

The Insurance Receiver

*A Publication by the
International Association of Insurance Receivers*

Promoting Professionalism and Ethics in the Administration of Insurance Receiverships

Spring 2013

Volume 22, Number 1

FEATURED ARTICLES

- 1 **President's Message**
- 3 **Board Talk: Donna Wilson**
By Michelle Avery
- 6 **The Perfect Receiver - Part 8 - The Numbers**
By Patrick Cantilo, CIR-ML
- 7 **View from Washington**
By James Tsai
- 10 **Issues Forum Recap: Washington, D.C. December 2012**
By Kathleen McCain
- 12 **Insolvency Workshop Recap: Spotlight in Savannah**
By Bart Boles
- 15 **Welcome IAIR's Newest Members!**
- 16 **Insurance Industry Update - Has the Dust Settled?**
By Michelle Avery
- 17 **IAIR FHLB Letter to NAIC**
By Francesca Bliss
- 21 **IAIR and AIRROC Join Forces**
- 23 **IAIR & INSOL Foster International Ties**

Message from Frankie Bliss, IAIR President

Dear IAIR Membership,

Finally, signs of spring are upon us. We've survived the winter and all the required year-end details. We've elected a new Board, engaged in new partnerships undertaken by

Doug Hertlein and **Mary Cannon Veed** with the Tort and Insurance Practice Section ("TIPS") of the ABA (see a summary in the Fall/Winter 2012 Receiver) and, most recently, with AIRROC (see summary of the new alliance on page 21). We've also successfully transitioned the association management responsibilities to Accolade and we pulled off another Insolvency Workshop. Now we can look forward to all the upcoming IAIR programs in 2013.

We are currently gearing up for the NAIC Spring Meeting in Houston, Texas and addressing the details of the various events we will be hosting there. Our schedule will deviate somewhat from our norm as IAIR will be conducting a State Training Session on Friday, April 5th, emphasizing the value of early detection and identification of various "red flags" that could significantly impact the subsequent activities and responsibilities of receivers and guaranty funds. Further, in lieu of our usual Think Tank, we are holding a Members' Town Hall meeting on Sunday, April 7th, to discuss a reorganization of IAIR's Committees and Subcommittees. To start the discussion, a report that analyzes the current committee structure and presents a possible restructure, first presented to the Board in January, will be sent to all members prior to the meeting. The report is annotated with various comments made by Board members and current Committee Chairs over the past weeks. Before we delve any deeper, I really want your thoughts and comments to ensure we are pursuing a path that meets your needs. The intent of the restructuring is to make the Committee work more transparent, so that you can more readily identify opportunities to become involved through service on a Committee, Subcommittee or specific ad hoc project.

To quote Seneca: "If one does not know to which port one is sailing, no wind is favorable." This seems to describe one of our association's perennial problems and one which we hope to rectify. Committee structure should support and foster membership participation - not be a confusing impediment. Recognizing that the strength of IAIR is the knowledge and expertise of its diverse membership, it is our goal that this restructuring provides our members with full transparency of ongoing IAIR activities, so that members can easily

(continued on page 2)

Association Manager:
Nancy Margolis, Esq.
International Association
of Insurance Receivers
610 Freedom Business Center Suite 110
King of Prussia, PA 19406
610.992.0015 | Fax: 610.992.0021
E-mail: nancy@iair.org

President's Message (continued)

participate. Accordingly, we are striving to eliminate some redundancy of efforts at the Committee level, ensure that the Committees act to fulfill their charges, and establish clear straightforward communication of committee endeavors and board determinations to the membership. Please read the report and bring your ideas so that we can have an active and engaged Members' Town Hall meeting.

I'd also like to utilize this President's Message to take care of a few housekeeping items, say a few "thank you's" to several deserving, dedicated members, welcome a few new folks and let everyone know what we have been up to. First, with the housekeeping...

Membership dues were due by January 31st. If you did not renew your membership, you should have received a delinquent dues notice. Please get in touch with **Nancy Margolis** at Accolade ASAP to resolve any membership issues, or she will be getting in touch with you! Now on to the thank you's...

I want to thank the co-chairs of January's Insurance Insolvency Workshop – **Chris Maisel** and **Dennis LaGory**; their hard work and tireless efforts were reflected in a wonderful, interactive program. If you weren't able to attend the event in Savannah, Georgia this year, be sure to check out the recap, written by **Bart Boles**, on page 12. Thank you to all the sponsors of that program – we could not do it without the valuable dollars and commitment you add to the event.

As we transition into a new year and a new Board, I want to again thank those who are rolling off the Board, Lowell Miller and Vivien Tyrell. We welcome **Bart Boles** and **Kathleen McCain** as new Board members and congratulate **Michelle Avery**, **Joe DeVito** and **Alan Gamse**, all re-elected to another three-year term. **Bart Boles** has agreed to Co-Chair the Education Subcommittee with **James Kennedy**, relieving **Doug Hartz**, who has earned this reprieve after years shepherding this Subcommittee. Also, I would like to thank **Donna Wilson**, who has been wearing two hats as Finance Chair and Membership Co-Chair in the organization for some time now and doing so with such dedication. Donna has turned over responsibility for the Membership Subcommittee to **Kerby Baden** (present Co-Chair) and **Betty Cordial** (who we welcome back to the Membership Subcommittee). And now for what we've been up to...

During January, the NAIC's Federal Home Loan Bank ("FHLBank") Legislation Subgroup of the Receivership and Insolvency (E) Task Force solicited IAIR's input and perspective on the FHLBank

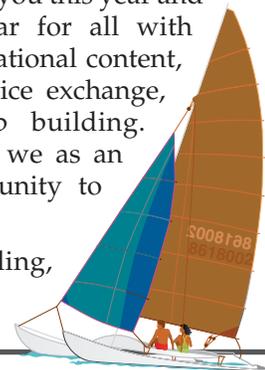
proposed legislation which seeks to exempt FHLBanks from stay provisions and voidable preference provisions within receivership proceedings. A team of IAIR Board members participated in drafting a response. Thank you to **Bart Boles**, **Patrick Cantilo**, **James Kennedy**, **Bill Latza**, **Kathleen McCain**, **Fran Semaya**, **Mary Cannon Veed** and a host of others for assisting in that effort. Patrick Cantilo and I, on behalf of IAIR, participated in an Insolvency Task Force conference call on February 8, 2013 as part of continuing discussions regarding this issue and we will meet with a group from FHLBank in Philadelphia in advance of the NAIC. (To see a copy of the comment letter submitted by IAIR, please turn to page 17.)

With one 2013 educational program behind us, we turn our eyes to the next program - the Technical Development Series. We are in the initial planning stages for TDS IV – scheduled to take place June 6-7 at the Mandalay Bay in Las Vegas. You can be assured we will notify you via email when the details are finalized and registration is open but for now SAVE THE DATE! This year's TDS will focus on Litigation in Insurance Insolvency and will be co-chaired by current and former Board members, **Michelle Avery** and **Phil Curley**. If you have any suggested topics, they would welcome your insights and encourage you to reach out to them directly to discuss.

As always, if you have questions about membership please reach out to **Kerby Baden** at kbaden@invotex.com; if you have any news for inclusion in the newsletter, please send it to **Michelle Avery** at mavery@verisconsulting.com; and if you would like to participate as a 2013 Corporate Sponsor - it isn't too late - please reach out to **Nancy Margolis** at nancy@iair.org. If you'd like to join a committee and aren't sure where to begin – speak to me, Nancy or really any Board member... and...come to our Town Hall meeting. We'd love to welcome your more active participation in the organization and find a spot for you to contribute in a meaningful way.

I look forward to working with you this year and hope to make it a great year for all with contributions of excellent educational content, knowledge sharing, best practice exchange, networking and relationship building. Here's to a wonderful 2013 – we as an organization have the opportunity to make it an outstanding one!

Thank you and happy sailing,
frankie



Board Talk: Donna Wilson

By Michelle Avery

For those of you actively involved in IAIR, I'm sure you have had a chance to meet Donna Wilson at some point either through her role as Treasurer (and therefore Chair of the Finance Committee) or as



Donna Wilson

Co-Chair of the Member Services Committee. She is a dedicated member of the IAIR Board in the second year of her three year term and contributes in so many ways – quietly going about her duties and getting the job done. It was certainly time for me to turn the spotlight on her and give our

membership an opportunity to learn more.

Donna grew up in Belton, Missouri, a town of just 25,000 people and part of the Kansas City Metropolitan area. After high school and community college, she headed to the city to Oklahoma State University and graduated with a degree in Accounting. Donna's involvement in insurance receivership work started very early in her career. While studying at Oklahoma State, she began working part-time at Southwestern National Insurance Company preparing account current statements. After graduation, she joined them full time and expanded her role to statutory financial reporting. However, it wasn't long before they ended up in receivership - a result, attributable in part, to an inability to keep up with claims associated with growth in the issuance of auto insurance stemming from the requirement for all auto owners to carry insurance verification.

