The Insurance Receiver

PROMOTING PROFESSIONALISM AND ETHICS IN THE ADMINISTRATION OF INSURANCE RECEIVERSHIPS

Fall 2006
Volume 15, Number 3

Feature Articles

Departments

www.iair.org

President's Message

Joseph J. Devito, MBA, CPA, AIR - Accounting/Financial Reporting, Reinsurance and Claims/Guaranty Funds

Well, we're batting 1000 in our educational programs! We've had excellent feedback on the educational forum that was conducted in conjunction with the NAIC meeting in Washington, DC. We were honored to have Commissioner Thomas Hamptom of the DC Department of Insurance, Securities and Banking open our Roundtable discussion who, together with Kevin Griffith of Banker & Daniels LLP, addressed a variety of issues concerning captives, risk retention groups, and other alternative risk mechanisms. David Wilson, CEO of the California Liquidation Office presented an excellent account of what has been accomplished at the CLO before and since he took the reins last year and what's ahead for him and the CLO. Patrick O'Brien of B&D Consulting covered issues that are on the horizon in DC such as NIA and SMART. Doug Hartz of Bingham Consulting moderated a discussion on claims and liquidity for policyholders, claiments and reinsurers with a legal perspective recap. These topics were lead by Marialuisa Gallozzi of Covington & Burling, Mike Singer of Argo Partners, Joe Scognamiglio of Quantum Consulting, and Elliot Kroll of Herrick Feinstein, respectively.

Although the Roundtable has been our most popular and well-attended session during the quarterly meetings, the "Members Think Tank" has proven to be a home run! In fact, approximately 60 members gave up some well deserved sleep to attend our 8:00 a.m. meeting. The most spirited exchange was between the Receivers and the Guaranty Associations…critical issues facing these sometime-opposing groups were batted around and I believe that this meaningful debate has fostered a most important dialogue that can bring these groups closer together when managing estates. For those members who manage to rise early enough to attend the Members Think Tank, we are hopeful that the growing popularity of this session will lure a sponsor to host a "coffee and danish" fete to feed our bodies as well as our minds.

The Education Committee, assisted by Barry Weismann (Event Chair), conducted its second staff training workshop to the CLO in San Francisco on June 29. Our first such workshop was such a success that the CLO invited us to return and, I'm happy to say, the presentation was a success (again)! "From Troubled Company to Receivership" touched on the many challenges facing examiners and receivers….IT, accounting, reinsurance, and claims. The workshop and our talented instructors received high marks for presentation and content from the 50 (or so) attendees. In fact, one participant said, "the course provided a comprehensive and valuable look at the industry as well as a big picture of how all sectors come together." According to another attendee, the "subject matter was vital and should be required training to all involved in liquidation after insolvency and receiverships." The participants also asked that we consider including a section from the perspective of the Guaranty Associations which we will be doing in future seminars. We would like to thank Barry for leading this workshop, David Wilson for opening the seminar, and all of the insurance industry professionals who instructed the course, Bill Barbagallo, Jenny Jeffers, Dick Pluschau, Barry Weismann and "yours truly", for their efforts in making this seminar so successful. Of course, all of this would not have been possible without the help of Bob Fernandez of the CLO…thank you for your assistance in the organization and leadership of this workshop and to our Executive Director, Paula Keyes, for her had work in making this a meaningful endeavor for participants and instructors alike. Due to the positive response, IAIR has been asked and will conduct similar workshops as follows:

September 20, 2006
New York Liquidation Bureau

October 19 & 20, 2006
Ohio Department of Insurance and ~~Liquidation Office~~

October 26 & 27, 2006
Florida Department of Financial Services

November 1, 2006
Utah Insurance Department

IAIR will be conducting its joint seminar with NCIGF on November 2 & 3, 2006 in Salt Lake City and we welcome the opportunity to strengthen the relationship between these organizations. Given our past history, we anticipate another successful joint venture with NCIGF this fall. I commend Pam Woldow, Chair of our Education Committee, and Steve Durish, Education Chair Extraordinaire, for their dedication to this joint seminar. Any members who would like to work together with Pam and Steve, we would greatly appreciate your assistance.

IAIR is also offering a half day London Market seminar on September 20, 2006. Those interested, please contact Vivian Tyrell of Kendall Freeman.

Any individuals, firms, corporations interested in our sponsorships or seminars or participating in any of our committees, feel free to contact me, any of our Board Members or Paula Keyes. Your assistance is greatly needed and would certainly be a rewarding experience for you.

See you in St. Louis!

View from Washington

Charlie Richardson, Baker & Daniels, LLP

Insurance reform/modernization is not at the top of the list of things commanding Congressional interest this election year, but it is also not the last. Optional federal charter legislation has been introduced in the Senate, while more limited reinsurance/surplus lines legislation has been introduced in the House. A Washington-area office has been established for the NAIC's recently constituted interstate compact. All in all, Washington is starting to see and hear more about our industry and ways to improve it.

Optional Federal Charter Talk

As reported in the last issue, Senators John Sununu (R-NH) and Tim Johnson (D-SD) introduced the "National Insurance Act of 2006" (S. 2509) on April 5, a bill that would permit life and property/casualty insurers to choose federal - instead of state - charters under an optional federal charter regulatory system. Both Senators are members of the Senate Banking Committee. That committee kicked off a discussion of insurance regulatory improvement in July with a wide-ranging hearing that included witnesses from insurance industry trade groups, the NAIC and a consumer organization. Presumably, OFC legislation will be reintroduced in the next Congress, with there likely to be more hearings and other activity then. There continue to be reports that OFC legislation will be introduced in the House yet this year.

SMART-Lite

After multiple hearings over the last two Congresses on proposals that would reform the insurance industry, the SMART Act was pared down to just two of 17 original titles, with the hope of passing the first small piece of the original aggressive package. The new bill, H.R. 5637 "The Non-admitted and Reinsurance Reform Act of 2006" filed on June 19 in the House would create regulatory standardization for non-admitted insurance and reinsurance by applying single-state regulation and uniform standards. There was a hearing on the bill on June 21, with supporting testimony from the reinsurance and surplus lines industries. The expectation is that more pieces from the original SMART puzzle will find their way into legislation this year or next.

The Insurance Industry's Antitrust Exemption Under Review

On June 20, the Senate Judiciary Committee focused on the continuing applicability of the antitrust exemption enjoyed by the insurance industry. Only Chairman Arlan Spector (R-PA) and Ranking Member Patrick Leahy (D-VT) attended the hearing and questioned the six witnesses:

1) Marc Racicot; Former Governor of Montana, President, American Insurance Association, Washington, DC

2) Elinor R. Hoffmann; Assistant Attorney General - Antitrust Bureau, Office of the Attorney General for the State of New York, New York, NY

3) Michael McRaith; Illinois Director of Insurance Chair, Broker Activities Task Force, National Association of Insurance Commissioners, Chicago, IL

4) Bob Hunter; Insurance Director, Consumer Federation of American, Washington, DC

5) Kevin Thompson; Senior Vice President, Insurance Services Office, Jersey City, NJ

6) Donald C. Klawiter; Chair, Section of Antitrust Law, American Bar Association, Washington, DC

For summaries of the hearing and the witnesses' submitted testimony, see http://judiciary.senate.gov/hearing.cfm?id=1952.

See also http://judiciary.senate.gov/hearing.cfm?id=1952 for a webcast of the hearing, and GAO Report: Legal Principles Defining the Scope of the Federal Antitrust Exemption for Insurance, March 4, 2005, http://www.gao.gov/decisions/other/304474.htm.

Interstate Insurance Regulation Compact

One of the NAIC's key modernization initiatives - the Interstate Product Compact - is up and running. Twenty-seven states have signed on (41% premium volume), with more in the pipeline. On June 13, the Compact Commission held its inaugural meeting in Washington. Among other kick-off actions, it formed interim committees, decided its office would be in the Washington area, and started a search for an Executive Director.

Health Care Reform

Massachusetts' health care reform legislation, signed by Governor Romney on April 12, continues to get a lot of buzz in Washington and around the country as a possible model for ways to cover the uninsured. On June 12, as part of the NAIC's Health Insurance and Managed Care (B) Committee, the NAIC held a public hearing on Health Care Reform to present and discuss effective health reforms for primary health insurance, which regulators could be guided by and follow. Speakers for the hearing included several health policy scholars, insurance industry representatives, consumer advocacy groups, and representatives from three states which have adopted innovative health reform measures. Several state initiatives, including the Massachusetts Health Insurance Mandate, Insure Montana, Healthy New York, and the Washington, DC Health Benefits Program were individually highlighted. Additionally, the NAIC prepared and distributed a 33-page preliminary report of various state innovations in modernizing health insurance.

The NAIC's Health Insurance and Managed Care (B) Committee concluded the hearing with a pledge to continue discussions on this issue. The panelists challenged each state to move forward with an open mind and build on the successes of others.

Reorganization Japan

Yoshihito Shibata, Sakai & Mimura - April 2006

Introduction

This article provides an overview of the procedure for reorganizing insolvent insurance companies under the Special Reorganization Law (**"SRL"**)[1] of Japan. The article also addresses the superiority of reorganization proceedings under the SRL over alternative administrative proceedings under the Insurance Business Law (**"IBL"**)[2]. This review of Japanese insurance reorganization proceedings suggests possible reforms to U.S. insurance insolvency law that would enable companies to reorganize and capture going concern value for the benefit of their policyholders and other creditors.

Legislative History

Prior to 1991, only the IBL was available to deal with insolvent insurance companies. The IBL insolvency proceedings were controlled without court supervision by the Japanese Financial Service Agency (**"FSA"**), which is the primary insurance regulator in Japan. At that time, a mutual company was not eligible to file for corporate reorganization. Stock companies were technically eligible for reorganization, but it was considered impracticable to use the reorganization laws. First, the reorganization process did not contemplate such large numbers of creditors. Second, in reorganizations, the trustee would likely reject, and therefore cancel, life insurance policies. This would contravene Japanese public policy.

Before the economic downturn of 1991, it generally was assumed that all insurance companies had a strong financial position and were highly unlikely to ever face insolvency. This was partly because insurers, especially life insurers, carried assets on their balance sheets at historical cost and it was assumed that their equity securities and real estate investments had substantial unrealized gains. It was also assumed that Japanese regulators would ensure that companies remained financially stable. The government had protected insurers from insolvency through a price regulation policy that basically prevented price competition.

