The INSURANCE RECEIVER

Promoting professionalism and ethics in the administration of insurance receiverships.

Volume 11, Number 4 **Winter 2002**

President's Message

by Elizabeth A. Lovette, CIR-ML

What a pleasure and privilege it has been to serve as the President of IAIR for the last two years. Fortunately I was assisted by a stellar board of directors whose support, encouragement and enthusiasm for the organization made my job as President quite simply, fun. I must also thank my dear friend and IAIR's Executive Director, Paula Keyes. Until becoming President I had no real appreciation for the amount of work done on behalf of the organization by Paula and her staff. While our board meetings, roundtables and other events often appear to come off seamlessly, it is in no small part due to the tireless "behind the scenes" efforts of our Executive Director.

Thanks must also go to each committee chair and the members of those committees. As an organization that must rely almost exclusively upon its members' participation to further its mission and goals, I strongly encourage and challenge every IAIR member who is not involved with committee work to get involved. All of the committees could use and would appreciate a new face and fresh perspective. The time commitment involved is not onerous and your participation will make a difference.

IAIR finds itself in a time when receivership activity has reached a pinnacle not experienced in many years. The current state of the U.S. economy as well as other factors both domestic and abroad are indicators that the surge of insurance company failures is likely to continue. What is certain is that complex issues never before confronted

by receivers are presenting themselves. IAIR has already proven to be a ready forum for presenting these novel issues and providing to membership the strategies for tackling them (e.g., the recent joint IAIR/NCIGF Workshop).

Though still in its infancy by organizational standards, IAIR now has the opportunity to gain strength, respectability, and maturation both in the eyes of its members and by those desiring our members' services by being at the forefront of this tumultuous insolvency environment. Whether IAIR can be taken to that next level, however, depends in no small part on the willingness of membership to get us there. Let us not lose this opportunity.

By the time membership receives this message, IAIR will have a new President and several new board members. Please support these people! I encourage all members to communicate with the board. Let us hear if IAIR is servicing your membership needs and what those needs are. We welcome and respect your opinions. Most importantly, your communication is essential to ensuring that the board's goals for IAIR are the members' goals as well.

As the year comes to an end, I hope you and yours will find much to rejoice in and many family and friends to do it with. Happy Holidays!

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INSURANCE RECEIVER
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Thank You To The Sponsors of The IAIR San Diego Meeting

We would like to thank those companies and individuals who have served as Patron Sponsors of our quarterly round table and reception held in San Diego, CA. It is only with the assistance of these firms that we are able to provide quality educational programs to the insurance insolvency industry. Thank you.

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IAIR Educational Seminar

2003 Insolvency Workshop

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Marriot Rancho Las Palmas Resort & Spa
Palm Springs, California

Topics will include special receivership topics such as:
Alternative Risk Transfer Vehicles
Unauthorized Health Insurers
Federal Alternatives
Interstate Compact Legislation
and
2003 Legal Update

For more information, visit the IAIR website at www.iair.org and go to the Events & Schedules page.

View From Washington

by Charlie Richardson

By the time this article is published, the mid term elections will have occurred and the Congressional terrain for 2003 and beyond will be clearer. Regardless of whether the House remains in GOP hands and the Democrats keep their one vote majority in the Senate, one thing is certain: insurance will continue to have a more prominent place in the public policy debates than at almost any time in Congress' history.

Roundtable Discussion on Insurance Regulatory Reform

On September 17, the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises of the House Financial Services Committee held a four-hour Roundtable on insurance regulatory reform. The Roundtable was a follow-up to the series of three hearings the Subcommittee held in June. The participants in the Roundtable were:

Panel I

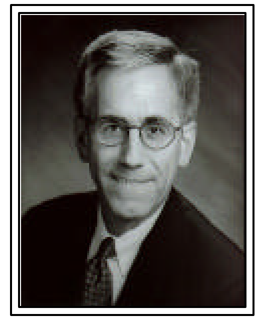
- Hon. Terri Vaughan, President, National Association of Insurance Commissioners
- John T. Fitts, Deputy General Counsel, Progressive Casualty Insurance Company
- Al Scott, General Counsel, Alfa Insurance Companies
- Michael J. McCabe, Senior Vice President & General Counsel, Allstate Insurance Company
- Ronald A. Smith, State Government Affairs Chairman and Past President of the Independent Insurance Agents and Brokers of America
- Paul Mattera, Senior Vice President & Chief Public Affairs Officer, Liberty Mutual Group
- John Lowther, Executive Vice President and General Counsel, State Auto Insurance Companies
- Lee Jedziniak, Vice President, Compliance, South Carolina Farm Bureau

Panel II

- William B. Fisher, Vice President and Associate General Counsel, Massachusetts Mutual Life Insurance Company
- William H. McCartney, Senior Vice President Industry Affairs, USAA
- William J. Murray, Senior Vice President & Deputy General Counsel, Chubb & Son
- Joel Freedman, Senior Vice President, The Hartford
- John Van Osdall, Chairman, Council of Insurance Agents & Brokers
- Wayne E. McOwen, Vice President of External Affairs, Guard Financial Group
- Herman Brandau, Associate General Counsel, State Farm Insurance Companies
- David Bowers, Executive Vice President and General Counsel, Zurich Financial Services
- Gary Hughes, General Counsel, American Council of Life Insurers on behalf of the Financial Services Coordinating Council

Much of the discussion implicitly conceded that the current state system was not as efficient or flexible as it needs to be

As you can assume from the lineup of industry and trade representatives, some of whom participated in the three June subcommittee hearings, there were across-the-board calls for improvements in the state-based system of insurance regulation (Panel I), as well as pleas by several of the witnesses for more significant changes including optional federal charters (Panel II). NAIC President Terri Vaughan gave the commissioners' responses. Much of the discussion implicitly conceded that the current state system was not as efficient or flexible as it needs to be. Groups clearly disagreed as to whether the approach to improvement should involve federal officials leaning on states to be more uniform and flexible, or the creation of a federal charter option. We



have copies of the prepared statements if you would like them.