As a consequence of that outcome, Donna began working with the Oklahoma Receivership Office, a non-profit established to assist the commissioner in various capacities pertaining to insurance receiverships, and she never left. Looking back, at the time she joined I'm sure Donna never imagined that the employment section of her LinkedIn page would have only one

listing under "Experience." Then again, I'm guessing that isn't the only thing about LinkedIn she hadn't imagined in 1985. Regardless, because they are a smaller office, Donna describes having to learn all aspects of insurance operations: underwriting, claims adjudication, reinsurance, and even human resource issues. Working in that environment for over 25 years and for over 50 estates makes one a Jack of all trades.

As an Assistant Receiver and Estate Manager at the Receivership Office, Donna is always on the move. Her work requires a good bit of travel – she estimates that between 25-50% of the time she is on the road. That, however, doesn't stand in the way of her participation in IAIR. Donna's first encounter was through the Society of Insurance Receivers ("SIR"), IAIR's predecessor organization. She attended an event in San Antonio and as a result of that experience found her way back to IAIR in 2004 and has been a regular attendee ever since.

Donna, by nature, is a bit reserved and not the type of person to share endless information about herself. I got a few fun facts from her when we spoke. So much I didn't know...

Q: What is the most important issue you see facing IAIR during your term on the Board?

"IAIR is at a point where it can become larger and can become more influential but it could be difficult to manage that growth over the coming years...we are at the point where we have gained respect in the community – we are expected to be places and expected to render opinions on relevant issues." For example, Donna mentioned requests from NAIC for comments and the circumstance where regulators look to members of IAIR for professional services they need. She raises the challenges that becoming a larger organization present when financial resources are limited and there is a heavy dependence on volunteers.



THANK YOU TO THE SPONSORS OF THE 2013 INSOLVENCY WORKSHOP



CANTILO & BENNETT, L.L.P.

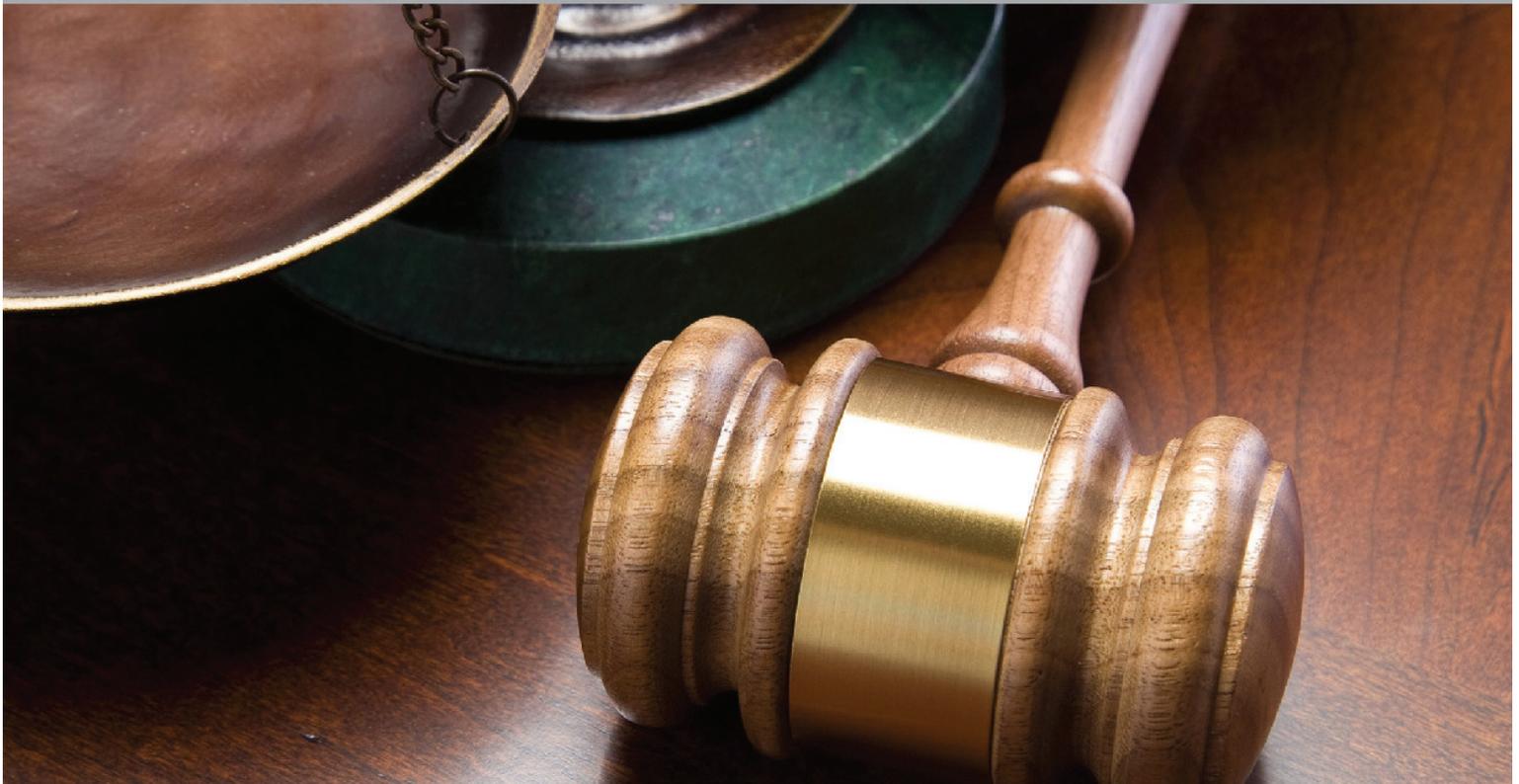


Locke
Lord^{LLP}



International Association
of Insurance Receivers

IAIR TECHNICAL
DEVELOPMENT SERIES



RAISING THE BAR

INSURANCE INSOLVENCY
LITIGATION:
TRIALS AND TRIBULATIONS

SAVE THE
DATE

June 5 - June 7, 2013

THEhotel at The Mandalay Bay
Las Vegas, Nevada

Board Talk: Donna Wilson (continued)

Q: What is your proudest professional accomplishment?

Donna recently received the distinguished honor of the Certified Insurance Receiver designation. She counts this as one of her most proud professional accomplishments as it requires being recognized by her peers as having a level of competence and proficiency in her field of expertise. IAIR's certification program requires a significant amount of involvement in the insolvency field, identification of specific areas of expertise, submission of written materials and examination by a panel of peers. Donna received this designation in fall of 2010 and was awarded her plaque by the Oklahoma Commissioner and in front of the IAIR membership. A proud moment, no doubt. Donna is also a member of the Association of Certified Fraud Examiners which I am sure comes in handy when unraveling some of the details behind the circumstances of insurance company insolvencies.

Q: If you could have dinner with any three other people in the world, dead or alive, fictional or non-fictional, who would you choose? Why?

Donna would take the opportunity to meet her grandparents all of whom passed away before she was born. Sadly, her grandparents were never discussed in her family growing up and she would love the chance to meet them and fulfill the desire to know more about her heritage.



Q: What is your favorite sport? Team?

Not surprising, given the proximity of Belton to Kansas City, before she went to college Donna lived in Kansas City and was a big Royals fan. Now however, her interests have changed and she enjoys sitting down on Sunday evenings to watch NASCAR. Her favorite driver? Three time Daytona 500 winner, Jeff Gordon.

Q: What is your favorite leisure activity?

Donna expressed her interest in trying her hand at all different arts and crafts projects. When home in the summer she likes to spend time in the garden and most recently she took on a stained glass project. Once she finishes one thing, she's off to the next, never initially sure exactly what it might be.

Q: Where is the last place you vacationed?



Needless to say I was a bit surprised to hear Donna's last vacation destination. Although she can't remember the exact location in Iowa, she recently attended an antique

tractor show with her husband who has a passion for vintage tractors and steam engines. On the trip, they also toured the Indianapolis Motor Speedway and watched autocross timed runs at Rantoul Aviation Center.

Q: What is your favorite NAIC/IAIR conference location?

One thing I took away from this interview is Donna's love for San Diego. To the extent we discussed favorite destinations, vacations, meeting spots and other rendez-vous points, at the top of the list was always her love for beautiful California and the fantastic climate it offers.

Q: Give us one piece of information that most people don't know about you?

This always seems to be the hardest question for the interviewee to answer. When I got towards the end of the interview with Donna, noting some unease given the spotlight on her somewhat shy personality, I asked this question anyway. To which she agonizingly replied, "Haven't I shared enough already?" So between gardening, Jeff Gordon, tractors and steam engines, she certainly had a point so I relented and we'll leave it at that!

Thanks so much Donna for sharing your story with us!



Michelle Avery, CPA is an Executive Vice President and Managing Director at Veris Consulting, Inc. within the firm's forensic accounting practice. Michelle has extensive experience assisting clients in causation and damage assessments related to failed property/casualty and life and health insurance companies. Michelle is a Board member of IAIR and a member of the AICPA's NAIC/AICPA Working Group Task Force. Michelle can be reached at mavery@verisconsulting.com.



