Society of Insurance Receivers

Winter 1995 NEWSLETTER Vol. 4, No. 1

Inside this issue

An Overview of Reinsurance Arbitration

By: Larry P. Schiffer, Partner, *Werner & Kennedy*

In the world of reinsurance, arbitration is the dispute resolution method of choice. This is because arbitration allows the parties to present their dispute to a panel of industry experts who will decide the case based on custom and practice in the industry and their common sense knowledge of how the matters in dispute should be resolved. The reinsurance industry prefers to have insurance and reinsurance experts making determinations that may affect future industry practice.[1]

Arbitration is favored because the process may be structured to fit the peculiarities of each dispute. Arbitration panels are mobile and the presentation of the case is adaptable to the circumstances. This should make arbitration faster and cheaper than litigation.[2] While this may not always be true, most cases will be heard by an arbitration panel somewhat faster than if the dispute was in court. Also, because of the flexibility of the process, many arbitrations cost less than litigation.

Arbitration finds its validity in contract. Nearly every reinsurance treaty, and many certificates of facultative reinsurance, contain an arbitration clause in the contract wording. Without an arbitration clause, there can be no arbitration unless the parties voluntarily agree, in a separate writing, to submit the dispute to arbitration.[3]

There is no standard reinsurance arbitration clause. Different companies use different clauses, which often are based on past practices and repeated re-use and re-writing of contract wordings drafted many years ago. Reinsurance intermediaries, who generally play the role of contract draftsperson for the broker market when placing quota share and excess of loss treaties, tend to have their own standard arbitration clauses.

However, there are common elements usually seen in a typical reinsurance arbitration clause. Foremost is the provision for the appointment of three arbitrators. Generally, each party is permitted to appoint its own arbitrator. The two "party-appointed" arbitrators select the third, or neutral, arbitrator, usually called the umpire. Other customary provisions in a reinsurance arbitration clause are: (1) the binding nature of the final decision or award; (2) the ability to appoint the other party's arbitrator if the respondent party fails to appoint its own arbitrator within the time allowed by the arbitration clause; (3) the requirement that the arbitrators be connected to the insurance or reinsurance industry; (4) the ability of the arbitrators to decide the dispute on an equitable basis and not be bound by judicial formality or strict rules of law; and (5) the requirement that each party bear the cost its own arbitrator and share equally the costs of the umpire and of the arbitration.

Not all disputes between parties to a reinsurance contract must be arbitrated. The parties may contract to limit arbitrable disputes to a narrow category of issues or may agree to arbitrate every dispute between the parties that in any way concerns the reinsurance contract. The arbitration clause will describe in varying detail the issues that are subject to arbitration. Where the arbitration clause is narrowly drawn, only those issues falling within the scope of the arbitration clause are arbitrable.[4] A claim of fraud in the inducement may not be arbitrable under a narrow arbitration clause, which limits arbitration to disputes about the actual transactions under the contract.[5] More typically, a reinsurance arbitration clause is broad. Courts favor arbitration and will enforce arbitration clauses by construing them as broadly as possible.[6] Today, nearly every dispute that arises concerning any aspect of a reinsurance contract containing an arbitration clause will be arbitrable.

The arbitration clause also contains any references to specific rules or procedures agreed to by the parties, including what, if any, law should apply in the arbitra-

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Reinsurance Arbitration

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tion, or whether the arbitration should be conducted under a particular set of rules. If the parties agreed in advance on where the arbitration should be conducted, the arbitration clause likely contains this information as well.

The reinsurance industry conducts most of its arbitrations outside of a formal arbitration tribunal and, in most cases, without application of any pre-existing set of rules. In this ad hoc method of arbitration, the parties and the arbitration panel develop the rules and procedures. Recently, there has been a movement towards the creation of formal rules and procedures for reinsurance arbitration. Guidelines for reinsurance arbitration prepared by The Reinsurance Association of America ("RAA") have been in existence for awhile.[7] Also, the American Arbitration Association ("AAA") and the American Bar Association have drafted a joint Code of Ethics for arbitrators.[8]

The United States Chapter of the Association Internationale de Droit des Assurances ("AIDA"), together with input from representatives of professional reinsurers, ceding companies, trade associations, reinsurance consultants, and practicing members of the insurance and reinsurance bar, has established a reinsurance arbitration association -A.I.D.A. Reinsurance and Insurance Arbitration Society ("A.R.I.A.S. (US)") — which plans to certify objectively qualified and experienced arbitrators, provide for arbitrator training, propose model arbitration procedural rules, and develop a model arbitration clause. The goal is to reduce costs and streamline the arbitration process by curtailing adversary discovery proceedings, assuring control of the arbitration proceeding by the arbitration panel, and assuring arbitration awards that comport with industry custom and practice in a manner best suited for a just, expeditious, and economical result.

Not all reinsurance arbitrations are ad hoc. There are occasions where the arbitration clause requires the parties to conduct their arbitration under the auspices of a private arbitration tribunal like the AAA. There are other clauses that, in whole or in part, require the parties follow an established set of arbitration rules. Under those circumstances, adherence to the specified rules or the involvement of an organization is required unless the parties agree to proceed otherwise.

Consideration also must be given to the application of the Federal Arbitration Act ("FAA")' and to the arbitration laws of any relevant state.[10] While generally, an arbitration clause will not refer to a particular jurisdiction's law, these statutes will be relevant if issues arise that require an application to compel arbitration or to appoint an arbitrator or umpire.[11] Other laws also may be useful should pre-arbitration legal proceedings occur, including state law provisions governing attachments or security.[12] Finally, international treaties may have applicability to arbitrations with non-United States parties.[13]

The arbitration process commences with the service of a written demand for arbitration. The demand should be made against the contracting party with whom a dispute has arisen. If non-contracting parties are involved in the reinsurance transaction, such as a reinsurance intermediary, copies of the demand should be served on them as well, but the demand should be addressed to the contracting party.

Unless the arbitration clause sets forth the method for service of the demand for arbitration, the demand should be sent by any means that will insure delivery and provide proof of receipt.[14] Generally, certified mail, return receipt requested or a recognized overnight delivery service with computer tracking should be sufficient to give the respondent notice of the commencement of the arbitration.

Generally, the party initiating the arbitration will name its arbitrator in the demand. Assuming the respondent names its arbitrator in a timely fashion, usually the two party-appointed arbitrators will select the umpire. In practice, each side will consult with its party-appointed arbitrator and together will propose at least three names to the other side. If there is a match, and the umpire can-

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Larry P. Schiffer is a partner with Werner & Kennedy.

Previously, Mr. Schiffer was a Law Assistant to the Justices of the New York State Supreme Court, Appellate Division, Second Department (1979 - 1981).

He is a member of the American Bar Association's Tort and Insurance Practice Section (Chair, Excess, Reinsurance & Surplus Lines Committee), and of the Section of Litigation. He also is a member of the New York State Bar Association Committee on Association Insurance Programs and the Association's Commercial & Federal Litigation Section. He is a member of the Special Committee on Medical Malpractice of The Association of the Bar of the City of New York. Mr. Schiffer is Chair of the New York City Chapter of the Albany Law School of Union University Alumni Association, a member of the Albany Law School Alumni National Council, and a member of the Board of Directors of the Green Acres Civic Association.

Mr. Schiffer has lectured and has been published on reinsurance litigation and other insurance topics, and is the author of "Note: The Availability of Benefit of the Bargain Damages in a Fraud Action Under Section 2-721 of The Uniform Commercial Code," 43 Albany Law Review 930 (1979). He was the Editor of the Excess, Reinsurance & Surplus Lines Committee Newsletter (1 991-93).

Mr. Schiffer received a J.D. from Albany Law School of Union University (1 979), where he graduated cum laude, was a member of the Albany Law Review and a member of the Justinian Society, and received his B.A. magna cum laude from Brooklyn College of the City University of New York (1976).

Mr. Schiffer practices in the areas of commercial, insurance, and reinsurance litigation, arbitration, mediation, and regulation. He also serves as a mediator for the mandatory commercial mediation program of the United States District Court for the Southern District of New York.

He resides in Valley Stream, New York, with his wife, Gail, and their two daughters.

ERRATA

In this issue of our newsletter, we missed a few important typos, working, as we did, against a hard deadline; our goal was to mail the newsletter one month prior to our March Seminar (to be held during the NAIC meeting in Miami). We succeeded, but with these few "casualties":

Page 1	Under "Officers and Directors" Mr. Surguine, is of course, Michael not Robert.
Page 2	In Jeanne Bryant's column, 2nd column, fifth line, Mr. Wrigley is Tom not Mike.
Page 13	In the Editor's note, add after "guaranty" the word fund.
Page 22	In the Financial Report the Total Members' Equity Prior Year to Date should read $34,904.34 not $340,904.34.

There are a few other minor typos-for which we apologize.

Editor

President's Column

Jeanne Barnes Bryant
President, S.I.R.

This is my first column as President of the Society of Insurance Receivers, and having reviewed several of the last columns by former presidents, I noted that for the most part, these columns attempt to give the members a feel for what they can expect of the Society in the coming months. While there are other places in the newsletter with specific details and reports concerning the activities that I will mention, I thought you might like to have a brief overview of what was accomplished last year and what is scheduled to be accomplished in 1995.

Last year educationally the Society held three half-day roundtables, and most recently a full day conference in New Orleans. Each of these roundtables had topics of interest to members as well as the potential for a free flowing discussion of current problems among receivers. I believe these roundtables along with the special education programs presented during the year are what members of the Society appreciate most.

As you know, a two day seminar was held in November in San Antonio with members of the NCIGF, and was a rousing success. All attendees responding to the survey requested more meetings of a similar nature in the future. Therefore, in 1995 the chair of the Education Committee, Kristine Bean, is working towards similar educational opportunities with NOLHGA, and a successor meeting with the NCIGF. As soon as details of these opportunities are available, they will be distributed to the membership.

The Board of Directors and individual members of the Society have attempted to provide additional benefits to all through such activities as the Mealey's discount, the membership directory which we hope to have completed and available in March, and expanded services such as the newsletter. I was one of the original members of the first Board of Directors in 1991, and I am amazed at how far we have traveled from that point.