Patriot Act

The Patriot Act was passed by Congress in October 2001, and gives federal regulators, especially Treasury, significant new authority to require businesses to combat money laundering.

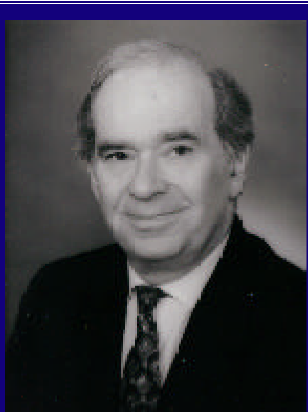
In September, the US Treasury Department announced that it would not require property and casualty or health insurers to comply with a potentially onerous section of the Patriot Act. Treasury stated that it was proposing rules which would require life insurers or insurers which issue investment or "stored value" features to develop an anti money laundering compliance program. Carriers which are not life companies would not have to implement a formal series of policies and controls aimed at deterring money laundering.

The September announcement follows an April announcement by Treasury deferring a decision on insurers, admitting they did not know what to do about insurers and money laundering, and would study the matter. Most financial institutions had to put anti money laundering compliance programs in place by April 24, 2002. So the follow up Treasury decision on whether insurers would have to start down this road had been hotly anticipated.

There are likely several subsidiary questions involving companies with dual authority, the concept of "stored value," and other issues.

Sarbanes Oxley Act of 2002

On July 30, 2002, President Bush signed into law the Sarbanes Oxley Act of 2002 (Public Law 107-204), legislation that has been described as the most comprehensive and far reaching package of corporate governance and accounting practice reforms to be applied to U.S. public companies in decades. The Act directs the SEC to adopt rules and regulations to implement many of its provisions, and the unexpected speed with which it was passed before Congress' annual August recess has caused unanticipated consequences, practical difficulties and shown the need for refinement and future clarifying amendments. Many provisions of the Act mandate, supplement, preempt or require modifications to other pending rule changes proposed by the SEC, NYSE and Nasdaq in the wake of Enron, WorldCom and other corporate and accounting scandals that have plagued Wall Street in recent months.



Thank you Lenny for your untiring efforts, your vision, leadership and unforgettable sense of humor. You will always be in our hearts.

Edwards & Angell, LLP sincerely regrets the passing of Insurance and Reinsurance Practice Group Member, Colleague, Mentor and Friend

Leonard 'Lenny' H. Minches

Former Special Deputy Superintendent, New York State Insurance Department Liquidation Bureau, widely published author, internationally recognized speaker and Dean of the Insurance Insolvency Bar.

In memory of Lenny, we have established

The Edwards &Angell, LLP, Leonard H. Minches Scholarship Fund

at St. Johns University School of Risk, Insurance and Actuarial Science (formerly the College of Insurance).

The Fund will assist deserving students and continue Lenny's tireless efforts to mentor and encourage the young professionals with whom he worked. Colleagues in the insurance industry who knew Lenny may join in honoring him by making a donation.

To make a donation, please send your tax deductible check, made payable to Leonard H. Minches Scholarship Fund, to Ms. Jae Stanton, Edwards & Angell, LLP, 90 State House Square, Hartford, Connecticut 06103 or you may contact Ms.Stanton for further details at jstanton@ealaw.com or 860-541-7758.

E & A

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IAIR/NCIGF Joint Workshop Recap

by Steve Durish, CIR- ML

Henderson, Nevada - November 7-8, 2002

There was no question as to the appropriateness of timing for the recent 2002 IAIR/NCIGF Joint Workshop: Perfect Storm Troopers?: Cooperative Approaches for a Turbulent Phase of Property and Casualty Insolvencies. The Alliance of American Insurers was kind enough to serve as inspiration for our title by publishing an article[1] earlier in the year. The piece highlighted the surge in property casualty insurer insolvency activity and the ensuing effect on the state guaranty fund safety net.

The program, representing the third joint event of the two organizations concentrated exclusively on property casualty insolvency issues, featured a good attendance by numerous insolvency professionals which served to enhance the predominantly interactive format. The event was co-chaired by Steve Uhrynowycz (Arkansas Property Casualty IGA/Arkansas Insurance Department) and Doug Hertlein (Office of the Ohio Insurance Liquidator) and relied on facilitated breakout sessions for the full first day and a portion of the next half day. Day One breakouts were separated into five different tracks in morning and afternoon sessions and recaps of all ten sessions were presented to the entire assembly at day's end. The five tracks included updates, brainstorming and deliberations under the broad headings of Estate Transitions, Claims, Large Insureds, Legal and Reinsurance/Reporting.

Day Two featured former guaranty fund manager turned chief insurance regulator Holly Bakke. The New Jersey Commissioner of Insurance & Banking, accompanied by two of her senior staff[2], led the discussion of a medical malpractice insurer case study. The final section of the program was an overview by Rowe Snider (Lord Bissell Brook) and Kevin Harris (NCIGF) of changes in the commercial property casualty marketplace and the resulting consequences for liquidations and guaranty associations.

DAY ONE BREAKOUT SESSIONS

Estate Transitions

The magnitude and complexity of the Reliance insolvency provided the ultimate backdrop for this discussion topic. The need to maintain the payment of claims and minimize disruptions to claimants met a difficult logistical challenge in this "largest-ever" property casualty liquidation. Many breakout participants had previously experienced some part of the transfer of thousands of files from approximately 1,500 branch offices of third party administrators to guaranty associations in fifty states in this insolvency.