The Perfect Receiver – Part 8 – The Numbers

By Patrick Cantilo, CIR-ML



In my youth, “numbers” were things other people (certainly not me!) rolled, lit, and passed around. In my

current world, the term has a very different and more conventional significance – now the numbers tend to mean everything. While some have little difficulty digesting and manipulating them, for others of us it can prove to be a real challenge. I offer here some practical suggestions that may help make the numbers your tool rather than an enigmatic mystery. Obvious as these points may seem to many, it is amazing how often these simple guidelines are ignored and the consequences of being thus uninformed. On day one, you should ask yourself three questions: (1) what numbers should I know, (2) where do I get them, and (3) what do I do with them? I address briefly my answers to these questions in the context of what I think are the key indicators. Your receivership plan should have as a goal the identification of the following numbers as soon as possible with continued updating throughout the plan’s evolution.



does not “deepen the hole” if at all possible. Thus, income and collections should exceed this run rate.

- 1. FINANCIAL CONDITION** – this key indicator will include surplus or deficit, income or loss, cash flow, and perhaps other indicia. The numbers will change as the quality of information available to you improves and as the company’s circumstances progress. However, no plan or significant initiative can make any sense if it is not supported by knowledge of the company’s condition. Start with the company’s reports, and scrutinize them with the help of seasoned and independent experts. Adjust them as circumstances dictate. Then use them as the foundation for developing and implementing a course of action that will take the company from its current situation to the one that your plan seeks to attain as its goal. Many receivers begin by preparing a “receivership balance sheet” that describes as accurately as possible the company’s condition on the day it enters receivership. As things evolve, this initial measure is invaluable in gauging the effect of the receivership plan.
 - 2. RUN RATE** – learn early how much it costs every month and year to run the receivership, including the costs of consultants. Your financial advisors should be able to compile this cash flow analysis relatively quickly, and you should update it frequently. You should strive to have a plan that
 - 3. BUDGET** – begin at the inception of the receivership to estimate how much it will cost to complete your receivership plan, and review and revise this number periodically (annually is typically sufficient). In larger companies, senior management should be actively and continuously involved in this process. This will help you to calibrate receivership initiatives to available resources and to test their efficiency retrospectively.
 - 4. RECOVERABLES** – since most companies in receivership could use more money, collecting it frequently becomes a key goal of the receivership plan. Understanding what can reasonably be expected from such efforts is essential to deciding what resources to devote to them. Consult with counsel and other advisors to prioritize recovery actions, and press them for estimates or analyses as to probability and magnitude of possible recoveries.
 - 5. DIVIDEND** – in many respects, the most important indicator of a company’s condition and the success or failure of a receivership plan is the portion of its liabilities that the company can satisfy. Key among these is the liability to policyholders and insureds. It is immensely useful to establish an initial “payment percentage” – the amount that could be paid to policyholders and insureds (excluding guaranty fund payments) without unreasonable risk of unlawful preferences – on day one, which will follow from the preparation of the receivership balance sheet. As recoveries are made and other circumstances change, this payment percentage (sometimes called the “policyholder dividend”) should be updated.
- To be sure, many of these numbers in turn depend on many other numbers, and there may be other numbers still that will become very important. Nonetheless, determining, updating, and monitoring these basic numbers throughout the receivership will help keep in context all of the complex and demanding steps that comprise the receivership plan.

View from Washington

By James Tsai

Election 2012 and a New Congress

The election of a new president and a new Congress was on the minds of many inside the Beltway this past fall. The results leave a Congress that is status quo: a returning President Barack Obama and a non-cooperative Congress that is split between the two chambers.

This configuration leaves some policies in the same space as before. Dodd-Frank, the Wall Street reform legislation passed in 2010, was the focus of House Republicans for complete repeal last Congress but will probably be more toned down at the start of this new one.

The House Financial Services Committee has new leadership with Rep. Jeb Hensarling (R-TX) taking the chair and Rep. Maxine Waters (D-CA) succeeding retired Barney Frank (D-MA) as ranking member. Sentiments of a collegial and bipartisan spirit fell apart during the first few minutes of the Committee's first hearing on February 6, 2013 on the mortgage insurance market. Representative Waters gave a series of testy responses to a question by Chairman Hensarling when questioning turned to her on the Chairman's characterization of FHA housing mortgage advertisements.

In comparison, the Senate Banking Committee had very few fireworks in its first hearing, on February 14, which focused on the implementation status of Dodd-Frank. Other than newly-elected consumer champion Sen. Elizabeth Warren's (D-MA) strong questioning of the panel of regulators on use of litigation as a means of enforcement, most questions played along expected party lines. The Senate Banking Committee leadership retains Sen. Tim Johnson (D-SD) in the chairman seat and welcomes Sen. Mike Crapo (R-ID) as its new ranking member, replacing term-limited Sen. Richard Shelby (R-AL).

Senator Bob Corker (R-TN) asked FDIC Chairman Martin Gruenberg about Orderly Liquidation Authority of systemically important financial institutions, including non-banks. Since Dodd-Frank was supposed to end too-big-to-fail by not bailing out institutions, Sen.

Corker pointed out that the currently implemented resolution plan would allow creditors to issue unsecured debt at its subsidiary level and never be at a loss per the current regulations. Chairman Gruenberg replied that they were working to close this loophole.

Federal Insurance Office and the Federal Advisory Committee on Insurance

The House Financial Services Committee in its organizing document for the new Congress noted that the Federal Insurance Office ("FIO") was late in several reports. It urged prompt action in completing and releasing these reports, including one on the modernization of regulation of insurance that is now over a year overdue.

At the Senate hearing on February 14, Treasury Under Secretary Mary Miller's written testimony addressed FIO and its reports. She wrote "FIO will soon release its first annual report on the insurance industry and its report on how to modernize and improve the system of insurance regulation in the United States. FIO is working diligently to release these and several other reports in the coming months."

Under Secretary Miller went on to say that the FIO has been busy with its role representing the United States, giving it a "single, unified federal voice" to develop international insurance supervisory standards with the International Association of Insurance Supervisors ("IAIS").

The Federal Advisory Committee on Insurance ("FACI") met on November 14, 2012 in its third public meeting to advise FIO Director Michael McRaith. Topics included a discussion on Superstorm Sandy and its effect on the National Flood Insurance Program, the continuing work of the subcommittees – each of which focuses separately on affordability and accessibility of insurance products, key principles for United States competitiveness in the international insurance market and international regulatory matters. Director McRaith concluded the session with an IAIS update. The next meeting is scheduled for mid-March.



Schiff Hardin is pleased to be a sponsor of the 2013 IAIR Insurance Insolvency Workshop

INSURANCE

For more information on how
we can help, contact:

David M. Spector
312.258.5552
dspector@schiffhardin.com

Dennis G. LaGory
312.258.5772
dlagory@schiffhardin.com

Count on us for comprehensive
capabilities and decades of
experience in insurance
company insolvencies.



Ann Arbor | Atlanta | Boston | Charlotte | Chicago | Lake Forest | New York | San Francisco | Washington

2013 Friends of IAIR



*Thank you to NCIGF
for your continued
support and
for advancing
the initiatives of IAIR.*

View from Washington (continued)

The Office of Financial Research

Dodd-Frank created the Office of Financial Research (“OFR”) as an agency to collect and analyze financial data to support the mission of the Financial Stability Oversight Council (“FSOC”). The OFR had no head and President Obama’s nominee, Richard Berner, was stalled until the Senate confirmed him on January 1, 2013. Director Berner is a former Treasury secretary official and Morgan Stanley chief economist and will have a six year term. Under Secretary Miller noted in her remarks that the OFR has completed an initial survey of existing data among the FSOC member agencies and has created data-sharing agreements to facilitate the exchange of financial data.

Republicans had previously decried the OFR as a wasteful agency and a burden to financial institutions that must pay an assessment to fund its budget. Legislation had been introduced last Congress to abolish the agency but did not go anywhere. It is uncertain if there will be further attempts to abolish or curtail this young agency.

FDIC and UK Orderly Liquidation

The FDIC held a series of meetings last fall regarding its orderly liquidation authority for non-bank institutions. Under Dodd-Frank, the FDIC has been tasked with requiring covered financial institutions to submit a “living will,” in essence a resolution plan under the Bankruptcy Code if it were to fail. The rules and regulations

continue to be hammered out with a series of public meetings.

One such meeting occurred December 10, 2012 when the FDIC and the Bank of England jointly issued a white paper titled “Resolving Globally Active, Systemically Important Financial Institutions.” (See <http://www.fdic.gov/about/srac/2012/gsifi.pdf>.) The paper highlighted some differences in approaches between the United States and the United Kingdom including how unsecured debt is handled, the management and appointment of a receiver and prevailing legal regimes that must be dealt with. It also noted some similarities between the two systems. The paper demonstrates ways the two jurisdictions are taking the lead on forming resolution policies on a global scale.



James Tsai is a public policy specialist in FaegreBD Consulting's insurance and financial services practice group where he assists insurance and other financial services entities with federal legislative, regulatory, public policy, corporate, insolvency and compliance matters. James works on Capitol Hill and federal agency strategy and helps associations, companies and individuals navigate the post Dodd-Frank Act environment.

The Insurance Receiver is intended to provide readers with information on and provide a forum for opinions and discussions of insurance insolvency topics. The views expressed by the authors in the Insurance Receiver are their own and not necessarily those of the IAIR Board, Newsletter Committee or IAIR's Association Manager. No article or other feature should be considered as legal advice.

