The INSURANCE RECEIVER

Promoting professionalism and ethics in the administration of insurance receiverships.

Volume 10, Number 1 **Spring 2001**

Creditor's Commitees: The Constellation Story

Reider vs. Arthur Anderson LLP: Professional Liability under the Model Insurer Rehabilitation and Liquidation Act

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President's Message

By Liz Lovette, CIR-ML

Many thanks to the Board of Directors for their confidence in electing me President. As those who have gone before me, I am both honored and humbled by the opportunity to further the mission of IAIR. I would like to thank former president, Bob Craig, for his accomplishments and dedication while serving at the helm for the last two years. Many thanks also to retiring Board members, Jim Stinson, Charlie Richardson and Ellen Robinson whose contributions were and continue to be invaluable. On behalf of the association, I extend a warm welcome to the newly elected and re-elected board members: Francesca ("Frankie") Bliss with the New York Insurance Department; Trish Getty with Paragon's Atlanta office; Dan Orth, Executive Director Illinois Life & Health Insurance Guaranty Association; Steve Durish, CIR-ML, Texas P&C Insurance Guaranty Association, and Jim Gordon, CIR-P&C, Maryland First Financial Service Corporation. I would also be remiss if I failed to mention how very grateful I am to Paula Keyes, AIR, whose tireless efforts as IAIR's Executive Director benefit our organization in ways too numerous to count. You are a treasure!

With those accolades being said, allow me to expound briefly on my goals for IAIR. Many of you may recall participating in an open forum discussion at the roundtable in Orlando, Florida (March 1998) in which the topic essentially was "how can IAIR better serve its members?" Utilizing the input and suggestions from that discussion, IAIR's Millennium Committee, charged with the development of a strategic, long- term plan of objectives and goals for the association, developed a survey designed to elicit input on a variety of subjects the results of which would be utilized and form the foundation of an action plan. Members responded enthusiastically. In short, the results indicated that members were concerned with the following: expanding IAIR's accreditation program while promoting its value to those in need of receivership services; being more sensitive to the needs and interests of our expanding international population; increasing membership with an active push to recruit those in the regulatory community; and continuing to offer educational programs reflective of current, cutting-edge issues. Thank you, members, for defining my goals!

I am pleased to report that much progress has been and continues to be achieved thanks to the enthusiastic efforts of many. It truly is an exciting time for IAIR. While pages could be written detailing all that is in the works, in the interest of getting this column to our Executive Director, I am limiting my remarks to an issue near and dear to my heart – accreditation and ethics. I think all would agree that a goal germane to IAIR's existence is the continued promotion of professionalism within the receivership community. For this we have our accreditation programs. Having served on the A&E committee for several years, I can personally attest to the hours spent materially revising the CIR standards, and more recently the AIR standards, whose sweeping revisions were recently approved by IAIR's Board. We now have a product in the AIR designation that is more reflective of the diverse skills of membership, is obtainable by all members, while still succeeding in maintaining the rigorous experience/ educational requirements demanded by our organization.

I'm told that a detailed article or presentation is in the works by IAIR's Vice President and Chair of the A&E Committee, George Gutfreund, CIR-LH, which will detail the changes to the AIR and CIR designation. In the meantime, I encourage all members to visit IAIR's website where the guidelines, standards, and applications for both designations can be found in their entirety. Better yet, come to the next A&E meeting (still better, join the A&E committee!) where members of the committee will gladly answer any

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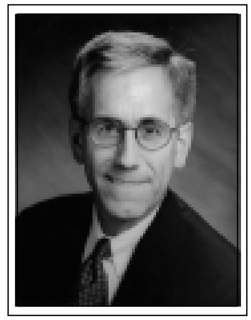
Other News & Notes

By Charles Richardson



The Now Not-So-New Congress

With only six months of a new administration and a new Congress, it's still a little early to predict what is going to happen ultimately on the insurance front. What we do know is that the GOP has control of the House, although the margin is a razor thin – 221 Republicans, 212 Democrats, and 2 Independents. The Senate is 50-50. Two former Insurance Commissioners are in the United States Senate, Bill Nelson of Florida and Ben Nelson of Nebraska. They join former North Dakota Commissioner and NAIC President Earl Pomeroy, who was re-elected in November to the U.S. House of Representatives. What does the turmoil since the election mean for the insurance industry? We can only guess, but here are some random predictions and observations to add to those I made in the last issue.

- The tight margins make it unlikely if not impossible for Congress to address highly partisan issues. Interestingly, two of the hot issues for the insurance industry – privacy and proposals for federal regulation – are not particularly partisan. Is there any issue other than privacy on which Senator Richard Shelby (R?AL) and Congressman Ed Markey (D?MA) agree? Given the public's interest in privacy protections and the fact that it was an issue in many campaigns, it might be an issue on which moderate members of each party find consensus in 2001-2002. If states adopt privacy regulations that differ significantly from the federal rules and among the states, the insurance industry itself might end up pushing Congress to legislate.
- Federal regulation of insurance is a tricky issue and one that members may not want – or be able – to get their arms around in this Congress. However, given that diversified financial holding companies and at least two industry trade associations intend to push forward their proposals for an optional federal charter and that moderate Democrats and Republicans are generally comfortable with advancing financial services modernization, continued hearings are all but guaranteed in the new House Financial Services Committee. It doesn't hurt that Congressman Dingell has long advocated some degree of federal oversight of insurance.
- Pending Department of Labor ERISA rules, HIPAA privacy rules, and the campaign issues of patients' bill of rights and prescription drug cost and coverage make it inevitable that Congress will address health insurance issues. Of course, addressing issues does not mean resolving them. What role will New York Senator Clinton play in this debate now that the pardon controversies are starting to die down?
- Here is an understatement. Predatory lending, consumer access to financial services, tort reform and similar issues are difficult to legislate in a partisan, narrow margin Congress.
- Gridlock on the Hill sometimes creates a vacuum that regulatory agencies are eager to fill. Keep an eye on Treasury and the Federal Reserve Board.

Implementation of HIPAA Privacy Regulations

Secretary of Health and Human Services Tommy Thompson announced on April 12 that HHS will begin the process of implementing the privacy regulations under the Health Insurance Portability and Accountability Act (HIPAA) released by the Clinton Administration in December. Secretary Thompson had indicated just a few days earlier that HHS would likely delay the effective date of the regulations, which had already been delayed once due to the Clinton Administration's failure to submit the regulations to Congress for the statutorily-required 60-day period of consideration. During this consideration period, HHS accepted further comments on the regulations, fueling speculation that the Bush Administration might modify the requirements as released in December. The comment period closed on March 30, and the agency received over 24,000 written comments on the regulations. Secretary Thompson stated that the agency will consider those comments when issuing guidelines on how to implement the regulations. HHS was required to provide standards for the privacy of personal health information when Congress failed to address privacy protection within the deadline set out in HIPAA. Opponents of the regulations claim they may interfere with quality of patient care and will be too expensive to implement at an estimated cost of $18 billion over 10 years.

Japan Woes

The United States has been at relative peace on the insurance insolvency front. Not so abroad. Despite valiant last minute attempts to save it, Chiyoda Mutual Life, one of Japan's largest life insurers, filed for bankruptcy protection last October. It was Japan's biggest post-war bankruptcy. Then, ten days later, Kyoei Life went down, an even larger failure. In March, Japan's 16th largest insurer, Tokyo Mutual Life, followed suit.

As IAIR's membership continues to expand globally beyond our current U.S., Canadian and U.K. membership, we should look for ways to share ideas with our receivership brethren facing challenges in new insolvencies in other countries. The sort of close working relationship between U.S. and Canadian interests in the behemoth Confederation Life insolvency starting in 1994 may need to be repeated in the years ahead in other parts of the world.

IAIR Roundtable Schedule

NAIC Meeting - June 9 - 13, 2001
San Francisco, CA
IAIR Roundtable
June 9, 1:00 - 5:00 p.m.

NAIC Meeting - September 22 - 26, 2001
Boston, MA
IAIR Roundtable
September 8, 1:00 - 4:00 p.m.

NAIC Meeting - December 8 - 12, 2001
Chicago, IL
IAIR Roundtable
December 8, 1:00 - 4:00 p.m.

The
INSURANCE RECEIVER

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

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London Market Run-Off Seminar

By Debra J. Roberts

On May 22, 2001, IAIR held its second annual Spring Event in London, a seminar entitled London Market Run-Off. This event was sponsored by KPMG, DJ Freeman, DLA, and PricewaterhouseCoopers, who hosted the event at their offices at Southwark Towers. Vivien Tyrell , Partner at DJ Freeman and a Director of IAIR, chaired the seminar. This year's event was attended by over 120 people, and the audience included several visitors from the U.S. as well as many attendees from the London insurance industry. The packed room and sophication level of the diverse audience proved the value of the subject matter of IAIR's second foray into London.

The program format consisted of a total of ten speakers in a series of 25-minute presentations. Vivien Tyrell gave opening and closing remarks, and Paula Keyes, Chief Executive of IAIR, gave a short presentation about IAIR at the end of the seminar. The speakers' topics were all timely, covering issues arising from or pertaining to London Market Run-Off.

Tony McMahon, Head of Insurance Solutions, KPMG, began the afternoon's presentations with the topic Looking for the Exit. According to statistics developed by Swiss Re, the current estimate of the size of the worldwide run-off market is $300 billion. While most companies go first into run-off, and then often into insolvency, there are big opportunities in this arena to devise schemes of arrangement. These schemes in the UK can be for both solvent and insolvent companies, and are respected in the US courts, too. If these schemes are developed within a framework of sound strategy, financial models, and with input from all constituents, this approach is a very successful one.