While there was underlying concern by some guaranty associations as to the degree of involvement prior to statutory triggers, a consensus emerged from these discussions as to the need for better coordination and preparation for the type of insolvencies being faced. This included the endorsement of the formation of NCIGF "Coordination Committees" earlier than the arrival of a liquidation order.

One concept presented was that of a "Dual Track" where insurance regulators foster a simultaneous effort of rehabilitation and liquidation scenario planning with the parties that would be called upon to exercise their duties in the event of a liquidation. Some attending this session were surprised to hear that it was not unusual for Insurance Department liquidation personnel to get nearly the same short notice as guaranty association personnel in some liquidations.

Claims

Discussion topics of this group were notably influenced by a number of large interstate insolvencies experienced primarily in the year prior to the conference. The two Pennsylvania liquidations of PHICO and Reliance ensured an ample supply of subject matter for this breakout. While some of the topics discussed may not have reached consensus solutions, many of the participants felt that the deliberations educated attendees on the reasoning by parties representing interests different from their own. A partial list of topics discussed included:

• Claim file transition including TPA control, hardship cases, and advance funding of workers compensation claims
• Large Deductible policies and associated collateral issues
• Reserving valuation by IGA's and Receivers
• Coordination of over IGA cap claims
• IGA/Receiver conflicts with respect to policy coverage analysis
• Aggregate policy data quality and estate allowances for IGA payments
• Data necessary from IGA's for reinsurers & individual estate requests over and above UDS reporting

Ideas introduced included the payment of incentives to TPA's for transfer of files from receivers to IGA's and receiver access to IGA claims systems. Participants noted the difficult "fit" of commercial property casualty policies being seen in recent insolvencies with guaranty association statutes. One impression that did reach a consensus of those present was for the elimination of IGA deductibles- an item that Receivers strongly considered a nuisance without disagreement from IGA administrators.

One of the two sessions of this group incorporated a "mini-case study" regarding the handling of a large deductible situation into their discussion. While the hypothetical elements of large deductible policy provisions; inadequate collateral; competing interests between receiver, guaranty associations, insureds and a holding company bankruptcy trustee may have been more genuine than imaginary for many participants, the ensuing dialogue allowed for a less formal airing of concerns from parties.

Large Insureds

This group highlighted the need for greater coordination between receivers and IGA's to deal with policies of large insureds which can produce dramatic changes in exposure to both IGA's and estates. While complex commercial insurance coverages have surfaced for even smaller insureds, recent insolvencies have produced "Fortune 500" type insureds with which insolvency professionals must deal. While the sheer magnitude of claims can be enough of a test, the complications in these arrangements of the recent past are difficult for even the most skilled of our practitioners.

This breakout considered an abundance of items including:

• Large insureds are unsurprisingly the possessors of policy arrangements with the largest deductibles (examples witnessed of up to $10 million) and less standard arrangements through "manuscript" policies

• They often possess complex insurance coverage arrangements with many insurers other than the insolvent

• Arrangements that shifted much of the normal role of the insurer back to the insured such as control of TPA's and the funding of claims payments

• Features of coverage which result in great difficulty in reconciling with guaranty fund provisions such as "Net Worth", "exhaustion of other available coverage" and the residency of corporate components.

• Greater applicability of coverages of these insureds to APH (asbestos, pollution and health hazard) claims and the greater possibility of the need for "global" IGA settlements

• Dealing with insureds and liabilities with varying degrees of involvement in federal bankruptcy proceedings

Legal

This group looked at large insured/ large deductible arrangements with a deeper exploration of various types of "cut-through" provisions including policy language, statutory provisions and relevant case law on the topic. Other subjects discussed included "forum shopping" by insureds of insolvencies in order to find more favorable IGA provisions and increasing involvement of IGA "Net Worth" provisions which exclude, or allow for subrogation, against large insureds. Kent Forney highlighted Iowa IGA provisions which exclude coverage of that association for claims related to policies which other guaranty associations deemed subject to their states' "Net Worth" provisions as well as a provision which excludes coverage for policies with deductibles greater than $250,000.

An area of agreement to most participants concerned the application and challenges related to stays of litigation proceedings at the beginning of insolvencies. The dialogue of "full faith and credit versus comity" issues produced an encouragement of affirmative actions by receivers in states outside of the domiciliary venue to enhance enforcement of stays and avoid default judgments.

Reinsurance/Reporting

This breakout concentrated on data standards and discussions related to the challenge of transmitting accurate and timely information between the different parties in the system. The communication between guaranty associations, receivers and reinsurers can be the single greatest driver behind the ultimate success of an insurance receivership, yet often poses one of the toughest areas to find solutions acceptable to the involved parties. The current state of Unform Data Standards (UDS) was prominent in commentary.

The discussions from these sessions were reflective of a topic that is often the greatest source of friction between key players in a liquidation. Relationships of trust and agreement by all parties to the prioritization of respective duties is a rarity in these settings. Facilitators compiled a sizeable list of items for this discussion which served as good reminders of the obstacles each party faces in attempting to do the job at hand. While a consensus on solutions proved elusive, the items highlighted generally raised individuals' understanding and provided a good foundation for ongoing efforts at improving this critical area.

DAY TWO SESSIONS

Medical Malpractice Troubled Company Exercise

The previous full day of deliberations brought many expressions of interest by attendees for improvements that needed to occur during regulatory phases prior to liquidation filings. Friday's exercise gave the workshoppers an opportunity to offer professional judgment during the early stages of a theoretical troubled medical malpractice insurer. The training was shepherded by the individuals best-qualified for such a mission: an insurance commissioner who has to make the ultimate calls on the life or death of an insurer and her two chief and very-experienced solvency advisors.