Though I believe education is one of the most important goals of the Society, I also believe that it is time to move on and establish standards for Society members. This has been in the planning stages for some time, and members have been surveyed on several occasions concerning their opinions. I have asked the Standards Committee (Dick Darling, Bob Deck, Mike Wrigley and Mike Surguine) to make this a high priority such that we can have a final membership vote on these standards before the end of the year.

As you will be able to see on our display at the NAIC in Miami, the Society is growing internationally and in the United States, and I believe we have been successful beyond any expectations.

I am interested in hearing from any members concerning any suggestions they may have for improving the benefits already offered by the Society, and/or to express any dissatisfaction with current policies.

When I agreed to run for president, after having been vice president for a year, chair of the Education Committee, and a member of the Board of Directors since 1991, I thought that I couldn't work any harder for the Society than I had already been doing. Even in the first thirty days, I have discovered that I was wrong. While working for the Society can be demanding, it is also very rewarding, and I would encourage every member to become further involved. Please let me hear from you as I am very interested in your opinions. I look forward to seeing all the members in Miami. ■

Society of Insurance Receivers
PO Box 9001
Mount Vernon, NY 10552

Chase Communications serves as SIR's administrative office.

1-800-951-2020 *Fax: 914-699-2025*

Meet Your Colleagues

Jeanne Barnes Bryant
Elected President of SIR

Jeanne Barnes Bryant graduated from the University of Tennessee in 1974 with a B.A. She subsequently attended the University of Tennessee Law School and received a J.D. in 1977. After approximately a year in private practice, she joined the Department of Commerce and Insurance as counsel to the Regulatory Boards, a division of the Department of Commerce and Insurance. In 1981 she became chief counsel for the Insurance Division. In 1986 a new section was created within the Insurance Division of the Department of Commerce and Insurance to handle receiverships. Ms. Bryant was made Director of Receiverships in 1987. Since that period of time she has been actively involved with the NAIC on a number of committees, including federal priority, revisions in the Model Act, the Committee on the Receivers Handbook, the Insolvency Committee, the Committee on Interstate Compacts, Chair of the Pre-Receivership Considerations Committee for the Receiver's Handbook, and is now President of the Society of Insurance Receivers.

As Director of Receiverships for the Department of Commerce and Insurance, she has been the receiver or special deputy receiver for ten insurance companies, three unauthorized insurance companies, two unauthorized security companies, and two funeral and/or cemetery operations.

Richard S. Darling
Principal Member

Richard Darling is the Chief Operating Officer as Receiver and/or Special Deputy of the Office of the Special Deputy Receiver (OSDR) for insurance entities subject to delinquency proceedings in Illinois, a position he has held since 1987.

Dick joined the OSDR in 1981 as a Management Information Services Consultant. Prior to becoming Chief Operating Officer, Mr. Darling held a variety of management and project oriented positions including responsibility for legal research and litigation support activities and designing records and archival control procedures.

As Chief Operating Officer, Dick is responsible for all of the day-to-day activities of the OSDR, as well as the rehabilitation or liquidation activities of almost 70 companies representing all aspects of the insurance industry. Under Dick Darling's guidance since 1987, the OSDR has closed 26 receivership estates of varying types.

Mr. Darling is currently president and/or chief operating officer of 11 wholly owned subsidiaries of the receivership estates, including 8 financial services entities and 3 insurance companies not subject to delinquency proceedings.

Dick has been active in the NAIC having served in a leadership capacity or as a member on a number of working groups and committees under the Rehabilitators & Liquidators Task Force and Guaranty Fund/Association Task Force Working Groups, as well as the successor Insolvency (Ex 5) Subcommittee.

Mr. Darling holds a variety of insurance related designations issued by the Insurance Institute of America. In addition, Dick is a member of the Society of Financial Examiners, and a principal member and member of the Board of Directors of the Society of Insurance Receivers.

Dick, his wife Kathleen and daughter Karen occupy a home built in 1929 (which of course takes up more than it's share of their free time) in Evanston, Illinois.

Robin Spencer
Principal Member

Robin Spencer graduated from Cambridge university in 1980 having read law and started his professional life in 1982 as a barrister. Following a three and a half year spell at the Solicitirs office of HM Customs and Excise he became a commercial lawyer in the insolvency department at the London law firm Durrant Piesse (now Lovell White Durrant). He remained a qualified barrister until 1991 when he requalified as a solicitor. He was made a partner of Lovell White Durrant in May 1994.

Hia first involvement with an insolvent insurance company was in 1987 when he was seconded from Durrant Piesse for two years to Appleby, Spurling, & Kempe, the Bermuda firm of attorneys to work on the complex and difficult liquidation of Mentor Insurance Limited. He says that his work on Mentor

provided him with first class experience to advise on the insolvency problems which have hit the London market in the 1990's.

On returning to Lovell White Durrant he developed, together with the firm's insolvency and insurance groups, the firm's insurance insolvency practice. He has since advised on the insolvencies of insurance brokers, Lloyd's underwriting agents, and troubled London market companies. He has contributed articles to Lloyd's list and the International Insurance Law Review and has regularly spoken at seminars. Robin Spencer lives with his wife (whom he met in Bermuda) and young son in Chesham, Buckinghamshire. Robin Spencer has been a sustaining member or the SIR since January 1994.

Kevin D. Harris

Vice President, Secretary & General Counsel, NCGIF Associate Member

Kevin Harris joined the National Conference of Insurance Guaranty Funds (NCIGF) in 1991 as Counsel and Secretary and has since become Vice President, Secretary and General Counsel. He is responsible for coordinating guaranty fund and liquidator activities related to multi-state property and casualty insolvencies, monitoring and reporting to members on legislative developments as well as the progress and outcome of important litigation, and acting as liaison on behalf of member guaranty funds to the NAIC, state and federal legislators, and insurance industry trade associations.

Kevin began his career with Ernst and Ernst (now Ernst and Young) followed by a position as Assistant Manager of Internal Audit for the Montgomery Ward Insurance Group.

He became a Certified Public Accountant and served as Chief Administrative Officer of the Liquidation Division of the Illinois Department of Insurance where he had the responsibility for claims and policyholder service and administration.

After receiving his J.D. from DePaul University College of Law and joining the Illinois Bar, he served as Associate Corporate Counsel for Reliance Insurance Company where he had the responsibility for investment compliance, monitoring NAIC activities and legislation, and acted as counsel for financial matters, information services, real estate transactions and premium finance company and bond divisions.

The many hats Kevin wears at NCIGF are joined by those he wears in his personal life. Married for seven years, he is a devoted "Daddy" to Julie, Nick, and Sara ages 4, 3, and 6 months. Kevin's wife, Lisa, says Kevin rolls up his sleeves and pitches in when he gets home. The corporate executive known for his polished image when she met him is now apt to wear strained carrots while feeding Sara.

Kevin's leisure activities include downhill skiing and hunting.

Nigel J. Bailey

Principal Member

We reprint Mr. Bailey's corrected biography, incorrectly run in our last issue.

Nigel Bailey has developed a career in the financial services and insurance industry at the senior management level and has served as a regulator for these industries. After taking his mathematics degree at Birmingham University he started his career with Noble Lowndes as an actuarial student. After five years of technical experience, Nigel joined Bain Dawes (now Bain Clarkson) as an account executive involved in negotiations at the senior level with corporate clients.

In his first management position with Parkdale, he served as director of both Parkdale Pensions Management Ltd. and Parkdale Pension Trustees Ltd. building a pensions consultancy over a period of six years. Nigel next joined Taylor Gembridge as Life and Pensions Director where his responsibilities included insurance and investment advice for high net worth individuals with multi-national companies as clients. With a background in offshore financial services, he joined American International Group to start a new operation in Gibraltar where he created Gibraltar's first unit trust.

Nigel's current position began when he was recruited by the Foreign and Commonwealth office to go to the British Virgin Islands and sort out their offshore insurance industry. When he arrived, there was a lack of legislation and control and his efforts resulted in the removal of nearly 1,000 companies and the development of a new insurance act. Nigel was elected to the Executive Committee of the International Association of Insurance supervisors in 1993 and 1994. He is also vice president of the Caribbean Association of Insurance Regulators.

At the conclusion of his present contract this year, Nigel Bailey will be seeking a new challenge. With four years of regulatory experience and ten prior years at the senior management level in financial services and insurance, both on and offshore, he is interested in a region where there are opportunities to develop financial and insurance services.

Miami Schedule

Saturday, March 11 Round-Table

Principal members and invited guests: 1:00 p.m. to 5:00 p.m. in the Lemans / Bordeaux Rooms Co-Chairs Roger Hahn and Mike Svaldi

Topics

Tom Tew / Mark Raymond - Officers, Directors & Accountants Malpractice Litigation in Florida
Helen Hauser - SIR Amicus Brief in the Seidman Case and Related Matters
Belinda Miller - Unauthorized Insurers/Entities
Robert L. Greer - Acceleration of Estate Closure & Commutation of GF Claims
Laurie Holtz - Non-Fraud Aspects of Forensic Accounting

There may well be other topics introduced for discussion and persons planning to attend should be sure to check the SIR display in Miami for updates. This year's Round-Table meetings are designed to be more free-form, open discussions of topics of current interest to receivers and the Co-Chairs of the Miami Round-Table are doing an excellent job polling the membership and of making sure that a full list of relevant topics will be on the agenda for this first of SIR's 1995 Round-Table Meetings. The information interchange that has occurred at these Round-Tables has resulted in a great deal of progress and cost savings for the insolvencies being managed by those attending. **Be sure to take advantage of this very significant benefit of SIR membership.**

Sunday, March 12

Board Meeting & Committee Meetings 8:00 a.m. to 4:00 p.m. in the Imperial III Room

8:00 a.m.	Publications
8:30 a.m.	Memberships
9:00 a.m.	Accreditation & Ethics
9:30 a.m.	Nominations, Elections & Meetings
10:00 a.m.	Finance
10:30 a.m.	Guaranty Fund
11:00 a.m.	By-Laws
12:30 p.m.	Accounting Standards
1:00 p.m.	Education
2:00 p.m.	Board Meeting

Changes to the above schedule may occur and persons planning to attend these committee meetings should be sure to check the SIR display in Miami for updates. We are setting the schedule of committee meetings much earlier than we have in the past to facilitate greater participation in these committees. We will try to keep the changes to a minimum. **Check the SIR display for any changes.**

Monday, March 13

Monday, March 13
SIR Reception 5:00 to 7:00 in the Burgundy Room

Looking ahead...