Newsletter Committee:

Michelle Avery, CPA, Chair

Evan Bennett, Arati Bhattacharya, Francesca G. Bliss, Richard J. Fidei, Douglas Hartz, Esq., CIR-ML, Harold Horwich, CIR-ML, James Kennedy, Esq., Dennis LaGory, Esq.

Officers:

Francesca G. Bliss, President, Patrick Hughes, Esq., 1st Vice President, Bruce Gilbert, 2nd Vice President, Donna Wilson, CIR-ML, Treasurer, Alan Gamse, Esq., Secretary, Patrick Cantilo, Esq., CIR-ML, Immediate Past President

Directors:

Michelle J. Avery, Evan Bennett, Bart Boles, Betty Cordial, CIR-ML, Richard Darling, CIR-ML, Joseph DeVito, AIR, Douglas Hartz, Esq., CIR-ML, James Kennedy, Esq., Dennis LaGory, Esq., Kathleern McCain, Esq.

Legal Counsel:

William Latza, Esq. and Martin Minkowitz, Esq., Stroock & Stroock & Lavan LLP



Issues Forum Recap: Washington, D.C. December 2012

By Kathleen McCain

We returned once again to the Nation's Capital for the December 2012 NAIC/IAIR meeting. Thomas Glassic, General Counsel of the Washington D.C. Department of Insurance, Securities and

Banking opened the Forum. He alluded to the D.C. Department's recent takeover of Chartered Health Plan, Inc., a D.C. based insurer that provides coverage to many of the city's low income residents. While he could not provide many facts regarding the ongoing rehabilitation, he was able to share his personal story regarding his participation in taking over a company. It was an appropriate introduction to the opening panel discussion regarding companies on the edge of liquidation.

Life on the Edge of Liquidation

The first panel discussed two companies, Frontier Insurance Company and Lumbermens Mutual Casualty Company that have lived on the edge of liquidation for several years. Frontier, which had been in rehabilitation since 2001, recently tipped over the edge and was placed into liquidation in November 2012. Lumbermens began a voluntary run-off in 2003 and had been operating under a run-off plan approved by the Illinois Department of Insurance in 2004. An agreed order of rehabilitation was entered against Lumbermens effective July 2012. The panelists, who were uniquely qualified to discuss the issues, included Bill Costigan, outside counsel representing the Liquidator of Frontier; Steve Durish, President of the Ohio and West Virginia Insurance Guaranty Associations, who coordinates the guaranty fund involvement for both companies; and Paul Miller, Special Deputy Receiver and CEO of the Office of the Special Deputy in Illinois, whose office will manage the rehabilitation of Lumbermens.

The panel discussion regarding Frontier focused on the run-off of liabilities during the rehabilitation and the Rehabilitator's early success in resolving various large reinsurance agreements. The issue that got the most attention and prompted audience participation was a May 2012 ruling that claims under surety bonds issued by Frontier would be classified as Class 2 "claims under policies" for purposes of distribution priority in liquidation (were liquidation to eventuate). The ruling precluded any possibility of a viable rehabilitation plan and precipitated the decision to place Frontier in liquidation. Guaranty funds, whose own claims would be significantly diluted if surety claims

are elevated to the same distribution priority, may challenge the classification of surety claims when the Liquidator is ready to propose making a Class 2 distribution.

Lumbermens currently has approximately one billion in liabilities. The Lumbermens discussion centered on the transition of the Company from a run-off through

rehabilitation to its eventual liquidation. The panelists discussed issues related to the transition of the claims handling responsibilities to the guaranty funds, including potential exclusions related to new products.

Federal Claims

With personal liability of receivers with respect to federal claims a consideration in closing estates, the federal claims panel provided a timely and provocative look into the Department of Justice process in obtaining a waiver of personal liability and release of



IAIR Washington, D.C. (continued)

federal claims. Lynda Loomis, Chief Deputy Liquidator of the Office of the Ohio Insurance Liquidator, served as the moderator of the panel. The other panelists were Ruth Harvey, an Assistant Director in the Commercial Litigation Branch of the Civil Division at the United States Department of Justice and Sharon Williams, a trial attorney in the Commercial Litigation Branch of the Civil Division at the United States Department of Justice. Ms. Harvey supervises the review of insurance insolvency matters and Ms. Williams is the principal contact for insurance insolvency matters and supervises the process to release receivers from federal priority statute liability.

The presentation began with the Department of Justice panelists' discussion of the Federal Priority Statute and the federal government's position on its super-priority. They also discussed the types of federal claims that arise in insurance insolvency proceedings; the difficulty in resolving environmental claims; and the fact that not all claims are covered by a federal release, such as tax claims, fraud claims and Medicare claims. They also provided information on the process of obtaining a release, including the burden on the liquidator to provide all information required to allow the Department of Justice to review the request for a federal release. Finally, they provided some insight into the length of time it may take to resolve the claims and obtain a release, which in some cases can take several years to achieve. The discussion prompted a lively discussion between the attendees and the panelists.

NAIC News and Updates

Jim Mumford, First Deputy Commissioner with the Iowa Division, provided updates and highlights of NAIC committee meetings. Mr. Mumford, as the Chair of the NAIC Receivership and Insolvency Task Force, has insight in those issues of significance to the IAIR membership. As he has done in past forums, Mr. Mumford presented a concise update of issues before the NAIC. He addressed the Receivership and Insolvency Task Force's evaluation of the use of loans to insurers through the various Federal Home Loan Banks, concerns being raised by those banks' regulator regarding potential risks to those loans in an insolvency and the regulator's

proposed legislation. He also spoke about the continuing work the Task Force is doing on a guideline for an ERISA limited exemption to the prohibition on advertising or discussion of Guaranty Fund coverage with respect to benefits payable under qualified retirement plans.

The View from Washington

Scott Kosnoff and Sara Powell, both of Faegre Baker Daniels, ended the program with a snappy, fact and fun filled view of current issues and goings on in Washington D.C. Their presentation, while brief was far ranging, touching on issues before various House and Senate committees of interest to IAIR members, including the impact of the election results on the constitution of various committees. They also discussed the United States participation and increasing activity in the International Association of Insurance Supervisors ("IAIS"), the current issues being addressed in IAIS meetings, including issues surrounding the list of Globally Systemic Important Insurers and Michael McRaith's selection as chair of the IAIS technical committee. They ended the discussion with their view of the topics that would be addressed in the widely anticipated and long awaited report from the Federal Insurance Office.

Thanks to all the participants who agreed to speak at the Issues Forum and share their knowledge and expertise with the organization. Thank you also to those who helped me organize the Forum. I look forward to seeing you all at the Houston Issues Forum and hope you will be able to participate in person. My recap is no substitute for the live program. We are currently scheduled to host the Issues Forum on April 6. Check the most up to date schedule to confirm the time and location. Hope to see you there!



Kathleen is Senior Counsel in the Regulatory and Administrative group of Michelman & Robinson, LLP, in Encino, California. Michelman & Robinson is a national law firm with offices in California and New York. Kathleen assists insurance companies and related agents with various regulatory, compliance, claims and reinsurance matters.



Insolvency Workshop Recap: Spotlight in Savannah

By Bart Boles

IAIR's 2013 Insolvency Workshop themed, Spotlight on Current Issues, provided valuable knowledge on a wide array of topics and then challenged the participants to use this information to work

outside of their normal, professional comfort zones to develop a course of action for a hypothetical troubled insurance company. Over two full days at the Hilton Savannah Desoto in Savannah, Georgia, attendees listened to, and argued with, seven different panels of presenters on topics and techniques in line with the workshop's theme. Co-Chairs Chris Maisel and Dennis LaGory organized the presentations and a participatory exercise that offered each attendee the opportunity to travel home from the workshop with a tidbit of additional knowledge; tools to add to a previously considered "full" arsenal of techniques; and maybe even a few newly forged, collegial bonds with someone with whom they had not previously interacted. Most of the participants took full advantage of the opportunity.

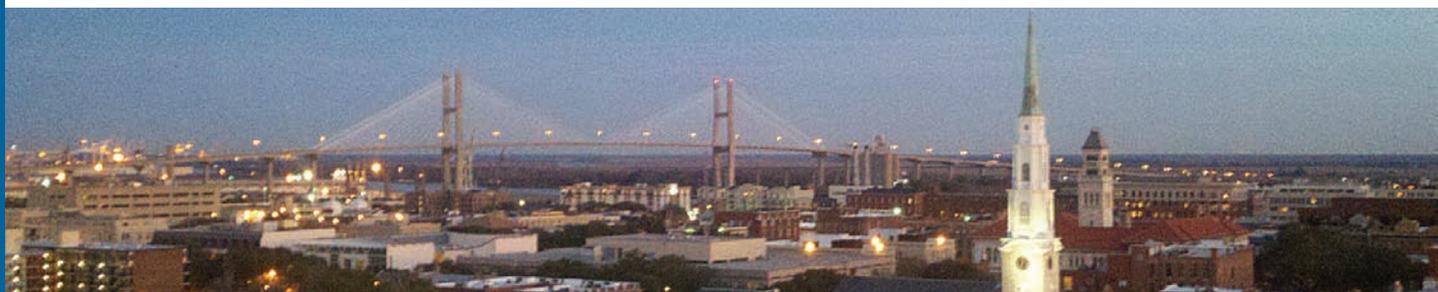
Chris Maisel moderated the first panel that included Wayne Wilson of the California Insurance Guarantee Association, Jonathan Bank of Locke Lord Bissell & Liddell, Stephen Schwab of DLA Piper, and Iain Nasatir of Pachulski, Stang, Ziehl & Jones." They compared, contrasted and quarreled through "The Right Choice" – Private Runoff, Rehabilitation or Liquidation. Their debate of the pros and cons of the options for addressing a troubled insurance company from the varied perspectives of the parties utilized

interpretations of the governing statutes and the practical, business judgment that is necessary to evaluate options and determine the direction to pursue. The debate spilled over from the panel into the attendees and that got the workshop off to a rousing start.