After 1991, however, it became obvious that the financial condition sheets of life insurers had been deteriorating due to a decline of the price of stocks and real estate. The financial markets did not hide their suspicion that many financial institutions were no longer economically sound and this loss of confidence resulted in a financial crisis.

At first, the government responded by increasing regulation and enhancing the power of the regulatory agencies. For example, after the amendment of the IBL in 1996 and again in 1998, life insurance companies were forced to participate in the life insurance Policyholder Protection Corporation of Japan (**"PPC"**). PPC was established in 1996, and its main purpose is to provide financial assistance, either by loan or by grant, to failed insurance companies in order to protect policyholders. PPC's function is similar to the purpose of guaranty funds in the United States. In general, PPC pays up to 90% of reserves if the assets of the failed insurer are not enough to cover reserves. The PPC is funded, in part, by other insurance companies in amounts set by law (until March 2006, JPY 100B, or USD 850M) and in part by the government (until March 2006, up to JPY 400B, or USD 3.4B)[3].

After corruption scandals involving three major life insurers, it became apparent that the amended IBL was not adequate to address the failure of the Japanese insurance industry. According to Prof. Yamamoto of Kyoto University, the most important reasons for this failure were:

• IBL proceedings cannot impair non-insurance claims (because the law provides authority over only insurance companies and insurance claims), making it impossible to effectively restructure the debtor's balance sheet.

• The Commissioner is generally unable to timely commence the proceeding (because she does not have sufficient and timely information about the company's financial condition), and

• Lack of transparency in the proceedings themselves (because the IBL proceeding is not a judicial, but rather, an administrative process).

Attempts to use the IBL resulted in enormous amounts of financial assistance by PPC (as discussed below) and poor policyholder recoveries, while non-insurance creditors were being paid in full.

For these reasons, it was decided to make the existing corporate reorganization system available on a modified basis to deal with insurance companies. The SRL was amended in 2000 so that insurance companies, especially mutual companies, could file voluntary petitions for reorganization and bankruptcy protection. The three major problems of the IBL proceedings were addressed by this amendment.

Basic Differences Between IBL and SRL Insolvency Proceedings

Under the IBL, insolvency proceedings are controlled by the FSA. After the commencement of a proceeding, the Commissioner appoints one or two administrators for each case (**"Administrator(s)"**). The Administrators

Reorganization Japan

Yoshihito Shibata, Sakai & Mimura - April 2006

are typically insurance professionals rather than insolvency professionals. The proceedings and the resulting plan are not subject to court review unless a policyholder commences litigation to challenge the plan. In the event of such a challenge, it is expected that the court would accord substantial discretion to the FSA and that the plan would be reviewed under the plain error standard. No published decision results from the review.

IBL proceedings are unsatisfactory for several reasons. One problem is that the absolute priority rule does not apply. Because the IBL only applies to insurance companies and their policyholders, the claims of non-insurance company creditors cannot be impaired. As a result, subordinated loans and bonds must be fully paid while policyholders' claims remain impaired. Ironically, this gives subordinated debt de facto priority, and policyholder claims are subordinated. Another problem is that all cases must be commenced by the FSA and the debtor insurance company may not itself commence a proceeding. Since management is automatically replaced in an IBL proceeding, management has little incentive to encourage the FSA to start proceedings. As a consequence, the commencement of proceedings was invariably delayed. By the time an IBL proceeding was commenced, it was typically too late to rescue the company or affect a going concern sale.

Under the SRL, by contrast, an insolvency case can be commenced by a voluntary petition filed by the insurance company. This gives management the incentive to seek reorganization before the company has deteriorated beyond repair. Like other corporate bankruptcy cases in Japan, the SRL proceedings are judicial. The company files a petition with a court, and the court orders commencement of the case. Upon commencement of a case, the court will order a stay of creditor action against the company. The FSA or creditors may also file the petition if certain requirements are satisfied, and the court may then order the commencement of the case.

The court appoints and supervises a trustee, who is typically a well-respected bankruptcy lawyer (**"Legal Trustee"**). Normally, the Legal Trustee finds a buyer (**"Sponsor"**) of the company, which typically is another insurer. Thereafter, another trustee will be appointed with the court's approval, called a **"Business Trustee"**. The Business Trustee is typically a non-lawyer businessperson from the management of the Sponsor. The trustees negotiate a plan for the purchase and reorganization of the company. The plan must ultimately be approved by the court. The role of the FSA is limited to its authority as a regulator that supervises insurance products, but the FSA also has a right to be heard on the plan proposed by the trustees.

At a practical level, one of the most important differences between a case under the IBL and the SRL is that under the SRL, insolvency professionals mainly direct the proceedings, whereas insurance professionals control the IBL proceedings. Typically, the Life Insurance Association of Japan is appointed as an Administrator

Unlike IBL proceedings, a modified absolute priority rule applies to the plan prepared under the SRL. This rule is similar, but not identical, to the absolute priority rule applicable to insurance insolvency proceedings in the United States. Therefore, unlike IBL proceedings, in SRL proceedings, subordinated loans and bonds do not get paid until policyholder obligations are paid in full.

Characteristics of a Reorganization Proceeding Under the SRL

The SRL was enacted as a special treatment to the Corporate Reorganization Law (**"CRL"**). The principal characteristics of the CRL are as follows: The CRL is applicable only to corporations, or *Kabushiki Kaisha* (**"KK"**). Under the CRL, unlike chapter 11, there is no debtor in possession. Trustees are appointed by the court, and directors and officers lose virtually all of their powers upon the filing of the case. The trustees, although subject to court supervision, have virtually absolute power to run the company. For example, trustees may cancel executory contracts. A modified absolute priority rule applies under the CRL, as does the principle that similarly situated creditors should receive similar treatment.

The SRL adapted the provisions of the CRL to insurance companies with the purpose of encouraging effective reorganization of insurance companies and protecting stakeholders' rights and expectations. A primary modification is that the SRL can be applied to mutual companies, as well as to corporations, and that mutual companies can be reorganized quickly to a KK. This makes timely going concern sales of insolvent mutual insurance companies more likely.

The SRL limits the trustee's ability to cancel contracts. This limitation means that insurance contracts, especially those bearing high interest rates, cannot be cancelled. However, the SRL permits the trustee to modify and fix new (and lower) interest rates in annuity contracts in a reorganization plan, regardless of the initial terms and conditions. Also, a contract can be modified to impose early surrender or commutation charges as part of a plan. The SRL also imposes a standardized valuation method for policyholders' claims.

SRL cases are not only insolvency proceedings but also major M&A transactions. Trustees in SRL cases typically try to sell the failed insurers as a going concern through an auction process (called

Reorganization Japan

Yoshihito Shibata, Sakai & Mimura - April 2006

a "sponsor race") because that is believed to be the best way to maximize value. Mutual companies are quickly reorganized as stock corporations, the debtors sell new stock to the purchasers or "Sponsors", and 100 percent of the old equity is cancelled after the approval of the plan. In each of three life insurer cases under the SRL, the companies became wholly owned subsidiaries of the Sponsors. As such, valuation of the company assets is the key. Most insurers' assets are investment assets. Each asset is individually valued on a realizable or liquidation value basis, and the total value of the failed insurer depends heavily on this valuation. Where potential buyers value the assets more highly than do the Sponsors, discrete assets are auctioned through individual or bulk sales. Due in part to the existence of valuable sales networks, Sponsors tend to recognize significant goodwill in formulating their offers: for example, AIG, the Sponsor of Chiyoda Life Insurance, recognized more than JPY 312B, or USD 2.64 B of goodwill in the purchase.

The PPC fund, which provides a safety net guaranteeing 90 percent of reserves, acts as the agent of policyholders with the authority to file and vote claims on their behalf without a power of attorney. While the PPC is similar to U.S. guaranty associations in some respects, it is different in at least one important respect. In general, the PPC implements its guaranty by making payment to the insurance company or the Sponsor rather than paying the claimants directly.

SRL proceedings also provide unique treatment to certain types of claims. For example, unlike CRL cases, practically all trade claims are paid in full with the approval of the court. No subordinated bonds or loans are paid. Unlike CRL cases, two thirds of the amounts of former employees' claims are impaired to almost the same extent as policyholders' claims. Reserves and policyholders' claims for past premiums are reduced by only eight to ten percent. In SRL proceedings, policyholders' claims are paid before the confirmation of the plan, upon the reaching of a financial agreement between the Trustees and PPC. However, their equity interests are cancelled. In addition, contracts with a variety of interest rates are fixed at a flat rate of 1.5 to 2.0 % per annum. The treatment of tort claims varies on a case by case basis. In the Chiyoda case, for example, tort claims received a 50 percent return.

Any plan must be approved by the court. Such plans typically involve an acquisition which raises issues that fall under the jurisdiction of the FSA. For instance, in some cases, it was necessary to recognize goodwill on the opening balance sheet of the reorganized company. This could only be done with the approval of the FSA. As such, as a practical matter, FSA approval is also required for plans.

Some Observations

Measured by the amount of money required to be provided by PPC, the financial results of the SRL proceedings have been much better than IBL proceedings. In three major insolvency cases under IBL, JPY 537.2B, or USD 4.55B, was paid by PPC. In clear contrast, the PPC was not required to make any payments in three major SRL cases, even though insurance-related liabilities of those three cases were much larger than the three cases under the IBL. In fact, two of these SRL cases were the biggest bankruptcies in Japanese history: Kyoei Life Insurance, where total liabilities were JPY 4.5 trillion, or USD 38 B, and Chiyoda Life Insurance, where the total liabilities were JPY 3 trillion, or USD 25 B. All three of these SRL cases were concluded within 6 months after commencement. Moreover, jobs were saved in many SRL cases because the companies were sold as a going concern. The Japanese experience shows that, even in the case of insurance companies, reorganization is much better than liquidation for not only employees, but also for creditors and policyholders.

From the Japanese point of view, it is surprising that the U.S. maintains an insurance insolvency system that virtually assures the liquidation of every company. This is particularly so in light of its development of the Chapter 11 reorganization process, which applies to companies other than financial institutions. The Japanese experience demonstrates that there is significant going concern value that can be captured in the reorganization process. That value, if captured, benefits policyholders, guaranty funds and other creditors.