Saturday, June 3
St. Louis, MO Round-Table - Principal & Associate members and invited guests.
Chair: Bob Deck

Saturday, September 9
Philadelphia, PA Round-Table - Principal members and invited guests.
Chair: Vince Vaccarrello

Saturday, December 2
San Antonio, TX Round-Table - Open to all members and invited guests.
Chair: Steve Durish

Report On Annual Conference

New Orleans, Louisiana

The annual conference in New Orleans was a big success and well appreciated by all of the attendees. Approximately 55 members of the Society were present for some part of the day's program. The program consisted of an opening session covering mock takeovers presented by Patrick Cantilo, Dick Klipstein, and Tom Bond. This was followed by a fraud presentation by Randal Beach of the Louisiana Insurance Department, with a paper presented by Litigation Support Services, Inc.

After lunch, Larry Schiffer did a brief and very interesting discussion of reinsurance arbitration, which was also accompanied by a written paper. The last formal topic of the day was how to accomplish the sale of a charter presented by Jo Ann Howard, Stephen Schwab, and Tom Wrigley, with accompanying papers.

CLE, CFE and other credit will be available to attendees of the meeting, and since it was pouring rain outside all day, we all had the benefit of a good day's work without regretting missing any of the New Orleans' fun. The next roundtable will take place in Miami, and is being organized by Roger Hahn and Mike Svaldi. Since the Miami meeting will take place immediately after the SIR/NAIC seminar in Savannah on February 6 and 7, 1995, it was determined that the Miami roundtable would be more informal. There have been several educational seminars (San Antonio, New Orleans, and Savannah) in a short period of time.

Jeanne Barnes Bryant

Reinsurance Arbitration

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didate has no conflicts and is willing to serve, the selection process is concluded. If the parties cannot agree on a candidate, then the parties must follow the requirements of the arbitration clause in selecting the umpire where a consensus cannot be reached.

Many contracts provide that each side shall strike two of the other side's three proposed umpire candidates, leaving one candidate for each side, at which time the arbitrators will "draw lots" to select the umpire. This procedure is often used in varying forms even where not specifically stated in the arbitration clause. Other contracts provide for the appointment of the arbitrator by a court or by a named organization.

If one party refuses to cooperate in the selection of the umpire, the other party may seek to compel arbitration and request the court to appoint the umpire under the FAA,[15] which is most commonly applicable to reinsurance arbitration, or where the FAA does not apply, under state arbitration law.[16] Very often the court will direct the recalcitrant party to comply with the selection procedures set forth in the arbitration clause of the contract. [17]

Many arbitration clauses also have a provision that allows one party to select the arbitrator for the other party if that party fails to make its appointment within the designated amount of time. These clauses usually are enforced as written, even if the party's failure to appoint its arbitrator was of short duration or inadvertent.[18] While the practice is to allow the other side leeway in appointing their party-appointed arbitrator, failure to name an arbitrator within the time required by the contract may have undesired consequences.

After the arbitration panel is selected, it is common for the panel to meet with the parties to organize how the arbitration will proceed. Normally, the umpire will circulate an agenda covering the topics the panel wishes to address at the organizational meeting. These topics often include: 1) disclosure of potential conflicts; 2) acceptance of the panel as constituted; 3) a hold harmless or indemnity agreement protecting the panel from future litigation by either party against the panel members; 4) pre-award security; 5) communications between parties and their party-appointed arbitrators; 6) the need for and scope of discovery, including audits, document discovery, and depositions; 7) a schedule, including a hearing date; and 8) the basic format for the hearing. The panel also usually requests each party to submit a brief preliminary statement of the issues in advance of the organizational meeting.

Unless the arbitration clause provides otherwise, there is no absolute right to discovery and depositions in a reinsurance arbitration. Practically, however, most arbitration panels will allow the parties to work out their own discovery schedule and will permit document exchanges, depositions, and audits, if requested. Very often the discovery process is preceded by the negotiation of a confidentiality agreement. The confidentiality agreement precludes either party from using documents or information discovered during the arbitration for any purpose other than the arbitration, settlement negotiations, or any related court proceedings. Generally, the parties are precluded from sharing the documents with any person not a party to the arbitration. Often these agreements require that any award of the panel be kept confidential, except for the fact that an award was rendered in favor of one party or the other. The purpose of the confidentiality agreement is to foster the traditional notion that reinsurance arbitra-

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Committee Reports

Achievement Subcommittee Report

Jim Dickinson,
Chair

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

Introductory comment from the Chair

Reflecting back on 1994, I have appreciated the opportunity to chair the Achievement Subcommittee in order to coordinate the reporting of important achievement news arising from various receiverships both in the United States and internationally. We developed a structure during 1994 with state contact persons, zone reporters and international reporters being designated and who subsequently began reporting timely news for our articles in the SIR newsletters.

Included in our first three articles were information and news received from fifteen state contact persons, the Virgin Islands and two international reporters. While I am pleased with our progress in the work being accomplished and the flow of communication to-date, my 1995 New Year's resolution encompasses further expansion for obtaining achievement news from additional states, including such large states as California, Illinois, Louisiana, New York. I know positive developments as to estate collections and disbursements to creditors (including estate closings) are also occurring in other states and hopefully will be reported upon in our future articles. For those state and international reporters who have helped make our column a success in 1994, your continuing support during 1995 will again be greatly appreciated by our SIR membership.

RECEIVERS' ACHIEVEMENTS BY STATE OR TERRITORY

Receivers' Achievements by State

Missouri (W.H. O'Bryan, State Contact Person)

Estates Closed - Third Quarter, 1994	Year Action Commenced	Dividend Percentage	Insurance Category
Professional Mutual Insurance Co	1987	68%	P&C

Disbursements Made to All Creditors	Amount
Professional Mutual Insurance Co	$33,780,506 (3rd Qtr 1994)

Ohio (Lynne Hengle, State Contact Person)

Estates Closed - 1993/94	Year Action Commenced	Dividend Percentage	Insurance Category
Medicare Health Plan	1989	100% (Policyholders) 37% (Others)	HMO
Merchants & Manufacturers Ins. Co	1986	43% (Policyholders/GF)	P&C
Abstract Title Co	1986	100% (Policyholders)	Title

Disbursements Made to Creditors	Amount
Medicare Health Plan	
Policyholders	$518,888
General Creditors/Providers	$658,877
Merchants & Manufacturers Insurance Co	
Policyholders & GFs	$2,259,464
GF (Administrative Expenses)	$99,966
Columbus Insurance Company	
GF (Administrative Expenses)	$356,274

Oklahoma (Lisa Bays, State Contact Person)

Estates Closed - 1993	Year Action Commenced	Dividend Percentage	Insurance Category
American Trustee Life Corporation	1987	N/A	Life
Liberty Nat'l Life Insurance Company	1983	N/A	Life
United Equity Life Insurance Company	1984	N/A	Life

Disbursements Made to OK L&H Guaranty Assn.	Amount
American Trustee Life Corporation	$725,000
Liberty National Life Insurance Company	$430,000
United Equity Life Insurance Company	$130,000

South Dakota (Wendell Malsam, state Contact Person)

Disbursements Made Directly to Policy/Contract Creditors	Amount
Underwriters Life Insurance Company	$311,000

Texas (Gale Webb, state Contact Person)

Estates Closed - Third Quarter 1994	Year Action Commenced	Dividend Percentage	Insurance Category
First Fidelity Life Insurance Company	1993	N/A	L&H
North American Insurance Company	1987	N/A	P&C
Progressive Mutual Life Insurance Co.	1992	N/A	L&H
Southern Lloyds, et al	1991	N/A	P&C
Texas Investors Life Insurance Co.	1989	N/A	L&H
Texas National Insurance Company	1989	N/A	P&C

Ancilliary Receiverships Closed
Allied Fidelity Insurance Company (IN)
Homeland Insurance Company (CA)

Utah (Len Stillman, state Contact Person)

Estates Closed - Third Quarter 1994	Year Action Commenced	Dividend Percentage	Insurance Category
Maxicare of Utah	1988	100%	HMO

Other Developments

Philip Singer (International) has provided the following report for the Halvanon Insurance Company Limited and recent developments involving KWELM companies, the latter companies being previously featured in an article in the September 1993 SIR quarterly newsletter.

Halvanon Insurance Company Limited

The creditors of Halvanon Insurance Company Limited at a meeting held in London in October 1994 approved a scheme of arrangement designed to conclude the liquidation more speedily than would otherwise be possible by estimating the tail of liabilities using an actuarial estimation methodology.

Subsequent to the Creditors' Meeting the scheme was sanctioned by the High Court in London and became effective October 31, 1994.

KWELM

The first distribution to creditors of KWELM companies commenced on September 30, 1994. The funds set aside to meet the costs of the first distribution were US$563.4 million and the percentage paid to creditors with agreed claims was as follows: Kingscroft - 8. 0%; Walbrook 4. 0%; Lime Street - 9. 0%; El Paso - 8. 0% and Mutual Reinsurance - 5. 0%. The 1993 accounts show 'gross liabilities of US$10.8 billion including a special margin of US$4.6 billion to cover possible adverse loss development over the 20 to 40 years of the run-off. The assets currently under management are US$800 million with total estimated assets of approximately $3.4 billion.

KWELM consists of five insurers known as Kingscroft Insurance Company Ltd., Walbrook Insurance Company Ltd., El Paso Insurance Company Ltd., Lime Street Insurance Company Ltd. and Mutual Reinsurance Company Ltd., which underwrote worldwide liability insurance and reinsurance produced by H.S. Weavers (Underwriting) Agencies Ltd.

Bill Taylor (PA) reports that the recent Rehabilitation Plan for the Fidelity Mutual Life Insurance Company contemplates a transfer of assets and policyholder liabilities to a stock life insurance company which will receive the necessary capital infusion from its holding company to meet risk-based capital requirements. The policyholders will receive stock of the holding company as compensation for loss of use of their money during the rehabilitation period. If sufficient stock is available, creditors will also receive a pro rata distribution of stock for their allowed claims. It is expected that policyholders and creditors will own 51% of the holding company and a private investor contributing the necessary capital will own up to 49% of the holding company. The holding company will also issue debt instruments to raise additional capital. Guaranty association contributions will be minimal. Policies are not modified except to delete mutual company participation provisions.

