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President's Message

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

Joseph J. DeVito

As we ring in the holidays, I want to wish everyone a happy, healthy, and prosperous New Year! You all work so hard throughout the year to accomplish your personal goals and yet you have dedicated so much time to recognizing the goals of IAIR during 2006…. but, remember "work hard/play hard" so be sure to take the time to enjoy family, friends, and colleagues during this joyous season.

The past few months have been quite busy…. The IAIR Fall Quarterly Meetings were held in St. Louis; Staff Training Workshops were held at the Ohio Department of Insurance and Liquidation Office, the Florida Department of Financial Services, and the Utah Insurance Department; a Joint Summit was conducted with NCIGF; and a training program was offered to the New York Insurance Department on the topics of accounting and reinsurance.

IAIR Fall Quarterly Meetings: The Fall Quarterly Meetings were held in September in St. Louis. I am pleased to announce that membership is up slightly from December 2005. The new President of NCIGF, Roger Schmelzer, gave a presentation to the Board regarding the establishment, or perhaps I should say reestablishment, of a committee to facilitate discussions between Receivers and Guaranty Associations. As a result, the Board voted to establish a Facilitating Committee to foster this concept. We look forward to having this Committee launch a forum for open communication, cooperation, and coordination between the two communities. Anyone interested in joining this Committee, please contact me or any Board member, at your earliest convenience.

The Roundtable was opened by Director Dale Finke of the Missouri Department of Insurance and the discussions included: Impact of Missing or Incomplete Information in an Insolvency, and various IT matters such as Systems Created to Address Information Challenges and IT Security Policies and Procedures Issues Raised by Sarbanes-Oxley and Gramm-Leach-Bliley Acts. The session closed with a summary of Hot IRMA Topics! Accreditation, Reinsurance, Fraudulent Conveyances and Other Controversial Issues.

Staff Training Workshops: The Staff Training Workshops all addressed similar topics although the presenters varied. Each workshop opened with a brief introduction by an IAIR member followed by welcoming remarks from a distinguished regulator. In general, the sessions included such topics as "IT….Who's He?"…and I am pleased to say that we all now know who "He" is and can be ready to address the relevant IT issues that face us today, "Warning Flags" of claims administration with a focus toward receiverships/liquidations, Reinsurance and Insurance Insolvencies…Friends or Foes?, and "What, When, Where, etc." to navigating guaranty funds along with particularly helpful handouts. And what training session would be complete without Accounting? Specific accounting topics included "Early Identification of Financially Troubled Insurers" and "Financial/Accounting Considerations in the Management of an Insolvent Insurance Company." A Question and Answer segment closed the sessions and all participants and speakers alike were pleased with the exchange of information. Our congratulations and thanks to those who contributed to the success of our Staff Training Workshops: Bill Barbagallo, Anne Bert, Joe DeVito, Alan Gamse, Frank Gartland, Kevin Harris, Doug Hartz, Doug Hertlein, Jenny Jeffers, Paula Keyes, Mary Jo Lopez, D. Kent Michie, Belinda Miller, Mike Motil, Dan Orth, Dick Pluschau, Sandi Robinson, Bill Rossbach, Francine Semaya, Ed Wallis, Barry Weissman and Pam Woldow.

Joint Summit with NCIGF: Well, we did it! We have laid the foundation and are on our way to building a shared vision and collaborative mission between the Receivers and Guaranty Associations. Piggybacking the Staff Training Workshop in Utah, we held a Joint Summit between the Receivers and the Guaranty Associations. The presentation featured such issues as large deductibles, early access, receivers processing claims for guaranty associations, transparency and coordination and administrative burdens between receivers and guaranty associations. The participants shared a "team" initiative pairing up to take the PRIME Exercise challenge. PRIME: Primary Insurance Management Exercise is a computer-assisted management exercise designed to acquaint the participants with the decision-making processes involved in operating a property/casualty company and to see the effects of their decision-making on the company's bottom line. I was enlightened by the challenge and found the interaction among the team members to be vibrant, informative, and a whole lot of fun. Those who were unable to attend this summit should surely plan to attend the next!

I would like to thank all of the speakers at the seminar for their hard work and presentations, to Gen Re for providing its PRIME program and to Steve Durish and Pam Woldow, the Co-Chairs of the event. Their continued dedication made the Joint Summit a great success…..See you all in San Antonio!

At a Board Meeting held in Salt Lake City in November, the Board voted to extend the term of the President to two years, so I look forward to serving you again and I am excited to see what's ahead for 2007!

View from Washington

Charlie Richardson, Baker & Daniels, LLP

As this column is being written in late September, we don't know if control of the House, less likely the Senate, will switch to the Democrats. What we do know is that insurance reform/modernization will continue next year as a hot topic for the White House and the 110th Congress regardless of the leadership of key Congressional committees.

NOLHGA Legal Seminar Draws National Audience: Treasury's Views on Insurance

On August 3-4, the National Organization of Life and Health Insurance Guaranty Associations drew a national audience and a wide array of speakers in Baltimore for their annual legal seminar. Speakers for the event included: David Nason, Deputy Assistant Secretary for the U.S. Treasury Department; Andrew Olmen, Counsel to the Senate Banking Committee; Kevin McKechnie, Associate Director, ABIA; Frank Keating, President, ACLI; Stacy Sachs, office of Senator Ted Kennedy (D-MA); Cheye Calvo and Brett Palmer, Manager for Government Relations and Managing Director of Government Relations, respectively, in the NAIC's Washington office; and Frank Nutter, President, RAA. Additional information about the seminar agenda is available at www.nolhga.com.

Immediately after Treasury Deputy Nason's speech was given, those remarks were posted on Treasury's website at http://www.treas.gov/press/releases/hp46.htm. Every person interested in the insurance reform debate should read Nason's comments. While focused on Treasury's view that the state-based guaranty system has done and is doing a commendable job in protecting consumers, the speech gives a snapshot of Treasury's views on the insurance sector generally and, specifically, what factors/issues/concerns should be front and center as Congress and the Administration examine ways to improve insurance regulation and market efficiency.

Senate No Longer Walks Alone on OFC

On September 28, Representative Ed Royce (R-CA), a senior member of the House Financial Services Committee, introduced companion legislation (H.R. 6225) to the "National Insurance Act of 2006" (S. 2509), sponsored by Senators John Sununu (R-New Hampshire) and Tim Johnson (D-SD). Both bills, which are similar but not identical, would create an optional federal charter for life insurance and p/c insurers. House Capital Markets, Insurance, and Government Sponsored Enterprises ranking member, Paul Kanjorski (D-PA), has expressed his support for the Royce bill but is not yet a formal cosponsor.

Surplus Lines Bill Clears House by Wide Margin; Next Stop -- The Senate

Only days left before lawmakers recessed to campaign for the November elections, the House overwhelmingly passed (417 to 0) on September 27 the "Nonadmitted and Reinsurance Reform Act of 2006" (H.R. 5637) to improve regulation of the surplus lines insurance and reinsurance markets. Many view the surplus lines bill as the next step towards comprehensive reform of how insurance is regulated at both the state and federal levels. The bill now goes to the Senate for consideration, although it is unclear if the Senate will act on the bill before the end of the 109th Congress.

Military Member Financial Services Protection Bill Signed by President

New legislation has recently been enacted that would eliminate the sale of abusive investment and insurance products to military personnel. The "Military Personnel Financial Services Protection Act" (S. 418) prohibits the sale of contractual plan mutual funds; it gives state insurance officials authority to regulate insurance sales on military installations in the U.S. and overseas; and it requires several types of disclosures before selling private insurance products to members of the military. The legislation, signed into law September 29 (public law number not available at press time), was spurred by a November 2005 Government Accountability Office report, which found widespread abuses and systemic regulatory failures in regulating sales of financial products to service members and urged Congress to pass remedy legislation.

The "T" in TRIA May Not Mean "Temporary"

The federal government's terrorism insurance backstop program, or TRIA (P.L. 107-297), will not expire until 2007, but many in the insurance industry are not waiting to say that it must be extended or made permanent. Two House Financial Services subcommittees held a joint hearing on September 27 to assess the availability of terrorism insurance in the private sector and, specifically, the threat of terrorist attacks using unconventional or NBCR (nuclear, biological, chemical, or radiological) weapons. Executives representing different segments of the insurance industry told lawmakers that there is little appetite for NBCR risk and that a public/private partnership remains essential to address financial costs associated with terrorist acts. Buttressing the insurers' position, days before the hearing, the General Accountability Office issued a report stating that losses from a NBCR attack are largely uninsurable and that any purely market-driven expansion of coverage is highly unlikely in the near future. The President's Working Group on Financial Markets issued its report September 29 on terrorism risk in-

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View from Washington

Charlie Richardson, Baker & Daniels, LLP

surance, as mandated by the 2005 TRIA extension (P.L. 109-144), and similarly found little market potential for NBCR coverage. The report added that group life insurance remains available and affordable, despite not being part of the TRIA program.

House Reviews SOX at Four; SEC and PCAOB Working on Guidance to Reduce Compliance Costs

In the final hearing of his Congressional career, held September 19, House Financial Services Committee Chairman Mike Oxley (R-OH) and his panel reviewed the implementation -- and particularly the costs associated with Section 404 -- of the four-year old Sarbanes-Oxley Act (P.L. 107-204). Responding to public criticism of Section 404, Oxley said that Section 404 of SOX has proven costlier than originally anticipated, but is due to an "overzealous implementation" of the internal control provisions and not to the text of the law. Both Securities and Exchange Commission Chairman Christopher Cox and Public Company Accounting Oversight Board Chairman Mark Olson noted that they are revising auditing standards and implementing guidance for companies and their auditors to reduce compliance costs. Final action on applying internal control requirements to small public companies is also pending at the SEC.

AHRQ Study Suggests Med Mal Damage Award Limits Reduce Health Costs

Researchers at the U.S. Agency for Healthcare Research and Quality (AHRQ) recently published a study entitled "The Impact of State Laws Limiting Malpractice Damage Awards on Health Care Expenditures" which suggests that state laws limiting amounts paid for noneconomic damages (e.g., pain and suffering) in medical malpractice cases lower state health care expenditures by approximately 3% to 4% ($92 per capita). The study recommends further analysis of the effectiveness of these laws across the 28 states that limit payments in malpractice cases and whether these laws are related to poorer health outcomes. Bills H.R. 5, S. 22 and S. 23 offered in Congress to cap ($250,000) noneconomic damages in medical malpractice cases, have stalled and are unlikely to be enacted this year.

The Storm Rages On

Mississippi Judge L. T. Senter recently decided the first Hurricane Katrina homeowner insurance coverage case to go to trial, Leonard v. Nationwide Mutual Insurance Company, awarding the plaintiff approximately $1,000, an amount far less than the $160,000-plus sought by the plaintiff. Judge Senter upheld the enforceability of the "flood" exclusion in the homeowner insurance policy, which the insurer argued excluded any damage sustained as a result of the storm surge.