About the Author

Yoshihito Shibata is a partner of Sakai & Mimura, and a former international associate of Bingham McCutchen LLP. He is also a former assistant trustee for the bankruptcy estate of Chiyoda Life Insurance Mutual Company (presently, AIG Star Life Insurance KK). He is admitted to practice in Japan and New York.

[1] *Special Treatment of Reorganization Procedures for Financial Institutions, Law No 95 of 1996.*

[2] *Ibid, Law No. 105 of 1995.*

[3] *The amount paid by insurance companies is tax deductible. PPC is a key player in both IBL and SRL proceedings. In addition to the role as a main fund provider, PPC is deemed to be an agent of policyholders under the SRL. The funding structure for PPC was changed as of April 1, 2006. As of that date the government role was changed from a primary role to a supplemental one. Other insurers now provide the main financial support for the PPC. This change reflects Japan's economic recovery and the improved strength of its life insurers. Ibid, Law No. 154 of 2002.*

Save the Date: Joint Summit Receivers/Guaranty Associations IAIR / NCIGF

Receivers and Guaranty Professionals Unite In Utah!

If you are in any way interested in, responsible for or affected by the combined receivership/guaranty system for insolvent insurers in the US, then you will want to attend the Receiver and Guaranty Association Summit and play a ground-breaking role in developing solutions to recurring problems and, perhaps more important, helping to further build a shared vision and collaborative mission for protecting policyholders with the receivership and guaranty association professionals attending.

This innovative summit program is designed to be the first step in a continuing learning experience in which receivers and guaranty professionals will focus on seeing insolvency-related issues from a common, rather than adversarial, perspective.

This unique program, which will create the foundation for subsequent, collaborative initiatives, will feature the acclaimed PRIME Exercise developed by Gen Re on day one, and will include interactive panels, group working sessions and one-on-one post-program follow-up activities. Regulators, receivership, guaranty and insolvency personnel will want to attend and participate in the continuing dialogue.

The Summit will feature presentations on issues such as large deductibles, early access, receivers processing claims for guaranty associations, transparency and coordination and administrative burdens between receivers and guaranty associations. Noted authorities will address how receivers and guaranty associations can best reach out to the most important people in the process – the policyholders, as well as whether we should keep the state-based receivership and guaranty systems.

When: November 2 – 3, 2006

Where: Grand America Hotel, Salt Lake City

Additional information and registration forms will be available soon.

Note also there will be an IAIR Staff Training on November 1 in Salt Lake City!!

Did you know? After a seven-year sprint and major, often heroic human effort, the first phase of construction of the transcontinental railroad had its watershed moment in 1869, when the Central Pacific and the Union Pacific railways joined at Promontory Point, Utah. You may recall that 8,000 to 10,000 Irish, German, and Italian immigrants built the Union Pacific line, pushing west from Omaha, Nebraska. At Promontory they met crews of the Central Pacific, which had included over 10,000 Chinese laborers, who had built the line east from Sacramento, California.

Coast-to-coast travel time was reduced, in that instant, from four - six months to six days. Soon after, our nation underwent a phase change, becoming a unified whole in its political, economic, and even its cultural affairs.

Update on Employers Mutual, LLC

Robert L. Brace, AIR - Legal

I. Introduction

Hollister & Brace of Santa Barbara, is counsel to Thomas Dillon ("Dillon"), the Federal Court Appointed Receiver of Employers Mutual, LLC and the Independent Fiduciary of thousands of Employee Welfare Benefit Plans ("EWBPs") that were created when small employers attempted to purchase health insurance for their employees. The purported health insurance was sold in 2001 to small employers across the country by licensed health insurance agents, or "Insurance Producers". The health insurance was supposed to be procured by a Nevada entity known as Employers Mutual, LLC from Golden Rule Insurance Company ("Golden Rule"), a real insurance company. After the purported Golden Rule insurance turned out to be a scam orchestrated by the now convicted felon James Graf ("Graf"), Dillon sued approximately 400 Insurance Producers who sold the insurance alleging they committed malpractice, breached their contracts to procure the Golden Rule insurance and breached their warranty of authority as purported agents of Golden Rule. (the "Malpractice Action"). There is over $25,000,000 in unpaid medical claims. Close to $15,000,000 in settlements have been reached with the E&O carriers for many of the Insurance Producers sued by Dillon. Litigation continues against the non-settling defendants.

A large number of Insurance Producers had E&O insurance issued by Westport Insurance Company ("Westport") to cover them for malpractice. Westport denied coverage based upon two exclusions — the "fraudulent or nonexistent entity" exclusion and the "insolvent insurer" exclusion. As to these defendants, Dillon obtained Stipulated Judgments in the Malpractice Action totaling $8.8 Million and filed suit against Westport in Federal Court in Nevada to enforce payment on the policies (the "Nevada Coverage Action"). Prior to Dillon filing the Nevada Coverage Action, Westport filed its own Declaratory Judgment Action in Federal Court in West Palm Beach as to one insured that Dillon had a $76,000 Judgment against, $1,000 over the jurisdiction minimum (the "Florida Coverage Action"). Westport was successful in staying the Nevada Coverage Action while the matter was resolved by Judge Ryskamp in the Florida Coverage Action. On January 19, 2006 Judge Ryskamp ruled in favor of Dillon by granting his Motion for Summary Judgment. Judge Ryskamp ruled that the "fraudulent or nonexistent entity" exclusion was patently ambiguous and the "insolvent insurer" exclusion did not apply to Dillon's Malpractice Action because Golden Rule, the purported insurer, was not insolvent; Employers Mutual, LLC, although insolvent, was never recognized by the Insurance Producers or their clients to be the insurer; and there was no insurer because the effort to procure the Golden Rule insurance had failed. This paper summarizes the arguments made by Dillon and Westport, as well as the conclusions reached by the Court in Florida. The pleadings in the Nevada Coverage Action may be viewed on Pacer at Dillon v. Westport, Case No. 03:04-cv-0480-Ezra and the Florida Coverage Action is entitled Westport v. Dillon, Case No. 04-80180-CIV-Ryskamp. The attorney for Westport is Jonathan Fordin, Esq. of Shutts & Bowen, LLP in Miami, Florida.

II. The Malpractice Action Against the 400 Insurance Producers

A. Dillon's Authority to Represent the Clients of the Insurance Producers.

Standing to sue is a critical legal issue in these types of cases which involve victims from many states having relatively small individual claims, defendants having privity with some but not all of the victims and the economic imperative that the matter be resolved in one lawsuit in one Court in one State. The State with the greatest interest to fix the problem was Nevada because that's where the fraud was set up to be perpetrated. All of the premium money was sent to a mail box drop in Nevada; the entity used to facilitate the scam, Employers Mutual, LLC, was incorporated in Nevada; and all of the Insurance Producers entered into contracts with the Nevada entity giving Dillon sufficient minimum contacts to sue them all in Nevada. Nevada officials took a very proactive role even though the scam was actually operated by Graf out of California with most of the victims and their respective Insurance Producers residing in Texas, Florida and states other than Nevada.

In late 2001, Dillon was selected by the Department of Labor ("DOL") and appointed by the Federal Court in Reno, Nevada to act as the Receiver of Employers Mutual, LLC and the Independent Fiduciary of the 6,000± individual Employee Welfare Benefit Plans ("EWBPs") created by employers when they agreed to provide their employees with health insurance as a benefit of employment. Under ERISA, an employers promise to provide health insurance creates a "Plan" (which is really just a trust) governed by Federal Law. When these individual EWBPs located throughout the country failed for the lack of Golden Rule insurance, the DOL under ERISA had the power to install Dillon as the successor fiduciary of each EWBP and charge him with the duty of collecting assets, dissolving the trusts, and using the proceeds to pay the unpaid health expenses of the employees. By installing Dillon as the successor fiduciary of these individual EWBPs, Dillon obtained the legal standing to sue each of the Insurance Producers who sold the defective insurance to each EWBP.

Update on Employers Mutual, LLC

Robert L. Brace

Dillon hired Hollister & Brace to attempt to recover assets and we filed an action (the "Malpractice Action") against, among others, the approximately 400 Insurance Producers throughout the country who failed to discover the fraud and, as a consequence, failed to procure the Golden Rule insurance they promised to procure for each EWBP. Pleadings can be reviewed at our website at hbsb.com or on Pacer by searching for Dillon v. Graf, et al., Case No. 3:03-cv-00119, filed in the Federal District Court for Reno, Nevada.

Pursuant to the objective to maintain control over the case in one courthouse, the Federal Court in Nevada employed rather unique procedural devices. Because the insolvent EWBPs were not proper debtors under the Bankruptcy Code, they could not be placed into formal bankruptcy. Instead, the court imposed a Quasi-bankruptcy proceeding which included hierarchical categories of creditors for each EWBP and a schedule for the payment of claims. In addition, pursuant to the All Writs Act, the court enjoined all of the medical service providers from filing suit or damaging their patient's credit ratings. Stopping provider/patient litigation and the assignment of claims to aggressive collection agencies helped mitigate damages that naturally flow from such a fraud and allowed Dillon to keep control over the litigation in Nevada. Because some of the purported insurance was sold to individuals outside of any employment setting, which would not trigger ERISA, Dillon was also made a Rule 23 Class representative for a minority of the claimants which was required by the settling defendants who were seeking complete closure in exchange for the money they contributed to the settlement fund. Finally, Dillon also sued Graf and his helpers for operating a RICO enterprise which provided Dillon with the subject matter jurisdiction needed for us to file the case in Federal Court, upon which we could attach the state law claims against all of the Insurance Producers pursuant to the concept of supplemental jurisdiction. Control over the underlying litigation in one Federal Court was achieved.