As a follow-up to the report by John Collins (WV) in the SIR Summer issue covering the Quality Insurance Company estate, it has been announced recently that the liquidator has recovered sufficient funds to pay all outstanding claims against this Fairmont, West Virginia insurance company. Creditors' claims are owed up to $6. 0 million and recoveries were made by the Liquidator from insurance company officials and partners, including Islamic Banking Systems International Holding SA of Luxembourg, and also from certain US insurers.

Jim Dickinson (KY) reports that in the Delta America Re Insurance Company liquidation, settlement and commutations totaling $135,295,000 have been negotiated with 107 of the company's debtors (primarily retrocessionaires) through 1994.

Insolvency (EX5) Subcommittee –

The duties of this subcommittee shall be administrative and substantive as they relate to issues concerning insurer insolvencies and insolvency guarantees. Such duties include, without limitation, monitoring the effectiveness and performance of state administration of receiverships and the state guaranty fund system; coordinating cooperation and communication among regulators, receivers and guaranty funds; monitoring ongoing receiverships and reporting on such receiverships to NAIC members; developing and providing educational and training programs in the area of insurer insolvencies and insolvency guarantees to regulators, professional and consumers; developing and monitoring relevant model laws, guidelines and products; and providing resources for regulators and professionals to promote efficient operations of receiverships and guaranty funds.

1. Continue development, testing and implementation of uniform data standards for both property/casualty and life/health insolvencies to facilitate exchange and use of information concerning receivership administration between receivers and guaranty funds.

2. Produce annual supplement to the *Receivers Handbook for Insurance Company Insolvencies*.

3. Review the protection available to enrollees or policyholders in the event of the insolvency of non-profit hospital and medical service organizations and health maintenance organizations and recommend amendments to the model acts or other action necessary to provide appropriate insolvency protection.

4. Monitor guaranty fund assessments in relation to system capacity.

5. Evaluate issues arising with respect to the reporting of premium data utilized allocating guaranty fund assessments among insurers and recommend guidelines to the various states in resolving such issues and an overall framework for assessment data collection and distribution.

6. Monitor and discuss issues arising with respect to receiverships of "nationally significant" multi-state insurers and guaranty fund activities involved with these receiverships.

7. Study issues related to closing receivership estates and the appropriate role of the supervising court in affecting earlier closure of estates. Make recommendations to achieve the prompt, efficient and economical closure of estates.

8. Study issues related to the administration of estates with little or no assets and make recommendations for mechanisms to fund the receiver's administrative costs in handling these estates.

9. Consider whether additional limitations on the moratoria placed on withdrawals and policy surrenders in life insurer insolvencies are necessary and recommend appropriate amendments to the Insurers Rehabilitation and Liquidation Model Act and the Life and Health Insurance Guaranty Association Model Act.

10. Consider methods to facilitate coordination of referrals from receivers of insolvent insurers to federal and state law enforcement agencies and make appropriate recommendations.

11. Study strategies for improving the collection of reinsurance recoverables due the receiver of an insolvent insurer and make appropriate recommendations.

12. Consider issues in life insurer insolvencies and evaluate an interstate contract mechanism to achieve efficiencies and economics in consultation with (EX) Special Committee on Interstate Compact.

13. Consider issues related to an insolvent insurer's participation in swaps and derivative agreements and recommend appropriate amendments to the Insurers Rehabilitation and Liquidation Model Act.

14. Review need to reform state based guaranty fund system and evaluate the appropriate legal mechanism to accomplish reform.

SSO Staff Support: Michael Surguine

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Publications Committee Report

The Publications Committee Report: SIR publications has made some improvements in this issue of the Newsletter by expanding the Mark Your Calendar section, by providing information of the committees of the SIR, by providing the NAIC Insolvency Task Force Charges and by generally trying to include as much current information of use to you, the member or reader, as possible. In the next issue we will incorporate advertising for the first time. Further, the Committee is considering publication of an SIR Magazine and we are looking for comments on the idea at the Miami Committee Meeting. Of immediate importance is the opportunity for interested members to place an ad in the SIR Directory to be published in March.... Call our Association office (914) 699-2020 for details.

Douglas Hartz, Chair

We're pleased to announce another member benefit

Save on your subscription to **Mealey's Litigation Report: Insurance Insovlency**

The officers of SIR have developed an opportunity for members to get a discount on subscriptions to this report. This is a special benefit of membership in addition to our workshops, newsletter and other activities.

Mealey's will allow a discount of 15% off the annual subscription price to subscribers who are paid up members of SIR once a group minimum of 50 SIR subscribers is met. The annual subscription price for Mealey's Litigation Report: Insurance Insolvency, which is normally $795 will be discounted to $675.75 — a savings of $119.25 each year. This will apply to both new and renewal subscriptions which begin after the minimum of 50 is met. Subscriptions prior to that time will continue at the full price rate.

All SIR members will receive a direct mailing from Mealey's which will include a subscription form for the SIR discount. To qualify, SIR members must declare that their membership is current and paid in full. Mealey's will hold all discount applications until the minimum is met (estimated February or March 1995) and this program can go into operation.

Through this program SIR members who subscribe to "Insurance Insolvency" will save enough to largely offset their annual SIR membership fee. If this first discount program is well received, your Membership Benefits Committee will seek similar discounts on additional publications of Mealey's or others. We welcome your suggestions.

Watch for news of this money-saving benefit.

Insurance Insolvencies Down Under

Insolvency Administrations of Australian General Insurance Companies

There have been relatively few insolvencies of general insurance companies in Australia during the recent recession. However, there are a number of important and unusual features of Australian law relating to insurance insolvencies.

The relative ranking of policyholders to creditors is one which is quite different to that in the US or the UK.

Under Australian law, policyholders are given two distinct advantages over the rights of general creditors.

1. Direct Access to Reinsurance Recoveries

Section 562A of the Corporations Law gives a policyholder the right to receive reinsurance relating to his claim, bypassing the insolvent insurer.

2. Direct Access to Policy Related Recoveries

Various pieces of legislation in Australia dealing with different sectors of the insurance industry allow insurance regulators to step into the shoes of insolvent insurers for the purpose of recovering monies under insurance policies issued by the insolvent insurer and for the purpose of recovering policy related recoveries generally. Indeed, recovery rights are in some circumstances vested in the relevant authority.

In addition to and to some extent in conjunction with the above, policyholders may also be entitled to "compensation" payments out of statutory established funds - such as the New South Wales Insurers' Guarantee Fund under the Workers Compensation Act 1987. In such circumstances, the Guarantee Funds are entitled to be subrogated to the rights of the insured as against the insolvent insurer. Those rights would include the tight of "direct access" through to any reinsurer or other policy related recoveries. The right of subrogation means that in many circumstances Guarantee Funds assume a major role in the winding up of Australian insurance companies through their increased voting power as major creditors.

Armed with these rights of direct access through to reinsurance and other policy related recoveries, policyholders in Australia assume greater priority than polictholders in other jurisdictions.

Armed with these rights of direct access through to reinsurance and other policy related recoveries, policyholders in Australia assume greater priority than policyholders in other jurisdictions.

As readers will appreciate, the practical effect is that Australian insolvency practitioners fulfill a dual role in the administration of insolvent insurance companies. First, they collect assets (such as investments) which are not reinsurance or policy related for distribution to general creditors. Secondly, they administer, supervise or oversee the direct access procedure - often in conjunction with the Guarantee Funds who, as major creditors, pursue reinsurance and other policy related recoveries.

Submitted by: Dominic Emmett
Norton Smith's & Co.
Sydney, Australia

Automated Cooperation: A Success Story

Hawaii Department of Insurance and Hawaii Guaranty Adopt UDS

By John Gates

The operation of guaranty funds and the operation of a receivership are each separate, necessary components of the protection provided to insureds in case of the insolvency of an insurance company. The guaranty funds and the receiver each must respond to their duties to the liquidation court and the department of insurance. However, this can present challenges to all of the parties to the process to properly coordinate their efforts. This is a story of the successful navigation of the administrative management of the results of a catastrophic event.

On September 11, 1 992 hurricane Iniki slammed into the Hawaiian Islands and hit the island of Kauai with devastating force causing millions of dollars in damage and affecting the lives of thousands of residents, even those not directly damaged by the storm.

Hawaii was the 50th state admitted. It is number 47 in area and 40th population wise. In 1993 the premium volume of the property and casualty companies in the state amounted to 1.2 billion dollars, a substantial part of which was written by the few companies domiciled in the state.

One of the local groups of companies that was most adversely affected by "Iniki" was the Hawaiian Insurance Group (HIG). This group was made up of the Hawaiian Insurance and Guaranty Company (HIGC), Hawaiian Underwriters Insurance Company (HUI) and United National Insurance Company (UNICO). These companies were owned by the Hawaiian Electric Company (HEI). The companies wrote both personal and commercial lines, as well as workers' compensation.

The HIG companies had a sizable number of risks on Kauai that were damaged or destroyed by the storm. The companies began paying claims soon after the storm subsided, especially the homeowners claims. By December 3, 1992 the parent company, HEI, determined that the potential outstanding losses would be so great that they could not support the insurance operations financially. As a result of this decision the Hawaii insurance Department took control of the companies on December 24, 1992.

On January 20, 1993, the department petitioned the court to declare two of the companies insolvent and to be liquidated (HUI and UNICO) and issue an order of rehabilitation for Hawaiian Insurance and Guaranty Company. The liquidation order meant that all unpaid claims of HUl and UNICO would be handled by the Hawaii Insurance Guaranty Association (HIGA).

As of the liquidation date HIGA assumed 10,000 claims, amounting to slightly less than 300 million dollars. When the claims were delivered, the staff of HIGA consisted of two people, Mr. Blake Obata and Ms. Arlene Ebisuya. The HIGA data processing capability consisted of a basic system and two personal computers. The HIG automated system was part of the HEI data processing unit and all insurance company data was maintained on the HEI mainframe computer.

Information was provided by HIGA to the liquidator only through hard copy reports, which then required manual reentry into the liquidators system, still maintained by HEI. With the priority of claims payment and limited availability of personnel, HIGA reporting lagged behind processing. Therefore, the claims data available to the liquidator was not up to date.