Separated into work teams of approximately ten participants from mixed disciplines, attendees relied upon departmental memos, financial projections and verbal overviews in order to analyze and provide recommended plans of action. As duly charged members of the Commissioner's "FST" (Financial Solvency Team), participants received the "Cliff's Notes" synopsis of financial regulatory tools available to the Insurance Department to steer a course of corrective actions. The memos and oral updates served to put a more realistic framework on the quandary faced by insurance watchdogs with contending forces of weakened markets, political implications, questionable managerial strategies and concerns about further depleting a troubled financial entity.

The benefit to the facilitators was the input of a constituency not normally present in a confidential troubled company situation. The working teams brought extensive "post-mortem" experience to the task of providing analysis and advice to this exercise. This type of exercise has been offered in past insolvency education efforts and can be challenging with the reliance upon financial information not normally

(Continued on page 8)

IAIR/NCIGF Joint Workshop Recap

(Continued from page 7)

encountered by customary attendees of our events. Despite this unfamiliar territory, participants offered extremely positive evaluations for the exercise and the lessons learned. Commissioner Bakke found the exercise an opportune way to "test the waters" for involvement of this type of input and may consider duplicating the training in the future for a more regulatory-oriented audience.

Commercial Insurance: This is not your Father's Oldsmobile

The program wrapped up with a presentation by speakers Snider and Harris based upon a very informative set of overheads on the commercial insurance business topics which were so prevalent in all the discussions up to this final segment of the workshop. The subject was divided into areas rapidly becoming difficult challenges for today's insolvency system: "Virtual Insurance Companies", "New Employment Arrangements", and "Complex Commercial Products".

The first area covered the growing proliferation of insurers characterized by a lack of tangible books and records and vendors of those companies who control essential data or services. New Employment Arrangements focused on the changing US workplace and its effect on insurance products. Situations such as the increase of "rent-an-employee" programs, novel group insurance coverages of trade associations and "professional employee organizations" (PEO's) have generated complications for receivers and the insurance safety net. The Complex Commercial Products update reminded attendees of the ever-increasing poor fit of these insurance products to guaranty association and liquidation laws that were designed with standard insurance in mind. The recent Credit General, Reliance and Legion insolvencies have severely tested the insolvency community with the explosion of multi-line, multi-state products with aggregate retentions, side agreements and other complex features. Captive and fronting arrangements are often tied to offshore insurers. Questions continue to surface as to which guaranty association, if any at all, should serve as the primary recipient of policy claims with such confusing criteria.

The presenters concluded with a recommendation for the need to address amendments to liquidation and guaranty association laws through the coordinated efforts of the insolvency community, the insurance industry and the regulatory sector.

The workshop evaluations included numerous positive comments and high marks. IAIR is fortunate to have such experienced insolvency professionals to volunteer their time. Our thanks go out to the strong and knowledgeable slate of facilitators and presenters which contributed to the success of this event.

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1 "A Perfect Storm for Guaranty Funds", Alliance of American Insurers , Solutions Publication, Volume 2, Number 2, August 2002.

2 Donald Bryan, Director of Division of Insurance and Karen E. Mitchell, Assistant Commissioner of the Office of Solvency Regulation.

News From Headquarters

Welcome To Our New Members!

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Berwin Group North America Ltd.
Newtown, PA
Sponsor: David Wells

Hallie J. Burnett, CFE
Oklahoma Insurance Dept.
Oklahoma City, OK
Sponsor: Dick Darling, CIR - ML

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Congratulations To Our New IAIR Designees!

Robert "Rusty" L. Brace
Attorney
Hollister & Brace
Santa Barbara, CA
Received the AIR - Legal designation

Thomas F. Crone
Chief Financial Officer & Director of Operations
Transit Casualty Co. In Receivership
Los Angeles, CA
Received the CIR - P&C designation

For a list of the 2003 Officers & Board of Directors, see page 27.

IAIR Roundtables 2003 Schedule

NAIC Meeting - March 8 - 11, 2003
Atlanta, GA
Roundtable: March 8, 1:00 - 4:00 p.m.

NAIC Meeting - June 21 - 24, 2003
New York City, NY
Roundtable: June 21, 1:00 - 4:00 p.m.

NAIC Meeting - September 13 - 16, 2003
Chicago, IL
Roundtable: September 13, 1:00 - 4:00 p.m.

NAIC Meeting - December 6 - 9, 2003
Anaheim, CA
Roundtable: December 6, 1:00 - 4:00 p.m.

***The* INSURANCE RECEIVER**

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

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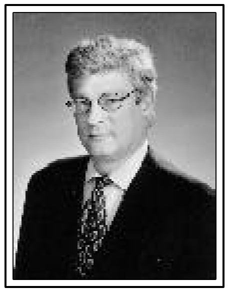
Resonsibility of Receivers for the Sins of Prior Management

by Robert M. Hall



Mr. Hall is an attorney, a former law firm partner, a former insurance and reinsurance executive and acts as an insurance consultant as well as an arbitrator and mediator of insurance and reinsurance disputes. The views expressed in this article are those of the author and do not reflect the views of his clients. Copyright 2002 by the author. Questions or comments may be addressed to the author at bob@robertmhall.com

I. INTRODUCTION

When an insurer is placed into receivership, the receiver will sometimes bring an action for fraud or other wrongdoing against the officers or directors and/or third parties who may have been in collusion with such directors or officers. The defendants in such actions may counter that any such wrongdoing is imputed to the insolvent insurer through the directors or officers who were agents of the insurer and, for this reason, the receiver, as successor to the company, is barred from pursuing such actions. Such defendants may further argue that the period of time since the receipt of such constructive notice of the wrongdoing has exceeded the statute of limitations for bringing such an action.