B. Insurance Fraud Committed by Graf While Operating Employers Mutual LLC.

The Employers Mutual, LLC case is a case about insurance fraud and the gullibility of Insurance Producers in a hard market. Graf, since convicted in Federal Court in Los Angeles (see USA v. Graf, et al., Case No. 04-CR-492-ALL), represented to the Insurance Producers that his company, Employers Mutual, LLC, had a contract with Golden Rule whereby Golden Rule would issue health insurance policies to all persons who joined one of Graf's 16 Nevada Associations. The critical problem overlooked by all of the agents involved was that Golden Rule had no relationship with Graf or Employers Mutual, LLC. Golden Rule never agreed to be bound as the insurer on the risk. Mike Corne, a representative of Golden Rule, testified to this simple fact in the Florida Coverage Action as follows:

"Golden Rule is a solvent, viable and licensed health insurer authorized to do the business of health insurance in all states of the United States of America except New York. Golden Rule is not obligated to pay the unpaid medical bills of members of Graf's 16 Nevada Associations because, among other reasons: (i) Golden Rule never agreed to provide insurance coverage for these people during the relevant time period; (ii) Employers Mutual, LLC and its marketing force were not authorized to bind such coverage, and (iii) Golden Rule never made any representation to anyone which could be considered by anyone as granting such authority, either express or implied."

C. Various State Departments of Insurance Wrongfully Concluded that Employers Mutual was the "insurer".

At the early stages of the fraud, Graf caused Employers Mutual, LLC to pay over $2,000,000 in medical claims. On August 14, 2001 the Florida Department of Insurance issued a Cease and Desist Order (hereinafter "C&D") against Employers Mutual, LLC alleging, in part, that Employers Mutual, LLC was an "insurer" which required it to hold a Florida Certificate of Authority in order to conduct business in the State of Florida. The evidence cited was the fact that Employers Mutual, LLC paid a minimum amount of the claims — approximately $2,000,000 out of the approximately $27,000,000 in claims incurred. Other states filed similar Orders reaching the same conclusion before Dillon was appointed the Receiver of Employers Mutual, LLC in December of 2001.

After reviewing the solicitation materials and interviewing Insurance Producers to determine if they thought they were selling Golden Rule insurance or insurance issued by Employers Mutual, LLC as an unlicensed insurer, Dillon concluded that Graf had Employers Mutual, LLC pay a small amount of the claims at the early stage of the fraud in order to steal more premiums. As with all Ponzi schemes, the successful operators of insurance scams pay small claims and the claims of people who complain at the inception of the fraud in order to dupe more people. The fact that some claims were paid out of a bank account in the name of Employers Mutual, LLC did nothing to prove by inference that Employers Mutual, LLC (as a Nevada corporation) intended to be contractually obligated as an "insurer" to provide "insurance" to 30,000 people. Taking the entity theory of the corporation seriously, it was unequivocally clear to Dillon that no corporation, if truly represented, would agree to accept $14,000,000 in premiums in exchange for assuming $27,000,000 in

Update on Employers Mutual, LLC

Robert L. Brace

indemnity liability while at the same time allowing its "employees" to loot most of its premiums, leaving the corporation insolvent.

The C&Ds issued before Dillon was appointed as the Receiver of Employers Mutual, LLC did not establish as fact that Employers Mutual, LLC was the "insurer". Dillon alleged in the Malpractice Action that Employers Mutual, LLC was not the insurer, but was the entity that was supposed to procure the insurance from Golden Rule, which was the intended bearer of the insurance risk when viewed from the perspective of the Insurance Producers. Despite Dillon's efforts to plead a more accurate description of the facts, Westport and other E&O carriers cited the findings in these C&Ds to deny coverage for their insureds by arguing that Employers Mutual, LLC was an "insolvent insurer" which triggered the insolvent insurer exclusion.

III. Dillon Prevails in Declaratory Judgement Action Filed by Westport in Florida

Westport filed a Declaratory Judgment action in Florida contending that there was no coverage under its E&O Policy for Insurance Producers sued by Dillon in the Malpractice Action based upon two exclusions — the "fraudulent or nonexistence entity" exclusion and the "insolvent insurer" exclusion. Westport contended that Employers Mutual, LLC was either an "insolvent insurer" (relying on the unfounded conclusions reached by various regulators) or it was a "fraudulent entity" because it was used by Graf to perpetrate a fraud by misrepresenting it would procure the Golden Rule insurance. Westport lost on both arguments.

A. The "Fraudulent or Nonexistent Entity" Exclusion.

The E&O Policy sold by Westport barred coverage for any claim by a client of an Insurance Producer arising out of or in connection with a "fraudulent or nonexistent entity." The Policy did not define what Westport meant by the term "fraudulent or nonexistent entity." We thought the exclusion was ambiguous on its face.

Dillon and Westport agreed that Florida law governed and in Florida an insurance policy is construed in its entirety and given the construction which reflects the intent of the parties. Ambiguity exists in an insurance policy when its terms make the contract susceptible to different reasonable interpretations, one resulting in coverage and one resulting in exclusion. If an insurance policy contains ambiguous language, the court is required to construe it in favor of the insured and against the insurer. The insurer has the burden of demonstrating the applicability of an exclusion. There were no published cases discussing the meaning of the terms contained in the "fraudulent or nonexistent entity" exclusion and Westport refused to produce any evidence regarding the drafting history of the exclusion contained in its E&O Policy and sold to thousands of Insurance Producers located across the Country.

Dillon argued to the Court that the entire exclusion should be rejected outright because the term "nonexistent entity" was an oxymoron. An "entity" must, by definition, exist and it is inconceivable how a claim can arise out of an entity that does not exist. The Court did not adopt Dillon's first argument. Instead the Court separated the two adjectives ("fraudulent" and "nonexistent") which modify the noun "entity" and ruled that because Employers Mutual, LLC was incorporated in Nevada it was not a "nonexistent entity." The Court then decided it must first determine the meaning of the term "fraudulent entity" and then determine if Employers Mutual, LLC fit within this definition.

Dillon's second argument, which was also rejected by the Court, was that a "fraudulent entity" must be an alternative derivative of a "nonexistent entity" under the legal doctrine of ejusdem generis which means of the same kind, class or nature. Dillon argued that a "nonexistent entity" must be an entity that does not exist because of some technical or negligent noncompliance with the incorporation statutes while a "fraudulent entity" must be a purported entity which does not exist but which is fraudulently represented to exist. Because there was no fraud about the existence of Employers Mutual, LLC as an entity, the exclusion, as interpreted by Dillon, did not apply. The Court concluded that this interpretation by Dillon was unreasonable because it read the language "fraudulent entity" completely out of the exclusion.

The Court did adopt Dillon's third and final argument which was that Employers Mutual, LLC did not benefit from the fraud which prevented the imputation of Graf's fraudulent intent and bad acts to Employers Mutual, LLC negating the attachment of the label "fraudulent entity" to Employers Mutual, LLC. Dillon plead in the Malpractice Action that Employers Mutual, LLC was looted by Graf and a victim of his actions which were performed solely for Graf's own individual advantage and gain.

Dillon proffered to the Court that a "fraudulent entity" could be a corporation that commits fraud for its own benefit like a tobacco company or it could be a corporation, like Employers Mutual, LLC, which was used by Graf and other individuals for the commission of individual

Update on Employers Mutual, LLC

Robert L. Brace

fraud to the detriment of the corporation. Because Employers Mutual, LLC did not benefit from the fraud, this reasonable interpretation of the exclusion would not apply to the facts as alleged by Dillon in the Malpractice Action. The Court agreed and stated that:

"A plain reading of the Policy leaves the Court without guidance as to whether a 'fraudulent entity' is a corporation whose officials manage the corporation in their corporate capacities for the purpose of commission of fraud, or whether a fraudulent entity is one whose officials use the corporation for the commission of fraud for their own benefit. Had Westport intended to define both such entities as "fraudulent," the Policy should have so specified…"

The Court went on to note that the policy was potentially illusory under Westport's broad interpretation of the term "fraudulent entity" which could include "any corporation having at least one officer who engaged in fraud at some time." The Court noted at the hearing that most insurance companies are accused of bad faith or fraud by their insureds or regulators at some time during their long existence which would make them all potential "fraudulent entities" negating E&O protection for Insurance Producers who erred in some fashion while marketing their policies at a later date. The Court granted Judgment for Dillon on the grounds that the term "fraudulent entity" was ambiguous on its face.

B. The Insolvency Exclusion.

Westport's E&O Policy for its insured Insurance Producers also contained an exclusion for any claims:

"...arising out of or in connection with the financial inability to pay, insolvency, receivership, bankruptcy or liquidation of any insurance company, any reinsurer, any IPA, HMO, PPO, DSP or any pool, syndicate, association or other combination formed for the purpose of providing health care, insurance or reinsurance."

It was undisputed that Employers Mutual, LLC was insolvent and had been placed into receivership. Westport argued that Employers Mutual, LLC was an insolvent "insurer" formed for the purpose of providing insurance because it had paid claims as part of its operations. Dillon argued that the exclusion did not apply because the purported "insurer" was Golden Rule and it was undisputedly solvent; the failure of the Insurance Producers to procure the Golden Rule insurance meant that there was no insurer to trigger the exclusion; and the failure to procure the Golden Rule insurance did not by magic or logical implication make Employers Mutual, LLC the insurer.

The Court noted that the solicitation materials stated, and the Insurance Producers believed, that Employers Mutual, LLC was to act as the trustee of the premiums which were ostensibly destined for Golden Rule, a real and solvent insurer. The Court concluded that had Employers Mutual, LLC been solvent and remitted the premiums to Golden Rule as promised, the claims of malpractice would still exist because neither Graf, Employers Mutual, LLC or the Insurance Producers were authorized to bind coverage on behalf of Golden Rule as was promised. The failure to procure the Golden Rule insurance meant that there was no insurer to trigger the insolvent insurer exclusion. The Court ruled that the cases cited by Westport *[Transamerica Insurance Company v. Snell*, 627 So.2d 1275, 1276-77 (Fla. 1st DCA 1993) and *Transamerica Insurance Company v. Smith*, 125 F.3d 392, 394 (9th Cir. 1997)] all involved insolvent entities that acted as insurers. Here, there was no insurance as the purported insurer, Golden Rule, did not bind coverage as was promised by the Insurance Producers insured by Westport.

IV. Conclusion

Dillon moved the Court in the Nevada Coverage Action to lift the stay and enter an $8.8 million judgment against Westport as the parties had agreed the ruling by Judge Ryskamp was binding as res judicata. Westport opposed contending that the damages were overstated and it was entitled to set offs from prior settlements. Westport appealed Judge Ryskamp's ruling in the Florida Coverage Action to the 11th Circuit and asked the Court in Nevada to continue the stay until the matter was resolved on appeal. The case finally settled for $4,000,000 to be contributed to the existing settlement fund.