At one time it was estimated that the liquidator was 10,000 items behind HIGA, which made it impossible to reconcile the records between the two entities. The difference between the records of the two entities was estimated to be some 27 million dollars.

In addition HIGA was setting up new claims, changing reserves on existing claims and making payments on claims using a coding structure that did not match the coding structure used by the liquidator. This added substantially to the appearance of an "out of balance" situation between the operations.

As problems mounted it became apparent that the transfer of data between the two systems must be improved. HIGA contracted with a software firm for a new system. This system significantly improved HIGA's automated performance, however the two systems still were not compatible. The problems experienced by the liquidator and HIGA dramatically demonstrated the disadvantage of the two entities operating on systems using two sets of system definitions with unique coding structures and formats. The inability to communicate information electronically was becoming a critical factor.

This problem had previously been recognized and, in 1990, a group of liquidation and guaranty association personnel began to work on the problem. Aggressive action was needed and the time was right to do it. The NAIC agreed and a working group was established to attack the problem. The working group then established a "technical support" group, which continues to

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Editor's Note:
This article was authored by John Gates. John is a consultant to the NCIGF and was formerly the Executive Director of the California Guarantee Association. John is one of, if not the most regognized individual in the guarantee association/liquidation environment.

John has been a "consultant" to many of us over the years, expecting and receiving no reimbursement except our thanks. In the Hawaii situation, John has been consulted by both the guaranty and the receiver.

Reinsurance Arbitration

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tion is a private dispute resolution matter between the parties. If the parties did not wish privacy, they would not have agreed in their contract to private arbitration.

The arbitration hearing itself may range from a single day to a multi-week proceeding. Generally, this will depend on whether live witnesses will be called. Some arbitrations are heard on the submission of papers and oral argument by counsel. Others are trial-like, with each side presenting witnesses for direct testimony and cross-examination. Single issue disputes involving contract interpretation may be decided on the papers, without a formal hearing with the parties. The hearing is held where the contract specifies, or where the parties have agreed. Because the arbitration process is flexible, hearings may be held in multiple locations to accommodate witnesses or the arbitration panel.

The final arbitration award must be in writing and agreed to by a majority of the arbitration panel.[19] Many arbitration clauses state that the panel shall render its decision in writing, which shall be final and binding on the parties. Most reinsurance arbitration awards merely state the relief granted, but do not indicate the reasons or bases for the award. However, there are some arbitration clauses that do require the award to set forth the reasons for the decision rendered. In those cases, the award is more apt to be subjected to collateral attack by the losing party.

A typical arbitration award will state that the arbitration panel met at a specific time and place and, after hearing the evidence and reading the briefs, decided the issues as indicated. Under normal circumstances, the unsuccessful party to an arbitration will pay any amounts due as determined by the panel without objection. However, there are occasions where the unsuccessful party will ignore the award or seek to challenge the award. Both the FAA and most state's arbitration statutes provide for the enforcement of and challenge to arbitration awards.[20]

Generally, the award must be final to seek enforcement. Awards that leave items open for future development or require the parties to return to the arbitration panel for future disposition are not final and may not be enforceable or subject to challenge.[21] To enforce an arbitration award, the successful party will seek to have the award confirmed under the FAA or applicable state statute.[22] If the award is rendered against a party domiciled outside the United States, enforcement may be had under the United Nations Convention on the Enforcement and Recognition of Foreign Arbitral Awards (the "New York Convention")[23] or the Inter-American Convention on International Commercial Arbitration (the "Panama Convention').[24] Once confirmed under the FAA or state statute and converted into a judgment, the award is enforceable in the United States against the losing party just like any other judgment. Similarly, under the New York and the Panama Conventions, the award is enforced as if it was a judgment rendered by the applicable court in the county in which enforcement is sought.

Under the statutes and the Conventions, the unsuccessful party may seek to vacate or modify the award, or may object to its enforcement under the limited conditions set forth in the Conventions.[25] If due process was not followed or if the award was affected by undue influence or demonstrated bias by a panel member, an award may be vacated. Generally, however, most reinsurance arbitration awards, like most arbitration awards, are confirmed and enforced under the broad policy favoring arbitration.[26]

As we have seen, over the years reinsurance arbitration has developed its own procedures. Those experienced in the ad hoc world of reinsurance arbitration find that these rules are becoming more uniform and consistent. Movement towards developing formal written procedures is accelerating with the advent of A.R.I.A.S. (US). It will be interesting to see whether the inherent flexibility of reinsurance arbitration as we know it today will remain intact in the future.

Notes

1. The Second Circuit's decisions in Unigard Security Co. v. North River Insurance Co., 4 F.3d 1049 (2d Cir. 1993) and Bellefonte Reinsurance Co. v. Aetna Casualty & Surety Co., 903 F.2d 910 (2d Cir. 1990), are good examples of how the courts decide cases without considering industry custom and practice. Many arbitration panels construing the issue of whether a reinsurer is obligated to pay costs in addition to the limit of liability in a reinsurance contract have not followed the Second Circuit's determinations.

2. For a thorough discussion of the pros and cons of reinsurance arbitration see Nonna, Reinsurance Arbitration: Boon or Bust?, 22 Tort & Insurance Law Journal 586 (1987).

3. See, e. g., United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); Progressive Casualty Ins. Co. v. CA. Reaseguradora Nacional de Venezuela, 991 F.2d 42 (2d Cir. 1993).

4. See McDonnell Douglas Finance Corp. v. Pennsylvania Power & Light Co., 858 F.2d 825 (2d Cir. 1988).

5. In re Kinoshita, 287 F.2d 951 (2d Cir. 1961); CNA Reinsurance of London, Ltd. v. Home Ins. Co., Nos. 85 Civ. 5681, 85 Civ. 5801 (S.D.N.Y. Dec. 29, 1986); Florida Dept of Ins. v. World Re. Inc., 615 So.2d 267 (Fla. App. 1993); see also S.A. Mineracao Da Trindade-Samitri v. Utah International, Inc., 745 F.2d 190 (2d Cir. 1984).

6. Mitsubishi Motors Corp. v. Solar Chrysler-Plymouth, Inc., 473 U.S. 614 (1985); Moses H. Cone

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Reinsurance Arbitration

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Memorial Hospital v. Mercury Constr. Corp., 460 U.S. 1 (1983); see 9 U.S.C.A. §2 (West 1970).

7. Reinsurance Association of America, Mediation and Arbitration Suggested Guidelines for Resolving Reinsurance Disputes (1988).

8. AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (1977).

9. 9 U.S.C.A. §§ 1-16 (West 1970 & Supp. 1994).

10. E.g., N.Y. Civ. Prac. L. & R. §§ 7501-14 (McKinney 1980 & Supp. 1994).

11. 9 U.S.C.A §5 (West 1970); N.Y. Civ. Prac. L. & R. § 7504 (McKinney 1980 & Supp. 1994).

12. E.g., N.Y. Ins. Law § 1213(c)(1))A) (McKinney 1985); Ky. Rev. Stat. § 304.11-010 et. seq.

13. United States Convention on the Enforcement and Recognition of Foreign Arbitral Awards, 9 U.S.C.A §§ 201-08 (West & Supp. 1994); Inter-American Convention on international Commercial Arbitration, 9 U.S.C.A §§301-04 (West Supp. 1994).

14. If the arbitration clause requires the involvement of an arbitration tribunal or adherence to established rules, like the AAA Commercial Arbitration Rules or the Rules of Procedure of the Inter-American Commercial Arbitration Commission, then service should be made as provided for in the applicable rules. But see P. T. Reasuransi Umum Indonesia v. Evanston In,s. Co., 1992 U.S. Dist. LEXIS 19753 (S.D.N.Y. Dec. 21, 1992).

15. 9 U. S. C. A. §§ 4 & 5 (West 1970).

16. E.g., N.Y. Civ. Prac. L. & R. § 7503-04 (McKinney 1980 & Supp. 1994).

17. Universal Reinsurance Corp. v. Allstate Ins. Co., 16 F.3d 125 (7th Cir. 1994).

18. Universal Reinsurance Corp. v. Allstate Ins. Co., 16 F.3d 125 (7th Cir. 1994); Evanston Ins. Co. v. Gerling Global Reinsurance Corp., 1990 U.S. Dist. LEXIS 12521 (N.D. Ill. Sep. 21, 1990); Employers Ins. of Wausau v. Jackson, No. 93-0354 (Wisc. Ct. of App. Aug. 10, 1993). But see New England Reinsurance Corp. v. Tennessee Ins. Co., 780 F. Supp. 73 (D. Mass. 1991).

19. E.g., N.Y. Civ. Prac. L. & R. § 7505 (McKinney 1980 & Supp. 1994).

20. 9 U.S.C.A. §§ 10-11 (West 1970 & Supp. 1994); e.g., N.Y. Civ. Prac. L. & R. § 7511 (McKinney 1980).

21. See, e.g., Yasuda Fire & Marine Ins. Co. v. Continental Casualty Co., 840 F. Supp. 578 (N.D. Ill. 1993); In re Institute de Resseguros De Brasil, N.Y. Sup. Ct., N.Y. Law J., Jul. 1, 1993).

22. 9 U.S.C.A. § 9 (West 1970); e.g. N.Y. Civ. Prac. L. & R. § 7510 (McKinney 1980).

23. See 9 U.S.C.A §§ 201, 207 (West Supp. 1994); New York Convention, Art. IV. Eighty-four other nations are signatories to the New York Convention.

24. See 9 U.S.C.A. §§ 301, 304 (West Supp. 1994); Panama Convention, Art. 4.

25. See 9 U. S. C. A. §§ 10- 11, 201, 207, 301, 304 (West 1970 & Supp. 1994); New York Convention, Art. V; Panama Convention, Art. 5.

26. See, e.g., Executive Life Ins. Co. v. Alexander Ins., Ltd., 999 F.2d 318 (8th Cir. 1993); P.T. Reasuransi Umum Indonesia v. Evanston Ins. Co., 1992 U.S. Dist. LEXIS 19753 (S.D.N.Y. Dec. 21, 1992).

Automated Cooperation

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exist today as the UDS Technical Support Group. The group consists of both liquidation and guaranty association personnel with automated systems expertise.