The next presenter was an experienced life and health insurance actuary, Gary Monnin of GP Monnin & Associates. He walked through the changes in reserving over the last 40 years. This included his explanation of the factors, such as economic, product driven, and/or political, that have led to the reserving changes. He demonstrated how the old methodology of tabular, formulaic reserving has given way to today's actuary developing reserves that require judgment, personal experience based assumption development, and extensive tests and stochastic modeling. His ability to boil down complex actuarial issues into a format that made sense to those that aren't so enamored with numbers allowed the attendees to appreciate the significance of scrubbing reserves, including the underlying assumptions, in rehabilitations and liquidations.

The reserving challenges of policy liability presentation in a company's financials was



Insolvency Workshop Recap: (continued)

followed by the next two presenters covering a complex component of the other side of the balance sheet, derivative investments and hedging activities. Edward Toy, the Director of the NAIC's Capital Markets Bureau, and Michael Earley, Managing Director of Deutsche Asset and Wealth Management, discussed the uses, options, market and financial reporting of options, forwards, futures, swaps, credit default swaps, collars, warrants, and replication (synthetic asset) transactions. They briefly touched on hedging and its effectiveness before providing how the Dodd-Frank Wall Street Reform and Consumer Protection Act impacted the derivative market. They made these mind swimming asset types almost understandable.

The next panel provided a spirited debate on their views of the AMBAC rehabilitation. Michael B. Van Sicklen of Foley and Lardner provided an overview of the rationale behind the nature and timing of the Wisconsin Commissioner's actions. He also explained the purpose of the segregated account rehabilitation, the implementation process, and the current status and key issues of the appeal. Greg Mitchell of Frost Brown Todd followed with the view of the rehabilitation from the perspective of the objectors. He also touched the key issues on appeal, although from a considerably different vantage point. Their engaging debate on active issues that are the subject of the pending appeal had the attendees probing and questioning the positions that have been publicly argued.

The principals of the Cantilo & Bennett firm, Patrick H. Cantilo and Mark F. Bennett, then moved the workshop into today's difficult realm of a life insurer's quest for yield on its assets and possible pitfalls that could be encountered. Mr. Cantilo summarized some of the competing considerations involved, the procedural issues that should be addressed,



and some not so obvious problems with different classes of investments. Mr. Bennett then compared and contrasted market data regarding the distribution of invested assets and yields of life and health versus property and casualty companies. He also presented net yield

rankings of the top 10 life and health companies for 2007 through 2011, discussed sovereign debt ratings, and the various causes of impairments. Mr. Bennett and Mr. Cantilo concluded with a summary of the asset turnaround they engineered in their recent successful rehabilitation and sale of a troubled life and health insurer.

Mark Tharp of Tharp and Associates and Robert Nefsky of Rembolt Ludtke presented the "Nuances of Mortgage Insurance and Surety." Mr. Tharp provided an in-depth summary of mortgage insurance, its history, a description of MI coverage, examples of MI coverage, the timing of MI loss recognition, and market share comparisons for the leading MI

writers. Mr. Nefsky followed with a thorough educational presentation on surety insurance. He covered types of surety, exclusions, the parties to a surety contract, the limited coverage of surety by a few property and casualty

guaranty funds, subrogation, and the rarity of surety receiverships. It was valuable to have presentations from these two gentlemen with direct receivership experience in these unique lines of business.

The final panel tackled a matter appearing in almost every insolvency, guaranty association expenses. Steve Davis of Stradley Ronon Stevens & Young and Thomas Jenkins of Locke Lord Bissell & Liddell walked, or maybe jogged, through several components in the evaluation of such expenses. What constitutes an administrative expense? Are there possible conflicts between liquidation and guaranty association statutes in defining these expenses?



Insolvency Workshop Recap: (continued)

How are these claims dealt with in a liquidator's priority determinations? Which guaranty association expenses are incurred in handling claims? What level of detail does UDS reporting provide for these claims? Their description of a liquidator's rationale and process for evaluating the claims presented the delicate balance between the obligations of the liquidator and the expectations of the guaranty associations. All of the attendees had probably been exposed or aware of these issues but their framing of the material provided insight triggering additional thought and consideration.

The participatory exercise involved dividing the attendees into eight teams. The teams were permitted breakout sessions that were intertwined with the panel presentations throughout the workshop. The teams worked in the breakout sessions to evaluate the political and financial issues facing the hypothetical company. They were each asked to serve as a consulting firm to develop a recommended course of action for the troubled company and present it to the Commissioner and the team of advisors.

The company information was designed with a host of financial issues such as possible reserving deficiencies, interest rate/yield mismatch, funds held under a modco reinsurance agreement, FHLB funding agreements, affiliate transactions, dividends to the parent, tax recoverables, and on and on. When coupled with the imaginary political situation, the consulting teams had to develop a plan with a recommendation for one of the following, or a combination of the following: (1) a continued company management controlled rehabilitation, (2) an administrative supervision, (3) a run-off plan with or without court involvement, (4) a court ordered rehabilitation agreement, or (5) a liquidation.

Mr. Maisel designed the participatory exercise, with the assistance of Gary Monnin, Mike Fitzgibbons, Holly Bakke, Dennis LaGory and the author of this article, so that there was no perfect solution and merits to any recommended approach. Apparently this approach worked well in achieving diversity as the four teams chosen to present the executive summaries of their plans to the Commissioner's team had each chosen a different approach. The presentations were made before all workshop attendees with the opportunity for questioning the aspects in the plans.

Tremendous kudos should be afforded Chris Maisel and the design team for developing an exercise that incorporated many of the issues presented in the workshop and forced the participants to delve cooperatively into wide ranging and new issues with professionals they sometimes oppose and even a few complete strangers. Yes, the exercise was hypothetical but the teams' efforts were definitely not hypothetical as they developed well-reasoned plans that pulled from their personal experiences and the issues/ techniques presented in the workshop. Thanks for adding a little spice to the Savannah workshop.



Bart Boles has worked in various capacities for the Texas Life and Health Insurance Guaranty Association since 1988. During that time he also served on the NOLHGA Board of Directors, as Chair of NOLHGA's Members Participation Council, as chair of a number of multi state insolvency task forces, and has participated in various other NOLHGA committees and task forces.

Welcome IAIR's Newest Members!

Thomas Mayberry, CPA, MBA, CFE

Thomas has been a partner with EWM Group, PC since 2000, overseeing financial and market conduct examinations for various state insurance departments. Thomas has nearly 30 years of accounting and insurance experience. Most of his career has been devoted to accounting and financial matters relating to the insurance industry. He has extensive experience with insurance statutes and regulations dealing with insurance carriers.

Thomas has served as a Special Deputy Receiver for the Georgia Department of Insurance since 2009. He is a Certified Public Accountant and Certified Financial Examiner. He received his BA and MBA from Mercer University in Atlanta, GA and is a member of the Society of Financial Examiners, the Georgia Society of CPAs and the American Institute of Certified Public Accountants.



Kevin Tullier, CPA

Kevin is a Managing Director at Veris Consulting, Inc. and his work involves performing forensic accounting and litigation support services in cases involving accounting and auditing malpractice, financial damages and valuations, insurance insolvencies, and

reinsurance disputes. He also performs outsourced accounting services primarily to clients in the insurance industry.

His recent experience includes assisting counsel on behalf of an international insurance company regarding a dispute arising from claims of fraudulent transfer and involving a complex business transaction primarily concerning a billion dollar reinsurance agreement.

Kevin graduated, cum laude, with a BS in Accounting from Louisiana State University.



David Shepherd, FCAS, MAAA

Dave is a Principal & Consulting Actuary with Merlinos & Associates, Inc. Dave has over 26 years experience in the insurance industry. This experience includes loss and loss expense reserve analysis; program pricing and evaluation; financial assistance for state insurance departments; rate filing reviews; and reinsurance pricing, reserving, risk transfer and program analysis.

He graduated cum laude and holds a BA degree in Economics / Business and Mathematics from Macalester College, is a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries.



Steven Davis, Esq.