The receiver often counters that the innocent parties which it represents should not be barred from recovery by a technical defense such as the statute of limitations and that the wrongdoing of former directors or officers should not be attributable to the estate.[1] In effect, the receiver argues that it should not be responsible for the sins of prior management. More particularly, the receiver may assert that the control or "adverse domination" of the insurance company by individuals acting against the interests of the company should prevent these acts from being imputed to the company and should toll or delay the running of the statute of limitations.

The purpose of this article is to examine the case law concerning exceptions to the rule of imputation of the acts of directors or officers to the insurer, and, therefore, the receiver, and the implications on the statute of limitations. It should be noted that this issue is not limited to insurance company receiverships and that there is a substantial body of case law dealing with this same general issue in other factual contexts.[2]

II. CASES FINDING ADVERSE DOMINATION OR NO IMPUTATION

A. Insurance Company Receivership Cases

The court in <u>Clark v. Milam</u>, 872 F.Supp. 307 (S.D.W.Va.1994) defined the adverse domination exception as follows:

"Adverse domination occurs when the officers and directors of who control the rights of the corporation act adversely to the corporation's interests, usually for personal gain, to the detriment of the corporation and/or its non-officer/director shareholders."[3]

The court found that under West Virginia law, the plaintiff, who was the receiver of George Washington Life, must make a strong showing that the defendant's alleged wrongdoing constituted "some action" contributing to the adverse domination. The court concluded that the allegations of the receiver (not detailed in the decision) met this test and prevented a dismissal of the action. The court further noted that the knowledge of shareholders who bring a derivative suit ordinarily should be attributed to the corporation and not be subject to the adverse domination exception. However, the court declined to dismiss on this basis since there was evidence that the shareholders had no interest in benefitting the George Washington Life by their action and were attempting, merely, to benefit themselves at the expense of George Washington Life.

In a related case, the Supreme Court of Appeals of West Virginia was posed two certified questions by the district court. <u>Clark v. Milam</u>, 452 S.E.2d 714 (S.C.App.W.Va.1994). In its decision, the court confirmed that West Virginia recognized the doctrine of adverse domination and that any shareholder derivative suit must be for the purpose correcting wrongdoing rather than protecting the beneficiaries of the wrongdoing for such a suit to negate or otherwise terminate adverse domination.

The receiver of Guarantee Security Life Insurance Company brought an action for breach of fiduciary duty against an officer in <u>In Re Blackburn</u>, 209 B.R. 4 (M.D.Fl.1997). The defendant sought a summary dismissal of the action based on the statute of limitations. The court declined summary judgement:

"Under this adverse interest exception, the actions and knowledge of the officers and directors are not imputed to the corporation when those agents were acting adversely to the corporation's interests. (Citations omitted). In these circumstances, there is evidence that the acts about which the plaintiff complains involve acts for the defendant's benefit and that were contrary to the interests of (Guarantee). This adverse interest exception to the discovery rule, therefore, would appear to preclude a determination that the

statute commenced to run with the imputed discovery of the acts by (Guarantee) which is now imputed to the plaintiff."[4]

Schacht v. Brown, 711 F.2d 1343 (7thCir.1983) was a RICO action by the receiver of Reserve Insurance Company against officers, directors, the parent corporation and several third party defendants for allegedly continuing the company's business past the point of insolvency by looting the company of its most profitable business. In order to find in favor of the adverse domination exception, the court had to distinguish its earlier decision of Cenco, Inc. v. Seidman & Seidman, 686 F.2d 449 (7thCir.1982) (*see* § III C, *infra*) which ruled against adverse domination. As points of distinction, the court found the defendants looted Reserve (*i.e.* they were adverse to Reserve) rather than using Reserve to defraud third parties. In addition, Cenco court used a two pronged analysis: (1) whether a judgement in favor of the plaintiff would benefit the victims of wrongdoing; and (2) whether such a judgement would deter future wrongdoing. This analysis supported the use of the adverse domination exception since innocent creditors would benefit from the receiver's suit and directors and shareholders would be encouraged to be watchful for fraudulent activity.

In the Matter of Integrity Ins. Co., 573 A.2d 928 (Sup.Ct.N.J.1990) was a suit by a receiver against the accountants for Integrity Insurance Company. The accountant argued that the suit by the receiver was barred because the knowledge of the directors and officers of Integrity must be imputed to the company and the receiver thereof. The court rejected this defense on the bases that a culpable party is estopped from raising it and the broad remedial power of the court in the insurance company receivership context.

B. Bankruptcy Trustee Cases

There are a number of cases with similar holdings involving bankruptcy trustees. Presumably, some of the same equitable considerations attach to the role of bankruptcy trustee as do to the role of insurance company receiver.

In Tew v. Chase Manhattan Bank, 728 F. Supp. 1551 (S.D.Fl.1990), the bankruptcy trustee sued the bank on the basis that it assisted the bankrupt in fraudulent activity. The court acknowledged the adverse domination rule that the wrongdoing must be directed at the corporation rather than third parties. The court further noted that the officers and directors obtained corporate loans for personal expenses, did not replay the loans yet received huge salaries and bonuses. Based on this record, the court ruled in favor of adverse domination:

"[T]he court finds that there is no genuine issue of material fact as to the actions of the officers and directors. They ran (the bankrupt) into the ground and robbed the corporate entity for their own aggrandizement."[5]

Operators of scams collect premiums without intending to make good on their promise to provide health coverage!