The author, President, Debra Roberts & Associates, spoke on the US perspective of ConvergenceWhat's Working and What Isn't. She was absolutely brilliant, of course. Her topic focused on the alternative risk transfer (ART) market, describing the current status of this market and discussing several types of transactions. The transactions were analyzed according to the soundness of their design, with certain legal cases brought up as examples of ART deals that had gone wrong.

A very useful update on LMP 2001 was provided by Marie Louise Rossi, Chief Executive, International Underwriting Association. Marie explained the current goals of improving three major areas: (1) contract production process, (2) premium collection process, and (3) claims payment process. The goals specifically involve shortening the average number of days to complete each of these three functions. In addition, for claims handling purposes, the intent is to offer a single point of contact for a broker or client, so that communication and claims payments can be more efficient. In general, the overall purpose of these reforms is to enhance the client's experience, retain and increase market share and to serve as a springboard for further change.

The Inter-dependency of the Live Run-off & Liquidated Markets was the topic presented by David McGuigan, Chairman, Association of Run-off Companies; and Claims, Reinsurance and Commutations Manager, Scottish Lion Insurance Company Limited. One of David's major points centered on the negative impact of the slow collection of reinsurance proceeds. As these proceeds are the only source of cash flow for companies in run-off, slow reinsurance payments translates to slow claims

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The English Court Of Appeal Rules On Classes In A Scheme Of Arrangement

By Nigel Mongomery
and Philip J. Singer, CIR-ML

Nigel Montgomery

The use of schemes of arrangement in England over the last ten years has developed largely in response to the failure of procedures currently available under English law to address the particular problems raised by an insurance company's insolvency. Typically, an insurance company will have a large number of unidentified creditors, many of whose claims will be contingent, and to whom it may not be possible to give notice of creditors' meetings.

As many readers will know, schemes of arrangement under section 425 of the Companies Act 1985 (which binds all creditors assuming the correct procedure is followed) are now used to provide an expedited closure for discontinued insurance business and for the effective distribution of assets of insolvent insurers. The use of the scheme itself is very similar in both solvent and insolvent scenarios. However, in the case of an insolvent insurer, an additional technique (the appointment of a provisional liquidator) ensures protection against claims whilst the scheme is being put in place and provides an effective and efficient method of dealing with insolvent insurance companies by avoiding some of the pitfalls of a formal liquidation.

New legislation to be introduced later this year may change this. Under the Insolvency Act 2000, Corporate Voluntary Arrangements (**CVA**) will, for the first time, become binding on all creditors whether or not they had notice of the creditors' meeting and were entitled to vote. However, the Act specifically excludes insurance companies from applying for a moratorium on claims whilst the CVA is being prepared and approved. Insurance companies will also still be prevented from applying for Administration Orders, although section 353 of the Financial Services and Markets Act 2000 allows the Secretary of State to introduce secondary legislation to extend Administration Orders to insurance companies with such modifications as may be specified.

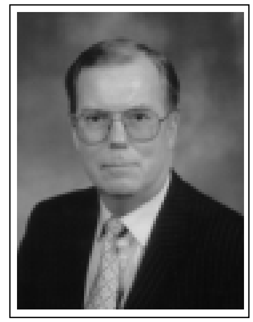
What effect this will have on the current fashion for schemes of arrangement remains to be seen. The process for setting up a CVA is more straightforward than a scheme. However, it may prove easier to get a scheme (which must be approved by the Court before it becomes binding) recognised in other jurisdictions than a CVA (which does not require Court involvement). Although it is anticipated, a timetable for the Secretary of State making Administration Orders available to the insurance industry has yet to be announced.

The Section 425 Procedure

A section 425 scheme will become binding on all creditors or classes of creditors, provided that

- it is approved by a majority of creditors in number representing at least three-quarters in value of the relevant creditor class, and
- it is sanctioned by the Court.

This procedure alone cannot protect an insolvent company from claims brought by creditors whilst the scheme is being drawn up and approved and so it is usually combined with a provisional liquidation. Normally in these circumstances, the company will issue its own petition for a winding up. Provisional liquidators, appointed by the Court, can then obtain a stay of proceedings against the company whilst the scheme of arrangement is drawn up and approved.



Philip J. Singer, CIR-ML

The petition itself is adjourned and, if all goes well, is withdrawn once the scheme is in place.

For both insolvent and solvent schemes, ensuring the scheme is properly approved by the creditors (or by each class of creditors) is vital if the scheme is to obtain the Court's sanction. One particular difficulty is identifying whether creditors have different rights against the company. If so, they should be grouped into separate classes and asked to vote in separate meetings, since creditors with different rights should not be required to vote together in case they might use their voting power to ensure that a smaller, perhaps less favourably treated, group is bound by the scheme.

In a landmark judgement, the English Court of Appeal in *Re Hawk Insurance Company Ltd* [2001] BCC 57 recently provided a clear statement of the principles to be followed and the Court's role in the process.

Background

Although it started life as a motor insurer, poor financial results persuaded Hawk to begin writing long-tail business in 1968. However, its situation did not improve for long. In 1976, it ceased to write any business at all. In December 1995, after its parent company decided it could not provide any further financial backing, Hawk presented its own winding-up petition. Philip Singer and Chris

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The English Court Of Appeal Rules On Classes In A Scheme Of Arrangement

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Hughes, then partners in PricewaterhouseCoopers, were appointed joint provisional liquidators and proposed a scheme of arrangement that was approved, in a unanimous vote, by the creditors.

At a hearing in December 1999, the English High Court declined to sanction the Hawk scheme. Even though all the creditors who voted unanimously approved the proposals, they had done so in a single meeting as though only one class of creditor had been identified. The Judge felt there should have been more than one class and for this reason decided she did not have jurisdiction to approve the scheme. The matter went to the Court of Appeal in December 2000.

Hawk had little money to distribute to its creditors, so the aim was to devise a scheme that would achieve a quick and relatively cheap method of distribution by means of a cut-off or quantification mechanism. The Hawk scheme provided for all claims (including contingent and liquidated claims) to be valued and a dividend to be paid out to creditors as soon as possible.

Hawk's creditors (aside from normal trade creditors) fell into three broad categories

(a) those with claims paid by the creditor but not paid by Hawk (unsettled paid claims)

(b) those with claims reported to the creditor but not yet paid (outstanding losses), and

(c) those with claims, which have been incurred, but not yet reported (IBNR).

Almost all creditors had claims in more than one category. Forty Percent of the creditors, representing 88% in value, had claims in all three.

We took the view that all the creditors, regardless of category, were unsecured creditors of the company and therefore had the same rights and formed one class. Since this was a cut-off scheme, the value of each claim had to be assessed, and in that respect, it was proposed that the various kinds of claims would be treated differently. A figure was to be agreed between each creditor and the scheme administrator or, failing agreement, this would be decided by an adjudicator. That value would then be discounted to reflect the uncertainty of the claim and the early receipt of the money. To avoid lengthy and expensive actuarial calculations, Hawk's Scheme used a simplified weighting mechanism whereby outstanding claims were weighted at 75% and IBNR claims at 50%.

Despite the unanimous vote in favour by Hawk's creditors, and without any objection having been raised subsequently, the High Court Judge felt that creditors with contingent claims were in a different position (and therefore had different rights) from those with accrued claims and that the proposed weighting procedure could create competing interests between them. In her view, there should have been not one meeting, but at least three.

Nevertheless, creditors with claims in all three categories might be said to be in a different position from those with claims in one, or in two. On that reckoning there could have been seven classes of Hawk creditors, each class necessitating a separate meeting. Hawk was a relatively straightforward scheme; imagine the chaos in a more complex situation with numerous classes. The procedure would become, for all practical purposes, unworkable. We therefore appealed against the first instance decision.

The Court Of Appeal Ruling

In his leading judgement in the Court of Appeal, Lord Justice Chadwick reviewed the section 425 procedure. Setting up a scheme is a three-stage process. First comes the application to the Court to make an order for a meeting (or meetings) of creditors to be called. This is the point when the number of classes (and therefore the number of meetings) has to be decided to ensure that all creditors have a proper opportunity to vote on the proposals. The second stage is to hold the meeting(s) and obtain the required majority vote, and the third stage is a further application to the Court to sanction the scheme.

At this last stage, even if the creditors have voted in favour, the Court has the discretion to refuse an order sanctioning the scheme. This provides the necessary safeguard against the oppression of minority creditors who can apply to the Court to prevent the scheme going ahead.

It should be remembered, however, that the Court may not fully address the class issue until the third stage, and if, on the application of anyone affected by the proposals, it decides that distinct classes have not been correctly identified and separate meetings properly held, it will have no jurisdiction to sanction the scheme.

At first instance, the High Court in Hawk decided *of its own motion* (and in the absence of any objection from any creditor) that it should, effectively, change its mind and that the order it had made at stage 1 to call just one meeting, was wrong. This change of heart, the Court of Appeal felt, was unacceptable - and likely to lead to justifiable dissatisfaction.

How, then, to decide on the number of classes? The crucial question to ask is: with whom is the proposed arrangement to be made? In some cases, it will be between the company and *all* its creditors on the same terms and it will be clear that one meeting is appropriate; in others, it will be between the company and more than one distinct class of creditors on plainly different terms, requiring as many meetings as there are distinct classes. More difficult to determine, however, are those cases where what appears at first sight to be a single compromise proves to be, on a true analysis, two or more linked compromises with creditors whose rights put them in separate classes.

On this issue, Lord Justice Chadwick turned to the test question set down by Lord Justice Bowen in *Sovereign Life Assurance Company v Dodd* ([1892] 2 QB 573 at 583), namely: are the creditors' respective rights against the company so dissimilar as to make it impossible for them to consult together with a view to their common interest? The Court of Appeal in both Sovereign and *Hawk* referred to rights and not to individual interests (which may well differ even if legal rights are the same).