Steven is the chair of the insurance practice at the law firm of Stradley, Ronon, Stevens & Young, LLP. Steven represents insurers, producers and other intermediaries in regulatory matters, complex business litigation and coverage disputes. He provides legal services covering broad segments of the insurance industry, including property-casualty, life, health, long-term health care, disability, D&O, E&O and other special liability lines. He also provides counsel to a variety of businesses on their insurance programs.

In addition to his insurance focus, Mr. Davis has experience handling a variety of general litigation matters, including professional liability defense.

Jane Koengisman, FLMI

Jane joined the National Association of Insurance Commissioners ("NAIC") in August 2009 as the life / health financial analyst. She is currently the Life / Health Financial Analysis Manager in the Financial Regulatory Services Division. She oversees the NAIC's quarterly / annual financial analysis process relating to nationally significant life, health and fraternal insurers. She also supervises the continued maintenance and improvements to the financial analysis solvency tools.

Jane has a BS in Business Administration with a major in Accounting from Kansas State University. She holds the Fellow, Life Management Institute (FLMI) designation.

Amy Ballain, CPA

Since 2006, Amy has been the Vice President - CFO and Treasurer at the National Conference of Insurance Guaranty Funds ("NCIGF").

Amy holds a BS in Accounting from Northwest Missouri State University and is a member of the American Institute of Certified Public Accountants and the Indiana CPA Society.



Rachelle Frisby

Rachelle is a Director with Deloitte & Touche, Ltd., Bermuda. She has over ten years of experience working in public accounting in Canada and Bermuda. She leads a team that specializes in providing restructuring, forensic, dispute and transaction services. Rachelle has been appointed as co-liquidator of various reinsurance companies and investment funds incorporated in Bermuda. Other projects include examining financial records to determine the sources and uses of funds, review of internal controls to investigate employee fraud and completing due diligence for potential acquirers.

Rachel has a Bachelor of Commerce in Accounting from the University of British Columbia, Canada.



Insurance Industry Update – Has the Dust Settled?

By Michelle Avery

The insurance industry expected significant rating downgrades, impairments and insolvencies to occur in the aftermath of the 2008 economic downturn. However, A.M. Best's Special Report, 1969-2011 U.S. Impairment Review, released in July 2012, reflects not only a decrease in life and health impairments, but also that life and health ("L&H") company impairments are at an all-time 50-year low. The Report notes that the decrease in L&H impairments was largely the result of a recovering economy and improved performance of the financial markets - specifically, decreases in realized losses and increases in unrealized capital gains.

In contrast, A.M. Best released a similar study¹ in which it discussed Property & Casualty ("P&C") company impairments, which have shown a sharp increase in 2011. In addition to inadequate reserving and mismanagement, A.M. Best cites the impact from several natural catastrophe events in 2011 as responsible for an additional 10 points to the industry's overall combined ratio. Additionally, almost one-third of the 2011 impairments have the implosion of the real estate industry to thank.

While it may appear that L&H companies have largely survived the crisis, the industry is still facing challenges stemming from the depressed economy. In particular, life and health insurers will be closely watching their investment portfolio yields. Over time, the asset mix of an insurance company's investment portfolio varies based on different macroeconomic factors and the ever-present need to appropriately match assets to liabilities while taking into consideration liquidity risk and duration.

Paramount in those investment decisions is the consideration of the balance between yield and risk. The current economy makes those decisions even more challenging. The Federal Reserve recently predicted little to no change in interest rates in the coming years², so alternative investment products are likely to be considered to assist the industry through the economy's continuing down periods. Best Review³ discussed this challenge and identified a few unlikely places where insurers may be able to find potentially higher yielding products. For example, Mortgage Back Securities ("MBS"), thought by many to be

undesirable, are back on the table. Although the culprit for much of the trouble that occurred in 2008, new MBS products could provide less risk. In addition, variable rate products could be a good option by providing a potential upside from rate increases with little downside risk in a market with current rates so low.

Yield is not the only factor the industry has to consider when making investment decisions. An insurance company also has to balance the risk of an investment with an evaluation of its impact on its risk based capital ("RBC") ratio. The RBC calculation is used to measure the amount of capital that an insurance company needs in order to support its overall business operations. The calculation weighs the risk associated with different aspects of an insurance company's operations, including its investment portfolio, and assigns a risk factor to calculate an overall RBC ratio.

For example, A.M. Best explains a B-rated bond, normally considered speculative and subject to high credit risk, will likely provide a higher return with less impact on a company's RBC capital needs than a similar equity investment which has greater volatility. This lesser variability occurs because of a more favorable RBC factor associated with bonds as compared to equity investments.

Whether the dust has settled is still unclear at this point. Things appear to be improving for L&H but the number of P&C impairments raises questions about the lingering impact of the economic downturn on that segment. And, although L&H companies appear to have performed better than their P&C counterparts, the effect of current investment decisions may be the ultimate factor. The impact of these decisions will take years to unfold.

¹ AM Best, Best's Special Report, 1969-2011 U.S. P/C Impairment Review, June 25, 2012: P/C Financial Impairments Hit Near-Term Peak in 2011

² ABC News "Federal Reserve Expects to Keep Interest Rates Low Through Mid-2015", Sept. 13, 2012

³ AM Best's Best Review, September 2012, p 40



Michelle Avery, CPA is an Executive Vice President and Managing Director at Veris Consulting, Inc. within the firm's forensic accounting practice. Michelle has extensive experience assisting clients in causation and damage assessments related to failed property/casualty and life and health insurance companies. Michelle is a Board member of IAIR and a member of the AICPA's NAIC/AICPA Working Group Task Force. Michelle can be reached at mavery@verisconsulting.com.



IAIR FHLB Letter to NAIC



International Association of Insurance Receivers

610 Freedom Business Center – Suite 110

King of Prussia, PA 19406

610-995-0015 Fax: 610-992-0021

E-mail: info@iair.org

Promoting professionalism and ethics in the administration of insurance receivership

January 25, 2013

Paul A. Miller (IL), Chair Federal Home Loan Bank Legislation (E) Subgroup
Jim Mumford (IA), Chair of Receivership and Insolvency (E) Task Force
National Association of Insurance Commissioners

RE: Request for Comments on FHLBank Proposed Legislation

Gentlemen:

On behalf of the International Association of Insurance Receivers (“IAIR”), this letter responds to your request for input and perspective on the Federal Home Loan Bank (“FHLBank”) proposed legislation to provide exemption to FHLBanks from the stay provisions and voidable preference provisions within state insurance receivership proceedings (the “Proposal”). IAIR appreciates the opportunity to provide this response to the Federal Home Loan Bank Legislation (E) Subgroup.

As you are aware, IAIR was founded in 1991 as an association of professionals involved with insurance receiverships and financially stressed or troubled insurers. IAIR’s mission is to provide a forum to exchange information, develop best practices, establish and maintain accreditation standards, and educate its members and others concerning the administration and restructuring of such insurers.¹ IAIR’s members include experienced insurance receivers (including liquidators and rehabilitators), insurance regulators and state guaranty associations.

IAIR recognizes the role of FHLBank lending as both an important source of liquidity and as a method to promote the continued viability of insurance companies, goals we share. However, FHLBank’s proposed revisions to state receivership statutes, as exemplified by the FHLBank’s proposed revisions to the Insurer Receivership Model Act (“IRMA”) Sections 108(E) and 604(C), could result in inequitable treatment of receivership creditors, and create conflict and confusion regarding established principles and practices in insurance receivership administration as will be described further in this response. Although IAIR understands the positive impact FHLBank loans have on the liquidity management of insurance companies and supports the continued ongoing relationship between FHLBank and the insurance industry, there is concern that FHLBank’s recommended revisions to state receivership statutes will have a significant negative impact on the liquidity management of insurance companies in receivership without any corresponding improvement in such companies’ access to liquidity from the FHLBank. Issues such as the need to post excess high-quality collateral, purchase FHLB stock in order to become a borrower and substantial pre-payment penalties all present potential obstacles to a receiver.

¹ For purposes of this response, the use of the term “insurer” shall be used interchangeably with the term “insurance company”.



IAIR FHLB Letter to NAIC (continued)

Messrs. Miller and Mumford
January 25, 2013
Page 2 of 4

This is especially true for an insurance company placed in rehabilitation, with the goal of either selling the company, or rehabilitating the company and having it re-enter the market.

It appears that the FHLBank's concern is to protect its security, which IAIR understands and appreciates. However, the Proposal could open the door to other creditor groups who could also argue for "special" treatment on the basis of the supposed advantages such creditors could offer insurers in the "zone of insolvency" if they did not need to be concerned with the negative consequences of receivership proceedings. The NAIC and each of the respective state insurance departments have been committed to the principle that policyholder interests in the unencumbered assets of the estate are primary. The receivership statutes governing liquidations afford receivers the necessary tools to marshal assets, maximize their values when liquidated, and, most importantly, fairly determine each claim's priority class and distribute the collected assets equitably. When discrete creditor groups are exempted from the operation of the priority of the distribution scheme, the favored group effectively receives priority, not only over other creditors, but especially over the interests of policyholders themselves. Considerable thought must be invested in any decision to offer such a protection to any group of creditors. It would be advisable, however, to consider whether there is an alternative, less destructive mechanism to balance the equities on which the present receivership laws function that would accomplish the FHLBank's objectives.

