory capacity;
- Graduation from an accredited law school supplemented by membership in good standing in or qualification for the Missouri Bar Association; and,
- Graduation from an accredited four-year college or university with a degree in accounting or closely related area.

Please send resumé/application and transcripts by *September 15, 1995* to:
Personnel Officer
Attention: Receivership Section Supervisor
Missouri Department of Insurance
P.O. Box 690
Jefferson City, Missouri 65102-0690

M/F/V/D-ADA-EOE

Society of Insurance Receivers

5818 Reeds Road • Mission, Kansas 66202-2740
913 / 262-2749 • Fax: 913 / 262-0174

Advertising Information
Newsletter & Membership Directory

Size: Advertising will be limited to the following sizes:

*** Rates:** For the 4 Newsletters and the Membership Directory.

Size	Width x Height	Issues 1x	Issues 3x	Issues 4x	4x Newsletter + Directory Ad	Directory 1 x Rate
1/8 Page	2-1/4" x 2-3/8"	$ 75	$ 70	$ 65	$ 60	$ 95
1/6 Page	*2-1/4" x 4-7/8"*	*$ 95*	*$ 85*	*$ 80*	*$ 75*	*$125*
1/3 Page	2-1/4" x 9-3/4"	$150	$135	$140	$130	$195
1/2 Page	*7-1/4" x 4-7/8"*	*$225*	*$205*	*$207*	*$190*	*$275*
1/2 Island	4-7/8" x 7-1/4"	$285	$250	$260	$245	$350
2/3 Page	*4-7/8" x 9-3/4"*	*$350*	*$285*	*$320*	*$295*	*$425*
Full Page	7-1/4" x 9-3/4"	$450	$430	$420	$390	$550

Members of the Society may take a 15% discount from the rates quoted.

All ads will be black and white. **Color for the Newsletter** is limited to PMS 194 (Wine) at an additional 20% of ad rate. **Color for the directory** will be quoted upon requst.

Sample: 2/3 page at 3 time rate in newsletter = $285 plus color, $57 each or $342 per ad with color. If you are a SIR member you can take a 15% member discount of $51.30 and pay $269.90 for each of the 3 ad. Billing is after each ad runs.

***Ad rates are based upon material being camera ready.** If you require typesetting and layout, it will be quoted upon request and billed with the ad after it runs.

Schedule and Ad deadlines for both Newsletters and the Directory:

Issue	Issue Date	Advertising Deadline
Spring	February 10	January 25
Summer	May 10	April 25
Fall	August 10	July 25
Winter	November 10	October 25
Directory	February 10	January 25

If you have questions or need additional information please contact our office.

PLEASE DO NOT STAPLE ARTWORK TO FORM

Contact Name:_____ SIR Member: [ ] Yes [ ] No

Copmany Name:_____

Address:_____

City:_____ State:_____ Zip+4:_____

Phone: (_____)_____ Fax: (_____)_____ Date:_____

Please mark the Newsletter issue(s) in which you would like your ad to appear or the Annual Directory:

Newsletters: [ ] Spring [ ] Summer [ ] Fall [ ] Winter [ ] With Color [ ] *Directory*

Mark size of ad you wish to run: [ ] 1/8 page [ ] 1/6 page [ ] 1/3 page [ ] 1/2 page [ ] 1/2 Island [ ] 2/3 page [ ] Full Page

Please enclose camera ready art or typed material you want us to estimate cost of layout & typesetting.

MacData\W\AdRateSh.PM5