The *Sovereign Life* case has been frequently relied on as authority for the proposition that, in insurance schemes of arrangement, creditors whose rights have vested must be in a different class from those whose rights are contingent. However, as Lord Justice Chadwick commented, this may often not be the case. In fact, the circumstances of the scheme in the Sovereign case were so particular that it could only have a limited application as authority for the treatment of vested and contingent rights. Lord Justice Bowen's test on who can vote together, however, is confirmed as settled law.

Lord Justice Chadwick also considered it to be equally important that those whose rights are sufficiently similar to the rights of others that they can properly consult together should be required to do [so]; lest by ordering separate meetings the Court gives a veto to a minority group.

Having analysed the Hawk scheme, the Court of Appeal was satisfied that the creditors did not have different rights. The Scheme was, after all, proposed as an alternative to liquidation. On a winding up, all the creditors would be entitled to submit claims as unsecured creditors of the company. The only difference between them would be that the value of their contingent claims (outstanding losses and IBNR claims) would have to be given a just estimate by the liquidator.

English law and the Insurance Companies (Winding up) Rules 1985 provide that contingent liabilities should be given a just value, but they give no guidance as to how that value should be calculated. The Court of Appeal concluded that Hawk's proposed weighting procedure did not reflect any difference in creditors' rights but only the need to make a just estimate of the value of their claims. Not only that, but (applying the *Sovereign Life* test) the creditors had a common interest in achieving an inexpensive and expeditious winding-up of Hawk's affairs outside a liquidation. Neither the rights released or varied, nor the new rights given under the Scheme, made it impossible for them to consult together, as indeed they had already demonstrated by their unanimous vote in favour.

Conclusion

The Court of Appeal has given clear and much needed guidance, not only for the creditors of Hawk, but also for all of us engaged in drafting schemes for insurance companies. It has also given a strong indication of the way in which the first Court hearing for an order to call the creditors' meeting(s) can be used more effectively to resolve the class issue at the outset.

By Nigel Montgomery a partner in DLA (a leading practice in insurance reconstruction and insolvency) which represented Hawk, and Philip Singer (formerly of PricewaterhouseCoopersand now a director of Tawa Associates Ltd) one of Hawk's joint provisional liquidators.

London Market Run-Off Seminar

payments for the policyholders of run-off companies. He further contends that keeping the run-off market liquid is really in the best interests of the entire market. This issue of slow claims payments by companies in run-off is a critical one that needs more attention and better solutions in order to maintain an acceptable level of service from the market overall.

Two legal presentations followed. First, Nigel Montgomery, Partner, DLA, gave a comprehensive legal update on various London market cases and outstanding issues, including those discussed in his featured article, co-authorized by Philip Singer, appearing on page 5 of this issue of *The Insurance Receiver*. Next, Glenn Brace, Head of APH Claims, Equitas, gave a presentation entitled A London Perspective on Asbestos Claims. Even now, 25 years after the last use of asbestos, the claims are still coming in, and the number of claims is increasing. Most of the new claims are now arising from unimpaired individuals, because the increasing use of inventory settlements in recent years has made it easy for such claims to be submitted. One significant step that Equitas has taken recently is requiring documentation supporting the medical symptoms and that they are the result of asbestos exposure.

Paul Taylor, Head of Run-off Supervision, Insurance Firms Division FSA, spoke about the Impact of Financial Services and Market Act on Run-off Regulation. He began by defining FSA's status as a statutory company limited by a government guarantee. He further explained that the only governmental authority over FSA is limited to its ability to hire and fire the FSA board members. FSA can make its own rules, without further legislation, and therefore will be able to regulate the run-off market in a much more flexible and positive way. FSA cannot, however, interfere with the Insolvency Act provisions as it relates to companies in run-off. Paul mentioned several initiatives still in the works, which he refrained from describing in detail.

Alan Rees, Director, Market Security, Aon, gave a presentation on The Broker's Perspective on Companies in Run-off/ Insolvency. Alan, sensing the possibility of a waning attention span on the part of the late afternoon audience at this point in the program, enlivened his talk with analogies to sex. For example, he proclaimed that the adage prevention is better than conception also applies to companies in run-off or insolvency. On a more serious note, he suggested several actions which could be taken by auditors, regulators and rating agencies that would improve the quality and timing of information available. A final word of advice regarding reinsurance bad debt: know your partner.

After an interesting question and answer session for all speakers, Paula Keyes spoke about IAIR's upcoming tenth anniversary and described the major benefits afforded by membership in IAIR. Vivien Tyrell gave brief closing remarks, and the seminar was adjourned to the cocktail reception.

News From Headquarters

Congratulations!!

Steve Durish

Special Projects Director of Texas P&C Insurance Guaranty Associations

For Being Awarded The Designation of

Certified Insurance Receiver - Multi Lines

A special thank you to our immediate past President, Bob Craig, for serving us for the last two years and to retiring Directors, Charlie Richardson, Ellen Robbinson, and Jim Stinson. You have all contributed immensely to the growth of IAIR and we appreciate your dedication.

A SPECIAL THANK YOU

We would like to thank those companies that served as Patron Sponsors of our quarterly round table and reception held in Nashville during the NAIC Meetings:

Baker & Daniels	**Ormond Ins. & R/I Mgt. Services**
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Mealey Publications, Inc.	**Strook, Strook & Lavan LLP**
Navigant Consulting	**Taylor - Walker & Associates, Inc.**

In Memory of Chuck LaShelle

On April 25, Charles S. LaShelle passed away. Chuck's company, LaShelle, Coffman & Boles, was the administrator of the Texas Life, Accident, Health & Hospital Service Insurance Guaranty Association. Chuck had served as Task Force Chair or Task Force member for the National Organization of Life and Health Insurance Guaranty Associations in some of the most significant multi-state life/health insolvencies in history, including Confederation Life, Thunor Trust, Kentucky Central and Fidelity Bankers. Chuck also served on the Board of NOLHGA.

Chuck was a dedicated lawyer. He held significant management and legal positions in the insurance industry, prior to his service on behalf of the guaranty system in the insurance receivership field. Chuck's contributions will continue to make a lasting impact within the industry. He also sat on several civic and charitable boards in Austin, Texas where he lived. He loved puns and jokes, having no peer as a story teller.

Chuck will be sorely missed by all of us in the receivership business. He had many friends in the receiver, guaranty system and regulator communities who saw first hand how many contributions Chuck made over the years to the well being of policyholders all over the country. IAIR extends our condolences to Chuck's family, friends and co-workers.

Reider vs. Arthur Andersen, LLP: Professional Liability under the Model Insurer Rehabilitation and Liquidation Act

By Hal Horwich

Litigation against accounting and other professional firms has become a common feature of insurance company receivership cases. In many of such cases, the professional firm challenges the receiver's standing to maintain the action. In all of the reported decisions, the receiver has prevailed on the issue of standing. From that perspective, Reider v. Arthur Andersen, LLP[1] is just the latest in a growing line of cases. However, unlike prior decisions, the Court's denial of the defendant insurance company's Motion to Strike was decided under a statute based on the Model Insurer Rehabilitation and Liquidation Act (the "Model Act"). The use of key Model Act sections permitted the court to provide a clear statutory basis on issues which had previously been decided on policy grounds and permitted the court to address new issues with a clear policy mandate stated by Model Act provisions.

Background Of First Connecticut Life Insurance Company

First Connecticut Life Insurance Company ("First Connecticut") was a health and medical insurance company which wrote policies only in Connecticut. At the time of its failure, it had 18,000 members and annual premiums of $7.0 million. First Connecticut was directly and indirectly owned by Robert and Helen Chain. The Chains also owned Capital Benefit Plans, Inc. ("Capital Benefit") which owned stock in First Connecticut and served as its managing general agent. First Connecticut had no employees or operations of its own. Capital Benefit collected all of First Connecticut's premiums and managed all of First Connecticut's affairs. It arranged for the payment of its claims, its agency commissions and its other items of overhead. It also arranged for the management and investment of its funds.

On its balance sheet, First Connecticut carried an account receivable from Capital Benefit which fluctuated, but ultimately became First Connecticut's largest asset. The account receivable was carried as an admitted asset on First Connecticut's books and Arthur Andersen's certified financial statements in 1992 and 1993. In fact, throughout the relevant period, Capital Benefit had no means by which to pay the account receivable and, as a result, First Connecticut lacked the necessary statutory surplus to continue to operate.

Moreover, during the same period, the Chains siphoned millions of dollars out of Capital Benefit for their own personal benefit. As a result, First Connecticut became insolvent. By the time the Insurance Commissioner of the State of Connecticut (the "Commissioner") became aware of the insolvency in 1995, First Connecticut was insolvent by over $8.0 million.

The Commissioner commenced legal action against Andersen based on the audited financial statements which were provided to the Commissioner. The complaint was in nine counts and alleged theories based on breach of contract, negligence, recklessness, fraud and the Connecticut Unfair Trade Practices Act.[2] The Commissioner brought the actions on two separate theories. First, the Commissioner brought the action in the name of First Connecticut. Second, the Commissioner brought the action on behalf of the creditors of First Connecticut. Andersen challenged the legal sufficiency of the Commissioner's allegations concerning standing on both bases.

The Commissioner As Successor To The Company

Model Act Section 24 (A)(14) (codified in Connecticut as Conn. Gen. Stat. § 38a-923(12)) provides in part that the liquidator has the power to continue to prosecute, and to institute, in the name of the insurer (or in the liquidator's own name) any and all suits. Thus, it is clear that the Commissioner as liquidator had standing to bring the action. However, the liquidator standing in the shoes of the company generally takes the claims of the company subject to all defenses which might be asserted against the company.