FHLBank's proposed amendments focus on two areas: the applications of stays and voidable preferences. As a practical matter, insurance receivership stays do not interfere with the realization of collateral held by creditors with perfected security interests. Unless there is some question about the legitimacy of the claim, receivers generally must abide by the terms of the secured claim. Where disputes arise over whether an interest is, in fact, perfected, the receivership court is available to speedily resolve these issues. The same is true for voidable preferences and fraudulent conveyances. A voidable preference only occurs if a transfer of assets is made "on account of an antecedent debt." Realization on a perfected security interest is not a voidable preference, because the transfer of the security interest occurred at, or before, the creation of the debt. It is only when lenders extend credit first, but try to secure collateral at a later date that a potential for voidable preferences arises, because only then does the debt become an "antecedent debt." Similarly, a fraudulent transfer occurs when the insolvent company transfers assets to a creditor for less than "fair equivalent value." Therefore collateral pledged in exchange for new and equivalent value, such as a loan, would not on its face be considered a fraudulent transfer, whereas collateral pledged to secure a loan that was initially unsecured or under-secured may. It is IAIR's understanding that FHLBanks rigorously enforce requirements for full and timely collateralization of all borrowings. As such, it would seem an exemption from the preference provisions is not only unnecessary but also redundant.

State Receivership Statutes were Enacted to Ensure Creditor Protection

FHLBank's proposed language would allow state receivership laws' carefully developed prioritization system, and the historical case law developed in connection with those laws, to be circumvented for the benefit of a specific secured creditor and to the potential detriment of all other creditors, including other secured creditors. If an FHLBank properly, under both state and federal law, has a perfected security interest in connection with the loans made to insurance companies, then that FHLBank will be afforded its full priority in the secured assets of the insurance company in receivership. It is imperative that the states preserve the protection afforded to all creditors, especially policyholders and third party claimants under policies issued by the insurance company placed into receivership. It should be noted that guaranty associations generally share the same priority status as policyholders when seeking reimbursement for policyholder claims that they have paid due to an insurer's insolvency. Therefore, contrary to the analysis contained in the FHLB Subgroup's Executive Summary, guaranty associations would most likely be



IAIR FHLB Letter to NAIC (continued)

Messrs. Miller and Mumford
January 25, 2013
Page 3 of 4

negatively impacted by the recommended changes to receivership statutes providing, in effect, a “super priority” to FHL Banks. The priority of receivership claims has been fully deliberated during the development, and adoption, of state receivership laws and NAIC Model laws, and should not now be revised to create a preference after such concerted efforts to ensure equity among creditors of the same class.

The provisions of IRMA, and the state receivership statutes, already afford protections to secured creditors. For example, Section 108(C) of IRMA provides that the commencement of a delinquency proceeding operates as a stay of the actions described in the section, “[e]xcept as provided in Subsections E and F *or as otherwise provided in this Act*” (emphasis added). The FHLBank proposal would create an additional exception under Subsection E, expressly allowing an FHLBank to exercise its rights under a security agreement. The implication in the Proposal that under Section 108(C) and equivalent state receivership statutes secured creditors would be prevented from exercising rights under a security agreement is incorrect. The Proposal focuses on Section 108 in isolation, and does not address the process by which secured creditors may assert their rights in a receivership. For example, IRMA Section 710, Secured Creditors’ Claims, provides that the value of security held by a secured creditor may be determined by converting the security into money according to the terms of the security agreement, or by agreement or litigation. Providing a further exception for a *particular* secured creditor would create an unwarranted preference with respect to the process of handling claims of certain secured creditors.

Additionally, IRMA Section 604 describes the circumstances under which the Receiver may avoid preferences. Section 604(C) contains exemptions for certain transfers, such as a contemporaneous exchange for new value, or a payment of a debt incurred in the ordinary course of business. These exemptions recognize that certain legitimate transactions should not and will not be avoided in a receivership. The FHLBank Proposal creates a special exemption for an FHLBank security agreement that would apply under *any* circumstances. IAIR submits that the existing exceptions contained in state receivership statutes, and as exemplified by the IRMA provisions, provide sufficient protections to an FHLBank, and that a blanket exemption for a particular creditor should not be allowed.

It is important to note that the Proposal is based on subsections of IRMA, without reference to the specific sections from which they were derived. IRMA is not an amalgam of independent provisions; it is a comprehensive scheme for insurer receiverships that addresses the entire process of receivership proceedings. Notably, the structure of IRMA, from where the proposed amendment is drawn, differs from its predecessor model, on which most state receivership laws are still based. Consequently, cutting and pasting subsections from IRMA into a state receivership statute may not be feasible, and could result in ambiguous (or even contradictory) statutory provisions.

Insurance Company Liquidations Are Not The Same as Bank Liquidations

The liquidation of an insurance company is very different from the liquidation of a bank due to the nature of the financial instruments held by the involved consumers. To protect insured depositors, the FDIC takes over when a bank or thrift institution fails. Such institutions generally are closed by their chartering authority – the state regulator, or the Office of the Comptroller of the Currency. The FDIC has several options for resolving institution failures, but the one most used is to sell deposits and loans of the failed institution to another institution. Customers of the failed bank automatically become customers of the assuming institution. Most of the time, the transition is seamless from the customer's point of view. Any remaining assets are sold by the FDIC. Thus there are no priorities and business is never stopped, just transferred.



IAIR FHLB Letter to NAIC (continued)

Messrs. Miller and Mumford

January 25, 2013

Page 4 of 4

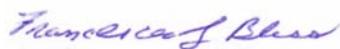
Insurance insolvencies, on the other hand, are much more complex. A bank depositor's loss in a bank insolvency is limited to the amount of his deposit and interest. A policyholder's loss is measured by the loss of indemnification from its insurance company for an unfortunate current or unforeseen future event. This is far more intricate and more compelling than a bank insolvency, as the policyholder who has suffered a loss is now left without the insurance protection previously purchased. Receivers strive to maximize and preserve assets that will be available for distribution to all creditors. Classes amongst creditors have been established to secure and protect the policyholders and effectuate equitable distributions. Recoveries by policyholders and claimants from liquidated assets could be substantially reduced under FHLBank's Proposal as it would allow FHLBanks to receive a disproportionate share of the receivership's assets. Therefore, although we understand and support the fact that lending through FHLBank can be an important tool to further an insurance company's rehabilitation, preferential treatment of loans issued to the insurer before a receivership proceeding is initiated should not be permitted beyond the perfected secured creditor position that may already be provided in the lending documents.

Conclusions and Recommendations

In summary, IAIR encourages the careful consideration of (1) possible distinctions in the treatment of FHLBank's positions under rehabilitation versus liquidation to permit continued availability of this capital source, while preserving the established claims priority determination and equitable application of state receivership provisions; (2) the impact of FHLBank's collateral requirements on availability of assets and asset/liability matching and prepayment penalties in an insurance company receivership; and (3) the preservation of the established claims priority determination under state receivership statutes. We believe it is to the advantage of all parties to work collaboratively to study and further consider the Proposal with input from FHLBank, participants from the NAIC, including representatives involved in both rehabilitation and liquidation receiverships, to avoid revisions to current state receivership statutes that would result in the disparate treatment of creditors and possibly other, unintended consequences in the conduct of an insurance company receivership.

IAIR appreciates the opportunity to provide this initial response to the FHLB Subgroup's request and to further assist the NAIC and FHLBank in the development of procedures that include the equal protection of creditors in insurance company receiverships. We look forward to the opportunity to participate in further discussions. If, after you have received these comments, you have any additional questions, please feel free to contact the undersigned.

Respectfully submitted,



Francesca G. Bliss
International Association of Insurance Receivers, President



IAIR and AIRROC Join Forces

IAIR's Board of Directors and the Board of Directors of the Association of Insurance & Reinsurance Run-Off Companies ("AIRROC") are pleased to report that both groups have approved a Memorandum of Understanding ("MOU") intended to advance their common goals.

"The mission of [AIRROC] is to promote and represent the common interests of insurance and reinsurance companies with legacy business. The Association's objectives include improving professional and managerial standards and practices and enhancing knowledge and communications within and outside of the run-off industry."

AIRROC "began to take form in early 2004 when a handful of companies with run-off books came together to voice their common concerns associated with run-off and their desire to work together to identify ways to find solutions to their common problems."

As described on its website, AIRROC's objectives and benefits include:

- Provides a forum for members to meet 3-4 times annually to raise and discuss common issues
- Conducts a commutation event to include solvent companies, receivers, rehabilitators and reinsurers
- Provides education to improve communication between cedents and reinsurers, promote dispute resolution alternatives, examine the possibilities of benchmarking, the receivership process, regulatory concerns, etc.

AIRROC Executive Director Carolyn Fahey, who attended the IAIR Fall meeting in D.C., said that she is "pleased that AIRROC and IAIR have entered into this agreement to help support each other's initiatives." In the view of IAIR's President, Francesca Bliss, these joint efforts will "expand . . . IAIR's benefits . . . to other professional organizations who share (IAIR's) mission."