Robert Brace has been an attorney since 1985 and AV rated since 1993. He has 21 years of experience in complex litigation with 14 years as an insurance insolvency practitioner. Robert Brace has focused his practice on the insolvency of domestic and offshore insurance companies, including ERISA Employee Welfare Benefit Plans. Most of his work ultimately involves litigation over insurance coverage for professionals who facilitate either the demise of an insurer or the fraud committed by the operators of an insurance scam. He is currently the attorney for Thomas Dillon, the Independent Fiduciary appointed in the Employers Mutual, LLC matter which was one of the largest health insurance frauds in the country with $25,000,000 in unpaid medical claims.

IAIR Committees

Accreditation & Ethics

Daniel L. Watkins, CIR
Jay Deiner, AIR
Joseph J. Devito, AIR
Michael J. FitzGibbons, CIR
I. George Gutfreund, CIR
Jenny Jeffer, AES
Bob Loiseau, CIR
Liz Lovette, CIR
Belinda Miller, CIR
Daniel Orth

Accreditation Standards

I. George Gutfreund, CA, CIRP, CIR
Patrick Cantilo, CIR-ML
Richard Darling, CIR-ML
Michael J. FitzGibbons, CPA, MBA, CIR-ML
Harold S. Horwich, CIR-ML
Robert Loiseau, CIR-ML
Elizabeth A. Lovette, CIR-ML
Francine L. Semaya
Harrry L. Sivley, Jr., CIR-ML

Amicus

Paige Waters
Jeanne Bryant, CIR
Philip Curly
Nigel Montgomery
Phil O'Connell
Jim Stinson

Bylaws

Francesca Bliss
Dorothy Cory-Wright
Bill Latza
Michael Marchman, CIR
Stephen Phillips, AIR
George Piccoli
Michael Surguine

Editorial Review Board

Francine Semaya
John Murphy, AIR

Education

Pam Woldow
William Barbagallo, AIR
Patrick Cantilo, CIR
Dorothy Cory - Wright
Jody Hall
Douglas Hartz
Lewis Hassett; Jenny Jeffer, AES
Ed Wallis
Kenneth Weine
Barry Weissman, AIR

Finance

Douglas Hartz
Paula Keyes, AIR
Lowell Miller
Steve Phillips, AIR
Richard Pluschau

IAIR/NAIC Liason

Daniel L. Watkins, CIR-ML

International

Vivien Tyrell
Dominic Emmett
Kehinde George
Robert Greer, CIR
Kristine Johnson
Paul Kirk
Robert Loiseau, CIR
Robert Sanderson

MARG

Doug Hertlein

Marketing

Mary Jo Lopez

Membership

Paula Keyes, AIR
Betty Cordial, CIR
James Gerber; Beverly Grant
Harold Horwich
Ipe Jacob; Robin Mayer
Greg Mitchell, AIR
Nigel Montgomery
George Piccoli
Karen Weldin Stewart, CIR

Nominations, Elections & Meetings

Harry L. Sivley, Jr.
Richard Bakka, AIR
Rheta Beach
Betty Cordial, CIR
Kenneth DeKoven
Brian Falk
James Friedman
Evelyn Jenkins
Daniel A. Orth, III
George Piccoli
Peter Scarpata

Publications

Harold S. Horwich, CIR-ML
Katherine Billingham
Dorothy Cory-Wright
Douglas Hartz
Jo Ann Howard, CIR-P&C
Paula Keyes, AIR
Debra Roberts
Edward Wallis
Feature Articles -Sharon Rose & Ken Weine, AIR
Meeting Coverage - Sharon Rose
Meet Your Colleagues - Joe DeVito, AIR
News & Notes - Charlie Richardson
Proofing - Francesca Bliss,Linda Lasley & Debra Roberts

Website

Alan N. Gamse
Katherine Billingham
Kristine Johnson
Paula Keyes, AIR
Bob Loiseau, CIR
Greg Mitchell, AIR
Frank Mulcahy, AIR
Sharon J. Rose
Jim Schacht, CIR
Dale Stephenson, CPA

IAIR 2006 Board of Directors

NOTE: Year behind titles indicates when term ends in December of that year.

President - 2008
Joseph J. DeVito, MBA, CPA, AIR - Accounting/Financial Reporting, Reinsurance, and Claims/Guaranty Funds
Navigant Consulting, Inc
7000 Boulevard East
Guttenberg; NJ 07093
jdevito@navigantconsulting.com

1st Vice President - 2006
Daniel L. Watkins, CIR-ML
The Law Offices of Daniel L. Watkins
4311 W. 6th Street, Suite C
Lawrence; KS 66049
E-mail: danwatkins@sunflower.com

2nd Vice President - 2006
Daniel A. Orth, III
Illinois Life and
Health Insurance Guaranty Association
8420 West Bryn Mawr Avenue, Suite 550
Chicago; IL 60631-3404
E-mail: ilhiga@aol.com

Secretary - 2007
William Barbagallo, AIR
Navigant Consulting, Inc.
633 W. Fifth St., 59th Floor
Los Angeles; CA 90071
E-mail: bbarbagallo@navigantconsulting.com

Treasurer - 2008
Douglas A. Hartz
Bingham Consulting
One State Street
Hartford; CT 06103-3178
E-mail: doug.hartz@bingham.com

Director - 2006
Francesca G. Bliss
Frontier Insurance Company
In Rehabilitation
195 Lake Louise Marie Road
Rock Hill; NY 12775
E-mail: fbliss@ftr.com

Director - 2007
Patrick H. Cantilo, CIR-ML
Cantilo & Bennett L.L.P.
7501 North Capitol of Texas Highway,
Suite 200
Building C, Suite 200
Austin; TX 78731
E-mail: phcantilo@cb-firm.com

Director - 2008
Dorothy Cory-Wright
Kendall Freeman
43 Fetter Lane
London; England EC4A 1JU
E-mail: kendallfreeman.com

Director - 2006
Trish Getty, AIR
360 Oak Terrace
Alpharetta; GA 30004
E-mail: trishgetty@bellsouth.net

Director - 2008
Jody S. Hall
New York Liquidation Bureau
123 William Street, 2nd Floor
New York; NY 10038-3889
E-mail: jhall@nylb.org

Director - 2007
Douglas L. Hertlein
Ohio Insurance Liquidation Office
1366 Dublin Road
Columbus; OH 43215-1093
E-mail: doug.hertlein@ins.state.oh.us

Director - 2006
Francine L. Semaya
Cozen O'Connor
45 Broadway Atrium, 16th Floor
New York; NY 10006
E-mail: Fsemaya@cozen.com

Director - 2007
Harry L. Sivley, Jr., CIR-ML
Regulatory Technologies, Inc.
645 Hembree Parkway, Suite A
Roswell; GA 30076-3868
E-mail: sivley@regtech.net

Director - 2008
Mary Cannon Veed, AIR
Arnstein & Lehr, LLC
120 South Riverside Plaza, Suite 1200
Chicago; IL 60606-3910
E-mail: mcveed@arnstein.com

Director - 2007
Edward B. Wallis
National Conference of
Insurance Guaranty Funds
10 West Market Street
Indianapolis; IN 46204
E-mail: ewallis@ncigf.org

High Deductible Policies in Insurance Insolvency: A Critical Analysis

Harold S. Horwich - Bingham McCutchen LLP
Michael L. Vild - Deputy Insurance Commissioner, Delaware Department of Insurance

Over the past several years, there has been substantial debate concerning the appropriate treatment of so-called "high-deductible policies" in insurance receivership cases. These policies are generally commercial or workers' compensation insurance policies that are subject to agreements under which the insured agrees to reimburse the insurer for losses and allocated loss adjustment expenses within certain limits. These arrangements are commonly referred to as high-deductible policies, although this is a misnomer, because unlike a true deductible, in these arrangements the insurer has policy liability for the entire loss from dollar one. Accordingly, we will refer to these arrangements as "loss reimbursement programs."


Harold S. Horwich


Michael L. Vild

Receivers and the guaranty funds have debated which of them is entitled to receive reimbursements obtained either from the policyholder or from collateral securing the policyholder's obligation. Each position can be summarized briefly. The guaranty funds and the carriers paying guaranty fund assessments argue that, because they are paying the losses, they are entitled to any reimbursement from the insured, who has contractually agreed to reimburse the insurer for the loss. Because, as the guaranty funds and their proxies argue, the insured assumed the loss, the loss should fall on the insured and not on the guaranty fund.

Receivers argue that loss reimbursements are simply a substitute for premium and that they should be treated the same as premium in receivership. According to the receivers' view, providing reimbursement to guaranty funds prejudices policyholder creditors that do not enjoy the benefit of guaranty fund coverage, and no policy of insolvency law supports that result. Each side has reasonable arguments to support its position. The purpose of the following is to provide some critical analysis of those arguments.

What Are Loss Reimbursement Policies?

Most purchasers of insurance buy it on a guaranteed cost basis. A premium is established at the beginning of the policy period and the insured pays the premium at the beginning of the period or in installments over the policy period. The premium is established based on the experience of a broad group of insureds.

Large commercial insureds typically have extensive risk management programs, and wish to pay premiums based on their own actual loss experience because they believe that their experience will be better than the norm. Several types of products enable this practice.

First, there is self-insurance. Under self-insurance arrangements, the party at risk has no insurance for liability up to a set limit, and purchases excess insurance for individual losses that exceed that limit. In the area of workers' compensation, the state must authorize the risk taker to self-insure. Typically, the self-insured will purchase an excess insurance policy to cover catastrophic losses. If the self-insured fails to pay a claim within the self-insured limit, the excess policy does not 'drop down' to cover the claim. In addition, claims arising under these policies do not enjoy guaranty fund coverage. The product is described above in order to furnish a contrast to loss reimbursement programs.