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Why Large Deductible Reimbursements Belong To Insurance Guaranty Funds

Thomas W. Jenkins and Rowe W. Snider

The recent wave of insurance insolvencies created new challenges for receivers and the insurance guaranty funds alike. Both groups have grappled with an unprecedented claims load and financial burden, and a diverse variety of alternative insurance products largely unseen in prior insolvencies. With the worst hopefully behind, it can be agreed that both groups rose to the challenge in distributing funds to the insureds and claimants of the insolvent insurers. There are lingering issues that remain in the wake of the insolvencies. None of these issues, however, is more prominent than the dispute between the receivers and the guaranty funds relating to large deducible insurance policies.

Thomas W. Jenkins

Rowe W. Snider

The dispute itself is simple: when a guaranty fund pays claims within a policyholder's large deductible, who is entitled to the benefit of the corresponding Reimbursements paid by the policyholders? The lines on this issue are distinctly drawn. The guaranty funds contend that the Reimbursements belong to the guaranty funds, who generated the Reimbursements by paying the claims in the first instance. The receivers contend that the Reimbursements belong to the estate of the insolvent insurer. This article explains why – for practical, legal and public policy reasons – the Reimbursements properly belong to the guaranty funds, and not the estate.

The Guaranty Funds Are Entitled To The Reimbursements Because They Made The Corresponding Payments.

A large deductible policy is an insurance contract where the financial risk of the insurance is allocated by agreement between the insurer and the policyholder. The allocation of risk is achieved by varying standard guaranteed-cost insurance policies through the use of deductible endorsements. A "large" deductible is commonly in excess of $100,000, which the policyholder agrees to reimburse the insurer, per claim, dollar for dollar up to the deductible amount. A standard large deductible policy and endorsement provide that the insurer will initially pay claims, and the policyholder will thereafter reimburse the insurer for amounts within the large deductible. While large deducible policies are written primarily for workers compensation lines, they also include automobile and general liability lines.

The Reimbursements arise as a direct result of post-liquidation claims that the guaranty funds pay in the insolvent insurer's stead. In any context, reimbursements are, by definition, amounts that are "repaid," "refunded" or "reimbursed" to the party who made the payment in the first instance. In the context of large deductibles, the party who makes the initial payments is the guaranty fund, who should receive the corresponding Reimbursements. Without the guaranty funds' payments, there would be no Reimbursement to fight over. It would be illogical – not to mention unfair – to "reimburse" receivers for payments that they never made.

Legislatures And Courts Agree: Reimbursements Belong To The Guaranty Funds.

Recognizing the relevant considerations, five states – Pennsylvania, Illinois, California, Texas and Michigan – have passed legislation stating that Reimbursements belong to the guaranty funds. No state legislature has enacted legislation stating that Reimbursements belong to the estate of an insolvent insurer. Other states are sure to follow Pennsylvania, Illinois, California, Texas and Michigan on this issue, because their legislation squares with existing guaranty fund statutes. The legislatures of almost all of the states have already decided that, as a matter of public policy, the guaranty funds cannot assume a greater risk than the insolvent insurer assumed under the policies. The guaranty fund statutes expressly or substantively provide that the funds shall:

> be deemed the insurer only to the extent of its obligations on the covered claims and to such extent, subject to the limitations provided in this article, **shall have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent….**

(NAIC Model Act, Section 8.A.(2))(emphasis added). This "deemer" provision is a part of the NAIC Model Act, adopted by the legislatures of most states, with minor variations in a few states. Long before the Reimbursements dispute arose, the receivers effectively incorporated this "deemer" provision into their published handbook, which states:

> When a guaranty fund pays a claim on behalf of an insolvent insurer, the guaranty fund is generally considered to step into the shoes of the insurer. Then, through subrogation, a guaranty fund may seek indemnity from a third party as if it were the insolvent insurer.

(NAIC, Receivers Handbook for Insolvencies 9-54 (2d Ed). Through the deemer provision, the guaranty funds are entitled to "step into the shoes" of the insolvent insurer and recover the Reimbursements generated by the

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claims they paid post-liquidation. Allowing the receivers to retain the Reimbursements, on the other hand, would violate the deemer provision because it would require the guaranty funds to assume a risk under the large deductible policies greater than the insolvent insurers ever agreed to assume as solvent companies. Thus, the receivers' position is directly at odds with the existing guaranty fund statutes.

In light of this well-established legislative framework, it is not surprising that the one court that has considered this issue found that Reimbursements belong to guaranty funds, and not receivers. In Imperial, the California Court of Appeals explained that a guaranty fund is entitled to recover large deductibles from the liquidator of an insolvent insurer's estate. See In re Imperial Ins. Co., 157 Cal. App. 3d 290, 295 (Cal. Ct. App. 1984). Imperial involved a dispute between the liquidator of two California insurance companies and the California Insurance Guarantee Association ("CIGA") over the right to policyholder large deductibles held by the liquidator. Affirming the lower court, the Court of Appeals held that the liquidator was not entitled to the deductibles, because they were not property of the insolvent insurers' estates. The Court found that, because the insolvent insurers would not have been responsible for the deductible amount had they remained solvent, CIGA could not be responsible for paying the deductibles when paying those claims.

Reimbursements Are Not Premium.

The repeated refrain of receivers is that Reimbursements are analogous to premium, which under state liquidation statutes is an estate asset. But the analogy does not fit because large deductibles do not have the key attributes of premium. Among other things, the Reimbursements are not called premium, not taxed like premium, not accounted for like premium, and not calculated like premium.

Perhaps most significantly, the policy holders who purchase large deductible policies, and the insurers that sell the policies to them, do not treat the Reimbursements in the same manner as premium. Policyholders treat large deductible policies in their books and records in the same way that they would treat self insurance. For example, policyholders generally record amounts expended within large deductibles as loss payments, not premium. Insurers record large deductible reimbursements similarly in their books and records as a reduction of paid losses, not premium. Under this or any light, Reimbursements are not premium.

There Is No Need For "Compromise" Legislation.

The receivers have suggested that the parties agree to so-called "compromise" legislation, which would treat Reimbursements as estate assets and thus is not compromise at all on this key issue. Under this approach, the guaranty funds would only receive partial reimbursement for amounts paid within policyholders' deductibles, with the estate taking the rest. There is no need to upend the well-established legal authority on this issue because, as discussed above, the current framework makes good sense. Moreover, the receivers' position would lead to adverse legal and practical results in insurance insolvencies, as demonstrated by the following three examples.

First, as discussed above, the receivers' proposal squarely violates the principle that the guaranty funds should not assume any risk greater than that assumed by the insolvent insurer, who would have obtained 100% reimbursement from the policyholder.

Second, the receivers' position would effectively require the guaranty funds to subsidize claimants that state legislatures throughout the country have already determined are not the intended beneficiaries of guaranty fund subsidization. For example, many states have net worth exclusions that prevent large net worth policyholders from bringing claims against the guaranty funds. The receivers' position would require the guaranty funds to subsidize such sophisticated large net worth policyholders, who likely knowingly and voluntarily purchased insurance from the higher risk insurer in order to get a lower price.

Third, requiring the guaranty funds to pay the bill for the large deductibles would lead to an increase in the guaranty funds' net assessments, the burden of which would fall on policyholders and owners of solvent insurance companies, as well as taxpayers. In essence, the general public would be filling in the gap to pay the insured's large deductibles. Large policyholders excluded from guaranty fund coverage benefit most from the payments, receiving a larger dividend from the estate. This would be a perverse regulatory transfer of wealth and contrary to the public interest and principles underlying the guaranty fund system.

In sum, the legislatures and courts have correctly determined that the Reimbursements properly belong to the guaranty funds, and not the estate of insolvent insurers. There is no need to "fix" anything at this point through the proposed "compromise" legislation because – for practical, legal and public policy reasons – the current approach is not broken.

The authors acknowledge the contributions of Steven T. Whitmer and Julie L. Young to the development of this article.

Community Choice Michigan: A New Approach to HMO Rehabilitation

James E. Gerber, Director of Receiverships,
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Karl V. Kovacs, Regional Director, Priority Health,
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Introduction

Karl V. Kovacs

One of the most challenging aspects of regulation is the receivership of health maintenance organizations (HMOs). These are extremely challenging because, in a majority of states, there are no guaranty associations to step into the insolvent HMO's shoes and pay provider claims. Also, each HMO is often unique in terms of its member base, its provider contracting, how it provides prescription coverage and most importantly, it's administrative, finance and claims systems.

The following is a brief summary of the rehabilitation of Community Choice Michigan, a Medicaid HMO. This rehabilitation was unique in the following ways:

1. The payment of pre-rehabilitation claims to providers continued without the necessity of filing pre-rehabilitation proofs of claims.
2. Surplus note funding was obtained from a federal agency loan guarantee.
3. A major claims system conversion process was undertaken during the rehabilitation, despite the challenges involved.

The above were accomplished through a number of efforts including teamwork, aggressive restructuring of hospital and pharmacy contracts, along with a Medicaid rate increase.

Background

The Board of Trustees of Community Choice Michigan (CCM) voluntarily entered rehabilitation with the Michigan Office of Financial and Insurance Services (OFIS) in May 2003. As part of the rehabilitation, CCM entered into a management agreement with CareSource Management Group. CCM was formed by 17 Federally Qualified Health Plans (FQHC) in 1995, in response to, and in support of, the state of Michigan's movement from fee for service to Medicaid managed care. CCM contracted with the Michigan Department of Community Health (MDCH) in 1996 to serve Medicaid recipients in the state's managed care program. The FQHCs recognized the importance of participating through an FQHC sponsored HMO rather that only as a provider responding to payers. The FQHCs also recognized that, in order to participate successfully in Medicaid managed care and therefore extend their mission of service to the underserved, an FQHC sponsored HMO was the vehicle to gain competency in managed care.

CCM operated with a surplus in four of its first six years of operation. Beginning in 2001 and in 2002, CCM experienced disastrous financial results. With a loss of nearly $7 million in 2002, CCM was forced to enter supervision and then voluntarily entered rehabilitation in May 2003. CCM had a series of management companies that provided administrative services. The Board of Trustees of CCM, in conjunction with OFIS, hired CareSource Management Group (CSMG) to replace the former management company, effective August 1, 2003, and named CSMG as co-deputy rehabilitator.

The transition to CSMG management required the hiring of the majority of the current staff, configuring and implementing a new transaction processing system in less than three months, changing the phone system and adding new office hardware and software. Without adequate planning and testing time, systems were tested in production. System and database reconfiguration and editing were necessary and ongoing. Rehabilitation created an atmosphere of extreme stress operationally. OFIS had placed two other Medicaid HMOs in rehabilitation and a third was placed in supervision. Fear of and eventual discounting of pre-rehabilitation claims payments to providers by the other two HMOs, made CCM's provider network tenuous and contracting and maintenance of contracts difficult. The overall environment of concern over viability added greatly to an already difficult operational transition. Because of the negative consequences of the other HMOs in rehabilitation, OFIS, CSMG and the Board of CCM worked diligently to implement a provider friendly rehabilitation.