The court distinguished Cenco, Inc. v. Seidman & Seidman, 686 F.2d 449 (7thCir.1982) (*see* § III C, *infra*) on the bases that here, the bankrupt, rather than third parties, was the principle victim, the principle beneficiaries will be innocent creditors and banks will be more diligent in similar situations in the future.

The issue of adversity to the corporation's interests was explored in Beck v. Deloitte & Touche, 144 F.3d 732 (11thCir.1998). The bankruptcy trustee alleged that the board of directors of a bank colluded with their accountants to misrepresent the value of an acquired bank with the result that the acquiring bank paid dividends and received regulatory approvals long after it actually was insolvent. The lower court dismissed the action on the bases: (1) that under Florida law the interests of the corporate officer must be entirely adverse to the those of the corporation; and (2) the corporation received a short term benefit from the accounting opinion. The appellate court reversed noting that the lower court used an improper baseline to determine adversity to the corporation. The trustee alleged that but for the improper accounting opinion, the acquisition would never have occurred so any short term benefit after the acquisition is not determinative of the issue. The court ruled:

"A director's wrongful actions toward his corporation do not have to rise to the level of corporate looting (as in Tew) or embezzlement (as in Golden Door Jewelry Creations , Inc. v. Lloyds Underwriters Non-Marine Assoc., 117 F.3d 1328 (11thCir.1997)) in order to be adverse and thereby prevent imputation, as long a the corporation receives no benefit from the director's behavior. Therefore, we hold that the district court erred by ruling that the Trustee did not allege a set of facts that might conceivable entitle him to relief."[6]

In Re Jack Greenberg, 212 B.R.76 (E.D.Pa.1997) was a suit by a bankruptcy trustee against an accounting firm which failed to detect a scheme by an officer to inflate the value of the company by misrepresenting inventory. The trustee alleged the officer did so to tout his skills to his employer and its creditors. The court noted that Pennsylvania required that the activities of the officer have to be actuated, at least in part, by a purpose to serve the employer in order for the employer to be responsible for those activities. The court declined to dismiss the complaint on the basis that the accounting firm failed to demonstrate that officer's activities was a benefit to the employer. The fact that the fraud caused the corporation to overextend itself with customers and lenders was not a benefit to the corporation.

The same dispute came back to the same judge two years later through a motion for summary judgement by the accounting firm based on imputation of the officer's fraud to the corporation. In Re Jack Greenberg, 240 B.R. 486 (E.D.Pa.1999). The court observed that the beneficiaries of the trustee's action would be innocent creditors. The court

(Continued on page 12)

Responsibility of Receivers

(Continued from page 11)

then ruled that under Pennsylvania law, imputation to the corporation would depend on position of the beneficiaries of the action *i.e.* innocent beneficiaries would support an imputation exception:

"Limiting those situations in which the imputation doctrine can be invoked in auditor liability cases to circumstances in which its application would serve the objectives of tort liability would ensure that the doctrine would be used only when it would produce an equitable result."[7]

In Re Sharp International Corp., 278 B.R. 28 (E.D.N.Y.2002) involved management inflating the revenues of the corporation which allowed them to obtain large sums from lenders and investors. These sums and more were diverted to the managers involved in the fraud. Eventually, the corporation's accountants found the fraud and the scheme fell apart. A suit by the trustee against the accountants followed. The court characterized adverse domination as an exception to the rule the acts of a corporation's management are the acts of the corporation. However, there is a "sole shareholder" exception to adverse domination: even if managers are pursing their own personal interests and not those of the corporation, the acts of managers will be attributable to the corporation if the managers in question are the sole shareholders of the corporation. The theory is that in such a case, the personal and corporate interests merge. The court found that the sole shareholder exception did not apply since an innocent 13% shareholder was on the board of directors and was active in reviewing the books. However, the court found that the adverse interest exception did apply. Even though a portion of the sums looted from the corporation can from outside investors, even more came from the funds of the corporation. The fact that managers retain some stock in the corporation does not preclude this result since it is very unlikely that they would ever receive any return on this stock.

III. CASES FINDING IMPUTATION OR NO ADVERSE DOMINATION

A. Insurance Company Receiver Cases

Seidman & Seidman v. Gee, 625 So.2d 1 (Dist.Ct.App.Fl.1993) was a suit by an insurance company receiver against accountants who failed to discover that a major asset of the insurer did not exist. The court noted that the fraud of the company's managing director would be imputed to the corporation, and thus a defense to the accountants, if the company benefitted from the fraud. The court ruled that the company did so benefit:

"[T]he fraud committed by the managing director was not intended to loot the corporation, but instead was designed to turn the corporation into an "engine of theft" against outsiders - - policyholders. . . . [T] ultimate financial demise of (the company) was not the determining issue in the case before us. (The managing director's) fraudulent misrepresentation benefitted (the company) as it was the prerequisite to the (company's) approval to continue in business, and was integral to its marketing program."[8]

States regulate both fully insured and self-insured group purchasing arrangements

In Florida v. Blackburn, 633 So.2d 521 (Dis.Ct.App.Fl.1994), it was alleged that officers and directors looted the insurer leaving it insolvent. The defendants argued a "sole shareholder" defense on the basis that the shareholders of 100% of the stock cannot be guilty of looting a corporation which they own in its entirety. The court declined to accept this sole shareholder defense due to the presence of policyholders and other creditors. In addition, the court ruled that the activities of the officers and directors could be imputed to the corporation since "the imputation rule can only be invoked to protect innocent parties, and it is not available to the person who perpetrated the misconduct sought to be imputed."[9]

B. Other Receivership Cases

There are several cases with similar rulings which do not involve insurance company receivers or bankruptcy trustees. One is Armstrong v. McAlpin, 699 F.2d 79 (2ndCir.1983). Following an SEC investigation for securities fraud, the court appointed a receiver for an investment fund. The receiver and others sued the principal behind the fund and related entities for fraud and the defendants raised a statute of limitations defense. The receiver argued adverse domination. The court noted that adverse domination requires that the entity be completely dominated by the wrongdoers. The court rejected the adverse domination argument on the basis that the receiver had made no showing that other officers and directors of the investment fund were part of the conspiracy or that there were no independent shareholders who could bring the wrongdoing to light. Conclusory allegations were insufficient to show adverse domination.