Second, there are retrospectively rated insurance policies. Under these policies, premium is determined based on actual losses and allocated loss adjustment expenses. The components of an insurance premium are "unbundled" and computed on a variable basis. By far the largest components of premium are loss and allocated loss adjustment expense. The amounts of paid loss and allocated loss adjustment expense are multiplied by factors to establish premium taxes, unallocated loss adjustment expense and profit. While there are several types of retrospective premium arrangements, a common one provides that the premium is paid as and when losses and loss adjustment expenses are paid. Typically, the insured provides collateral security to support its obligation to pay premium to the insurer. There does not appear to be any controversy that the premium due on a retrospectively rated policy is property of the receivership estate in the event that the insurer becomes insolvent.

Third, there are loss reimbursement programs. Under these programs, the insurer issues a policy that has first dollar coverage – the same as the policy that would be issued in a guaranteed cost or retrospectively rated program. The insured pays a minimal premium to cover certain costs and the insurer's profit. The insured also agrees to reimburse loss and allocated loss adjustment expenses paid by the insurer. That obligation is typically supported by collateral security to ensure payment by the insured. Under applicable state law, these arrangements do not typically require the payment of premium taxes or guaranty fund assessments on the loss reimbursement portion.

HIGH DEDUCTIBLE POLICIES IN INSURANCE INSOLVENCY: A CRITICAL ANALYSIS

Harold S. Horwich - Bingham McCutchen LLP
Michael L. Vild - Deputy Insurance Commissioner, Delaware Department of Insurance

Arguments Supporting The Guaranty Fund's Position Under Existing Law.

Under the terms of a loss reimbursement arrangement, the obligation of the insured runs to the insurer and the collateral security is pledged to the insurer. Thus, in order for the guaranty fund to have the right to access the collateral, it would need to establish a basis for exercising the rights of the insurer. There are two alternatives for doing so. One alternative is to stand in the shoes of the claimant that the guaranty fund has paid. The other alternative is to stand in the shoes of the insurer on behalf of which the payment was made.

Under guaranty fund laws, any claimant that receives payment from the guaranty fund "shall be deemed to have assigned his rights under the policy to said association to the extent of his recovery from said association." The question then becomes whether a claimant would have the right to access collateral in the hands of the insurer if the insurer failed to pay a claim. We are not aware of any legal authority for that proposition. Moreover, it seems unlikely that the claimants would have any contractual interest in the collateral. Even in a loss reimbursement program, the insurance has been issued to protect the insured from liability. The claimant is at best a third party beneficiary. The collateral is posted for the benefit of the insurer, and it would not be reasonable to imply that it exists for the benefit of the claimants.

The guaranty funds cite *In re Imperial Insurance Co.*, 157 Cal.App.3d 290 (Cal. App. 1984) to support their position. There, the California Appellate Court determined that the guaranty fund was entitled to funds collected as prepaid deductibles on the theory that the receiver held the funds in trust for the guaranty fund. However, the policy at issue in that case was significantly different from the typical loss reimbursement policy. In that case, the deductible was to be remitted to the insurer, not in connection with the issuance of the policy, but immediately upon the initiation of any claim. Funds were only collected if a claim was filed. The agreement provided that the funds could only be used for the payment of the claim or the expenses associated with the claim. In addition, if the deductible was not funded, the insurance coverage terminated as to the claim. The court correctly concluded that, under the terms of the policies in question, the funds were held in trust for the insureds and thus were available to the guaranty association. But standard loss reimbursement policies are different. Nothing in the collateral provisions treats the collateral as held in trust for the payment of specific claims. Instead, the collateral is available to cover the insured's general obligation to reimburse the insurer for amounts that it pays from time to time. Moreover, unlike the policy at issue in *Imperial*, the policies in loss reimbursement programs do not include provisions that allow the insurer to escape liability if the collateral is not provided or if the insured defaults on its obligation to reimburse the insurer. Thus, it seems unlikely that the guaranty funds can make a principled argument that they are entitled to the collateral pledged by the policyholder by succeeding to the rights of the claimant.

The guaranty funds also succeed to certain rights of the insurer by virtue of payment. The guaranty funds cite the case of *Perleman v. Reliance Insurance Company*, 371 U.S. 132 (1962) for the proposition that they are entitled to rights of equitable subrogation and that the guaranty fund succeeds not only to the rights of the claimants, but also to the rights of the insurer by virtue of payment. It is argued from that proposition that the guaranty fund should therefore succeed to the rights of the insurer against the insured. This argument seems to be reflected in the guaranty fund statute which states, "Said association shall have no cause of action against any insured of the insolvent insurer for any sums it has paid out to such insured except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer." This language was intended to deal with situations such as insured misconduct or coverage issues. However this language could arguably be broad enough to permit the guaranty fund to succeed to the insurer's rights to access collateral. The problem is that it might also be broad enough to permit the guaranty fund to succeed to the rights of the insurer to premium – particularly retrospectively rated premium. It might also be broad enough to subrogate to the insurer's right to receive reinsurance recoveries. Neither of those results is intended.

In addition, the argument that guaranty funds are entitled to equitable subrogation is not entirely persuasive. Guaranty funds are creatures of statute and their obligations and rights are fully defined and limited by statute. Guaranty funds are not subject to the same detriments as sureties and therefore, should not automatically receive the same rights. For instance, a surety's claim is subordinated to the excess claim of its claimant in insolvency proceedings. That is, if the surety does not pay the entire amount of a claim (due to limits on its obligation), the claimant is entitled to be paid the entire amount of its unpaid claim in full before the guarantor receives anything. (This would apply principally to general liability policies, since guaranty funds typically have unlimited liability for workers' compensation claims.) So, in a situation where a claimant had a claim for $600,000 and the guaranty fund paid only $350,000, the claimant would be entitled to receive the dividend on the guaranty fund's claim as well as its own until it received an additional $250,000. However, as the insurance insolvency statutes do not subordinate the guaranty fund's claim in this

HIGH DEDUCTIBLE POLICIES IN INSURANCE INSOLVENCY: A CRITICAL ANALYSIS

Harold S. Horwich - Bingham McCutchen LLP
Michael L. Vild - Deputy Insurance Commissioner, Delaware Department of Insurance

way, the argument that the guaranty funds are entitled to the full benefits of subrogation does not seem strong.

The existing laws do not appear to deal adequately with the question of whether the guaranty funds are or are not entitled to the benefit of collateral held by the insurer. For that reason, the question should be addressed as a question of public policy.

Policy Considerations.

In the public debate concerning loss reimbursement policies, the public policy issue has been phrased in terms of whether the receiver should receive the funds at issue or whether the guaranty funds should receive them. We submit that this argument is a straw man. The real question is whether guaranty funds should receive them or whether policyholders that hold claims not covered by guaranty funds ("Uncovered Claims") should share them with the guaranty funds. Companies that write high deductible programs typically deal with large policyholders who may not ultimately enjoy guaranty fund coverage, primarily by operation of "net worth exclusions". They also issue large policies that often have losses that exceed guaranty fund coverage limits. Thus, in cases where high deductible programs exist, there is likely to be a significant policyholder community that has Uncovered Claims. The question is whether those policyholders are entitled to share in the claim reimbursements or not.

The guaranty funds observe that no "premium" is charged for the portion of the risk within the loss reimbursement layer. While this is true, it would not be fair to conclude that the insurer has not been compensated for assuming the risk associated with the policy. To the contrary, the insurer's profit and risk charge in connection with a high deductible program does not differ from what its profit and risk charge would be in a retrospectively rated program, where the charges for the program are called premium. The charge is not typically called "premium," but the profit is the same. Thus, it cannot be argued that insurers should not bear the responsibility for high deductible losses because they have not been paid for doing so.

It has been pointed out that taxes and guaranty fund assessments are not paid by insureds under high deductible programs, whereas such taxes and assessments are allocated to other types of policies including retrospectively rated policies. The guaranty funds argue that this arrangement deprives them of policyholders to assess. However, this ignores the fact that their assessments are still paid in full by the policyholders who do pay assessments. The tax and assessment relief for high deductible policyholders may be inequitable to policyholders that do pay taxes and assessments. However, this has nothing to do with insolvency policy and does not provide a basis for permitting guaranty funds to obtain a preference over Uncovered Claims.

The guaranty funds argue, without citation of authority, that self-insured arrangements and high deductible programs are treated the same in the bankruptcy of the insured. This is not the case. First, the surety's obligation under a bond provided under a self-insured arrangement is limited. A workers' compensation policy issued in a high deductible setting is not. Second, the claims of the surety in a bankruptcy case are subordinated to the claims of the workers' compensation claimants if they are not otherwise paid in full. The claims of the insurer in a high deductible arrangement are not subordinated. This is often the difference between recovery and no recovery for a creditor. Third, the insured has a direct and continuing obligation to the workers' compensation claimant in a self-insured arrangement. The insured does not have such an obligation where there is a high deductible arrangement. Thus, the LTV Corporation, which was the second largest domestic steel producer in the 1980's, resumed paying the workers' compensation claimants who were covered by self-insurance arrangements, but did not continue reimbursing its insurer in connection with its high deductible arrangements.

The NAIC/IAIABC Joint Working Group has issued a Workers' Compensation Large Deductible Study dated October 18, 2005. The study is an in depth and thoughtful look at workers' compensation deductible programs. It reaches several conclusions that would improve regulation of workers' compensation loss reimbursement programs. Conclusion 16 asserts that guaranty fund laws should be changed to assure that loss reimbursements go directly to guaranty funds instead of the estates. This conclusion is supported only by the proposition that in the absence of such reimbursements, guaranty fund assessments may be higher and non-guaranty fund covered creditors would receive more recovery. While this is undoubtedly true, the study provides no public policy basis for favoring guaranty fund claims over Uncovered Claims.

It has been argued that the burden of guaranty fund coverage falls on insurance companies and their owners, but this is not true in many cases. In many states, the ultimate burden of guaranty fund assessments falls on state taxpayers in the form of premium tax offsets. In some states, the burden of guaranty fund assessments is passed on to policyholders generally. Moreover, the trend in the development of legislation is toward passing the liability to insureds or the public.