Generally, a company which has engaged in fraudulent conduct through its officers and directors is estopped from asserting claims against third parties related to the fraud. Cenco, Inc. v. Seidman & Seidman, 686 F.2d 449 (7th Cir. 1982). The reason for this rule is that the knowledge of the officers and directors is imputed to the company, and one party engaged in fraud is barred from seeking recovery from another. However, in Schacht v. Brown, 711 F.2d. 1343 (7th Cir. 1983), the Seventh Circuit determined that the rule did not apply in an insurance company insolvency case. The Court in Schacht held that the estoppel rule did not apply where only management and not the company was being benefited by the fraud. "More colloquially put, if defendants' position were accepted, the possession of such 'friends' as Reserve

1/ George M. Reider, Jr., Insurance Commissioner of the State of Connecticut as Liquidator of First Connecticut Life Insurance Company v. Arthur Andersen, LLP, Case No. CV-98-0151625 S (Conn. Super. Ct. Jan. 31, 2001)(Mem.) Reported in Mealey's Litigation Report; Insurance Insolvency, Vol. 12, #19, March 1, 2001, p. A-1 (hereafter referred to as "Reider").

2/ The Connecticut Unfair Trade Practices Act provides for treble damages and attorney's fees in appropriate cases. See Conn. Gen. Stats. § 42-110, et seq.

(Continued on page 10)

Reider vs. Arthur Andersen, LLP

(Continued from page 9)

had would certainly obviate the need for enemies." Id. at p. 1348. Thus, where the company was damaged by management's fraud rather than benefited by it, the company was held to have standing to pursue claims against third parties.

In the First Connecticut case, Andersen asserted that the exception to the rule established by the Schacht decision should not apply because the Chains were the sole shareholders of First Connecticut and their interests were identical with those of First Connecticut. On this line of reasoning, the alleged fraud not only benefited management, it also benefited the company because management and the company were one and the same. Although several bankruptcy cases lend support to this argument, none of the reported insurance company insolvency decisions directly addressed this issue. In re The Mediators, Inc., 105 F.3d 822 (2d Cir. 1997); FDIC v. Ernst & Young, 967 F.2d 166 (6th Cir. 1992). The Court rejected Andersen's argument concluding that the insurance commissioner had standing to bring an action for fraud based on its duty to the public to maintain insurance company solvency. The Court referred to the Commissioner's statutory authority to intervene in an insurer's financial affairs and quoted at length from the opening sections of the Connecticut Insurers Rehabilitation and Liquidation Act, which follows the Model Act.[3] The Court wrote:

Against this background, the defendant's argument that there is a complete unity of interest between a sole shareholder who loots his own insurance company and the company itself is clearly without merit. The public, through the Insurance Commissioner, has a vital interest in the continuing solvency of the insurer and the right, which it exercises through the Commissioner, to take over the insurer's business activities to protect that interest. Though the Commissioner is not an ex officio member of the insurer's Board of Directors, he is legally empowered not only to participate in, but to control, the insurer's business activities whenever its solvency is threatened. Conn. Gen. Stat. § 38a-916(c).

Therefore, when a sole owner seeks to loot his own insurance company, every person with a legally protected interest in the insurer's continuing solvency is not a knowing and willing participant in the owner's fraud. Like an innocent minority shareholder whose interests in a corporation are harmed by a conspiracy of the other shareholders to loot the corporation for their own private gain, the public is an innocent stakeholder in the solvency of the insurer, with an important, legally protected interest in the company that is materially harmed whenever the sole owner loots the company. Through the Insurance Commissioner, the public can be counted on to take immediate action to preserve and protect its interest in the company's solvency if it ever receives word, from an auditor or otherwise, that those interests may be threatened by a self-dealing owner. Reider at A-20 - A-21.

Based on this reasoning, the Court concluded that the fraudulent acts of the owners could not be imputed to the company because the interests of the Chains were adverse to the "public's enforceable interest in ensuring the insurer's continuing solvency."

While the court did not refer to it in its ruling, the interest of the public in Connecticut is more than an abstract concept. In all states, the interest of the public is to avoid the disruption caused by insurance insolvencies and the expense of insurance department personnel devoting their time to them. In Connecticut, the public bears an additional direct pecuniary interest in the solvency of insurance companies because insurance companies subject to Connecticut state taxes receive a direct reduction in their taxes based on assessments paid to guaranty associations (Conn. Gen. Stat. § 38a-866(h)(1). Thus, the public is deprived of tax revenue as a result of insurer insolvencies.

The Commissioner As Representative of Creditors Generally

The liquidator in Reider asserted claims against Andersen on behalf of policyholders and creditors. Andersen challenged these claims generally on two grounds. First, Andersen argued that such claims belonged to the individual policyholders and creditors and that the liquidator lacked standing to pursue them. Second, Andersen argued that the complaint failed to allege a sufficient legal theory of causation and reliance. The Court rejected both arguments.

In considering Andersen's contention that the liquidator lacked standing to pursue the claims of creditors, the Court cited the provisions of Sections 38a-923(13) and 38a-923(19) of the Model Act (as codified in Connecticut law) which grant the liquidator standing to bring actions on behalf of policyholders and creditors.[4] The court found that "these provisions clearly give the liquidator the broadest possible mandate to recover monies for the estate, for the general benefit of creditors and policyholders." Reider at p. 25. Under prior decisions involving insurer insolvency, the courts have been required to rely on general provisions which require the liquidator to protect the interests of policyholders and the public. Cordial v. Ernst & Young, 199 W. Va. 119, 128, 483 S.E. 248, 256 (W. Va. 1996); In the Matter of Integrity Insurance Company, 240 N.J. Super. 480, 490; 573

[1/] "Sections 38a-903 to 38a-961, inclusive, shall be construed to effect their purpose which is the protection of the interests of insured, claimants, creditors and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through: (1) Early detection of any potentially dangerous condition in an insurer and prompt application of appropriate corrective measures; (2) Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry; (3) Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation; (4) Equitable apportionment of any unavoidable loss; [and] … (7) Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to sections 38a-903 through 38a-961, inclusive, as part of the regulation of the business of insurance in the state. Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern."

[1/] § 38-a-923 provides in relevant part (a) the liquidator shall have the power:…(13) to prosecute any action which may exist on behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer or any other person; … [and] (19) to exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with sections 38a-926 to 38a-930, inclusive; (b) The enumeration in this section, of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do other acts not specifically enumerated, or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

A.2d 928, 933 (N.J. App. 1990); Foster v. Peat Marwick Main & Co., 138 Pa. Cmwlth. 147, 154, 587 A.2d 382, 385 (Pa. Comm. Ct. 1990). While the courts have consistently concluded that the liquidator has standing to pursue claims on behalf of creditors generally, the provisions of the Model Act should eliminate any doubt.

Having concluded that the liquidator has standing to bring an action, the Court then turned to the question of whether the claims asserted were common claims or claims of individual creditors. In analyzing this issue, the Court focused on the allegations that the false financial statements had induced the Commissioner to allow First Connecticut to remain in business and thus accumulate more debt while the Chains continued to loot the company. In deciding that these allegations formed the basis of common claims, the Court wrote:

Importantly, however, each count is based on the same basic claims of causation and harm. Because that harm was allegedly suffered by the estate of First Connecticut, causing a diminution of its assets to the common detriment of the public and all persons generally interested in the insurer's continuing solvency, those claims may properly be brought by the liquidator to recover the lost monies for the estate. Reider at A-27.

Having thus decided that the claims were common to all creditors and could therefore be pursued pursuant to the powers of the liquidator, the Court turned to the question of causation and reliance. Andersen maintained that the allegations of the complaint did not sufficiently allege reliance and causation because the liquidator failed to allege that each policyholder and creditor relied on Andersen's financial statements. Instead, the liquidator only alleged that the Commissioner relied. Andersen argued that such reliance was insufficient because the Commissioner did not sustain any damage from his reliance on the financial statements. In disposing of this argument, the Court again relied on the special role of the Commissioner in the life of an insurance company. The Court wrote:

The Insurers Rehabilitation and Liquidation Act makes it very clear that in exercising these responsibilities, the Commissioner is acting to protect the interests of "insureds, claimants, creditors and the public." Conn. Gen. Stat. § 38a-903. Therefore, when the Commissioner is misled by false reporting not to take action to protect the interest he is bound to protect, those for whose benefit he would otherwise have acted, have also, constructively, been misled, and, more importantly, their vital interest in the solvency of the insurer has been compromised. It takes no leap of logic or departure from law to recognize that misrepresentations which mislead an agent acting within the scope of his duties to the detriment of his principal are fully actionable by the principal on its own behalf. Here, then, the Court is persuaded that the liquidator's claims of harm to the estate of First Connecticut, to the general detriment of its policyholders and creditors, may properly be based on the defendant's alleged misleading of their statutory representative, the Insurance Commissioner, as to the true financial status of First Connecticut. Misrepresentations to him were in sum and in substance misrepresentations to them. Had the misrepresentations not been made, he would have acted in their common interest to shut down First Connecticut before it was further looted and dragged deeper into debt. Reider at A-30 - A-31.

Thus, the pivotal and unique role of the Commissioner in the solvency regulation of insurance companies established by the Model Act provided the link between the misrepresentations made to the Insurance Department and the damage sustained by policyholders and creditors generally.

Conclusion

Several courts have considered the liquidator's right to bring actions against accounting firms. In each of the reported decisions, the Court has found that the liquidator has such standing. Reider v. Arthur Andersen reaches the same conclusion based on the provisions of the Model Act. The provisions of the Model Act provided a clear statutory basis to conclude that the liquidator had standing to bring an action against First Connecticut's accountants in the name of creditors. The provisions of the Model Act also provided the court with a clear statutory statement of policy which permitted the court to permit an action in the name of the corporation notwithstanding that the owners of the corporation were the parties who defrauded it.