CCM was the first Medicaid HMO that CSMG had managed outside of Ohio. The CCM contract presented multiple opportunities and challenges. This included centralized and decentralized functions, new reporting configurations, new management and staff communication challenges and gaining expertise in working in an oversight environment that included a Deputy Rehabilitator who oversaw all aspects of CCM and CSMG functions.

One essential success factor was the desire on the part of stakeholders to see CCM emerge from rehabilitation and remain viable. This included the sponsoring FQHCs, the Michigan Department of Community Health (MDCH), OFIS, the majority of the provider community, and the Health Resources Services Administration (HRSA). CCM had previously secured, but did not use, a line of credit that was made available to FQHC sponsored HMOs. In order to meet risk-based capital, OFIS, CSMG and CCM leadership were able to secure a loan guarantee that was recognized as capital by OFIS. This $9 million loan guarantee from HRSA required that the sixteen (16) sponsoring FQHCs contribute a total of $900,000 in cash collateral. This allowed CCM to successfully participate

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in the MDCH bid process for a two year contract beginning October 1, 2004, with three one year extensions possible.

Community Choice Michigan emerged from rehabilitation on September 29, 2004, and expanded its service area to include nine additional counties. CCM is the only plan in Michigan to successfully emerge from rehabilitation. Since then, CCM has had positive financial results, and had a surplus of about $6.8 million at December 31, 2005.

The effort to conduct a "provider friendly" rehabilitation was a constant guiding principal. Consistent with this approach, CCM continued to pay pre-rehabilitation claims throughout the rehabilitation.

Teamwork and Goals

In addition to stakeholder desire and commitment to emerging from rehabilitation, teamwork and clear goals were critical success factors. The Management Team resided in two locations. The core operations and corporate executive team was located in Dayton, Ohio and the core CCM leadership team and staff, and the OFIS Deputy Rehabilitator was in the Okemos office. A significant internal success factor was the involvement of senior staff on the ground with "sleeves rolled up". This was used strategically in two areas, provider relations and contracting, and in securing the HRSA Loan Guarantee. The senior team participated with the line staff to reinforce the commitment of CCM to be a "provider friendly" organization. The Deputy Rehabilitator also participated extensively in direct communications to calm fears and to halt the termination of provider contracts. This consistent personal involvement over time allowed CCM to develop trust with the FQHCs, as well as other professional and institutional providers.

While success can be measured by a myriad of goals, objectives and activities connected with CCM's rehabilitation; there were five main goals that were communicated throughout the organization by the Deputy Rehabilitator and the leadership team.

The first was to assess and stabilize the financial impact of provider contracts on CCM. The leadership team in both offices and particularly the Directors of Finance of CSMG and CCM worked to evaluate the impact of existing contracts and develop initiatives to reduce CCM medical expenses related to pricing. One area of focus was institutional provider contracts and another was assessing the complex financial risk pools established for each FQHC and other major primary care provider groups. A contract strategy team was formed of senior and analytical staff in both Ohio and Dayton to develop an overall contracting strategy and evaluate institutional contracts to determine which were at negative variance with the capitation payments from the state. The result was a re-contracting initiative through the Provider Relations team to modify contracts. The initiative was very labor intensive but was successful in hospitals voluntarily modifying thirteen (13) contracts for an annual savings to the plan of about $2 million.

CCM had developed complex risk arrangements with large primary care providers and PHOs. These risk arrangements were no longer meeting their provider incentive goals, were not easily maintained and were labor intensive; further, the complexity and inherent lack of confidence led to dissatisfaction in the provider community. The estimate of IBNR applied to the risk pool settlements was also a point of ongoing contention. It was decided to reduce this complex arrangement to a more basic plan-wide model during the period of rehabilitation, in order to increase provider satisfaction and make the financial status of CCM more transparent to all stakeholders. Coupled with the simplification of the risk model, the process of converting all primary care provider contracts from capitation to fee-for-service was finalized with three large primary care provider groups as a result of the rehabilitation plan.

A second area of focus was the effort of the team, and specifically the finance staff, to determine other root causes for CCM's financial demise and to develop remedial responses. One key historic factor was the lack of a capitation increase by the state through most of the three-year contract. Another significant contributor to the negative financial results was the over-estimation of IBNR. While IBNR is far from an exact science, it was determined that the methodology used produced results that were not reflective of the actual medical expenses. CCM had posted more than $6 million in losses through July 31, 2003; and ended 2003 with only a loss of $97,000. About one-half of this turnaround in the last five months of 2003 was due to the adjustment of IBNR to more appropriate levels.

In addition to the IBNR overestimates, a number of other areas were assessed and remediated. It was discovered that conversion to a new transaction processing system by the former management company had lead to incorrect configuration of provider contract terms. The treasury function of CCM was analyzed, funds were consolidated and higher investment yields were obtained without risking the safety of the investments. A new Pharmacy Benefits Manager and a strict formulary were also instituted on August 1, 2003. A contract to retrieve credit balances with hospital providers did not exist, so the process was instituted early in the rehabilitation. Coordination of Benefits/Subrogation was reviewed and a new contract initiated. Provider recoverables were actively pursued.

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Community Choice Michigan: A New Approach to HMO Rehabilitation

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High cost counties in the service area were not selected in the bid process for the new state contract. Eligibility of members in the Children with Special Health Care Needs category was closely monitored and these members were appropriately transitioned to the State's fee-for-service program. The Medical Department focused on high cost medical tests, such as MRI's, and focused on active utilization and case management in order to increase the quality and cost effectiveness of care. Again teamwork, including Finance, Provider Relations, Claims, IT, Medical Management and Operations helped the team understand problems and act to fix them.

The development of a Rehabilitation Plan encompassing all remedial and improvement activities was a third and overarching goal for CCM. CSMG staff worked in concert with the OFIS Deputy Rehabilitator to craft a document that would provide the road map for success and be acceptable to all stakeholders, especially the Judge overseeing the rehabilitation.

A vital component of the rehabilitation plan and the fourth major goal was the application for the HRSA Loan Guarantee. While CCM had secured a $2 million line of credit in the past, it had not used it. An application for a loan guarantee was sent to HRSA in November 2003 in order to recapitalize CCM from its losses, meet Risk Based Capital requirements with OFIS, and qualify for a new MDCH contract roughly a year after CCM had voluntarily entered rehabilitation. The efforts of the leadership team to secure the loan guarantee mirrored the team that crafted the Rehabilitation Plan, but also included the efforts of the FQHCs and the Michigan Primary Care Association (MPCA). Additionally, a lending bank and legal counsel for all parties were included in this effort to qualify for the loan guarantee.

The fifth major goal and teamwork success was the bid for a new MDCH contract. This contract was critical in that CCM's sole source of revenue was its Medicaid contract. The HRSA Loan Guarantee was a crucial component of the Bid and the two teams contributed to the complex assembling of a Bid that qualified CCM for a 38 county service area, nine more than prior to the bid. Another critical component of the bid was provider recruitment. In order to obtain adequate provider contracts and letters of intent, the Provider Relations Director and his staff from Dayton, assisted the provider relations staff in Michigan in order to get the necessary provider network to successfully bid.

Conclusion

Emerging from Rehabilitation was the result of the efforts of the OFIS Deputy Rehabilitator and the leadership team. Success was achieved by collaborating with all stakeholders, FQHCs, MDCH, OFIS, HRSA, the Rehabilitation Judge, the provider community and plan Membership, and the community at large, convincing them that CCM was a provider friendly and viable community resource. This was confirmed with the emergence from rehabilitation.

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IRMA Accreditation Standards

Douglas L. Hertlein, Chief Deputy Liquidator
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In December 2005, the NAIC gave the prior receivership model act (the Insurers Rehabilitation and Liquidation Model Act or "IRLMA") its walking papers with the approval of the new Insurance Receivership Model Act ("IRMA"). Proving true the premise that "there is no rest for the wicked," or "no good deed shall go unpunished," the regulators and interested parties who had worked so long and diligently on IRMA, were promptly tasked with grappling with considerations as to which, if any, of the new model provisions should be incorporated into the accreditation standards established and maintained by the Financial Regulation Standards and Accreditation (F) Committee ("FRSAC").

Douglas L. Hertlein

Kim H. Finley

Early in 2006, FRSAC requested input from the regulators who had worked on the development of IRMA regarding provisions in the new model act that should be considered for accreditation standards. As of this writing, the Receivership Law and Intergovernmental Working Group ("RLIWG"), which reports to the Receivership and Insolvency Task Force ("RITF"), under the Financial Condition (E) Committee, has made an initial set of recommendations. Those recommendations will ultimately be adopted in some form as a recommendation to FRSAC.

It's now been a year since IRMA's passage and an entire alphabet soup of committees and working groups and subsets of the same are still wrestling with the many issues of IRMA or its impact on accreditation standards. Substantial disagreements exist as to how IRMA should be viewed for accreditation purposes. Those disputes will almost certainly continue through, and perhaps beyond, FRSAC's ultimate consideration. While I cannot begin to predict how this will end, I will try to outline the history of this dispute and how we've gotten the IRMA accreditation issue to where it is today.

The IRMA drafting project officially began in 2001 after the NAIC did not adopt the Uniform Receivership Law ("URL"), which had been drafted as a proposed replacement for IRLMA, the existing receivership model act. While the NAIC did not adopt the URL, it did recognize that many of the provisions in the URL were improvements over their counterparts in IRLMA and thus began the IRMA project to consider incorporating many of the URL provisions and otherwise updating the receivership model act so as to produce a new model act.

Around this same time, people and entities interested in the insurance receivership process were criticizing and challenging many aspects of the way in which receiverships were being handled. Receiverships, however, were not alone in this attack as there was a significant push in many areas of insurance regulation for uniformity among the states. During 2003 while Mike Pickens was president of the NAIC, he promoted efforts to unify insurance regulation among all of the states, including in the area of receiverships. Commissioner Pickens implemented a roadmap for uniformity, which in regard to receiverships included the following eight points:

- Rights and obligations of policyholders, reinsurers, state guaranty associations (SGAs) and other claimants and debtors to the estate
- Commissioners and supervising courts' roles
- Priority of distribution
- Special deposits being deemed to be general assets, unless to benefit of SGA's (Create uniformity and consistency in the use of and access to special deposits)
- Reciprocity and interstate cooperation
- Transparency and financial reporting (including to the Global Receivership Database)
- Immunity and indemnification of receiver and others working for benefit of estate
- Coordination and cooperation between the state guaranty system, receivers, and regulators.

Consequently, even as IRMA was being drafted, there was a strong push to not only develop a model receivership law, which included the best practices observed nationwide, but also to implement those best practices uniformly throughout the country.