After many hours and many meetings, reporting formats and coding structures were developed and adopted whereby liquidators and guaranty associations could communicate electronically using all of the same definitions. Using the UDS format makes it possible for the claim activity of a guaranty association to be made available to a liquidator on a basis constrained only by the agreement of the parties to transmit the data.

With the problems that were being experienced by the HIG liquidation and the desire of the then Hawaii Insurance Commissioner, Ms. Linda Takayama and the Board of Directors of HIGA to get the operations improved, the UDS formats were reviewed under the guidance of Mr. Paul Whitters, Special Deputy Liquidator, and Mr. Blake Obata, Manager Of HIGA. This review concluded that the use of the UDS concept and format was not only needed by these insolvencies, but was a step toward more economical operation of the liquidation and the guaranty association in the future. This could be especially true for HIGA in handling future insolvencies domiciled in other states,

The use of systems compatible with the UDS format and coding structures in place can make the data readily available, and usable, by both guaranty associations and liquidators. HIGA and the HIG liquidator both implemented UDS compliant systems and are now using a daily electronic transfer, "polling" the systems every night, to ensure the complete reconciliation of all claim data.

The HIG adoption of UDS makes them one of the first insolvencies to be handled completely on the UDS reporting basis. The cooperation between the Hawaii Insurance Department and the Hawaii Guaranty Association shows what can be accomplished when an cooperative aggressive effort is made by both parties.

The managements of HIG, HIGA and the Hawaii Insurance Department are to be congratulated for this accomplishment.

Further information on this endeavor may be obtained from the NCIGF, the Hawaii Insurance

Recoveries From Foreign Re-Insurers

The purpose of this section is to outline the position where reinsurance recoveries are to be made in jurisdictions other than the United States. In an increasingly global reinsurance market a significant proportion of reinsurance cover is often placed in third party jurisdictions, perhaps the single most notable of these being the London Insurance Market and Lloyds.

Dealing with the recoveries overseas presents particular problems and opportunities and often requires speedy action in order to maximize their potential and take precedence over competing third party claims.

Summary

In summary, any asset in other jurisdictions, and such range from reinsurance recoveries, through deposits, trust funds and similar security to property and other tangible assets, are vulnerable to attack by the failed insurance company's creditors. The first priority is therefore to ensure that they are protected from opportunistic attacks by creditors. The fact of US insolvency does not automatically confer protection in third party jurisdictions and in most instances specific steps need to be taken in foreign Courts either to obtain recognition of the US proceeding or to institute analogous and preferably ancillary proceedings there. This is particularly true of recoveries in England where there is no automatic stay of proceedings simply because US insolvency procedures are in place.

Because of the fully international nature of reinsurance, it may also be necessary to obtain orders in foreign jurisdictions restraining creditors resident in them from attacking assets in yet other jurisdictions.

Where reinsurance recoveries are due from non-US reinsurers, the Receiver must examine the reinsurance contract and ascertain which jurisdiction governs the contract. As a general rule, if the contract in governed by a non-US jurisdiction, the Receiver should obtain legal advice from lawyers qualified to act in that jurisdiction, if there is any dispute as to the payment of claims. It may become necessary to initiate arbitration proceedings or to obtain a judgment against the foreign reinsurer either in the US or in the foreign jurisdiction and matters may be further complicated if the reinsurer is in some form of insolvency procedure.

Means of recovering reinsurance receivables

1. If the reinsurance contract provides that the contract is governed by US law, the Receiver must consider how any subsequent judgment or arbitration award (see 4 below) may be enforced in the particular jurisdiction in which the reinsurer operates. If arbitration proceedings are not appropriate, the Receiver would first apply to a US Court for an order that the amounts are due and having successfully obtained such an order, the next step would be to enforce that judgment in the foreign Court. If the problem arose in the London Market and the foreign Court was an English Court, the Receiver should then instruct English lawyers to apply to the English Court for an order granting leave to enforce the judgment in that jurisdiction. Similar provisions apply in most jurisdictions but this chapter will refer predominately to English Courts.

2. If the reinsurance contract provides that it is governed by English law the Receiver must issue civil proceedings in that jurisdiction and instruct local lawyers accordingly. Any subsequent judgment would be enforced according to local law.

3. A quicker, cost effective and more potent weapon for obtaining reinsurance recoveries from an English reinsurer may be to first serve on it a written demand for payment which is called in England, a Statutory Demand. If the demand remained unpaid for a period of three weeks, the Receiver could apply to the English Court for an order that the English reinsurance company be wound up and an English liquidator appointed. The Statutory Demand must be in the prescribed form and the Receiver should instruct local lawyers to draft it and, if necessary, apply to the Court for the Winding-Up-Order. In England, insurance companies can be wound up via this route and it is rare for the government body responsible for regulating insurance to initiate the process. In most instances, where companies are solvent and there is no dispute as to the amount of the recoveries due, this is a particularly effective method of extracting payment.

4. Notwithstanding the above, it is standard practice for most reinsurance contracts to include some form of arbitration clause which stipulates that any dispute arising between the cedent and its reinsurer must be referred to arbitration as opposed to the Court. Reinsurance arbitrations in England are generally conducted in line with broad principles of fairness rather than in line with strict principles of law. An arbitration may determine issues in accordance with broad notions of equity, fairness, practice or common sense although it is unlikely that this

extends to ousting the general law of England. The arbitration proceedings will usually be heard in front of two nominated arbitrators with provision for a third to be appointed if the first two cannot reach an agreement.

Once an arbitrator's award has been made, there is a very limited right of appeal to the Commercial Court. Leave to appeal must be given by the Court which has authority to hear the appeal and leave will generally only be given in respect of a question of law arising out of the award. Of particular relevance to a Receiver of a US insurer with reinsurance protections in England, is the fact that any arbitrator's award, whether made by an arbitrator sitting in England or abroad, and whether or not the proper law is England law, will be enforceable by the English Courts against any party to the arbitration agreement who is within the jurisdiction of the English Courts.

5. The English Courts would generally recognize and acknowledge an overseas receivership or liquidation if the liquidator or Receiver is appointed in a jurisdiction where the company carried on business and/or was incorporated. That a foreign insolvency is recognized by the English Court involves more than a mere acknowledgement of the existence of the foreign proceedings. As a matter of principle, recognition carries with it the active assistance of the Court. Given recognition, foreign liquidators are allowed to institute civil proceedings in England and may seek to recover debts in that jurisdiction. Notwithstanding this, the better course for the Receiver may be to also petition to wind up the US insurer in England. The English Court will assume jurisdiction to wind-up an overseas corporation on various grounds including if it had a branch or place of business in the UK, if it has a claim against a reinsurer in the UK, or even if there is a reasonable possibility of a benefit to creditors. However, the Court's power is discretionary and it does not have to make the winding-up order at the Receiver's request. The English Court can (but is not obliged to) make its liquidation ancillary to the US insolvency procedure and, if this is done, the English liquidator's role would be restricted to collecting the reinsurance recoveries if that was the only purpose for his appointment.

If the US insurer had a place of business in the UK in respect of which a winding-up order was granted by the English Court, the English liquidator's responsibilities would extend to collecting in the UK assets and settling a list of creditors in the UK. However, local preferential creditors' and the liquidator's professional fees would be deducted before the assets or money could be transferred to the US. Generally, where there exists a reasonable prospect of open and even-handed co-operation any sensible arrangements between an English and foreign liquidator or receiver which benefit English creditors would be sanctioned by an English Court provided the arrangements adhered to the following general principles:

(A) Preferential creditors - that is creditors having priority under English insolvency law, receive payment of the debtor company's UK assets in priority to all other creditors, wherever located. These preferential debts are listed in the English Insolvency Act 1986 and impose a positive duty on an English liquidator to discharge them in priority to all other debts. There are six categories of preferential debts which have statutory priority for payment and include certain debts due to the tax authorities, some social security contributions and pension scheme contributions and specified amounts due to employees. They are not be confused with transactions entered into by a company prior to its liquidation where the intention was to prefer (in the sense of giving an advantage to) certain creditors above others;

(B) The remaining UK assets are then distributed equally among the nonpreferential creditors wherever located, and

(C) Any non-preferential creditor who has received a payment out of the debtor company's assets by seizing or attaching assets in other jurisdictions must generally, before benefiting from an equal distribution of assets with other like creditors, account for the assets seized or attached.

Although assets collected by an English liquidator may be applied in satisfaction of foreign as well as English liabilities, whilst there is a simultaneous liquidation or receivership abroad, the Court will seek to ensure that all creditors benefit equally whether they are claimants here or in the foreign proceedings. In other words, an English Court will not sanction a transfer of assets from England to the United States if the transfer prejudices the rights of English creditors in favor of creditors situated in the United States.

For example, in the case of Felixstow Dock and Railway Company v. US Lines Inc. (1989) OB 360, the English Court failed to accord full recognition to a US Court Order restraining litigation by creditors of a US Company in Chapter 11 proceedings, and refused to discharge an injunction freezing the company's English assets. Repatriation of the English assets to the US was refused on the basis, principally, that the English creditors would not gain any foreseeable benefit from the proposed reorganization of the company's business which was thought to be likely to favor US creditors. In part of the English Court's judgment it was stated that internationalist aspirations must "yield to the exigencies of the local situation", and the Court expressed doubts as to whether a US Court would release the assets and allow repatriation in a case where the facts were reversed. Any adverse

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Recoveries

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impact of this decision upon the conduct of English-US relations has hopefully been laid to rest by the judicial approaches adopted in later case, and in particular the case of Barclays Bank plc v. Homan (1992) BCC 767. In this case Barclays Bank wanted an order restraining a company's administrators (administration is a form of insolvency procedure in England) in England and the company's examiners in New York from invoking the jurisdiction of the US Bankruptcy Court to set aside a preference payment made to Barclays Bank shortly before the company went into Chapter 11. The English Court decided that it would not be "unconscionable, vexatious or oppressive" for US jurisdiction to be invoked because the administrators had been recognized by the US Court; the predominant location of assets was in the US; the payment in question was derived from the disposal of an asset in the US and there was a "genuine" connection with the jurisdiction of the US Court. The English Court held that it had to strike a balance between the interests of each party and that the only satisfactory solution to the possibility of jurisdictional conflict was the "discretionary exercise of jurisdictional self-restraint." In principle, therefore, an English Court will always wish to cooperate and assist a foreign Court or foreign liquidator in relation to any cross-border issues but the nature and extent of that co-operation will depend upon the particular circumstances and it will not be exercised if the result would be to unjustly prejudice English creditors.