Hal S. Horwich is a partner in the national law firm of Bingham Dana LLP (which merged with Mr. Horwich's former firm, Hebb & Gitlin). Mr. Horwich is a member of the firm's financial restructuring department and the head of the firm's insurance insolvency practice. That practice involves representation of receivers and creditors of insolvent insurance companies. It also involves representing insurance companies in other types of insolvency matters. Mr. Horwich is a graduate of Boston University Law School (1978) and Brown University (1975). He has written extensively on the subject of insurance company insolvency.

Meet Your Colleagues

by Joe DeVito

PAULA HOWER CLAUSEN

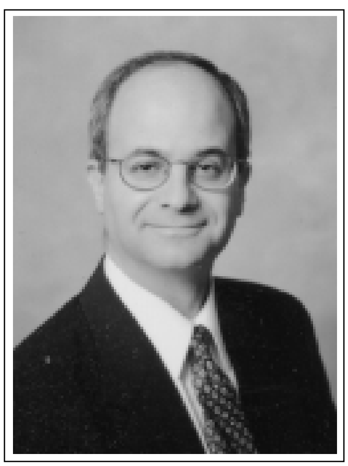
Paula Hower Clausen is Director of the Bureau of Liquidation Claims for the Pennsylvania Insurance Department. In this position she oversees the adjudication of claims, coordinates customer service and handles the records of companies placed into liquidation by the Commonwealth Court of Pennsylvania.

Paula is a career government employee who served under a former Governor as a Legislative Liaison in the Department of Health. She moved onto the Insurance Department as Director of Operations for the Catastrophic Loss Trust Fund, reengineering the processes used to handle and pay catastrophic medical claims. She began her career as a liquidator ten years ago, handling claims against a number of unlicensed health insurers in Pennsylvania. She was instrumental in developing comprehensive software currently used in Pennsylvania to track liquidations. Paula believes her biggest contribution to “liquidations” in Pennsylvania has been streamlining the process and steps necessary to complete the adjudication of claims against companies in liquidation.

Paula is relatively new to IAIR, and has attended a number of IAIR seminars. Paula says she always comes away from the seminars learning something new and valuable.

Paula feels that her education in the "school of hard knocks" has been at least as useful to her than her business education. Paula lives in Mechanicsburg, a suburb of Harrisburg, with her husband, Jens, 16-year-old son, Kyle, and big "yeller" dog, Annabelle. She is active in her church and serves as part of its Stephen Ministry, plays the piano, is an avid reader and relaxes by playing hearts on the Internet.

LEWIS E. HASSETT



Lew Hassett is a partner in the Atlanta, Washington D.C. and Charlotte law firm of Morris, Manning & Martin, L.L.P. He graduated, cum laude, with a Bachelor of Business Administration degree from the University of Miami in 1976 and earned a juris doctorate from the University of Virginia in 1979.

His practice concentrates in litigation and insurer insolvency matters throughout the United States. His litigation/arbitration practice focuses upon insurer/reinsurer disputes, insurer/agent disputes, product claims, business torts and RICO. His insolvency practice includes the representation of receivers, reinsurers, and assuming insurers in life and health and property and casualty insolvencies.

Lew served as counsel to the Georgia receiver in the insolvency of Coastal States Life Insurance Company. He, his colleagues and the receiver guided the receivership through an assumption transaction that protected policyholders, including a large contingent of elderly policyholders holding retirement products. The case spawned an important reported decision in which an appellate court applied the liquidation priority statute to the rehabilitator’s prior agreement to pay a particular claim.

Lew also represented the Michigan receiver of Confederation Life Insurance Company (CLIC) in connection with the rehabilitation of a Georgia subsidiary, Confederation Life Insurance and Annuity Company (CLIAC). CLIAC had a substantial portfolio of structured settlement obligations funded by annuities issued by CLIC. Because both companies were in receivership, a substantial issue arose as to the priority to be accorded the structured settlement annuities. The receivership team was able to obtain the approval of a plan of rehabilitation that preserved full funding of the structured settlement obligations.

Lew is a frequent speaker at reinsurance-related seminars, including the ABA’s Insurer Insolvency Revisited: 1999, Mealey’s 1999 Insurance Insolvency & Reinsurance Roundtable, and the NAIC’s/IAIR’s Insolvency 2000 Workshop-Managed Care: A Different Millennium Bug. He also has published insurance-related articles in various periodicals, including Mealey’s Reinsurance Reports and The Insurance Receiver.

Lew, his wife, Sylvia, and their two children reside in Atlanta where they participate in several organizations. Lew enjoys playing golf and jazz guitar.

ELLEN S. ROBBINS

Ellen S. Robbins is a partner in the Chicago office of the international law firm Sidley Austin Brown & Wood. Ellen has extensive experience in the areas of insurance insolvency and insurance coverage. She has represented the Office of the Special Deputy Receiver in Illinois in connection with a number of estates, primarily in the area of claims handling and resolution. In the course of this representation, Ellen developed summary claims adjudication procedures with a voluntary arbitration alternative, which has helped streamline the process for resolving contested claims against the estate and thus expedite the insolvency proceedings. In addition, Ellen has represented the Utah Insurance Commissioner in connection with the liquidation of Southern American Insurance Company.

In addition to her work in the area of insurance insolvency, Ellen has extensive experience handling complex civil litigation matters, including civil RICO actions and fraud cases, as well as a variety of commercial litigation. She has also been involved in a number of corporate internal investigations.

Ellen has lectured and published several articles on insurance insolvency, insurance coverage and claims estimation. She also serves as an Adjunct Professor at DePaul University College of Law, where she has taught Pre-Trial Civil Litigation Strategy for several years.

Ellen graduated summa cum laude from the University of Illinois with a B.S. in Business Administration, and graduated magna cum laude from Harvard Law School. Prior to joining Sidley & Austin, Ellen clerked for the Honorable Charles P. Kocoras of the U.S. District Court for the Northern District of Illinois.

Ellen enjoys spending her free time playing golf, watching football, working out, and playing with her two pet rabbits, Trixie and Scooter.

LINDA WALKER SPANN

After attending Brigham Young University, Linda began working as an administrative assistant and training coordinator for McDonald's. She became intrigued with liability and the insurance industry. This lead to her attending the NAIC meetings starting in the 1970's. It was at those meetings she was introduced to the "real world" of insurance. Linda learned that insurance companies had to abide by laws designed to protect the policyholder. They had a governing body in each state, and a national organization. Actuaries certified reserves, companies paid claims, made investments, and yes, sometimes went broke.

In 1984 Linda was asked to use her marketing skills to help in establishing an actuarial firm. That company came to be known as Taylor-Walker and Associates. The home office is located in Salt Lake City, Utah with branch offices in Tennessee, Oregon, Colorado, and Illinois. She became Vice President/Marketing.

Taylor-Walker & Associates actuaries have participated on rehabilitation and liquidation projects, including being named Special Deputy Receiver. They have assisted other Special Deputy Receivers with life and health and property and casualty assignments.

Linda has attended SIR and now IAIR meetings since the early 1990's. In 1996 she was asked to serve on the IAIR A&E Committee, where she still participates. During the past four years, the committee has rewritten the CIR and AIR standards as well as approving many applications for these designations. A&E continues to approve applications and work with the marketing committee in promoting the CIR and AIR designations. She keeps saying it is time to resign, but giving up the chance to see other committee members on a regular basis has kept her there.

1996 really was a banner year. (Besides the A&E Committee!) She married Don Spann, Chief Insurance Examiner for the State of Tennessee. Together they have 7 children, and 10 grandchildren. They are fortunate to be able to travel to the NAIC and other insurance meetings together. And the honeymoon is not over. They still golf together!

Receivers' Achievement Report

by Ellen Fickinger

Reporters:
Northeastern Zone - J. David Leslie (MA); W. Franklin Martin, Jr. (PA);
Midwestern Zone - Ellen Fickinger (IL); Brian Shuff (IN);
Southeastern Zone - Eric Marshall (FL);
Mid-Atlantic Zone - Joe Holloway (NC);
Western Zone - Mark Tharp, CIR (AZ); Amy Jeanne Welton, AIR (TX); Melissa Eaves (CA);
International - Philip Singer, CIR (England); John Milligan-Whyte (Bermuda)

Our achievement news received from reporters for the second quarter of 2000 is as follows:

Mark Tharp (AZ) submitted the following information regarding Ameristar Life Insurance Company (Ameristar). On September 2, 1998, an Order of Liquidation in Cause No. CV98-15998 was entered authorizing the Director of Insurance of the State of Arizona, as Receiver, to liquidate the assets and business of Ameristar Life Insurance Company. Pursuant to Order Re Petition No. 6, a bar date for filings claims against Ameristar was set for October 8, 1999. On September 29, 2000, the Receiver filed petition 14, Receiver's Report of Claims and Recommendations Thereon. The Court established November 6, 2000 as the date upon which all objections to the Receiver's Recommendations be filed.

Further, on November 16, 1999, Premier Healthcare, Inc. d.b.a. Premier Healthcare of Arizona (Premier) became subject to an Order for Appointment of Receiver and Issuance of Permanent Injunction issued by the Superior Court of Maricopa County, Arizona. At the time of the entry of the Order by the Court, Premier was doing business with the U.S. Health Care Financing Administration, providing a health care service organization (HCSO) product, known as "Medicare + Choice" plan, to persons entitled to Medicare benefits. Premier also engaged in "commercial", or non-Medicare, business issuing health care plans to various groups in the private market. Premier operated throughout Arizona and as of the date of Receivership had approximately 75,000 enrollees of which approximately 20,000 were Medicare enrollees. Under the Plan for Risk of Insolvency mandated by Arizona statute, the Receiver has paid nearly $13.5 in benefit payments on behalf of its former members for claims incurred post-receivership. All 75,000 members of the insolvent HCSO were transferred to alternative carriers on or before April 30, 2000.