Obviously, with a state-based system uniformity can only be obtained if each of the states enacts similar statutory provisions. Insurance receiverships, however, is an area where it is difficult to get any legislative attention, until a state is faced with a major insurance company receivership within its jurisdiction and many of the existing state statutory provisions prove to be inadequate in dealing with issues that consequently arise. This reality was best summarized by Doug Hartz in his August 7, 2006 comment letter addressed to the RLIWG:

> Receivership is an area of insurance regulation that runs hot and cold. Either there is press and much ado about

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> the system and the need to modernize it and improve it, or there is a desire to pretend that it is not there. It is not some thing that is easier to fix when it is "running hot," and so, it is something that needs an encouragement so that it is fixed when things are cooler. A stronger accreditation standard (more than merely requiring that some scheme to handle receiverships be in place) will provide that encouragement.

http://www.naic.org/documents/committees_e_ritf_liwg_comments_Bingham_Doug_Hartz.pdf.

Understanding this reality, the NAIC was considering ways in which it could raise interest among the states in enacting more uniform receivership provisions. Among the options that were considered by the NAIC was to enact some or all of the new IRMA provisions as accreditation standards under the FRSAC accreditation program.

The Role of Accreditation in Achieving Uniformity

Although most regulators and interested parties involved in the drafting of IRMA, and now the accreditation debate surrounding it, seemingly agree that uniformity of key receivership provisions among the states is important, there is significant disagreement as to whether the accreditation program should be used to encourage that uniformity. In January 2006, the RLIWG was asked to identify key provisions from IRMA that it would recommend for inclusion as accreditation standards. At that time, still following Commissioner Pickens' roadmap for uniformity, the RLIWG solicited comments from other regulators and interested parties as to the top 10 provisions that they believed were most important for uniformity and the three provisions that they believed were least important. This became known as the top 10 and bottom three lists. Along with those top 10 and bottom three lists, suggestions also came a few comment letters in general objecting to any of the IRMA provisions, in whole or in part, being made accreditation standards.

The primary emphasis of these particular objections was that the accreditation process was designed and implemented solely to unify among the states the financial reporting and solvency monitoring of ongoing insurance companies. These commentators believed that once a company became insolvent and the receivership provisions became applicable, the purpose for the accreditation program was no longer being met. For example, in a January 30, 2006 comment letter, Peter Gallanis argued:

> The NAIC's Financial Regulation Standards and Accreditation Program was developed for the purpose of enhancing solvency regulation by the states. To that end, the standards focus on financial oversight of going concern companies, and the appropriate levels of resources, expertise, and documented procedures for thorough financial analysis of companies by state insurance departments. The standards also require that states have a receivership scheme in place for the administration of companies found to be insolvent, and a regulatory framework in place for guaranty fund protection. We understand that all fifty states and the District of Columbia have achieved accreditation in accordance with these appropriately general standards.
>
> Changes to the NAIC accreditation standards, particularly those that require specific legislative action by the states, will necessarily expose states to the risk of losing their accreditation. Loss of accreditation is a risky prospect for the NAIC, for any state, and for the many interested parties who have strongly supported the financial accreditation program as it was originally conceived and implemented. Therefore, changes to financial accreditation requirements should be made sparingly, and with the purpose or correcting specific, identifiable problems relating to the regulation of financial solvency of "live" companies. They should not be used as a means to compel adoption of unrelated and highly controversial model act provisions.

http://www.naic.org/documents/committees_e_ritf_liwg_comments_NOLHGA_Joni_Forsythe_060130.pdf.

This view has not only caught the attention of the regulators and interested parties inside the industry. The National Counsel Of Insurance Legislators ("NCOIL") at its July 2006 meeting passed a resolution objecting to the NAIC using the accreditation program to influence what legislation is enacted in the states. Similar to some opponents within the industry, NCOIL opposes inclusion of IRMA standards into accreditation, in part, because the model law does not directly relate to solvency. Besides stating its opposition, the resolution also committed NCOIL to investigate the merits of IRMA, including the need for any revisions and to take action if necessary.

Notably, many of the same industry participants and their associations that raised complaints about the lack of uniformity among the states are now the ones most vehemently opposed to using the accreditation process to encourage uniform insolvency regulation. While some of the parties arguing this position appear to maintain only that using the accreditation process to encourage uniformity in receivership handling is contrary to the purpose of the accreditation system, many seem more motivated by the fact that they do not like particular provisions of IRMA and thus do not want those to be strongly

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promoted by the NAIC through its accreditation program. This motivation has been most apparent when the same interested parties, who have taken a position opposing any accreditation standards based on IRMA, have oftentimes supported the inclusion of IRMA provisions that they particularly favored as accreditation standards.

As the RLIWG began to work through this, it anticipated that there would be a strong temptation for the working group members and interested parties to favor or disfavor particular IRMA provisions for accreditation standards based on how they feel about the substance of the provision. Throughout the IRMA drafting process, there were many disagreements as to the appropriate handling of various aspects of the receivership law and ultimately, many compromises were made. Where compromises could not be made, the drafters often had to choose between two conflicting options for particular provisions. Many of these difficult and highly debated provisions of IRMA were enacted on very close votes among the regulators. Thus, early on the RLIWG requested that parties disregard their personal preferences for the particular drafting of the provisions, but instead consider provisions based on whether the issues being addressed are important for inclusion in receivership statutes. While it was not always successful in maintaining this focus, for the most part the RLIWG was able to avoid discussions re-arguing the substantive disputes over the IRMA provisions.

Debate Regarding What is Important for Accreditation

With these ground rules, the RLIWG then began to consider specific IRMA provisions to be recommended as accreditation standards, starting with those provisions that had been recommended on the top 10 lists. The working group began to draft a recommendation based upon these suggested sections of IRMA in a form similar to the current accreditation standards published by FRSAC.

This approach became a major difficulty for the working group because its members began to debate not only which provisions of IRMA were important for uniformity, but also the degree to which each particular provision should be incorporated as an accreditation standard. There were a variety of suggestions as to the degree of incorporation of any particular provision, ranging from virtually a verbatim requirement that the IRMA provision be included in state law as it was drafted in IRMA, to a standard that would simply require a provision in state law addressing a similar substantive area as the particular recommended IRMA provision. Implicated in all of this was FRSAC's use of the terms "similar" and "substantially similar" in many of its accreditation standards. While it seemed clear that FRSAC had particular meanings and purposes for using these terms in its standards, the RLIWG members did not have a uniform and consistent understanding as to what FRSAC actually intended by using these terms.

Thus, after substantial work trying to draft the recommendation requested by FRSAC, the working group realized that it needed more direction from FRSAC as to exactly what it was expecting. Accordingly, a request was made that FRSAC clarify its expectations for the working group. On June 15, 2006, FRSAC sent a letter to the working group explaining that it was looking to the members of the RLIWG, as the individuals who were most familiar with receiverships and IRMA, for a recommendation as to those provisions in IRMA, which met one or both of the following two criteria: "1) provisions that are necessary for effective management of multi-state receiverships; and 2) provisions that must be present to have a functioning receivership system." Further, the June 15 letter indicated that FRSAC did not wish for the working group to try to ascertain the degree to which any particular provisions should be incorporated as an accreditation standard.

With this new direction, the RLIWG was then able to complete its assigned task and on August 21 unanimously approved its draft recommendation for forwarding to RITF. The recommendation identified twenty substantive areas covered in IRMA, which the working group felt met one or both of the criteria outlined in the June 15 letter. Additionally, the recommendation identified the specific provisions in IRMA that addressed those substantive areas and also provided comments as to why the working group felt those provisions met the criteria requested by FRSAC and why they were important for meeting those criteria.

Unresolved Issues

If all proceeds as expected, both the RITF and then the Financial Condition (E) Committee will review, potentially revise, and ultimately pass some form of a recommendation to FRSAC. At some point in the process several issues will still need to be addressed.

The first will be the comments regarding whether any receivership provision whatsoever should be included in the accreditation standards. Currently, the accreditation standard in regard to receivership only requires that a state have a "scheme for the administration, by the insurance commissioner, of insurance companies found to be insolvent similar to the NAIC's Model Law on Supervision, Conservation, Rehabilitation and Liquidation." Under this broad standard, virtually any combination of statutory or case law, which allows for some procedure and process for handling insolvent insurance companies, meets the accreditation requirement. Those who say that nothing re-

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garding receivership should be included in the accreditation program, because accreditation is meant to deal only with solvency issues, have the problem of dealing with the fact that the accreditation program currently has at least this very broad standard relating to receiverships. Therefore, the argument that the accreditation program has nothing to do whatsoever with insolvent companies, at least is inconsistent with the fact that this provision is already in the accreditation standards.

The next argument that must be addressed is whether a provision-by-provision standard or just a general provision relating to receiverships similar to what is currently in the accreditation standards should be incorporated. While the adoption of something similar to the current one-liner approach may be the path of least resistance for finalizing a receivership accreditation standard, there could still be much debate how such a one line standard should be drafted. It could simply substitute the words: "Insurers Rehabilitation and Liquidation Model Act" for "Model Law on Supervision, Conservation, Rehabilitation and Liquidation." Or it could go so far as to eliminate the vague and general "scheme" standard and in its place require statutory provisions in state law substantially similar to IRMA. There are interested parties who strongly support each of these alternatives.

Assuming that FRSAC ultimately decides to adopt provision-by-provision accreditation standards from IRMA, not only will there be extensive debate as to whether the specific provisions that are currently being recommended by RLIWG are the appropriate provisions, but there will also be considerable arguments as to the degree to which those provisions should be incorporated. Even among those who believe that the accreditation standards should identify specific receivership provisions, there is disagreement as to whether those provisions should simply require something in state law that addresses the substantive area identified in the specific receivership provisions set forth as the accreditation standard or something much closer to requiring that the state law provisions be worded almost verbatim with the accreditation standard. Thus, although this initial step has been completed by the RLIWG, there remains significant disagreement among the regulators and interested parties as to what the final accreditation standards relating to insurance receiverships, if any, should look like.

Conclusion: Have We Just Begun to Fight?

At this point probably the only thing that can be said with certainty about the adoption of IRMA, or parts of IRMA, as accreditation standards is that the fight has only just begun. There appear to be many committed advocates for all of the many sides of this issue and where the majority of the FRSAC members will ultimately come out on this is anybody's guess. I certainly am not prophetic enough to see the end result.

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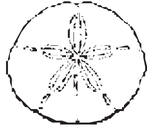

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Keeping Your Systems and Data Secure

Thomas K. Wagenhauser, MCP, MCSA, CEH

Thomas K. Wagenhauser

Most businesses store information in both computer and paper-based systems.

Whatever storage method you use, keeping your data secure and confidential will help safeguard the information you need to run your business successfully and ensure you comply with relevant legislation.

If your business data is lost, misused or accessed without authorization, it can be difficult to make informed business decisions. This can also put your organization at a severe disadvantage. Serious data loss can put your whole business at risk.

Why Data Security is Important

Data security is important to most businesses. Financial information (accounts and claim details) or employee information (payroll and personnel files) could be very difficult to replace. This could expose you to certain risks that need managing carefully. If you lost data through human error, fire, theft or some other reason, you would at the very least have to spend time and effort collecting and reproducing the information.