Dealing with insolvent reinsurers

In the present insurance climate it is very possible that overseas reinsurers may themselves be subject to an insolvency procedure. This will inevitably result in slower and more difficult recoveries. A very brief outline of the procedure which generally apply in the English jurisdiction is set out below.

Forms of English Procedure for Insurance Companies

Where insurance companies are concerned, the general procedure used in England is either that of compulsory liquidation (which is a court supervised form of insolvency, generally initiated by the petition of a creditor or, occasionally, the government body responsible for regulating insurance, the Department of Trade and Industry) or a Scheme of Arrangement.

A Scheme of Arrangement is a compact between the failed company and its creditors under which the means by which the assets will be realized and distributed to them is regulated. The Scheme has to be approved by 75 percent by value of the creditors and sanctioned by the Court and can take a number of different forms depending on whether it seeks to establish a cut-off date for assessing liabilities or whether a prolonged run-off is to be carried out within the Scheme, perhaps with an interim dividend payment out of available cash resources.

In the case of insurance companies which are in financial difficulty, either procedure is often preceded by the appointment of a Provisional Liquidator, generally a chartered accountant, who is given extensive interim powers by the Court to manage the company to minimize the impact of the insolvency.

Complex issues of set-off and reinsurance liability do arise both in liquidation and Schemes of Arrangement which are beyond the scope of this section of the text.

It should be noted, however, that all correspondence and dealings with the failed insurance company should be directed to the liquidator, provisional liquidator or, in the case of a Scheme of Arrangement, the Scheme Administrator. These individuals have, in almost every situation, powers which supersede those of the former management. The advent of Liquidation or Scheme will mean that the US insurer creditor should be entitled to vote and prove its debt in the Liquidation or Scheme of Arrangement and should be requested to lodge a claim. It is important that a claim is lodged as soon as possible, even if only in outline, to ensure that there is no danger of the company's rights being overlooked. The advent of Liquidation will, and the advent of a Scheme can, affect any proceedings in English Courts and the application of set-off and currency conversion.

Brokers' Role in Collections

The position of brokers is of vital importance in collecting overseas reinsurance. Very often they are in possession of more information than the failed company itself and their co-operation and assistance may be the best, if not the only,. way of recovering what is due. Care must be taken in dealing with them in that they themselves may have funded claims or premiums and frequently disputes arise where brokers seek to impose set-off in respect of sums which they themselves have spent or which they feel are due to their other clients. It is good practice to utilize brokers in collections where they hold vital information, but great care must be taken in respect of any funds which they hold or which pass through their hands, to clarify the legal position of any claims they may have in their own right or on behalf of other clients.

Nigel Montgomery
Partner

Top Five Traps In The Sale Of Charters Of Insolvent Insurance Companies

The charter of an insurance company can be a valuable asset of a receivership estate. However, the sale of such a charter can be fraught with unexpected complications. This paper does not directly address the legal issues involved in the idea of selling a corporate shell and its corresponding certificates of authority. This essay assumes that the audience has overcome any legal obstacles, decided to take the plunge by attempting the sale, and now wants some tips on hidden pitfalls. Borrowing from late night television guru, David Letterman, this discussion presents some of the most significant problems encountered in sales of charters.

So, in the spirit of *Late Night with David Letterman,* these are:

The Top Five Traps in the Sale of
Charters of Insolvent Insurance Companies

5. Those Pesky Negative Actions Taken By Regulators Against Certificates of Authority;

4. Placing a Value on the Charter;

3. Choosing a Method of Sale Which Produces the Largest Recovery For the Estate;

2. Resolving the Conflict Between the Receiver and the Commissioner;

and --- the top trap you can encounter in selling a receivership charter IS

1. Scaling the Wall of the Form A Application Process.

#1 Form A Approval

The most significant problem is the Form A approval. The Form A application process in the context of receivership can take a significant amount of time. Meanwhile, a Special Deputy Receiver (SDR) is receiving pressure to bring funds into the estate.

The SDR can contractually provide some protection against an interminable Form A application process. Most prospective purchasers know what a Form A application involves. Further, they know the amount of time involved in obtaining Form A approval. The acquisition agreement should contain an automatic termination clause after a specific amount of time. The clause can include language allowing for extension if both parties agree in writing. However, such a clause can work to the detriment of the SDR if he wishes the sale to proceed and the purchaser refuses to extend the agreement.

Another method of time containment is to place time restrictions on curing any Form A deficiency. Insurance Departments send a Form A deficiency notice is sent on most Form A applications. The SDR should expect a deficiency notice in receivership charter sales. The question then becomes whether the applicant is able to cure the deficiency and how quickly it can be cured. There are at least two ways of limiting the length of time this process can take. The SDR can insert a provision that the purchaser must respond to any deficiency notice within a certain amount of time. Even more stringent, the SDR can provide that the purchaser actually cure, rather than simply respond to, any deficiency within a time limitation.

#2 Receiver/Commissioner Conflict

The roles of the SDR and the Commissioner differ greatly in the Form A process. The SDR has a duty to maximize recoveries of the estate. On the other hand, the Commissioner has a duty to fully scrutinize each acquisition applicant in order to protect consumers. Whereas the SDR wants to expedite the acquisition in order to bring in needed funds, the Commissioner must explore every aspect of the proposed purchaser. Particularly where the Receiver and the Commissioner are one and the same person, there is an inherent conflict of interest.

This conflict of interest can be overcome. The roles of the SDR and the Commissioner must be specifically defined. The SDR's role is to obtain the highest purchase price for a valuable estate asset. The SDR's purpose is not dissimilar from the purpose of a party selling a charter of a healthy company. The SDR is not charged with insuring that the proposed purchaser is capable of effectively managing an insurance company. This role must be made clear to the holding company division of the agency as well as any SDR oversight division.

Although the SDR should not make the determination as to the fitness of the purchaser, it is appropriate for the SDR to consider whether the winning purchaser is able to close the sale. One safeguard is to require potential purchasers to file a Form A application as a prerequisite to bidding on the charter. This

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Top Traps

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requirement assures that those bidding have at least a rudimentary notion of the acquisition process.

Implicit with this role, as defined above, is that the SDR not attempt to influence the Form A process. If the SDR uses his connections within the agency to expedite the Form A approval, the distinct role of the SDR, as opposed to that of the Commissioner, becomes blurred. The holding company division must be free to make an unbiased decision as to the competency of the purchaser. Otherwise, the SDR may be blamed for any future solvency problems experienced by a successful applicant.

If the SDR commits to remain apart from the Form A decision, the holding company division should respect this arrangement. It is the holding company division's job to scrutinize the purchaser. An SDR should not be expected to choose the "best" purchaser, in terms of competency. His job is to select the highest bidder. Any criticism levied at an SDR for selling a charter to a less than respectable entity is invalid. If the holding company division does its job, that disreputable buyer will never be a danger to consumers.

As an aside, I spoke to a regulator in the preparation of this paper in order to obtain his input. This attorney for a state department of insurance expressed concern regarding this inherent conflict. Even if the SDR does not directly pressure the holding company division to approve the Form A, the regulators, nevertheless, feel somewhat obliged to approve the Form A in order to obtain funds for the receivership estate. This perspective may be fueling the movement of regulators to forbid SDRs from selling charters.

#3 Method of Sale

The best method of sale depends on many factors. Some states are insistent that the sale be accomplished through competitive bidding. The concern is that the SDR should not show any favoritism toward a prospective purchaser.

Some types of charters have a special value. For instance, in Texas, county mutuals are governed by unique laws which make them exceptionally valuable. Further, county mutual companies can no longer be newly formed. The only method of acquiring control of a county mutual in Texas is to purchase a charter along with the management contract. Another example of charters with special value are those of companies licensed in several states.

If a charter has a high value, an auction is a beneficial method of sale. Obviously, in an open, competitive bidding process, the SDR should take the highest price bid for the charter. An auction held in the presence of the bidders offers the SDR an opportunity for a second round of bidding, possibly increasing the purchase price. In holding an auction, it is best to require bidders to pre-qualify in order to obtain bids from those who are able to close on the sale. Methods of pre-qualification can vary. Historically, bidders have been required to file a Form A application at least 10 days prior to the auction. Further, the SDR may require some proof of financial ability in the form of an audited financial statement or a letter of credit.

A second method of sale also involves taking bids. Unlike an auction, bids are received through the mail. Bidders are kept less informed of their competition and, therefore, are presumably more likely to offer their highest and best price at the outset. This method is best for charters with marginal value. Keep in mind that the astute bidder will check with the appropriate department of insurance to determine whether any other bidders filed Form A applications in advance of the bidding deadline. This will give the bidder an idea of the level of competition. Therefore, instead of requiring a Form A application to be filed in advance, the SDR should consider requiring potential purchaser to file the Form A application simultaneously with the mailing of the offer to purchase.

If the value of the charter is questionable, a negotiated sale may be more appropriate. The costs associated with this method of sale are lower because there are no marketing expenses. A negotiated sale should be considered if the level of inquiry on the availability of the charter is low. However, keep in mind that a negotiated sale will open the SDR to being criticized for giving preferential treatment to the purchaser.

The SDR may also consider whether to allow a commissioned sale. The advantages and disadvantages of this arrangement are the same as in any transaction involving a broker. If the value of the charter is unquestionably high, there should be no need to find a buyer because buyers will rush to the seller. There is no need to share the purchase price in such a situation. However, if the value of the charter is minimal, use of a broker can be beneficial.

#4 Placing a Value on the Charter

The choice of method of sale depends primarily on the value of the charter. Unfortunately, the value of the charter is not easily determined. As with any asset, the value of the charter is gaged by the market demand. It pays to keep informed as to the going rates of various types of charters. Unless a charter has a unique characteristic rendering it particularly valuable, such as a Texas county mutual, recent history is the best gage of the value.

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Top Traps

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#5 Negative Actions Against Licenses

If the SDR is marketing a multistate charter, the threat of negative action by various state regulatory agencies is a serious concern. Multistate charters are valuable because the company was licensed in many states. A purchaser is actually buying time. An established charter will already have existing certificates of authority. Because these certificates of authority are already in place, the length of time required prior to doing business is, theoretically, decreased.