Federal Deposit Ins. Corp. v. Ernst & Young, 1991 WL 197111 (N.D.Tex.) was a suit by the FDIC for negligence in performing bank audits. The defendant argued that the knowledge of the bank's board chairman, CEO and sole shareholder should be attributed to the corporation thus barring a suit by the FDIC. The court noted that fraud by the corporation against third parties would be imputed to the corporation and ruled that this applicable rule of law in this matter:

"In the present case, Woods was the sole shareholder. As a result, he was the beneficiary of his own fraudulent activity; the victims of the fraud were outsiders to the corporation - - depositors and creditors. Thus, under (citation omitted), Woods fraudulent acts were taken on behalf of Western. Furthermore, because his actions were taken on behalf of Western, his

knowledge is imputable to Western."[10]

C. Other Case of Note

A case heavily cited on imputation and adverse domination is Cenco Inc. v. Seidman & Seidman, 686 F.2d 449 (7thCir.1982) *cert. denied*, 450 U.S. 880 (1982). Although not involving a receivership, it is included here since it is cited in many of the cases above both as support for their results or to distinguish it.

In Cenco, shareholders brought an action against former management for pervasive fraud and against the accountants who failed to detect it. In deciding whether to impute management's actions to the corporation for purposes of the accountant's liabilities, the court examined the underlying objectives of tort liability (*i.e.* whether innocent creditors would benefit) and whether future fraud would be deterred. As to the second point, the court found that future fraud by management would not deterred by shifting liability to the accountants. As to the first point, the court observed that former management held significant stock and would benefit from the action. Other shareholders elected directors to the board who participated in the fraud and must bear some responsibility for the result. On this basis, the court imputed the activities of management to the corporation.

V. CONCLUSION

There is a line of cases which would: (a) allow imputation of a director's or officer's actions to the corporation and would decline to find adverse domination if the fraud was directed at third parties; but (b) not allow imputation or would find adverse domination if the wrongdoing was aimed at the corporation. This formulation of the rule may present difficulty in the insurance receivership context. The aim of the of the directors or officers may be difficult to ascertain since the effect may be the same *i.e.* an insurer that cannot pay the claims of insureds and other creditors. Moreover, a results-oriented receiver may believe that the specific aim of the wrongdoing is irrelevant to benefitting innocent parties and punishing the wrongdoers.

Receivers are likely to embrace the Conseco, Tew, Schacht and Greenberg line of cases which support the application of the imputation and adverse domination doctrines in a fashion designed to benefit innocent parties and punish wrongdoers regardless of the aim of such wrongdoers. Presumably, the formulation espoused in this line of cases would make it less likely for receivers to be responsible for the sins of prior management.

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1. The argument is well stated in *Clark v. Milam, 452 S.E.2d 714, 720 (W.Va.1994):*
When the Commissioner is appointed Receiver for an insolvent insurance company, he is charged with marshalling the assets of the company for the benefit of its policyholders and creditors. (Citations omitted). Those assets include claims against those who may have looted the insurance company as well as their possible accomplices who are either outside lawyers or accountants. (Citations omitted). After all, much more is at stake in this litigation than simply a loss to shareholder investors: we have here an insurance company that was allegedly victimized and that was allegedly looted of monies that should have been available to pay the claims of totally innocent policyholders.
2. See generally, *M. Dore*, Statutes of Limitation and Corporate Fiduciary Claims: A Search for Middle Ground on the Rules/Standards Continuum, *63 Brook.L.Rev.695 (1997).*
3. 872 F.Supp. 307 at 310.
4. 209 B.R. 4 at 11.
5. 728 F.supp. 1551 at 1559.
6. 144 F.3d 732 at 737.
7. 240 B.R. 486 at 508.
8. 625 So. 2d 1 at 3.
9. 633 So.2d 521 at 524.
10. 1991 WL 197111 *5.

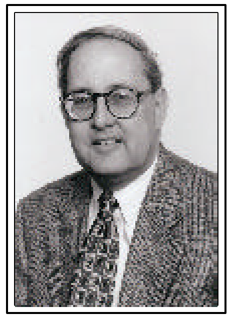
TERRORISM RISK INSURANCE ACT OF 2002

by Richard G. Clemens
Partner, Sidley Austin Brown & Wood

After a long and difficult process, Congress has approved the Terrorism Risk Insurance Act of 2002 ("Act"). The Act establishes a Terrorism Insurance Program ("Program"), which is to be administered by the Secretary of the Treasury ("Secretary"). Pursuant to the provisions of the Act, qualifying insurers must offer, in all property and casualty insurance polices (see definition below), insurance coverage for any loss resulting from an act of terrorism on terms not materially different than terms applicable to losses arising from other events. The Federal government will reimburse insurers ninety percent (90%) of amounts paid by such insurers in excess of a specified deductible on claims made under such policies if aggregate property and casualty insurance losses resulting from an act of terrorism (and, in the case of workers' compensation insurance, an act of war) exceed $5,000,000. Under the Act, aggregate insured losses subject to inclusion in the Federal reimbursement calculation is limited to $100 billion per program year.