More seriously, the reputation of your organization could be directly affected.

Losing data in an insurance related database - such as claimant names, details and social security numbers could stop you from processing claims. This could mean you lose trust in the organization.

A virus can damage your business by making documents stored on computers unusable. As more and more business is conducted via email, a virus can also make getting in contact more difficult.

Risk management

Risk management is a process whereby risks are identified, assessed for their impact and likelihood and then, depending on their seriousness, reduced to an acceptable level.

Risk assessment can help you identify what risks your organization faces and what would happen if you lost valuable data or your systems failed.

Carrying Out a Risk Assessment

Firstly, you need to identify potential hazards to your data and systems. This will include looking at:

- Physical threats – e.g. an office fire, power cuts, malicious damage and theft
- Human error – e.g. input error, mistaken processing of data and careless disposal of data
- Threats from corporate espionage and malicious damage.

You can then consider how you currently secure data and information systems and identify areas where you are vulnerable. Consider:

- Who has access to what information
- Who uses the Internet, email, data and how they do so
- Whether access is restricted to those who need data for their work
- Whether passwords are used and how they are kept
- What anti-virus software and firewalls you have in place to protect systems
- Your level of staff training

Once this is done, you can prioritize the data and systems that are the most critical to your business, and decide which require additional security safeguards.

It is worthwhile drawing up a business continuity plan that employees can follow in the event systems fail. You should review your risks and security safeguards regularly to allow for changes in your business' circumstances or working methods.

You may want to consider using the services of a professional risk consultant.

IT Security Policy

Data security is only one aspect of the wider issue of IT security in an organization. It is good practice to write an IT security policy, setting out the general rules that will be followed to minimize IT security risks. This can then be used by management and employees to help ensure good practice.

You should develop a clear policy that takes account of common risks to your data. This will allow staff to understand and adopt appropriate security measures, and help create a security-conscious culture. The policy does not need to be lengthy or complicated, but should provide a reference point for all staff.

An IT security policy should cover both external threats, such as viruses, and internal threats, such as the theft of data.

Your IT security policy might include:

- Secure login identification for using IT systems

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Thomas K. Wagenhauser, MCP, MCSA, CEH

- Logical access controls - limiting access to information and restricting access to the level needed for each job
- confidentiality rules for customer and business information
- Plans for business continuity management.

You also need a clear policy on what you consider acceptable use of the Internet and email, as these are usually the means by which viruses get into systems. Such a policy will normally prohibit the browsing of websites likely to contain offensive material. Similarly, you should prohibit the use of email to send or receive such material.

You should have a clear policy about the transmission of sensitive information via email. In addition, you should clearly state your policy on the use of business email and web facilities for private use.

Types of Threat - Viruses

Computer viruses are created to cause a nuisance or damage computer systems. Viruses are programs that can replicate themselves, spreading from computer to computer, and usually damage files. They are typically activated by opening a program or document and are often passed on to unsuspecting users.

There are several variants of the virus idea that you may see:

- Trojan - a program that appears to do something useful, but actually has a hidden destructive capability.
- Worm - a program that spreads itself over a network, reproducing itself as it goes. Worms can cause problems by creating a lot of useless traffic on your network.

Typical methods of infection are:

- Email
- Clicking on website advertisements;
- Using contaminated external floppy disks or CDs.

Viruses can spread rapidly through your business network via internal email, an intranet or a shared disk. They can overload or crash your computers and network.

They can capture keystrokes - everything you type, such as confidential passwords and credit card details - and they can destroy files.

Tools for combating the problem include the following:

- Install anti-virus software to detect viruses, stop them from running, help you delete them and repair the damage. Remember to update the software regularly.
- Use the surfing security functions available with your web browser to restrict specific high-risk sites.
- Have a clear IT policy for acceptable use of business systems and email. Refer to this policy in employment contracts and provide training for the procedures.
- Using and regularly updating anti-virus software to scan emails is good practice and can be invaluable for protecting your systems. Ensure employees are warned not to open attachments from unknown or suspicious senders. Restricting email and Internet access to those who need it can lower the risks of your systems being infected by a virus.

Computer Misuse and Hacking

Unauthorized access, known as hacking, involves someone breaking into your IT systems without consent. The threat can come from inside or outside your business. There are various legal penalties for hackers, but you should not rely on these to act as a deterrent.

If your IT systems connect to the Internet, then you need to take special precautions against hacking, including the following:

- Firewall - this checks what goes into and out of your systems and blocks things that could be a threat according to a set of rules.

Just as important as these tools is to keep your software up-to-date, as hackers will try to take advantage of older software that contains known weaknesses.

It is an offence to gain unauthorized access to a computer, even if no damage is done and no files are deleted or changed. It is also an offence to purposefully change files on a computer with intent and without authorization, e.g. deleting files or even changing computer settings. If there is the intent to commit a further offence, e.g. access your bank account online to transfer money, then an individual could face five years imprisonment and/or a fine.

Don't rely on the law to protect your IT systems. It is a deterrent to hackers, but you must also take your own precautions. Additionally, you must ensure that your employees do not use your system to hack other organizations.

Internet and Email Issues

The inappropriate use of email and the Internet, e.g. using the Internet for non-work purposes, can have significant consequences for

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your business. This could be in terms of:

- Damage to your business' reputation
- Loss of productivity
- Increased risk of liability and legal action, e.g. as a result of sexist or racist emails
- Increased risk of virus attack

To avoid inappropriate usage, it is a good idea to clarify exactly what is and is not permitted at your business in a written record. You could ask employees to sign a written confirmation that they have understood the email and Internet policy.

You certainly should prohibit the use of your business' IT systems for the distribution of information (perhaps via a website) that has no relevance to your business. For example, the distribution of music and video tracks might well result in civil action against your business.

It is also worth introducing electronic safeguards. You should ensure that all email that enters or leaves your business passes through virus checking. You can install filtering software that searches emails for specific words or phrases, normally obscene or discriminatory, or monitors which websites your employees are accessing, or filters the type of websites they can access. You can extend this filtering to block access to sites that are known to carry obscene or racist material.

These measures are not infallible. You should not rely on filters alone to protect your business.

Before monitoring your employees' email and web usage, it may be worthwhile seeking legal advice as there are data protection issues to consider.

Data Back-up and Disaster Recovery

The extensive use of computer systems makes business operations vulnerable to major problems, ranging from the accidental loss of data to deliberate sabotage. Storage systems, whether computer or paper-based, can be at risk of theft or physical damage through a fire or flood.

If computer systems are out of action due to any of these reasons, you may face problems in paying staff, complying with data protection law or paying claims.

Backups allow you to continue working even if computer data has been lost. Backups consist of copies of data from your key systems. These copies are made to portable media like magnetic tapes or CD-ROMs. You should have a back-up routine (often done every day) as part of your IT security policy and you should check that this is being correctly carried out.

Best practice for backing-up data includes:

- Giving one person the main responsibility for backing up, and designating a second to cover fo absence
- Using a different tape or disk to back up each day of the week and have a schedule for rotating them
- Keeping backups secure - preferably off-site from the main business premises, e.g. in a bank box

Disaster recovery is intended to provide cover for really serious incidents such as fire or flood. It is good security practice to work out in advance how your business could survive and recover from such an incident, recording this in the form of a disaster recovery plan. Good data security and data backups are essential requirements for disaster recovery.

You should train your staff in business continuity methods - safeguarding essential functions.

Staff Training and Data Security Awareness

Communicating security policies and procedures to employees, and getting their commitment to adopting such methods, is an important way of lowering the risk of loss or damage to your data and systems.

If your staff regularly use and process data, make them aware of data security and protection principles, and what actions might infringe on security or confidentiality.

Employees that use technology for their work need to know how to use systems and how to be security-conscious. If employees know the procedures to follow when systems fail, it will be easier for them to get back to work in such an event.

To create awareness about data security issues, it may be helpful to consider the following:

- Train staff to use systems correctly and give responsibility for backups.
- Communicate data security procedures and principles - consider obtaining signed declarations from anyone handling sensitive information.
- Plan how particular tasks will be carried out manually if technology breaks down.
- Set out IT good practice, including use of email, software and the Internet, and the use of passwords. Draw staff attention to it by referring to it in employment contracts.
- Involve staff in a risk assessment and in regular reviews of your procedures.

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The "What" of Mediation: When Is Mediation the Right Process Choice?

Professor Paula M. Young

In 1999, Steven Keeva, the editor of the ABA Journal and author of Transforming Practices: Finding Joy and Satisfaction in the Legal Life, had this to say about ADR:

Paula M. Young

> While alternative dispute resolution has made encouraging inroads over the last twenty years, the adversarial system continues to hover above ADR like an elephant over a chipmunk.

I now suggest to my students that, in less than a decade, the metaphor has completely changed. ADR is now the elephant hovering over the chipmunk of litigation.

For instance, a review of the ADR referral policies of the district judges in the United States District Court for the Eastern District of Missouri shows that the eight judges will refer almost all cases to mediation, especially if they present fact issues. The judges do not make referrals when the cases involve: only questions of law; appeals from rulings of administrative agencies; habeas corpus and extraordinary writs; bankruptcy appeals; Social Security cases; and prisoner civil rights cases. For most experienced mediators, even this list of excluded cases raises questions about why the judges have deemed these cases inappropriate for mediation.

All of us have heard about mediation of personal injury cases or child custody matters. But a review of the headlines appearing over the past several years indicates the increasing use of mediation at earlier stages in the dispute – often pre-litigation – in an increasing variety of matters.

- White rap singer, Eminem, will use mediation to resolve the terms of his second divorce from his high-school sweetheart after a judicial settlement conference failed to bring the parties to agreement.
- African-American plaintiffs dropped a 38-year old lawsuit seeking desegregation of Tennessee's college and professional school educational system after hammering out an agreement in court-ordered mediation six years earlier.
- The Securities and Exchange Commission mediated its $800 million in fraud claims that it had filed against ousted chief executive of the HealthSouth Corporation. Courts had already referred the company's investors, in related lawsuits, to mediation.
- A very public sexual harassment suit filed against the former sheriff of Roanoke, Virginia entered mediation in early 2006 by court order.
- Major League baseball requested a pre-suit mediation with Washington, D.C. after the city failed to approve, by a December 31, 2006 deadline, a lease for a new ball park designed for the Washington Nationals. Without the lease -- the pre-cursor for the planned $535 million bond-funded stadium located in Southeast Washington -- the commissioner's office would not sell the team, formerly the Montreal Expos, to the city.
- A federal judge ordered Barry Scheck -- a prominent New York lawyer facing a $3 million malpractice suit for having missed court filing deadlines in a client's rape and robbery case -- into mediation with the former client.
- The family of deceased civil-rights icon, Rosa Parks, engaged in pre-suit mediation of allegations of undue influence with the people Ms. Parks appointed to handle her estate.
- The Federal Aviation Commission, nearing impasse in its contract negotiations with unionized air traffic controllers, requested mediation.
- The New Jersey Division of Youth and Family Services agreed to mediate with an advocacy group, Children's Rights Inc., in an effort to prevent a take-over by the federal government of the state's child welfare agency. The advocacy group alleged that the state had failed to overhaul the system as agreed.
- World Trade Center architect and master planner, Daniel Libeskind, entered mediation in an attempt to resolve his lawsuit for $843,000 in fees that he filed against the site leaseholder, Larry Silverstein. Silverstein requested the mediation within a week of the lawsuit's filing.
- Mexico's then-president Vincente Fox agreed to have his country act as a mediator between Columbia's government and guerrillas in their forty-year conflict.
- A judge ordered two younger teenage boys – accused of killing their father – to mediation with the prosecution after the judge ordered a new trial in a case carrying a 20-year to life sentence.