On August 24, 2000, the Court entered its Order regarding Petition No. 26, Petition for Order of Liquidation and Order Establishing Claims Bar Date and Approval of Receiver's Recommended Claims and Notice Procedures whereby a bar date of December 29, 2000 was set for the filing of all pre-receivership claims.

Victoria Kliner (FL) reported that the Florida Department of Insurance, Division of Rehabilitation and Liquidation placed the Florida Employers Safety Association Self Insurance Fund (FESASIF) into liquidation on October 22, 1996. Upon the department's appointment as Receiver, litigation commenced to recover $3.5 million paid to Mr. David Sanz who was the Chief Operating Officer and sole shareholder of Gulf Atlantic Management Company (Gulf Atlantic), the management company that contracted with FESASIF. Mr. Sanz claimed this amount reflected commissions that had been accruing over the life of the fund. The Receiver demanded the $3.5 million from Sanz claiming it as a voidable and preferential transfer under Florida Statutes. A two week trial was held September of 2000 at which time judgment was entered against Mr. Sanz and Gulf Atlantic for the entire $3.5 million. A special provision of the Florida receivership statutes allows the Receiver to also recover its attorney fees, investigative costs and other collection costs.

We continue to receive reports from **Mike Rauwolf (IL)** on American Mutual Reinsurance, In Rehabilitation (AMRECO) and Centaur Insurance Company, In Rehabilitation, two companies currently under OSD supervision. AMRECO continues to manage the reinsurance run-off of their business. Total claims paid inception to date; Loss & Loss Adjustment Expense $30,449, Reinsurance Payments $134,969,290 and LOC Drawdown disbursements $9,613,386. Centaur, managing the run-off of their business, reports total claims paid inception to date; Loss & Loss Adjustment Expense $52,466,836, Reinsurance Payments $4,945,493 and LOC Drawdown disbursements $13,876,555.

As reported by **Dan Watkins (KS)**, the West General Insurance Company, In Liquidation distributed $2,792,112 representing a 54.4% distribution to Class 3 non guaranty fund policyholder claimants during the quarter ended September 30, 2000. Guaranty Funds received a 40% initial distribution from this estate during the quarter ended December 1999 and are scheduled to receive an additional 14.4% distribution during the second quarter of 2001.

Continuing collection information from **James A. Gordon (MD)** for Grangers Mutual Insurance Company indicates collections during the third quarter of 2000 totaled $136,781.31.

Further updates on the progress of Fidelity Mutual Life Insurance Company (FML), In Rehabilitation, were received from **Frank Martin (PA)**. As of 11-30-00 FML showed a statutory surplus in excess of $112,000,000 after reserving for all policyholder and creditor liabilities. The surplus declined slightly from September of 2000 because we booked the liability for the $70 million policyholder dividend and $15.5 million in interest credits approved by the Court for payment in 2001.

When FML was placed in rehabilitation on November 6, 1992, the Commonwealth Court imposed a moratorium on cash surrenders, withdrawals, policy loans and other contractual options. Death benefits continued to be paid and dividends continued to be credited. The moratorium was imposed to stop the run on the policies that threatened FML's solvency and to permit financial rehabilitation. Since 11-6-92, the Rehabilitator has petitioned the Court 5 times to modify the moratorium to allow the exercise of various policyholder options and to allow access to limited amounts of cash.

On Friday, January 26, 2001 the court appointed Policyholder Committee filed a "Petition of Policyholders' Committee for Order Terminating Restrictions on the Exercise of Contract Rights and Request for Hearing." In effect, the petition asks the Court to lift the moratorium on policy surrenders and withdrawals and restore all contract rights after notice and an opportunity to be heard. The Rehabilitator and her counsel reviewed the PHC petition and determined that it was necessary to respond to the PHC petition because that petition did not take into account some serious issues as to the timing of terminating the moratorium and did not provide similar relief for creditors. The Rehabilitator's response was filed on February 20.

The Rehabilitator agrees in principle that the moratorium on policy surrenders and withdrawals can and should be lifted and consequently, the Rehabilitator proposed her own petition for terminating the moratorium effective approximately one month after preliminary approval of the Third Amended Plan. The Rehabilitator had been considering complete termination of the moratorium and believes that it is financially feasible. However, the Rehabilitator disagrees with the PHC on the timing of the termination.

The differences between the two petitions are:

The Rehabilitator believes that it is important to preserve the value of the FML business by minimizing the number of policyholder surrenders. This will:
- provide more security for continuing policyholders;
- help maintain the value of stock in the new company; and
- make the company more attractive to investors.

The Rehabilitator is advised that more policyholders may choose to surrender if the plan of rehabilitation has not been approved by the time the moratorium is lifted. Conversely, the Rehabilitator is advised that fewer policyholders may choose to surrender of they know that the plan has already been approved and can be implemented.

The Rehabilitator does not want policyholders to make a financial decision without adequate information. It will be several months after the Record Date before information will be available about the number of shares allocated to individual policyholders. If policyholders are permitted to surrender before the Record Date, they will not know how many shares of stock they may be forfeiting and they will be making a decision without adequate information.

The Rehabilitator is advised that if policyholders are permitted to surrender before the Record Date, it may be necessary to redo the actuarial calculations for allocating stock based on contribution to surplus, which could take up to six or seven months.

If the moratorium is terminated prior to the Record Date, there may be adverse tax consequences to FLIC and to policyholders, depending on how many policyholders surrender. One consequence could be that the stock distributed to the policyholders, as mutual members would be taxable when received. Another consequence could be that the assets transferred to FLIC would have to be recorded on FLIC's books based on the current market value rather than the book value when transferred. In order to protect against such consequences, it would be necessary to obtain a ruling from the IRS, which could take as long as 6 months. Consequently, we would be terminating the moratorium without knowing the tax consequences.

Creditors have also been required to wait for their claims to be paid when goods or services may have been provided years ago. They should also be able to receive payment for their claims.

The PHC also objected to the notice of moratorium termination proposed by the Rehabilitator. The Rehabilitator proposed that notice of the filing of the PHC petition and the Rehabilitator's response be sent to all policyholders because, depending on the level of shock surrenders, the value of the company could be negatively effected which would devalue the stock to be allocated to mutual members (policyholders) under the Third Amended Plan. The PHC responded that notice of the two petitions did not need to go to all policyholders because it could only benefit them.

On February 5, 2001 the Rehabilitator filed a petition to modify certain provisions of the Third Amended Plan and related documents in order to satisfy several of the objections filed by the PHC to the Third Amended Plan. After the notice and objection period runs for this petition, the Rehabilitation will request a schedule from the Court to brief the remaining objections that could not be resolved.

(Continued on Page 16)

RECEIVERS' ACHIEVEMENTS BY STATE

(Continued from Page 15)

Illinois (Mike Rauwolf, State Contact Person)

Use and distributions made to policy/contract creditors and Early Access

Estate	Loss and Loss Adjustment Expense	Reinsurance Payments
Alliance General	3,543	0
Amreco		1,211,871
Back of the Yards	182,563	0
Centaur	731,256	0
Coronet	341	0
Illinois Insurance Co.	125	0
Pine Top	506,075	0
Prestige	40	0
State Security	3	0
Security Casualty	16	0

Kansas (Daniel L. Watkins, State Contact Person)

Use and distributions made to policy/contract creditors and Early Access

Receivership	***Amount***	
West General Ins. Co., In Liquidation	$2,792,112.00	(PH 54.40%)

Maryland (James A. Gordon, State Contact Person)

Use and distributions made to policy/contract creditors and Early Access

Receivership	***Amount***	
Grangers Mutual Ins. Co.	$ 1,430.55	(MD)
	$10,359.25	(DC)
	$ 759.00	(GA)
	$ 143.00	(VA)
	$ 1,094.00	(NC)
	$ 1,799.00	(TN)
Total	**$15,584.80**	

New York (F.G. Bliss, State Contact Person)

Use and distributions made to policy/contract creditors and Early Access

Receivership	Security/ Guaranty Funds	Policy/Contract Creditors	Other Creditors	Total
Consolidated	$197,045.00	$0.00	$0.00	$197,045.00
Cosmopolitan	$151,172.00	$0.00	$0.00	$151,172.00
Dominion	$0.00	$0.00	$42,252.00	$42,252.00
Horizon	$153,661.00	$0.00	$0.00	$153,661.00
Ideal Mutual	$1,432,465.00	$0.00	$0.00	$1,432,465.00
Interamerican Re	$144.00	$12,858.00	$4,081,172.00	$4,094,174.00
Long Island	$22,825.00	$0.00	$0.00	$22,825.00
Whiting	$12,369.00	$0.00	$0.00	$12,369.00
Total	$1,969,681.00	$12,858.00	$4,123,424.00	$6,105,963.00

North Carolina (Boyce Oglesby, State Contact Person)

Use and distributions made to policy/contract creditors and Early Access

Receivership	*Amount*	
Twentieth Century Life Ins. Co.	$1,000,000.00	(EA - NC LH IGA)

PRESIDENT'S MESSAGE

(Continued from page 2)

questions pertaining to the designation program.