As discussed above, guaranty funds do not suffer the detriments of other guarantors in insolvency proceedings in that their claims are not subordinated to other creditor

HIGH DEDUCTIBLE POLICIES IN INSURANCE INSOLVENCY: A CRITICAL ANALYSIS

Harold S. Horwich - Bingham McCutchen LLP
Michael L. Vild - Deputy Insurance Commissioner, Delaware Department of Insurance

claims. Moreover, guaranty funds already have many priorities that Uncovered Claims do not enjoy. Guaranty funds have a priority for their adjustment costs that are senior to policyholders in most states. Thus, a policyholder that pays its own adjustment costs will have a claim that is junior in the receivership to that of the guaranty fund. Guaranty funds are entitled to early access distributions from receivership estates in preference over their policyholders. Under the Insurers Receivership Model Act that right is expanded so that guaranty funds receive all funds that are not necessary for administration of the receivership estate. This is a huge cash flow advantage over Uncovered Claims.

The foregoing are significant legislatively mandated preferences for guaranty funds over other claimants. If further preferences are granted, there should be a principled basis for doing so. The guaranty funds have not made a clean and convincing case for receiving high deductible reimbursements in preference to other policyholder creditors.

A Proposed Compromise.

The current proposals for legislation all seem to permanently deprive Uncovered Claims of any participation in recoveries under high deductible programs. It is doubtful that this is an appropriate result from a public policy perspective. Loss and loss expense reimbursement are simply a substitute for premium. This is never more apparent than when high deductible programs are compared with retrospectively rated insurance policies. It is clear that premium under retro policies is property of the estate, and there is no reason that deductible reimbursements should not be too.

However, there is a compromise that all receivers, guaranty funds and Uncovered Policyholders may be able to live with. In the first instance, guaranty funds are concerned about liquidity. A lack of funds from which to pay claims puts an untoward burden on the insurance industry. As such, it is proposed that a statute should enable guaranty funds to attempt to compel policyholders to pay claims directly if their agreement so provides. If the guaranty fund is required to pay claims, the receiver should access available collateral and otherwise pursue the policyholder, and provide all funds received as early access payments to the guaranty fund.

This is a compromise that gives guaranty funds most of what they want, but still provides some benefit to Uncovered Claims. The guaranty funds get liquidity. If policyholders pay, the guaranty funds are relieved of liability. If the policyholders do not pay, they get the benefit of an advance of collateral from the receiver.

If the policyholder pays, the guaranty fund gets the entire benefit of the reimbursement, which gives the guaranty fund a priority for this amount over Uncovered Claims. However, this preference is justified by administrative savings to all involved. If the policyholder defaults and the guaranty funds are required to pay, the ultimate benefit of the reimbursement should be shared by all policyholder creditors, just like premiums and reinsurance. This may require adjustment of early access payments at the end of the case, but such an adjustment would be appropriate to achieve fairness to all creditors in the policyholder class.

Harold Horwich is a Partner at Bingham McCutchen and head of the firm's insurance practice. He concentrates on representation of insurance companies and insurance company receivers in transactions and insolvencies. He has represented insurance companies, regulators and creditors in insurance company run offs and restructuring transactions. Mr. Horwich has also represented receivers and creditors in property-casualty companies and health care companies, and has written and lectured extensively on insurance company insolvency. He has also received the designation of Certified Insurance Receiver - Multiline Insurers from the International Association of Insurance Receivers

Michael L. Vild is the Deputy Insurance Commissioner for the State of Delaware and has served in that position for the Honorable Matthew P. Denn since January 2005. Prior to joining the Delaware Department of Insurance, Mr. Vild was engaged in the private law practice in Wilmington, Delaware, where his practice focused on corporate restructuring and bankruptcy and Delaware corporate law matters.

[1] *There is an excellent discussion of these insurance products in the NAIC/IAIBC Joint Working Group's paper entitled Workers' Compensation Large Deductible Study dated October 18, 2005.*

[2] *Some statutes exclude high net worth companies from guaranty fund coverage while others provide for coverage but give guaranty funds a right to seek reimbursement from high net worth companies.*

[3] *See Bankruptcy Code Section 509(c).*

[4] *See In re Chateaugay Corp., 155 B.R. 625 (Bankr. 1993).*

[5] *See http://www.ncigf.org/guaranty/datasheets.asp, under Other Assessment Information*

[6] *See, http://www.ncigf.org/guaranty/datasheets.asp, under Other Assessment Information*

[7] *See Sections 801 and 803, NAIC Insurance Receivership Model Act (2005). Both Alternative 1 and 2 for Section 801 provide full reimbursement of the guaranty funds claims administrator costs which an Uncovered Claimant will not have. Section 803 provides for advances to the guaranty association on their claims.*

[8] *See, Section 712 proposal for IRMA, at www.naic.org/documents/committees_e_ritf_section712.doc*

[9] *A form of this compromise was recently proposed to the Delaware General Assembly and is currently under consideration by the NAIC Receivership and Insolvency Task Force.*

NAIC Adopts New Receivership Model Act

John N. Gavin, Foley & Lardner, LLP

In December 2005, after a four-and-a-half year process, the National Association of Insurance Commissioners (NAIC) formally adopted a new Model Act entitled the Insurer Receivership Model Act (IRMA). According to the NAIC, the Model Act is an important step in the NAIC's modernization efforts and is intended to comprehensively address the administration of an impaired or insolvent insurer from conservation and rehabilitation to the liquidation and winding up of a receivership estate.

The NAIC received input from a variety of industry sources in drafting the IRMA, including guaranty associations, trade groups, insurers, and receivers. Many participants in the process, while favoring at least some of the changes, criticized some of the changes and the NAIC's failure to adopt other changes

IRMA effects a large number of substantial changes to the previous Model Act, including the following:

• A notice and hearing process intended to increase efficiency and economy of receivership proceedings, which puts the burden on an objecting party to show why the court should not authorize the receiver's proposed action (§107)

• Expanded immunity provisions covering the receiver, employees, and contractors, and expanded indemnity provisions covering the receiver and employees (§115)

• Increased receiver financial reporting requirements (§117)

• Provisions dealing with executorycontracts (§114)

• Provisions allowing the sale of the insurer's corporate entity and its licenses (§503)

• New provisions addressing conservation, which provide broad powers to a conservator similar to the powers of a rehabilitator (Article III)

• Provisions granting a receiver expanded powers to recover assets, including:

* Provisions lengthening the period for which transfers may be challenged as voidable preferences or fraudulent transfers (§§604, 605)

* Provisions expanding a receiver's ability to recover transfers to affiliates (§602)

• A provision intended to allow a receiver to pay, as a Class 1 administrative claim, lower priority claims if they are deemed to assist in the collection of assets (§801)

• A number of provisions addressing guaranty association matters, including:

* Provisions dealing with a guaranty association's right of intervention (IRMA provides states with three options) (§105)

* A new Class 2 priority of distribution for guaranty association expenses (with an option to put claims defense costs in Class 3, the general policyholders class) (§801)

* Provisions regarding early access payments to guaranty associations (§803)

* Provision for greater coordination between receivers and guaranty associations (§§303 and 405)

* Guaranty associations' access to information and records (§118)

* A provision making clear that the receivership court may not resolve coverage disputes between guaranty associations and claimants, absent the guaranty association's consent (§105)

• Provisions requiring the payment of the receiver's attorneys' fees and costs by those that make objections that are found to be frivolous or filed merely for delay or for other improper purpose (§107), or where a party challenging a receiver's recovery efforts loses in part (§607D)

• Several provisions dealing with reinsurers, including

* Provisions requiring in some circumstances a commutation of a reinsurer's liabilities (§§611, 614, 615)

* Separate provisions dealing with the continuation of life and health reinsurance (§612)

* A provision preserving a reinsurer's contractual right to arbitration (§ 105)

* A provision stating that the right to set off shall be a secured claim (§104.BB)

* All assumed reinsurance contracts are terminated upon liquidation (§502)

• The insurer'sagents may be required by the liquidator to give notice to holders of policies issued through the agent (§506)

• Provisions allowing IRMA (at a state's option) to apply to insolvencies commencing prior to IRMA's adoption by the state (§111)

NAIC Adopts New Receivership Model Act

John N. Gavin, Foley & Lardner, LLP

• A provision that, in the event of any conflict between IRMA and any other law, IRMA will prevail (§102)

The various other groups involved in the IRMA drafting process — guaranty funds, insurers, and trade groups — have strongly criticized a number of these provisions. Among other things, the commentators argued that many of these provisions unduly favored receivers and did not fairly balance the interests of all the constituent groups involved in an insurer's liquidation. For example, these commentators criticized the imposition of the burden on those objecting to the receiver's proposals, the broad immunity provisions, and the possible imposition of attorneys' fees on those opposing the receiver.

Further, while addressing a large number of issues, IRMA fails to address several issues desired by industry groups. In particular, IRMA does not address

• The treatment of large deductible business. Industry groups sought a provision requiring reimbursements collected from insureds to be paid to the guaranty fund to the extent the fund paid claims which the insured had agreed to reimburse within its deductible.

• Provisions requiring more transparency in the receivership process — e.g., a requirement that receivers file a plan or road map to wind up the estate.

• A provision requiring a standard of care to be met by the receivers.

Efforts to enact IRMA as law will now shift to each of the respective state's legislatures. The groups that criticized various provisions or omissions of IRMA may be expected to seek to achieve revisions in the legislative process or to oppose the adoption of IRMA altogether. It is worth noting that, due to opposition to the NAIC's prior Model Act on receivership (the Insurers Rehabilitation and Liquidation Model Act of 1995), that Model Act was not adopted inmany states. To put pressure on the states to adopt IRMA, the NAIC has undertaken a process to determine which parts of IRMA must be adopted in order for a state to remain accredited by the NAIC. It will be years beforewe know how the efforts of the NAIC, the insurance departments, and other groups will fare in the various state legislative bodies in connection with the actual adoption of IRMA.

Mr. Gavin is a partner in the Chicago office of Foley & Lardner LLP. A member of the firm's Insurance Industry and Health Care Industry Teams, he has for more than 25 years practiced extensively in the insurance and managed care areas.

Improvements to the Members Information Section of the IAIR Web Site

Alan N. Gamse, Chair, IAIR Website Committee

We have recently implemented several changes to the portion of the IAIR Web Site where IAIR members' personal information is listed. These changes deal with individual member's ability to submit changes to or her personal information and the ability to reflect more than one jurisdiction where the members engage in their individual insolvency practices.

First, individual membership information may be submitted for change by accessing the members' services area through the link at the bottom of each page labeled "Members Services Login". That link will go to the member login page and, from there, to the Members Services page. Changes to personal information, such as addresses, phone numbers or areas of functional expertise, may be submitted from that page. The submitted changes will be reviewed by IAIR staff on a regular basis and, if appropriate, posted to the member's individual information page.