The use of mediation to resolve conflicts seems limited only by the support of courts, the will of the parties, and the creativity of their counsel.

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The "What" of Mediation: When Is Mediation the Right Process Choice?

Professor Paula M. Young

Disputes Suitable for Mediation

Hal Abramson, the author of Mediation Representation: Advocating in a Problem-Solving Process, suggests that certain types of disputes are especially amenable to mediation:

- When the parties have conflicting views of the facts or law
- When a party needs to express strong emotions
- When a party craves the opportunity to be heard directly by the opposing party
- When clients or their lawyers can no longer effectively communicate with each other without the assistance of a skillful mediator
- When the parties are not skillful negotiators and need the process structure and negotiation expertise provided by a mediator
- When a conflict exists between a party and his or her attorney.

Christopher Moore -- a partner in CDR Associates, a mediator since 1979, and author of The Mediation Process: Practical Strategies for Resolving Conflict – would also consider these factors:

- The emotions of the parties are intense and are preventing a settlement
- Communication between the parties is poor in either quantity or quality and they cannot change the situation on their own
- Misperceptions or stereotypes are hindering productive exchanges
- Repetitive negative behaviors are creating barriers to settlement
- Disagreements over data hinder its collection and evaluation
- Multiple issues in the dispute keep the parties from agreeing about the order and combination in which the issues should be resolved
- The parties perceive their interests as incompatible
- The parties have no negotiating procedure, they are using the wrong procedure, or they are not using a procedure skillfully
- The parties have no acceptable forum for the negotiation
- The parties are having difficulty starting the negotiations
- The parties have reached impasse in the unfacilitated negotiation process.

I would add to this list cases in which the parties:

- Need to protect in a confidential process reputations, good will, trade secrets, or a good name
- Seek to avoid the emotionally and psychologically exhausting process of litigation
- Seek to avoid the distraction –especially in a business setting – of ongoing litigation
- Seek to avoid the expense of litigation
- Need a much quicker resolution of the dispute
- Cannot accurately predict the outcome at trial
- Desire to maintain control over the dispute resolution process design
- Need more than an award of damages or an injunction
- Seek some sort of compromise solution rather than a win-lose outcome
- Desire to maintain control over the outcome
- Seek to avoid the decisions of a biased adjudicative neutral
- Cannot afford the expense of skillful and higher-paid lawyers, expert witnesses, or other representatives in litigation.

Disputes Less Suitable for Mediation

Abramson suggests that the following types of disputes or circumstances make mediation less desirable:

- The party needs to establish binding precedent
- The party needs to deter future claims by establishing a "hard-ball litigation – no settlement reputation" (aka the Wal-Mart strategy)
- The party seeks validation or vindication by a person in authority who declares that the client was blameless, but the other party was a low-down, dirty SOB
- The party wants or needs to go for a litigated "jackpot" damage award, no matter the statistical chance of winning that award

The "What" of Mediation: When Is Mediation the Right Process Choice?

Professor Paula M. Young

- The parties are embroiled in a value-based conflict on which they see no room for compromise

- The party will not be effectively represented in mediation, either because he or she is unrepresented or represented by inexperienced or unskillful counsel

- One or more parties refuses to participate in good faith in the process

- One or more persons essential to a resolution can not be brought into the process.

I would add to this list disputes in which:

- A party seeks retribution

- A weaker party needs the power the court or of law to balance an imbalance of power or resources.

The Maryland Handbook for Lawyers identifies four types of disputes in which mediation would not be successful or is not appropriate:

- When a party vicitimizes the other party

- When alcohol or drug abuse plays a significant role in the dispute or undermines a party's ability to effectively participate in the mediation

- When only a court can offer a remedy to the dispute, especially in matters of first impression or those matters requiring injunctive relief

- When relationships cannot be healed.

I would challenge two components of this list. While the mediation community continues to debate whether victims of spousal abuse or domestic violence should ever participate in mediation, several authors suggest that with sufficient safeguards the process may offer an attractive alternative for abused spouses. One of my former students, a victim of spousal abuse, wrote a seminar paper advocating the use of med-arb in divorce proceedings involving abused spouses. After her experience in the West Virginia court system, in which a judge openly expressed his bias against her, she preferred a process giving her more control, especially, over the outcome.

I would also suggest that mediators successfully handle many cases in which the parties either had not pre-existing relationship (auto accident cases) or do not wish to preserve the relationship (divorcing spouses with no children).

Still other authors identify those attributes of a dispute or of the parties that will make mediation more successful. They include: a positive state of mind; good faith; adequate settlement authority; flexibility; patience; realistic expectations; preparation; a willingness to listen; an effective negotiation strategy; creativity; and honesty.

As mediators, lawyers, and their clients gain more experience with mediation; fewer and fewer types of disputes will seem less amenable to the process. Even if mediation only succeeds in improving the parties' communication, in identifying their underlying interests, in narrowing the issues in conflict, or in helping them more carefully evaluate their litigation option, it can move the dispute towards a quicker, more cost effective resolution.

Paula M. Young is an associate professor at the Appalachian School of Law located in Virginia teaching negotiation, certified civil mediation, arbitration, and dispute resolution system design. She received in 2003 a LL.M. in Dispute Resolution from the top ranked program in the U.S. She has over 1400 hours of alternative dispute resolution training. Missouri and Virginia have recognized her as a mediator qualified to handle court-referred cases. You can reach her at pyoung@asl.edu.

- Steven Keeva, Transforming Practices: Finding Joy and Satisfaction in the Legal Life 102 (1999). http://www.moed.uscourts.gov/forms/ADRDistrict.pdf.
- Id., referring to Local Rule 16-6.01(a), available at http://www.moed.uscourts.gov/documents/loclrule.pdf.
- No empirical research supports the statement that some disputes are "best" for mediation. In fact, data on settlement rates and party satisfaction with mediation does not vary significantly based on type of dispute mediated. At the same time, disputes are more likely to settle in mediation if the parties' positions are already fairly close, the issues are less complex, or the issue of liability is less strongly contested. Bobbi McAdoo, Nancy Welsh & Roselle L. Wissler, Institutionalization: What do Empirical Studies Tell us About Mediation?, DISP. RESOL. MAG., Winter 2003 at 8, 9.
- http://news.yahoo.com/s/ap/20060919/ap_en_mu/people_eminem_divorce.
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- Matthew L. Wald, F.A.A. Calls for Mediation in Talks with Controllers, N.Y. Times, Nov. 11, 2005, at A20, available on Westlaw at 2005 WLNR 19186814.
- Richard L. Jones, Metro Briefing New Jersey: Trenton: Child Welfare Mediation Scheduled, N.Y. Times, Oct. 18, 2005, at B8, available on Westlaw at 2005 WLNR 16844077.
- George James, Metro Briefing N.Y.: Manhattan: Mediation Ordered in Trade Center Suit, N.Y. Times, July 22, 2004, at B4, available on Westlaw at 2004 WLNR 5598451.
- Antonio Betancourt, World Briefing Americas: Mexico: Mediation in Columbian Conflict, N.Y. Times, June 8, 2004, at A11, available on Westlaw at 2004 WLNR 4787661.
- Mediation Begins for Boys in Slaying of Father, N.Y. Times, Nov. 9, 2002, at A14, available on Westlaw at 2002 WLNR 4088824.
- Every now and then I here a comment about cases not suitable for mediation that literally makes my head whip around. This comment is often made by retired judges-turned-mediators or lawyers-turned-mediators who are not well-trained or well-versed in the expanding literature on the role emotions play in negotiation or mediation. The comment goes something like this: "High-emotion cases just don't work in mediation. You've got to keep the parties from getting too emotional. Emotions just get in the way." But see Roger Fisher & Daniel Shapiro, Beyond Reason: Using Emotions As You Negotiate (2005); Eileen Barker, Tips for Dealing with Emotion in Mediation, www.mediate.com/articles/ebaker2.cfm; Paula M. Young, Emotions in Mediation – Yours and Theirs: The Good News is, They Matter, St. Louis Lawyer 14A (February 4, 2003), reprinted at http://www.mediate.com/articles/young12.cfm.
- Hal ABramson, Mediation Representation: Advocating in a Problem-Solving Process 117-18 (2004).
- Christopher Moore, The Mediation Process: Practical Strategies for Resolcing Conflict 13-14 (2d ed. 1996).
- My language, not Abramson's.
- Abramson, supra note 17, at 118-19.
- The Md. Inst. for Continuing Prof'l Ed. of Lawyers, Inc., Ch. IV: Deciding When to Use Mediation, Mediation: A Handbook for Lawyers (1999), available on Westlaw at MEDI MD-CLE 27.
- E.g., compare Trina Grillo, The Mediation Alternative: Process Dangers for Women, 100 Yale L. J. 1545 (1991) with Dennis Marthaler, Successful Mediation with Abusive Couples, 23 Mediation Q. 53 (Spring 1989).
- Angela Lambert, Preventing Judicial Re-victimization: Introducing "Domestic Violence Dispute Resolution Specialists" into the Present ADR Systems, State Legislatures, and Family Courts . . from a Domestic Violence Crusader's Point of View (Fall 2006) (unpublished manuscript, on file with author).
- See, e.g., Kenneth O. Simon, Jr., Keys to Successful Mediation, http://library.findlaw.com/1999/Jun/1/128176.html.