The AIRROC-IAIR MOU will allow the parties to:

- link to each other's websites;
- exchange articles between Matters and The Receiver; and
- offer brochures and promotional material to each party's members, all of whom will receive a 20% discount off the non-member registration fee for any program sponsored by the other party

IAIR and AIRROC will also assist with and promote other activities or projects as opportunities present themselves. AIRROC publishes a newsletter, Matters, which you can read online at the AIRROC website (www.AIRROC.org). Be sure to check out the wonderful content online.

We at IAIR look forward to working with the AIRROC organization and having a long and mutually beneficial relationship through this endeavor.





International Association of Insurance Receivers

2013 SPONSORSHIP PROGRAM

The International Association of Insurance Receivers was founded in 1991, and continues to be recognized today as the professional association providing those involved with insurance receiverships and financially stressed or troubled insurers with a forum to exchange information, develop best practices, establish and maintain accreditation standards, and educate its members and others concerning the administration and restructuring of such insurers.

The International Association of Insurance Receivers is proud to be able to offer three levels of participation to sponsors interested in expanding their participation in IAIR events and maximizing the potential of their exposure to insurance receiver professionals and others interested in this growing industry. Each level of participation includes the value-added benefits described below to enhance the opportunities of focused engagement with IAIR members and others attending events throughout the year, and those who visit the IAIR website.

OUR MISSION

- To assemble individuals interested in the affairs of insurers which are financially stressed or troubled or are in need of restructuring or in receiverships;
- To establish ethical and professional standards in the conduct of the affairs of such insurers;
- To provide its members with professional education and development relevant to such pursuits; and
- To recognize, through accreditation, the attainment by its members of expertise and proficiency in such pursuits.



PLATINUM SPONSORSHIP

is available for \$7,500 per year

- Credit against IAIR dues for up to 2 representatives of Sponsor (value up to \$750).
- Credit against IAIR Workshop registration fees for up to 3 representatives of the Sponsor (value up to \$2,250).
- One representative of Sponsor to serve on IAIR Board of Advisors, consisting of past IAIR Presidents and IAIR Platinum Sponsors
- Posting of the Sponsor's logo at the bottom of the IAIR Home Page. Additionally, a tab at the top of the IAIR Home Page will be labeled "IAIR Sponsors" and will link to a page displaying each sponsor's logo, name or trade name, a brief description of the services provided, and a link to a page designated by the sponsor on the sponsor's website.
- Speaker role annually for a representative of the Sponsor (or its designee) at one of the IAIR Issues Forums or an IAIR Workshop, or an article in *The Insurance Receiver* (with IAIR to have final approval on the speaker/author and topic).
- Two full page ads each year in *The Insurance Receiver* (current value \$1,100).
- Space on a materials table for the Sponsor at all IAIR events.
- Recognition of the sponsor on the IAIR website, in each issue of *The Insurance Receiver*, and at all IAIR events.
- These value-added benefits reduce the effective cost to the Sponsor by 55% to only \$3,400.



GOLD SPONSORSHIP

is available for \$4,000 per year

- Credit against IAIR dues for one representative of the sponsor (value up to \$375).
- Credit against IAIR Workshop registration fee for one representative of Sponsor (value up to \$750).
- Posting of the Sponsor's logo at the bottom of the IAIR Home Page. Additionally, a tab at the top of the IAIR Home Page will be labeled "IAIR Sponsors" and will link to a page displaying each sponsor's logo, name or trade name, a brief description of the services provided, and a link to a page designated by the sponsor on the sponsor's website.
- One full page advertisement each year in *The Insurance Receiver* (current value \$550).
- Space on a materials table for the Sponsor at all IAIR events.
- Recognition of the sponsor on the IAIR website, in each issue of *The Insurance Receiver*, and at all IAIR events.
- These value-added benefits reduce the effective cost to the Sponsor by 42% to only \$2,325.



SILVER SPONSORSHIP

is available for \$1,500 per year

- Credit against IAIR dues for one representative of the sponsor (value up to \$375).
- A 10% discount on IAIR Workshop registration fees for one representative of the Sponsor (value of at least \$75).
- Posting of the Sponsor's logo at the bottom of the IAIR Home Page. Additionally, a tab at the top of the IAIR Home Page will be labeled "IAIR Sponsors" and will link to a page displaying each sponsor's logo, name or trade name, a brief description of the services provided, and a link to a page designated by the sponsor on the sponsor's website.
- Space on a materials table for the Sponsor at all IAIR events.
- Recognition of the sponsor on the IAIR website, in each issue of *The Insurance Receiver*, and at all IAIR events.
- These value-added benefits reduce the effective cost to the Sponsor by 30% to only \$1,050.

IAIR & INSOL Foster International Ties

IAIR is continuing to build its presence and collaboration with organizations having similar interests, so as to expand the opportunities for its members. On February 5, 2013 Bernd G. Heinze, Esq., who along

with Nancy Margolis, Esq. provide management of IAIR, met with INSOL's representatives in London, England. IAIR member, Vivien Tyrell and her colleague Neil Brown of Reynolds, Porter & Chamberlain, met with Penny Robertson and Jelena Sisko of INSOL.

The opportunities to hold joint conference calls among board members of the respective organizations, have members attend events, undertake joint projects and articles, share distribution of newsletters and link to one another's activities, were all discussed. "We made substantial progress in looking at various opportunities and putting plans in place to bring the two groups closer together," Mr. Heinze said. "We also examined the prospect of a joint IAIR/INSOL Conference either in the US or the UK at some time in the future," he added.

INSOL's program for the upcoming Ninth World Quadrennial Congress, on May 19-22, 2013 at The Hague in the Netherlands was also reviewed. Full details and registration information can be found at: <http://www.insol.org/page/225/insol-2013>. Over 800 participants are expected to attend INSOL's 2013 Congress.

IAIR and INSOL representatives have already had a conference call to follow-up on the London meeting. "This is exactly what we at IAIR need to do to facilitate additional benefits for our members on an international basis, and I could not be more delighted to have renewed our partnership with INSOL's representatives as we work toward developing closer ties among the professionals actively engaged in issues and opportunities of mutual interest," said IAIR President Frankie Bliss. More details of future activities will be provided in upcoming issues of The Receiver.

A SPECIAL THANKS TO OUR 2013 CORPORATE SPONSORS FOR THEIR CONTINUED PARTICIPATION AND SUPPORT!

Arnstein & Lehr, LLC
DeVito Consulting, Inc.
Fitzgibbons & Company, Inc.
Jo Ann Howard & Associates, P.C.
Kane Corporation
Quantum Consulting, Inc.

Robinson Curley & Clayton, P.C.
Semmes, Bowen & Semmes, P.C.
Stradley Ronon Stevens & Young
Strategic Initiatives Management
Group, LLC
The Law Offices of Daniel L. Watkins
Veris Consulting, Inc.

For sponsorship opportunities, please contact:
Nancy Margolis, Esq. • 610.992.0015 • nancy@iair.org



If you are interested in participating as an IAIR sponsor, advertiser or wish to receive information about IAIR membership or committee participation, please contact Nancy Margolis, Esq., Association Manager, International Association of Insurance Receivers, telephone 610.992.0015 • nancy@iair.org



SAVE *the* DATES

IAIR: Technical Development Series

June
6-7
2013

Las Vegas, NV
THEhotel at
Mandalay Bay

NAIC Summer Meeting

August
24-27
2013

Indianapolis, IN
JW Marriott and
Mariott Downtown

NAIC Fall Meeting

December
15-18
2013

Washington, DC
Washington Marriott
Wardman Park

IAIR 2013 Committee Chairs

Executive Committee

Francesca G. Bliss

Strategic Planning Committee

Francine L. Semaya, Esq.

Operations Committee

Jenny Jeffers
Dale Stephenson

Accreditation & Ethics

Joseph DeVito, CPA, AIR
Michael FitzGibbons

Designation Standards

(Subcommittee of A&E)

Daniel Watkins, CIR-ML

Communications Committee

Evan Bennett

Marketing Committee

(Subcommittee of Communications)

Holly Bakke, Esq.
Evan Bennett

Newsletter Committee

(Subcommittee of Communications)

Michelle Avery, CPA

Publications Committee

(Subcommittee of Communications)

Dennis LaGory, Esq.

External Relations Committee

Mary Cannon Veed, Esq., AIR-Legal
Doug Hertlein, Esq.

Guaranty Fund Committee

(Subcommittee of External Relations)

Lynda Loomis, Esq.
Wayne Wilson, Esq.

Finance Committee

Donna Wilson, CIR-ML

Governance Committee

Dennis LaGory, Esq.

Audit Committee

(Subcommittee of Governance)

Evan Bennett

By Laws Committee

(Subcommittee of Governance)

Dennis LaGory, Esq.

Elections Committee

(Subcommittee of Governance)

Dick Darling, CIR-ML

Member Services Committee

Douglas Hartz, Esq., CIR-ML
Donna Wilson, CIR-ML

Education Committee

(Subcommittee of Member Services)

Bart Boles
James Kennedy, Esq.

International Committee

(Subcommittee of Member Services)

Vivien Tyrell, Esq.

Membership Committee

(Subcommittee of Member Services)

Kerby Baden
Betty Cordial, CIR-ML



www.iair.org