I also share the desire of members to have designations that not only reflect relevant skills but that also have real, tangible value by virtue of being valued by those who seek receivership services. While much energy has been placed on the first desire, woefully little has been directed toward satisfying the latter need. It is my belief that if IAIR's designation program is ever to be fully embraced by membership, our focus now must begin a shift to promoting the recognition and value of the designations to potential employers. Enter the Marketing Committee. I am very pleased to announce that IAIR has been invited to speak at the closed meetings of the Midwestern, Western and Northeastern Zones at the upcoming Summer NAIC. I believe this is IAIR's first opportunity to apprise not one, not two, but many commissioners of its purpose as a professional organization dedicated to "promoting professionalism and ethics in the administration of insurer receiverships." While our presentation time is brief, certainly a point of focus will be our designation program. With this entrée, it is our hope that follow-up communication with commissioners can be facilitated perhaps leading to additional opportunities to further educate commissioners and others about IAIR, its purpose and objectives.

As I stated earlier, I am so very proud of IAIR's accomplishments and excited about the direction of the organization. While some may feel we are not moving fast enough or are taking "baby" steps in reaching goals, I feel compelled to remind everyone that change cannot occur overnight; it certainly can't occur without your help and without the type of personal investment necessary to secure. The impassioned plea for participation continues. . .in the words of former President Craig, **GET INVOLVED !**

Creditors' Committees: The Constellation Story

by James Veach

In the Insurance Receiver's Fall issue, Thomas W. McCarthy argued in favor of creditors' committees, even going so far as to state that the desirability of creditors' committees is manifest. T. McCarthy, Creditors' Committees in U.S. Insolvencies - The Wave of the Future? (Only if Creditors Demand It!) at 18. In the Insurance Receiver's Spring Issue, Douglas Alan Hartz replied. He maintained that while an appropriately representative creditors' committee might be useful to assuring that all of the (estate's) sometimes very divergent interests are fully considered, there were sound public policy considerations against allowing a committee of creditors to supplant the state's role in liquidations. D. Hartz, Creditor Committees, Constituencies, and Constitutions at 11, 18.

Messrs. McCarthy and Hartz began their articles with extensive disclaimers. Let me do the same and stress that the following comments don't necessarily reflect the views of any past or present clients, including the receivers of two estates our firm represents. These comments may only be attributed to the author.

McCarthy wrote that with the exception of a recently formed creditors' committee for the Transit Casualty estate and the Mutual Fire rehabilitation, he was not aware of any other formally designated creditors' committee in a U.S. insolvency proceeding. In fact, in 1992 New York Supreme Court Justice Walter M. Schackman recognized a creditors' committee in conjunction with proposals to reorganize Constellation Reinsurance Company of New York (Constellation).

Peter Bickford (now with Cozen & O'Connor's New York office) and I served as co-counsel for the committee. What follows is a recollection of how the committee worked and what it accomplished. I've related my experience with Constellation to some of the arguments and observations advanced by Messrs. McCarthy and Hartz.

Constellation

In early 1986, the New York State Superintendent of Insurance moved to liquidate Constellation, a professional reinsurer. Constellation ceased paying claims and was eventually placed in liquidation in February 1987. Constellation's property included liquid assets that eventually totaled about $190,000,000.

Constellation's Liquidator first made a commutation-type proposal to Constellation's ten largest creditors. A Deputy Liquidator met with these creditors, addressed their concerns and questions, and sought support for a commutation. Great American Insurance Company, a former Constellation owner, and the estate's largest debtor and largest creditor, participated in this process. Separately, Great American obtained permission to review Constellation's books and records in anticipation of making its own purchase and assumption proposal. In late 1989, Justice Schackman directed the Liquidator to solicit requests for proposals from other interested bidders.

In its order directing the Liquidator to solicit bids for the estate, the Court observed that a philosophical divergence of opinion had emerged between the creditors and Constellation's liquidator. Creditors favored something akin to the Great American proposal, while the Liquidator advocated a commutation plan, which Justice Schackman characterized as lacking support in the absence of current and complete financial records. In Re Liquidation of Constellation Reinsurance Company, Index 43178/86, slip op. at 4 (November 20, 1989). The Court also strongly suggested that the Liquidator meet with the creditors to explore various workout options. Id. The Court's suggestion led to the formation of an *ad hoc* creditors' committee.

Great American responded to the Liquidator's request for proposals. The *ad hoc* committee commented on Great American's plan, as did the Liquidation Bureau, and various objections and questions were raised. The Bureau required additional information from Great American, as did creditors, i.e., ceding insurers, who had grown impatient for an early dividend or distribution. The Liquidator appeared to be abandoning his commutation plan, but was unhappy with Great American's proposal.

In early 1990, the *ad hoc* committee moved to be officially recognized. The Liquidator opposed the motion, largely on the ground that the liquidation court lacked the statutory authority to create a creditors' committee. In ruling on the motion, Justice Schackman noted that the only reference to a creditors' committee in the New York Insurance Law concerns a committee of creditors convened at the Superintendent's request to purchase an insolvent company's assets. NYIL 7428(d). Constellation's creditors weren't seeking to purchase Constellation's assets, but instead sought to: (1) be a conduit for information between the creditors and the liquidator; and (2) participate in the negotiation of any proposal to reorganize Constellation.

Not only was there no New York statutory authority for the appointment of a creditors' committee, New York courts had held that a liquidation court may veto an action of the liquidator but cannot compel it. In Re Lawyers' Mortgage Co., 293 N.Y. 159, 162, 56 N.E. 305 (1944) citing Matter of Casualty Co. of America (Rubin Claim), 244 N.Y. 443, 449, 155 N.E. 735, 736 (1927)(Cardozo, C.J.). Indeed, Lawyers Mortgage arose from an insolvency in which the Superintendent had originally formed a creditors committee while the company was in rehabilitation, but then refused to follow one significant part of the committee's reorganization plan after the company was liquidated. The New York Court of Appeals held, nevertheless, that the lower court could not order the Liquidator to abide by the terms of the committee's original plan.

The *ad hoc* committee also moved, pursuant to CPLR § 3104, for the appointment of a referee to oversee bids being submitted for the Constellation estate.

Section 3104 is a broad disclosure statute that allows the trial court to supervise discovery. The Court denied the committee's request for a referee on the ground that it was premature and appeared to impinge on the prerogatives of the Liquidator to manage the estate and formulate a plan for reorganization or dissolution. However, the Court did recognize the creditors' committee, relying on Section 3104. Slip op. at 7.

Justice Schackman found that a creditors' committee would simplify the Liquidator's task by relaying information on any proposal to creditors and responding on its constituents' behalf. The Court believed that this should facilitate the evaluation of any plan and move things along in a more orderly manner. In Re Liquidation of Constellation, Index No 43178/86 at 7 (July 13, 1990). The court directed that all communications to creditors as a group go through the creditors' committee, which was charged with the responsibility for conveying this information to its constituent members and forwarding members' communications to the Liquidator. The committee could not manage assets of Constellation or otherwise interfere in the Liquidator's management of the Estate, but would serve as a go-between for Constellation's creditors. Slip op. at 7-8.

The Constellation Creditors' Committee

The committee's membership fluctuated and included attorneys for ceding companies, non-lawyers from the cedents themselves, and representatives from at least two reinsurance intermediaries. In addition, several ceding companies with substantial claims against the estate asked to be copied on reports, but were never added to the committee's membership. None of the committee members and neither of the committee's co-counsel were paid by the estate. Nor was the committee reimbursed for photocopy, Federal Express, or other out-of-pocket expenses incurred over the following two years.

The committee had been led to believe that Constellation had about two hundred ceding companies and fifty or sixty retrocedents. Once recognized by the Court, the committee obtained from the Liquidation Bureau a list identifying 2,200 cedents, retrocessionaries, or other Constellation creditors. The committee asked the Liquidator for contribution to the cost of communicating with these parties, but throughout the proceeding the Liquidator insisted that the committee bear the cost of reporting to other creditors.

The creditors' committee reviewed the Great American proposal and addressed specific questions with its counsel. Meanwhile, in January 1991, Centre Reinsurance Company of New York asked permission to submit a proposal to reinsure the entire estate pursuant to a 100% quota share contract, pay all bona fide claims in full, and remove Constellation from liquidation. The creditors' committee met with Centre Re and asked that its counsel draft reinsurance documents to implement the proposal. The committee also obtained from counsel for the Liquidator copies of an actuarial review of Constellation's business and the reinsurance proposal from Centre Re.

The committee collected members' comments on the Centre Re proposal and wrote to Centre Re, Great American, and the Liquidator. The committee then reviewed Centre Re's revised reinsurance documents, proposed order, and runoff management agreement and met with the Liquidator and his counsel, and Centre Re.

As the negotiations moved forward in March, April, and May, the committee arranged for weekly conference calls among the Court, counsel for the Liquidator, Centre Re, and Great American. Transcripts of the calls were provided to members of the committee who could not participate. The committee sought specific changes to the reinsurance agreement and the Court's proposed order approving the plan. These changes included:

1. A revised definition of business covered by Centre Re's 100% quota share contract;

2. A clearer definition of effective date for the treaty given a nine-month waiting period contained within the proposed order;

3. Clarification as to which of two options the committee preferred with respect to expanding a cap on liability for the quota share; and

4. Specific requests to revise or amend the quota share contract with respect to currency, reserves, direct payments, and the arbitration clause.

The committee requested several changes to the proposed order dealing with the court's retention of jurisdiction, revesting of the estate's property if Constellation failed again, and disposition of non-insurance claims against the estate. The committee also asked for changes in the run-off service agreement.

Three of the committee's most significant requests were granted. The reinsurance quota share was revised with respect to: (1) the definition of a covered business; (2) handling cut-throughs nature in any arbitration proceedings commenced by cedents against the revived Constellation; and (3) the expansion of the reinsurance limit.