IAIR Workshop
Tuscon, January 31, 2007 – February 4, 2007

(Tentative Agenda - Subject To Change)

"NOT READY FOR PRIME TIME"

WEDNESDAY, JANUARY 31, 2007

15:00 BOARD MEETING

19:00 RECEPTION

THURSDAY, FEBRUARY 1, 2007

07:30 BREAKFAST AND REGISTRATION – [0.50]

08:00 WELCOME – [0.25]
PATRICK H. CANTILO*, ESQ., MODERATOR - CANTILO & BENNETT, L.L.P.*
JOSEPH J. DEVITO*, MBA, CPA, AIR - NAVIGANT CONSULTING, INC.*

THE DAILY SHOW

08:15 SESSION 1 – [0.50]
INTERNATIONAL UPDATE -- "WHAT'S NEW AND EXCITING ABOUT FAILURE?"
A brief discussion of significant recent developments in non-U.S. insolvency matters.
JOHN MILLIGAN-WHYTE*, ESQ., MILLIGAN-WHYTE & SMITH*

08:45 SESSION 2 – [0.50]
LEGAL UPDATE
Roundup of recent legal developments in the insolvency arena—by someone who has kept a good finger on this pulse and written extraordinarily about it.
DENNIS G. LaGORY*, ESQ., SCHIFF HARDIN LLP*

09:15 SESSION 3 – [0.50]
MODEL ACTS UPDATE
Finally, a chance for Frank to take a firm position! Authoritative briefing on the status, progress, and prospects of pending insolvency—related model acts with the choreographer! (Dancing shoes not required.)
W. FRANKLIN MARTIN, JR.*, PROJECT DIRECTOR - OFFICE OF LIQUIDATIONS, REHABILITATIONS AND SPECIAL FUNDS, PENNSYLVANIA INSURANCE DEPARTMENT*

09:45 SESSION 4 – [0.50]
GUARANTY FUND UPDATE
The latest and greatest in the world of guaranty associations.
JOSEPH C. TANSKI, ESQ., NIXON PEABODY, LLP

10:15 BREAK – [0.25]

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(Tentative Agenda - Subject To Change)

10:30 SESSION 5 (BREAKOUTS) – [1.25]

HOME IMPROVEMENT: AFFORDABLE TOOLS FOR EVERYONE'S BUDGET

INFORMATION TECHNOLOGY

An informative discussion (not lecture) about ongoing technological developments and how they can be leveraged to enhance the receivership process.

***WAYNE JOHNSON**, CFE - ASSISTANT DIRECTOR, FLORIDA DEPT. OF FINANCIAL SERVICES*

DOCUMENT MANAGEMENT

There are ways of coping with the overwhelming volume of data showering us day in and day out. This session will explore techniques for doing so effectively.

***W. MICHAEL FLAHARTY**, PRESIDENT - WMF CONSULTING, LTD.*

ASSET MANAGEMENT

In the wine business, the surest way to make a small fortune is . . . to start with a large one. This session will explore the reverse – how to turn the small receivership fortune into a large one (or at least keep it from getting smaller).

***EDWARD A. WIESE**, CFA, - VICE PRESIDENT, T. ROWE PRICE ASSOCIATES, INC.*

HUMAN RESOURCES

How to make the most of your most important resource under trying circumstances.

***JO ANN HOWARD**, JO ANN HOWARD & ASSOCIATES, P.C.*

11:45 SESSION 6 – [0.50]

ONE STEP BEYOND – LESSONS FROM ABROAD

Our friends and neighbors do not always use the same approaches. Learn a bit from beyond the pond.

***STEPHEN DOODY**, ESQ., ALLEN & OVERY LLP*

12:15 LUNCH – [1.75]

14:00 SESSION 7 – [1.00]

CSI – COMMISSIONERS SPEAK INSURANCE

Step back from the trees and look at the forest. Star-studded panel (not counting the moderator) of leading policymakers address insolvency from a macro perspective.

***THE HONORABLE ALFRED W. GROSS** - COMMISSIONER OF INSURANCE, VIRGINIA BUREAU OF INSURANCE*

***THE HONORABLE PAULA A. FLOWERS** - COMMISSIONER OF INSURANCE, TENNESSEE DEPT. OF COMMERCE & INSURANCE*

***THE HONORABLE JANE CLINE** - COMMISSIONER OF INSURANCE, WEST VIRGINIA INSURANCE COMMISSION*

***PATRICK H. CANTILO**, ESQ., MODERATOR - CANTILO & BENNETT, L.L.P.*

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15:00 SESSION 8 – [1.00]
THE X FACTOR – SCHEMES OF ARRANGEMENT
Another in our continuing series of explorations of this relatively recent alternative to traditional insolvency mechanisms.
***MICHAEL S. WALKER**, ESQ., CHAIR - FULBRIGHT & JAWORSKI L.L.P.*

***JOHN MILLIGAN-WHYTE**, ESQ. - MILLIGAN-WHYTE & SMITH*

***HAROLD S. HORWICH**, ESQ. - BINGHAM McCUTCHEN, LLP*

16:00 BREAK – [0.25]

16:15 SESSION 9 – [1.00]
THE DISTRICT – NEWS FROM THE CAPITAL
There is nothing like having the most eloquent and knowledgeable “insider” talk to us about developments in Washington. Unfortunately, she was busy so we bring you Charlie instead.
***CHARLES T. RICHARDSON**, ESQ. - BAKER & DANIELS LLP*

17:15 WRAP UP DAY ONE – [6.75]

19:00 WORKSHOP RECEPTION

FRIDAY, FEBRUARY 2, 2007

07:30 BREAKFAST – [0.50]

08:00 SESSION 10 – [1.00]
FEAR FACTOR – BIRTH OF IRMA
Finally, a real-life test for all that theoretical mumbo-jumbo that gave rise to this vastly different model act. The combatants tell you how it really works.
***CHRISTOPHER M. MAISEL**, ESQ.*

***DOUGLAS A. HARTZ**, ESQ. - BINGHAM CONSULTING*

***W. FRANKLIN MARTIN, JR.**, MODERATOR - PROJECT DIRECTOR, OFFICE OF LIQUIDATIONS, REHABILITATIONS AND SPECIAL FUNDS, PENNSYLVANIA INSURANCE DEPARTMENT*

09:00 SESSION 11 – [1.00]
THE NET – REAL OR IMAGINED GUARANTY FUND PANEL
Those who have been even on the periphery of these discussions know why this panel cannot be missed. For the others, Kevlar and popcorn are in order.
***JOSEPH C. TANSKI, ESQ**. - NIXON PEABODY, LLP*

***ROGER H. SCHMELZER**, PRESIDENT - THE NATIONAL CONFERENCE OF INSURANCE GUARANTY FUNDS*

***GREGORY E. MITCHELL**, ESQ. - FROST BROWN TODD LLC*

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***HARRY LEVINE**, ESQ. - CALIFORNIA DEPARTMENT OF INSURANCE*

***PATRICK H. CANTILO**, ESQ., MODERATOR - CANTILO & BENNETT, L.L.P.*

10:00 BREAK – [0.25]

10:15 SESSION 12 (BREAKOUTS) – [1.00]

WHO WANTS TO BE A MILLIONAIRE? – SAP, GAAP, GRID AND FINANCIAL REPORTING

Hear Doug make numbers sound romantic, watch him drool over spreadsheets, see his excitement as he plays with dialogue boxes, and best of all, YOU CAN JOIN IN TOO!

***DOUGLAS A. HARTZ**, ESQ. - BINGHAM CONSULTING*

CLUELESS – TAX TIPS FOR RECEIVERS

Just when you thought you had a handle on this dog, the tax tail snapped you silly! Learn why and how to keep it from happening again!

***MARK KOVEY**, ESQ., CHAIR - SCRIBNER, HALL & THOMPSON, LLP*
***MICHAEL C. WARREN** - THE WARREN GROUP*

DARK SHADOWS – LOSS PROJECTIONS AND OTHER ACTUARIAL TRICKERY

Alchemy, black magic, loss triangles, and other sleight of hand used by actuaries to tell you how deep your hole is and how you can fill it.

***ERIC J. HORNICK**, FCAS, MAAA, FCA - MERCER OLIVER WYMAN ACTUARIAL CONSULTING, INC.*

11:15 SESSION 13 – [0.50]
E.R. – REHAB VS. RUNOFF

Chemotherapy or surgery? As this debate gains momentum, work through the practical implications and applications with someone who actually knows.

***HAROLD S. HORWICH**, ESQ. - BINGHAM McCUTCHEN, LLP*

11:45 SESSION 14 – [0.50]
THE TIME MACHINE – WHAT DOES THE FUTURE HOLD?

Fortune telling without tea leaves or Tarot cards. A few humble forecasts and wild guesses.*

***PATRICK H. CANTILO**, ESQ., CANTILO & BENNETT, L.L.P.*

** Forward-looking statements are nothing but rank speculation upon which only a fool like the presenter would rely. Investment decisions based upon such statements have the same mathematical probability of success as "rock, paper, scissors" but are much harder to understand.*

12:15 CLOSING REMARKS
***PATRICK H. CANTILO**, ESQ., MODERATOR - CANTILO & BENNETT, L.L.P.*
***JOSEPH J. DEVITO**, MBA, CPA, AIR - DEVITO CONSULTING, INC.*

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Joint Summit Brings Insolvency Community Together

Stephen S. Durish, CIR-ML

The complexities of recent years' property casualty insurance insolvencies have provided numerous opportunities for differences of opinion among insolvency professionals as to how best to serve policyholders and claimants. The recent 2006 Joint Summit educational event in Salt Lake City brought together attendees from the NCIGF and IAIR to focus on ways to find common ground and work together to seek solutions to complicated problems and issues.

The cornerstone of the event was the acclaimed PRIME exercise which was developed by Gen Re. This interactive training exercise has been provided to numerous insurance regulatory professionals for years, yet few insolvency professionals had participated in this program prior to the Joint Summit. The PRIME program placed attendees in the roles of senior members of an insurance company's management team. They were tasked with producing strategic decisions regarding business mix, pricing, investments, staffing, reinsurance, etc. in a simulation format which compressed the equivalent of four years of operations.

Gen Re moderators John Campbell and Katee Gerling enthusiastically provided periodic financials, management information and analysis to the nine teams in four rounds during the program. The moderators noted the generally conservative bent of strategies from teams whether the concentration of members was receivership or guaranty association personnel. Team spirit was enhanced by the distribution of unique railroad-related hats provided by kind sponsors for each of the competing groups.

When participants weren't intensely involved in their teams' strategizing, they were treated to a number of panels and speakers offering their thoughts on current hot receivership topics. Utah Insurance Commissioner D. Kent Michie opened the event with comments on his close interaction and cooperation with local guaranty association management. The first break from the simulation featured a panel on insurance runoffs with current New Hampshire Commissioner Roger Sevigny and former Illinois Director Deirdre Manna. This panel was moderated by former New Jersey Commissioner Holly Bakke, who was also instrumental in obtaining Gen Re's PRIME program as the main feature for the Joint Summit.

The theme of cooperation was further highlighted by the respective Presidents of the sponsoring organizations. IAIR's Joe DeVito and NCIGF's Roger Schmelzer emphasized the need for collaboration by the two communities in order to produce positive results for those we serve. The runoff topic was covered from a different perspective in a spirited panel on the Highlands rehabilitation. Moderated by Len Stillman, the panel featured Frankie Bliss and Barb Cox flanking James Kennedy and, no doubt, causing him at least a momentary flashback of growing up with "older sisters". Randy Blumer, now in charge of the Wisconsin Insurance Security Fund and former long-time chief financial regulator in that state, offered insightful observation about the NAIC's Financial Analysis Working Group (even if he didn't give us the specific list of coming attractions).

Winners of the competition were announced at the Thursday reception and presented appropriately-colored railroad spikes for their accomplishments. Gold spikes went to the Union Pacific team, Silver to the LIRR and Bronze to the MO & Pacific for their respective first, second and third place achievements. It was futher noted that several teams not placing in the competition met greater success than other teams in achieving their team goals. Of course, following the program, the teams winning the spikes were then tasked with figuring out how to get their awards through security at the airport.