A new feature of the individual membership information page is the ability to list several jurisdictions where the member engages in an insolvency practice. Thus, those of us who are active in more than one state will be able to list up to three jurisdictions where we maintain a significant practice. There will also be a comments area where our international members will have the ability to more specifically describe the geographic areas within which they practice.

The IAIR Office will be happy to provide any assistance required in connection with updating membership information.

International Association of Insurance Receivers, St. Louis, MO Meetings

Friday – Sunday, September 8 - 10, 2006
Renaissance Grand Hotel and America's Center

Friday, September 8th

3:00 – 6:00 p.m. Board Meeting – Renaissance – Grand Hotel – Hawthorne, Lucus and Flora Rooms, 21st Floor
Open to all IAIR members.

Saturday, September 9th

8:00 a.m. – 12 noon IAIR Committee Meetings – America's Center – Room 274
Open to all IAIR members

1:00 – 5:00 p.m. IAIR Roundtable – America's Center – Rooms 240 & 241
Open to IAIR members

The Age of information, Technology & IRMA

1:00 Introduction and Welcoming Remarks
Director Dale Finke, Missouri Department of Insurance
1:15 - 1:45 Impact of Missing or Incomplete Information in an Insolvency
Jessica Pardi, Esq., Morris, Manning & Martin, LLP
1:45 – 2:30 Have We Got Some Solutions for You? Systems Created to Address Information Challenges
Jenny Jeffers, CISA, AES, Moderator
Dave Rampson, Legion Insurance Company
Davis Tharayil, Home Insurance Company
Wayne Johnson – RITA, Florida Department of Insurance
2:30 – 2:45 Break, Announcements & Designations
2:45 – 3:30 IT Security Policies and Procedures: Issues raised by the Sarbanes-Oxley and Gramm-Leach-Bliley Acts
Tom Wegenhauser, MCP, MCSA, CEH, NCIGF
Mark Steckbeck, NCIGF
3:45 – 5:45 Hot IRMA Topics! Accreditation, Reinsurance, Fraudulent Conveyance and other Controversial Issues.
John Gavin, Esq., Foley & Lardner LLP
Dick Bromley, Esq., Foley & Lardner LLP
Eligible for 4.2 hours of NASBA CPE Credit based on a 50 minute hour

Sunday, September 10th

8:00 a.m. – 10:00 a.m. IAIR Members Think Tank – Renaissance Grand Hotel – Majestic Ballroom Section E, 2nd Floor
Open to IAIR members by reservation only. Contact Paula Keyes at pkeyes@iair.org.
Eligible for 2.4 hours of NASBA CPE Credit based on a 50 minute hour

10:00 a.m. – 5:00 p.m. IAIR Committee Meetings – America's Center – Room 275
Open to all IAIR members

5:30 – 7:30 p.m. IAIR Reception – Renaissance Grand Hotel – Crystal Ballroom, 20th Floor
Open to IAIR members and invited guests

Course Level The IAIR Roundtable and the IAIR Members Think Tank are offered for Intermediate and Advanced Insurance Receivers. No advance preparation or prerequisites are necessary, as the courses will provide group-live delivery of updates and overviews of knowledge to which insurance receivers are already exposed.

Total number of CPE hours offered: 7.2 CPE • Fields of study offered: Specialized Knowledge & Applications 7.2 CPE

The International Association of Insurance Receivers is registered with the National Association of State Boards of accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual course for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Ave., North, Nashville, TN 37219-2417. Web site: www.nasba.org In accordance with the standards of the National Registry of CPE Sponsors, CPE credits will be granted on a 50-minute hour.

IAIR Members With AIR and CIR Designations

IAIR is very proud of our members who have achieved the AIR and CIR designations. Is you name on this prestigious list? If not, go to http://www.iair.org to find out how you can obtain one of the designations.

Accredited Insurance Receiver
Michael Anderson, CPA, AIR
Richard S. Bakka, AIR
William C. Barbagallo, AIR - Claims and Reinsurance
Jimmy D. Blissett, AIR-Claims/ Guaranty Fund, Accounting/ Financial Reporting and Asset Management
Robert Brace, AIR-Legal
R. Michael Cass, AIR-Reinsurance
Jay Deiner, AIR
Joseph J. DeVito, AIR - Accounting/ Financial Reporting, Reinsurance and Claims/ Guaranty Funds
Robert Fernandez, AIR-Asset Management
Trish Getty, AIR – Reinsurance
David K. Hamilton, AIR - Accounting and Financial Reporting
Robert L. Howe, CFE, CIE, CGFM, AIR
Darwin Johnson, AIR CFE, RPA, MSA
Paula Keyes, CPCU, ARe, AIR, CPIW
Nicholas J. Marfia, CPA, CFE, AIR
Greg Mitchell, AIR – Legal
Francis J. Mulcahy, AIR - Legal
John T. Murphy, Jr., AIR - Claims and Reinsurance
Stephen Phillips, CPA, FLMI, AIR
Mary Cannon Veed, AIR-Legal
Kenneth M. Weine, AIR - Claims/ Guaranty Funds
Barry Leigh Weissman, AIR - Legal and Reinsurance

Certified Insurance Receiver - Property & Casualty
Thomas Crone, CIR-P&C
Charles A. Glass, EA, CIR-P&C
James A. Gordon, CIR-P&C
Robert M. C. Holmes, CIR-P&C
Jo Ann J. Howard, CIR-P&C
Robert Loiseau, CIR-P&C
Jack M. Webb, CIR-P&C
Richard L. White, CIR-P&C

Certified Insurance Receiver - Multiple Lines
Frederich J. Bingham, CIR-Multiple Lines
Jeanne B. Bryant, J.D., CIR-ML
Patrick Cantilo, CIR-ML
Betty Cordial, CIR-ML
Robert Craig, CIR-ML
Richard Darling, CIR-ML
Steve Durish, CIR-ML
Michael J. FitzGibbons, CPA, MBA, CIR-ML
Robert L. Greer, CIR-ML
I. George Gutfreund, CA, CIRP, CIR-ML
Douglas A. Hartz, CIR-ML
Harold S. Horwich, CIR-ML
Elizabeth Lovette, CIR-ML
Michael C. Marchman, CIR-ML
Belinda Miller, CIR-ML
James W. Schacht, CIR-ML
Philip J. Singer, CIR-ML
Harry L. Sivley, Jr., CIR-ML
Karen Weldin Stewart, CIR-ML
Lennard Stillman, CIR-ML
Mark D. Tharp, CPA, CIR-ML
Dan Watkins, CIR-ML
Thomas G. Wrigley, CIR-ML
James M. Young, CIR

Certified Insurance Receiver - Life & Health
Christopher M. Maisel, CIR-L&H
Douglas J. Schmidt, CIR- L&H

News From Headquarters

New Designee - Congratulations to Douglas A. Hartz on the achievement of the Certified Insurance Receiver – Multi Lines (CIR-ML) designation, which was bestowed upon him in June 2006.

Fall Quarterly Meetings - The next quarterly IAIR meetings will be September 8 – 10, 2006 Renaissance Grand in St. Louis, MO. The IAIR Board Meeting will be on Friday, 9/8 from 3 – 6 p.m. The IAIR Roundtable will be on Saturday, 9/9 from 1 – 4:30 p.m. and the Members Only Think Tank will be on Sunday from 8 – 10 a.m. More information will be posted to the IAIR website, at HYPERLINK "http://www.iair.org" www.iair.org, as it becomes available.

IAIR State Training Programs 2006

IAIR is hosting four State Training Programs in 2006. They are:

Wednesday, September 20	New York Liquidation Bureau New York, NY	Open to Receivers Only
Wed./Thurs, Oct. 19 – 20	Ohio Insurance Department Columbus, OH	Open to Ohio Receivers and Regulators Only
Wed./Thurs. Oct. 26 – 27	Florida Department of Financial Services Tallahassee, FL	Open to the Insolvency Community Including Consultants, Receivers, Regulators and Guaranty Funds
Wed., Nov. 1	Utah Insurance Department Salt Lake City, UT	Open to the Insolvency Community Including Consultants, Receivers Regulators and Guaranty Funds

Save the Date - Joint NCIGF/IAIR Seminar - The NCIGF/IAIR Seminar will be on November 2 – 3, 2006 at the Grand America Hotel, Salt Lake City, UT. As more information becomes available, we will post it to the IAIR website.

Our apologies! - The following two Board Members' names were inadvertently excluded from page 4 of the 2006 Membership Directory:

Director - 2006
Francine L. Semaya
Cozen O'Connor
45 Broadway Atrium, 16th Floor
New York; NY 10006
E-mail: Fsemaya@cozen.com

Director - 2007
Harry L. Sivley, Jr., CIR-ML
Regulatory Technologies, Inc.
645 Hembree Parkway, Suite A
Roswell; GA 30076-3868
E-mail: sivley@regtech.net

The International Association of Insurance Receivers would like to thank the sponsors of the 2006 Insolvency Workshop

Bingham McCutchen, LLP

Cantilo & Bennett, L.L.P.

Navigant Consulting, Inc.

Robinson Curley & Clayton, P.C

Sidley Austin Brown & Wood, LLP

Sonnenschein Nath & Rosenthal

Thank you to the sponsors of the June IAIR Reception At the Marriott Wardman Park, Washington, D.C.

American Insurance Management, Wyndmoor, PA

Baker & Daniels LLP, Indiana and Washington DC

Cantilo & Bennett, L.L.P., Austin, TX

Colodny, Fass, Talenfeld, Karlinsky & Abate, P.A., Ft. Lauderdale, FL

Cozen O'Connor, New York, NY

INS Consultants, Inc., Philadelphia, PA

Joseph M. Grochowski Insurance & Reinsurance Consulting & Audting Services

Ormond Insurance & Reinsurance Mgmt. Services, Inc, Ormond Beach, FL

Quantum Consulting, Inc., Brooklyn Heights, NY

Regulatory Technologies, Inc., Roswell, GA

Sidley Austin Brown & Wood LLP, Chicago, IL

And a special thank you to the hosts of the reception

Veris Consulting LLC • Reston, VA