The Court directed that notice be provided to all of Constellation's cedents, retrocessionaires, and non-insurance creditors. The notice called for objections to be filed prior to a July 2, 1992 hearing on the proposed plan. While the committee took no official position on the proposal, it did coordinate responses from the committee members. In addition to many statements supporting the plan, the committee addressed issues raised by the handful of ceding companies that filed objections. All of the objections, save those from Great American, were withdrawn before the hearing.

At the hearing, Justice Schackman noted that the committee's counsel and the committee itself had been "very helpful . . . as part of the operation here." The Court appreciated that counsel for the Liquidator, Centre Re, and the creditors' committee had worked together to devise a plan to bring Constellation out of liquidation. Staff counsel for the Liquidator, however, had the last word. He wanted to "dispute" the creditors' committee's contribution to the process so as not to "set precedent" in favor of future committees. Transcript of July 2, 1992 hearing at 23. For an account of the July 2, 1992 hearing, see Constellation Re

(Continued on page 20)

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(Continued from page 19)

Reorganization Under Quota Share; Plan of Centre Re of New York Nears Final Stage; Judge's Approval is Expected, Insurance Advocate, July 11, 1992 at 3.

Justice Schackman approved the reorganization plan in an order entered on July 13, 1992. Judge Approves Constellation Re Plan, Mealey's Litigation Report: Insurance Insolvency, July 15, 1992 at 17; Constellation Re Taken By Centre Re in Reorganization, National Underwriter, July 27, 1992, at 2. Centre Re's quota share treaty was executed on September 28, 1992. In early 1993 Constellation resumed paying claims and remains solvent today.

Lessons Learned

Can the lessons learned in the Constellation insolvency be profitably applied to other insolvencies? Put differently, does Constellation support McCarthy's position that creditors' committees in insurance insolvencies are the "wave of the future", or does Constellation demonstrate that a committee's role can never supplant the domiciliary insurance receiver and it should act (at most) as part of a system of checks and balances, as Hartz suggests? A good argument could be made that the Constellation story supports both positions.

As McCarthy points out, one of the "most frequent complaints" heard about insolvent estates concerns the "failure to pay dividends quickly and regularly." The delay in distributing Constellation's assets certainly motivated the Constellation creditors' committee. The committee continually pressed for a decision on the competing proposals and constantly urged the Court to expedite the liquidation proceedings.

McCarthy is probably correct when he writes that the courts might actually be more open to innovation than statutory receivers. That was certainly the case in Constellation. The liquidation court, in response to creditors' complaints about foot-dragging and delay, first suggested the formation of a creditors' committee, and later recognized it. It is my understanding that the liquidation court in Transit Casualty encouraged formation of the creditors' committee referred to in McCarthy's article.

McCarthy notes that investment policy is usually dictated by statute and that estates often wind up with assets that are too conservatively managed. McCarthy at 15. Hartz also sees creditors' committees as the logical place to turn if the liquidator were faced with a loss on highly leveraged and speculative investments and needed to meet a cash call. Constellation supports the point that creditors' committees can contribute in determining the investment policy of the estate during the runoff.

Before the Constellation transaction closed, Centre Re and the Liquidator sought the Court's permission to take some of Constellation' assets out of New York bank accounts and invest them in A-rated bonds and U.S. Treasury Bills. J. Veach, Assets of Constellation Reinsurance Invested in Anticipation of Centre Re Takeover, Mealey's Litigation Reports: Insurance Insolvency Vol. 4, No. 8 at 20 (September 16, 1992). The creditors' committee knew that Constellation's assets were being held in New York bank accounts pursuant to NYIL § 7424. The committee also knew that the Centre Re plan incorporated a nine-month waiting period and that investment income was one of the factors that increased the quota share contract's liability cap. As a result of this prior knowledge, the committee didn't object to Centre Re's request, which was granted.

In the same issue of the Insurance Receiver that contains Hartz's article, Phil Singer writes about the differences between insurance insolvency here and in the U.K. Mr. Singer sees the absence of creditors' committees in U.S. insolvency proceedings as a very significant difference between these two systems, and one that frankly surprises (him) in view of the U.S. desire both for democracy and representation. Singer, Insurance Insolvency in the United Kingdom and the United States Compared and Contrasted, Insurance Receiver, Winter 2000 at 22. Singer observes that UK creditors' committees are very cost-effective exercises for the simple reason that committee members aren't paid. Singer at 22. If memory serves, counsel for the cedents' and policyholders' committees in the Mutual Fire rehabilitation were paid out of the estate's assets. In Constellation, members of the committees, most of whom participated through their attorneys, were not paid by the estate. Ceding companies on the committee absorbed these costs.

In Constellation, some of the largest creditors elected not to participate on the committee, but reaped the benefits of changes that the committee advocated. Perhaps virtue, and the right to participate in how Constellation was reorganized, was its own reward, but it is ironic that creditors who benefited the most from changes in the Centre Re proposal often did the least.

Hartz observed that an insurer receivership is a broad use of the state power that may not be delegable. Hartz at 11. To a certain extent, the Constellation experience is consistent with the notion that responsibility for wrapping up an estate can't be delegated. The Liquidator and the liquidation court remained in charge of the estate until the Centre Re plan was approved. With the Constellation reorganization plan thus completed, a private party assumed responsibility for the runoff.

It's often pointed out that many insurance insolvency provisions are derived from the U.S. Bankruptcy Code. The Code, of course, allows for creditors' committees. 11 U.S.C. § 705, 1102. While a Chapter 7 creditors' committee isn't mandatory, Bankruptcy Courts must recognize a duly selected Chapter 7 creditors' committee. In Re Federation Workers Credit Union, 354 F. Supp. 1206 (N.D. Ohio 1973).

The role of a Chapter 11 creditors' committee is far greater than merely serving as a "conduit" for information. 11 U.S.C. § 1103; see In re Daig Corp., 17 B.R. 25 (D. Minn. 1981). Although the difference between U.S. Bankruptcy and U.S. insurance insolvency proceedings is beyond the scope of these comments, its curious to see specific statutory authorization for creditors' committees in the Code, but not find a similar provision in

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state insurance insolvency statutes.

Conclusion

The Constellation creditors' committee came recently to mind with respect to a petition filed by the Liquidator of Midland Insurance Company to approve an Aggregate Reinsurance Agreement between the Liquidator and National Indemnity Company (NICO) of the Berkshire Hathaway Group. Under the proposal NICO will pay a 32% Guaranteed Dividend for each claim allowed in the Midland proceeding. A copy of the order to show cause and proposed agreement may be found in Mealey's Insurance Insolvency, Vol. 12, No. 21. No *ad hoc* creditors committees have sprung up to address the order to show cause, which is returnable on June 11, 2001 in the same court that conducted the Constellation hearing.

In the Constellation case, the creditors' committee worked with the parties to the proposed transaction, supported the plan, and addressed the few objections that were filed but ultimately withdrawn. The committee's work paid off not only with respect to specific changes made in the reinsurance contract and related agreements, but also in gathering support for the proposal when it was finally submitted to the Court for approval. It will be interesting to see if the Midland hearing goes as smoothly.

McCarthy writes that only creditors can overcome resistance to creditors' committees. That may be true, but the Constellation experience, I submit, was good for not only the creditors, but the assuming reinsurer and Constellation's Liquidator as well. Constellation was not so unique that the lessons learned in that estate can't be applied elsewhere, regardless of how insistent creditors become.

James Veach is a partner with the New York office of Mound, Cotton, Wollan & Greengrass. A member of IAIR since 1991, Mr. Veach focuses his practice on reinsurance, insurance coverage, and insurer (and reinsurer) insolvency. He served as co-counsel for the Constellation Creditors' Committee.

"Reserve The Date"

INSOLVENCIES OF THE NEW MILLENNIUM: **Comparing the Legal Issues of the Last Twenty Years with the Next:** The NCIGF Legal Seminar has been scheduled for August 23-24, 2001 at the Hyatt Regency Hotel, Fishermans Wharf, San Francisco. An agenda for this meeting is posted on our web site at www.ncigf.org. Click on meetings; then click on NCIGF Legal Seminar Agenda.

AUDIENCE & SPEAKERS: This Seminar is of interest to guaranty fund managers, attorneys with an insolvency or guaranty fund practice, receivers and others who are involved in insurance insolvency matters or who would like to know more about this topic. Presenters will be lawyers and other professionals with extensive experience in these areas.

CONTINUING LEGAL EDUCATION: This program is expected to qualify for Continuing Legal Education credit. The requisite forms will be available at the seminar.

To assist in estimating the number of attendees we ask that you indicate your interest in attending this seminar by notifying by telephone, fax or email Kelly Barr, National Conference of Insurance Guaranty Funds, 10 West Market Street, Suite 1190, Indianapolis, IN 46204, Phone: 317-464-8187 Fax: 317-464-8180, Email: kbarr@ncigf.org Please include your name, address and phone number in your fax or email. Registration material will be forwarded to you in mid June. ***Please pass this information along to others you feel may be interested in attending this seminar.***

IAIR - Then And . . . . .

Do you remember these members/speakers and the events where the pictures were taken? In ten years, IAIR has hosted a lot of roundtables and educations seminars? Please e-mail your guess on who/where these are to IAIRhq@aol.com. (We will let you know if you are the winner!!!)

Now . . . . . .

Debra Roberts (speaker), Philip Singer (co-host), and Vivien Tyrell (co-host) enjoy a laugh at the speaker's dinner.

Nigel Montgomery (co-host and speaker)

Time for some networking after the presentations.

The participants enjoy some refreshments and conversation after the seminar.

Mark Your Calendars! IAIR is planning a dinner on Saturday, December 8, 2001 in Chicago to celebrate our 10th Anniversary. We will give you more information as it becomes available, but we are planning a fun-filled evening as we look back over our accomplishments of the past ten years and as we look into the future to see where we want to go. Plan on joining us on this very special journey.

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