The final day of the Summit began with a recap of the PRIME exercise and lessons learned by Holly Bakke, Doug Hartz, Mary Jo Lopez and this author. The next panel covered hot issues discussed by prominent insolvency professionals in extremely convincing acting roles. Moderated by the ebullient Charlie Richardson, with Doug Hertlein and Dave Wilson as guaranty association reps and Marvin Kelly and Jack Falkenbach as receivers, the presenters displayed some of the most credible role-playing on hot Receiver/GA topics witnessed since Dustin Hoffman became Tootsie. Panelists later assured inquiring minds that the conversion was temporary.

The event wrap-up, led by Michelle Lovern and Bob Greer, featured a "pairing up" of attendees for more focused discussions of issues and concerns as well as a a pledge to continue their dialogue for six months after the event. This continuing dialogue and other post-event information will be posted on a special "Blog".

On-site feedback regarding the event was very favorable and indicative of a successful fulfillment of the program's goal of promoting a shared vision of cooperation between the two communities. I want to thank my Co-Chair Pam Woldow and the Planning Committee for this productive and fun program.

ERATTA

In the Winter 2005 issue (Vol. 14, No. 3), we inadvertently failed to include the footnote citations to Professor Young's article entitled "The Who of Mediation - Part III: Lawyers in the Mix." If you would like a copy of the article with the footnote citations, please contact Professor Young at pyoung@asl.edu.

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National Conference of of Insurance Receivers

International Association of Insurance Receivers

NCIGF and IAIR wish to thank the sponsors of the Joint Summit

Dykema Gossett PLLC
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Thank you to the sponsors of the hats for the Teams

Polar Express - Mary Jo Lopez
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The Bar Car - Paula Keyes & Associates LLC
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Union Pacific Railroad - Arnstein & Lehr, L.L.C.
Missouri & Pacific - Cantilo & Bennett L.L.P.
LIRR - Pluschau Consultants, Inc.
The Bullet - IAIR

Insurance Forum

The hosts of the Insurance Forum held on October 11, 2006 in Chicago, IL would like to thank their sponsors:

Gold Level:

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Silver Level:

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Sonnenschein Nath & Rosenthal

Special:

Joint Venture Partners
Paula Keyes & Associates LLC

News From Headquarters

Winter Quarterly Meetings

The next quarterly IAIR meeting will be December 9 – 11, 2006 at the San Antonio Marriott Rivercenter, River Walk and La Quinta hotels (all close to each other) in San Antonio, TX.

Board Meeting - Friday, 12/08, 3 – 6 PM, Marriott River Center - Conference Room 7.

Roundtable - Saturday, 12/09, 1 – 4:30 PM, La Quinta Hotel - Bowie East-West Rooms.

Annual Meeting - Saturday, 12/09, 5 – 7 PM, La Quinta Hotel - Bowie East-West Rooms.

Committee Meetings - Saturday, 12/09, 8 AM to 12 Noon - La Quinta Salons D-F and Sunday, 12/10, 10 AM – 5 PM, Marriott River Walk - Travis Room.

Joint Breakfast Symposium (which IAIR has co-sponsored with RSI and others for nearly 10 years) in lieu of the Members Only Think Tank - Sunday, 12/10, 8:30 AM – 10 AM, Marriot RiverWalk - Alamo Ballroom Salon C

IAIR Reception - Sunday, 12/10, 5:30PM - 7:30 PM, Marriott River Center, Salon L.

Meeting room location and other information will be posted to the IAIR website, at http://www.iair.org as it becomes available. Related meetings from http://www.naic.org/documents/meetings_home_agenda.pdf are:

Receivership Model Act Revision Working Group - Saturday, 12/09, 8 – 11 AM, Rivercenter, Salon G, 3rd Floor.

Receivership Technology and Administration Working Group - Sunday, 12/11, 11 AM – 12 Noon, Rivercenter, Salon F, 3rd Floor.

Receivers Handbook Working Group - Sunday,12/11, 3 – 4 PM, Rivercenter, Salons C & D, 3rd Floor.

Receivership & Insolvency Task Force - Monday, 12/12, 8 – 10:30 AM, Rivercenter, Salon I, 3rd Floor.

International Solvency Initiatives Working Group - Monday, 12/12, 2 – 3 PM, Rivercenter, Salons L & M, 3rd Floor.

Financial Condition (E) Committee - Tuesday, 12/13, 10:30 AM – 12:30 PM, Rivercenter, Salon I, 3rd Floor.

Save the Date

2007 Insolvency Workshop – The Insolvency Workshop will be on February 1 – 2, 2007 at the El Conquistador Hilton Hotel in Tucson, AZ. As more information becomes available, we will post it to the IAIR website.

Update on New Membership Dues For 2007

The Board has authorized a new dues structure for IAIR membership for 2007. The largest change in the dues structure is that the new dues will be much lower for members from non-profit entities. The goal is to increase the membership and participation in IAIR for persons that work in departments of insurance, state receivership offices, guaranty associations and academia.

The old dues structure was - simply: 1 - 3 members $250 per person, 4 - 10 members [from a single "Company or Insurance Department"] $175 per person, more than 10 members $100 per person. Stated another way, the base membership dues were $250 with group discounts if the "Company or Insurance Department" you worked for had a few (more than 3) or many (more than 10) other IAIR members.

The new structure sets the base membership dues for persons working in non-profit entities at $125. This is half the old dues rate! This is intended to greatly increase membership for those working in non-profit entities. For others (those working in for-profit entities) it sets the base membership dues at $275. This represents a modest increase of $25 over the old dues rate!

From these base dues rates group discounts are applicable when the number of members from a single entity is from 4 to 9 members (where each member's dues in a non-profit drops to $100 and each member's dues in a for-profit drops to $225) and where there are 10 or more members (where each member's dues in a non-profit drops to $75 and each member's dues in a for-profit drops to $175). Because the group discounts for for-profit entities are smaller discounts than before, the total dues revenue for IAIR is projected to increase even though dues for members from non-profits have been greatly reduced. A table and graph of the dues rates are provided in this issue of The Insurance Receiver to clarify how these new dues will apply. From these it can be seen that having 10 members will add only marginal costs at the entity level over having 7 members. This is the case for both a non-profit or for-profit entity.

The membership application will be updated to ask if the applicant works for a non-profit or for-profit entity. The IAIR Executive Director and staff will be entitled to ask for documentation of an entity's non-profit status. However, in most cases it will not be necessary to do so. The blank for "Company or Insurance Department" on the application will be changed to "Business

News From Headquarters

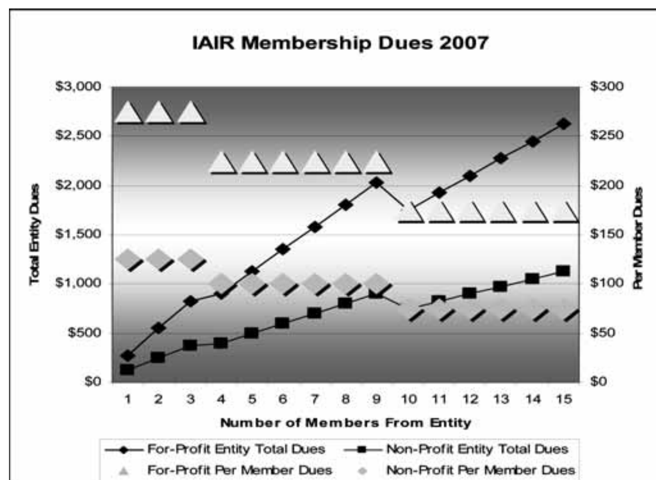
Name" and an information box will be provided explaining that this may include any company, department of insurance, state receivership office, guaranty association, educational institution or other type of entity. Immediately below this will be a drop-down box for "Business Type" with choices like "Guaranty association, non-profit" and "Other, for-profit".

Note that the Sponsorship Discount remains unchanged. This discount reduces a member's annual dues by 20% for each new member in each preceding calendar year (limited to five new members, of course) that indicated that current member as their primary sponsor on the membership application. Three sponsors are required, but the first sponsor listed is deemed the primary sponsor. The quick will note that this creates an interesting incentive for for-profit members to attempt to get five new non-profit members to join IAIR. Each indication of "primary sponsorship" for a member in a for-profit entity with 3 or fewer members is worth $55 to that member. Let the games begin; get out there and recruit!!!

Table - IAIR Membership Dues 2007

Number of Members in Entity	For-Profit Entity Total Dues	Non-Profit Entity Total Dues	For-Profit Per Member Dues	Non-Profit Per Member Dues
1	275	125	275	125
2	550	250	275	125
3	825	375	275	125
4	900	400	225	100
5	1,125	500	225	100
6	1,350	600	225	100
7	1,575	700	225	100
8	1,800	800	225	100
9	2,025	900	225	100
10	1,750	750	175	75
11	1,925	825	175	75
12	2,100	900	175	75
13	2,275	975	175	75
14	2,450	1,050	175	75
15	2,625	1,125	175	75

Graph - IAIR Membership Dues 2007



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Wants to thank the following sponsors of the September Reception
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And a special thank you to the sponsor of the IAIR Fall Meetings

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INTERNATIONAL ASSOCIATION OF INSURANCE RECEIVERS

La Quinta Hotel, Bowie East-West Room
San Antonio, Texas
Saturday, December 9, 2006

1:00-1:15 **Introduction**
Jo Ann Howard, CIR-P&C, *H2O Partners, Inc.*

1:15-1:45 **Posse's in Town - Collateral Issues From Different Points of View**
Phillip Singer, CIR-ML, *Tawa Management Limited* and
Debra J. Hall, *Swiss Re America Holding Corporation*

1:45-2:15 **Hold It, Parder – Tax Planning After 501(c)(15)**
Brian Falk, *Deloitte*
Douglas L. Hertlein, *Ohio Insurance Liquidation Office*

2:15-2:30 **Break**

2:30-3:15 **High Noon - D&O Claims**
Christopher Fuller, *Fuller Law Firm*,
Patrick Cantilo, CIR-ML, *Cantilo & Bennett L.L.P.,* and
Van Mayhall, Jr., *Breazeal, Sachse & Wilson. L.L.P.*

3:15-3:45 **Who Was That Masked Man? IT Security Policies and Procedures**
Tom Wagenhauser, *NCIGF* and
Mark Steckbeck, *NCIGF*

3:45-4:15 **Guns 'a Blazing" Texas Issues (Vesta & Highlands)**
Commissioner Mike Geelsin, *Texas Department of Insurance* and
Betty Patterson, *Texas Department of Insurance*

4:15-4:30 **Question & Answer**

Eligible for 3.5 hours of NASBA CPE Credit based on a 50 minute hour

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

Total number of CPE hours offered: 3.5 CPE
Fields of study offered: Specialized Knowledge & Applications 3.5 CPE

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