Unfortunately, state action goes hand-in-hand with receivership. Thus, the SDR must take action to inform the regulatory agencies of any impending sale and the effect of such action.

If a multistate charter sale is available, the SDR should take immediate action upon his appointment. Once states become aware of the liquidation, they will take action. The SDR must either convince the regulatory agency to forego action against the charter or he must close the sale quickly. (See #1 for problems with a quick sale.) The value of the charter will decrease with each negative action against the license.

Also, the SDR walks a fine line here in keeping within his role as Receiver as opposed to Commissioner. Again, he should not use his influence to pressure foreign regulators into forbearance. The SDR can not and should not vouch for the credibility of any prospective purchaser. Rather, he should simply point out the value of the asset and that because a Receiver has been appointed, consumers are not in danger.

Also, the SDR walks a fine line here in keeping within his role as Receiver as opposed to Commissioner.

These efforts may be met with hostility in some states. There is currently a backlash of sentiment against the concept of selling charters of insurance estates. The sale is viewed as a way for less-than-desirable companies to get into the marketplace by way of a back door. The counterargument is that the SDR welcomes, and indeed encourages, regulators to scrutinize purchasers through the Form A process. If the holding company divisions are doing their jobs, only reputable and fit purchasers will close the sales.

Conclusion

Above are the major considerations in selling charters out of receivership. The list is certainly not all inclusive. Attached is a checklist of additional issues that should be considered.

The sale of the charter of insolvent insurance companies can be a very effective way of recovering assets for the estate. The SDR should evaluate the costs and benefits of the sale of this asset. After this initial step, the SDR should not be timid in marketing the charter if a cost/benefit analysis warrants such a-sale. The influx of proceeds of the sale is certainly in the best interests of the estate.

Sara Shiplet Waitt
Jo Ann Howard & Associates, P.C.

Checklist of Additional Considerations

1. Amount of earnest money.
2. Ownership of interest on earnest money.
3. Ownership of earnest money if Form A is disapproved.
4. Minimum acceptable bid.
5. Length of time allowed for prospective purchasers to file Form A applications prior to bid.
6. Extent of advertising. National publications of general circulation such as Wall Street Journal and USA Today or insurance trade journals or local publications.
7. Receivership Court authority.
8. Legislative second guessing; keep detailed accurate records.
9. Alternatives should the Form A be disapproved or the winning bidder be unable to perform.
10. In the case of multistate charters, contingent price reductions, when states revoke certificates of authority.

Society of Insurance Receivers Balance Sheet

December 31, 1994 and 1993

Assets

Current Assets	YTD	Prior YTD
Wilmington Trust Checking Acct	$5,667.60	15,998.94
Wilmington Trust CD	25,716.03	25,000.00
Accounts Receivable	290.00	
Investment Income Accrued	76.20	
Total Current Assets	31,749.83	40,998.94
Property, Plant and Equipment	1,367.50	1,367.50
TOTAL ASSETS	$33,117.33	$42,366.44

Liabilities and Equity

Current Liabilities		
Accounts Payable	$815.07	$7,462.10
Prepaid Dues	3,225.00	
Total Liabilities	4,040.07	7,462.10
Member's Equity		
Fund Balance	3,704.34	13,650.02
Special Reserve	25,000.00	
Net Income	372.92	21,254.32
Miscellaneous		
Total Member's Equity	29,077-26	340,904.34
Total Liabilities and Equity	$33,117.33	42,366.44

See accountant's report and notes to financial statements. See next page.

Society of Insurance Receivers Income Statement

For the years ended December 31, 1994 and 1993

	CURRENT YTD	BUDGET YTD	PRIOR YTD
Revenue from Sales			
Membership Dues	33,945.00	$33,920.00	$39,210.00
Amount Dinner	2,555.00	2,545.00	30.00)
Retreat Fees	0.00	0.00	1,221.50
Educational Seminar Fees	0.00	0.00	7,180.00
Directory Income	0.00	0.00	0.00
Interest Income	792.23	770.00	0.00
Total Revenue from Sales	37,292.23	37,235.00	47,581.50
General & Administrative			
Management Fee	6,975.00	6,975.00	0.00
Postage & Freight	3,193.67	2,700.00	0.00
NewsLetter	6,622.77	6,624.00	0.00
Printing/Stationery/Copy	4,111.59	3,600.00	0.00
Telephone	2,202.49	2,204.00	0.00
office Expense	16.64)	21.00	8,711.36
Bank Charges	52.00	52.00	97.00
Licenses and Taxes	0.00	0.00	40.00
Retreat Expenses	698.32	700.00	2,709.79
Reception Expense	2,608.40	2,400.00	1,317.92
Annual Meeting Expense	2,923.06	2,925.00	0.00
Seminar Expense	0.00	0.00	3,639.19
Publications	0.00	0.00	7,671.92
INSOL Dues	2,980.00	3,500.00	2,140.00
Display	0.00	0.00	0.00
Travel Expense	1,668.49	2,100-00	0.00
Directory Expense	2,900.16	2,908-00	0.00
Total General & Administrative	36,919.31	36,709.00	26,327.18
Net Income	372.92	$526.00	$21,254.32

See accountant's report and notes to financial statements. See next page.

Society of Insurance Receivers
Notes to Financial Statements

(See accountant's report)

1. Summary Of Significant Acounting Policies:

The Society of Insurance Receivers ("SIR") is a not for profit association and not subject to Federal Income Taxes. Revenues and expenses have been accounted for on the accrual basis.

The financial statements were not prepared on a basis consistent with the December 31, 1993 financial statements submitted to the Board of Directors. The December 31, 1993 financial statements were prepared on the cash basis of accounting. The December 31, 1993 financial statements previously submitted were restated to reflect revenues and expenses in the year incurred instead of in the year paid. A reconciliation of the change from the cash basis to the accrual basis as of December 31, 1993 is as follows:

Fund Balance (Cash Basis)	$40,998.94
Accounts Payable	(7,462.10)
Display Stand Reclassified (Note 3)	1,367.50
Fund Balance (Accrual Basis)	$34,904.34

2. Certificate Of Deposit:

On December 6, 1993 SIR purchased a certificate of deposit from the Wilmington Trust Company, Wilmington, Delaware for $25,000.00. The certificate of deposit was renewed on December 5, 1994 for 90 days and will mature on March 5, 1995. Interest of $716.03 on the $25,000.00 was added to the certificate. The interest on the certificate of deposit is 4.16% (4.25% annual percentage rate).

3. Accounts Receivable:

The amounts recorded as accounts receivable represent amounts due from members for the annual membership meeting dinner held in LaJolla, California in January, 1994. Collection of these amounts is uncertain. No provision has been made for amounts that may not be collected.

4. Property, Plant And Equipment

During 1993, SIR purchased a commercial display stand for the purpose of displaying SIR materials at the National Association of Insurance Commissioner meetings and at SIR sponsored events. The cost of the display stand was recorded as an expense in 1993. The display stand was originally recorded as an expense in the cash basis financial statements but has been reclassified as an asset in the accrual basis financial statement.

No provision for accumulated depreciation has been recorded for the display stand.

5. Special Reserve:

A portion of the fund balance has been set up as a Special Reserve as a contingency to cover unknown future expenses of the Society. Currently there are no known expenses that would require the disbursement of the funds set up in this special reserve.

SIR Directors

Director	Class	Term	Officer / Committees
Jeanne James-Bryant	I	93-95	President & Board Chair Executive Chair
Open (resigned)	I	93-95	By-Laws, Nominations, Elections & Meetings (NE&M)
John Massengale	I	93-95	Treas. / Executive, Finance Chair, Acct. Standards
Douglas Hartz	II	94-96	V.P. / Executive, Education, Publications Chair, Acct. Standards Chair
Dick Darling	II	94-96	Accreditation & Ethics (A&E), Education, Finance
Tom Wrigley	II	94-96	Executive, Guaranty Fund Chair, NE&Chair, A&E
Phillip Singer	II	94-96	Membership - International Subcommittee Chair
Mike Miron	III	95-97	NE&M - Meetings Subcammittee Chair, Guaranty Fund, Membership
Robert Deck	III	95-97	Secretary / Membership Chair until 3-95), A&E
Mike Surguine	III	95-97	A&E, NE&M
Betty Cordial	III	95-97	Membership (Chair effective 3-95), NE&M

SIR Committees

Committee	Composition Requirements	Chair	Members
Executive	President, Treasurer and an odd number of Directors.	Jeanne Bryant	Doug Hartz, Bob Deck, John Massengale & Tom Wrigley
Finance	Treasurer and any other SIR members; Chair - any member.	John Massengale	Dick Darling, Steve Phillips
Accred. & Ethics	1 Director as Chair, and any other SIR members.	Open	Bob Deck, Dick Darling, Mike, Surguine, Tom Wrigley
Membership	Secretary and any other SIR members; Chair - any member.	Bob Deck/ Betty Cordial	Bob Deck, Betty Cordial, Phillip Singer (Int'l), Paul Walther (Sustaining), Jackie Reese (Principal, Asso.)
Publications	1 Director and any other SIR members. Chair - any member. See also, Achiev. Subcom. Report	Doug Hartz	Morty Mann (Articles), Mike Cass (Member Features), Jim Dickinson (Achievements - Subcommittee)
Education	1 Director and any other SIR members; Chair - any member.	Kristine Bean	Dick Darling, Mike Marchman, Bob Craig
NE & M	3 Directors who are not officers, and any other SIR members; Chair - any member.	Tom Wrigley	Tom Wrigley, Mike Miron, (Meetings) Mike Surguine, Betty Cordial
Guaranty Fund	Open	Tom Wrigley	Mike Miron, Mike Marchman. Dale Stephenson
By-Laws	This should be a standing committee for Formal Interpretations of the By-laws. Chair - any Director	Open	Bob Greer, Karen Stewart, Bill Latza, Frankie Bliss, Mike Miron
Accounting Standards	Open	Doug Hartz	Steve Phillips, John Massengale, Billy Bostick, Elizabeth Biatt, Jimmy Guillot, Mark Tharp, Ed Warszalek, David Masini, Dale Stephenson, Larry Warfield

Society of Insurance Receivers
25-35 Beechwood Ave.
P.O. Box 9001
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