No reimbursements will be paid out to insurers under the Act unless, among other requirements, a policyholder has filed a claim with its insurer for a loss resulting from a terrorist act. Furthermore, to be reimbursed under the Act, an insurer must have previously disclosed to the policyholder the premium charged under the policy at issue for terrorism coverage and the share of compensation for insured losses under the Federal Program.

Under the Act, an insurer may obtain reinsurance for deductible and copayment amounts that remain its responsibility without reducing reimbursement eligibility under the



Act. However, an insurer may not be doubly-compensated by receiving both Federal reimbursements and reinsurance proceeds for the same loss. The Program is scheduled to terminate December 31, 2005.

Under Section 103 of the Act , an "insurer" is defined as any entity, including an affiliate thereof:

(A) that is-

(i) licensed or admitted to engage in the business of providing primary or excess insurance in any state;

(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC;

(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;

(iv) a state residual market insurance entity or state worker's compensation fund; or

(v) any captive insurer and other self-insurance arrangements, to the extent provided in the rules of the Secretary;

(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than state residual market insurance entities and captive insurers and self-insurance arrangements ; and

(C) that meets any other criteria that the Secretary may reasonably prescribe.

"Property and casualty insurance" is defined under Section 103 of the Act to include commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance; and does not include (i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act or any other type of crop or livestock insurance that is privately issued or reinsured; (ii) private mortgage insurance or title insurance; (iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations; (iv) insurance for medical malpractice; (v) health or life insurance, including group life insurance; (vi) flood insurance provided under the National Flood Insurance Act of 1968; or (vii) reinsurance or retrocessional reinsurance.

Special rules apply to state residual market insurance entities (including all insurers that participate in such entities) and state workers compensation funds. The Secretary has discretion to apply the Act to certain classes of captives and self-insurance programs. Additionally, the Secretary may determine that group life insurance will be subject to the Act.

The Act is unlikely to solve all problems related to terrorism insurance that have embroiled the insurance industry since September 11, 2001 and there are some major questions which have arisen concerning the interpretation of the Act.

Definition of Terrorism

The Act only applies to terrorist attacks that are certified as such by the Secretary, in concurrence with the Secretary of State and the Attorney General of the United States. The terrorist acts must have occurred in the U.S. or outside of the U.S. in the case of an air carrier, a U.S. flag vessel, or the premises of a U.S. mission. To be a certified act of terrorism, such act, among other requirements, must have been committed by individuals on behalf of a foreign person or foreign interest, as part of an effort to coerce or affect the United States civilian population or the United States Government. Therefore, the Act does not address acts of purely domestic terrorism such as the bombing of the Oklahoma Federal building. Furthermore, if the perpetrators and motivation for an act are unknown, whether the Act applies will be determined solely by the above-mentioned officials, whose determination is final and not subject to judicial review. Insurers are generally expected to continue to try to exclude terrorist acts not covered by the Act from coverage under their policies to the extent permitted by state insurance regulators and applicable law.

Insurer Retention of Losses and Recoupment

The Act will leave insurers with high potential exposure for terrorism-related claims due to the deductible and copayment provisions of the Act. During year 2002, before the Federal government will reimburse an insurer for insured losses under the Act, an insurer is responsible for paying a deductible equivalent to one percent (1%) of the insurer's direct earned premium for property and casualty insurance issued for locations within the United States or issued for air carriers, United States flag vessels or the premises of United States missions wherever located ("Direct Earned Premiums"). For calendar years 2003, 2004 and 2005, the insurer's deductible under the Act will rise to seven percent (7%), ten percent (10%) and fifteen percent (15%), respectively, of an insurer's Direct Earned Premiums. In calculating the amount of Direct Earned Premiums, the premiums received by affiliates for property and casualty insurance are aggregated. Even after an insurer has met the required deductible for claim pay-outs covered by the Act, the insurer will not be reimbursed under the Act for ten percent (10%) of claim pay-outs over the deductible amount.

The Act will leave insurers with high potential exposure for terrorism-related claims due to the deductable of copayment provisions

Because insurers will need to charge premiums for those portions of losses unreimbursed by the Program and because reinsurance will be costly and difficult for the primary insurer to obtain, the cost of premiums for such terrorism insurance coverage is still expected to be high.

Reimbursements paid to insurers under the Act are subject to recoupment through a surcharge on property and casualty insurance policies by the Federal government to the extent that the insurance marketplace's aggregate retention for claims related to terrorist events subject to the Act is less than $10 billion, $12.5 billion or $15 billion for the remaining period of year 2002 and 2003, year 2004 and 2005, respectively, but exceeds the losses which the insurers are required to absorb under their deductibles and 10% sharing. The recoupment is accomplished through a surcharge on all holders of property and casualty insurance policies that is collected by insurers and remitted to the Treasury. The Secretary of the Treasury has discretion on the timing of the surcharge, but the surcharge cannot be more than 3% of the premium paid for a policy in a given year. The Secretary has discretion to recoup additional amounts beyond the mandatory recoupment, subject to economic conditions and other factors.

Effect on Existing Insurance Policies

Under Section 105 of the Act, any terrorism exclusion in a property and casualty insurance contract that is currently in force is void if such exclusion exempts from coverage losses that would otherwise be subject to the Act. The Act also preempts state approval of terrorism exclusion clauses in a property and casualty insurance contract that exclude such losses. An insurer may reinstate a preexisting contractual provision excluding coverage for an act of terrorism subject to the Act for a policy in force at the date of enactment of the Act if: (i) the insurer has received a written statement of the insured that affirmatively authorizes such reinstatement; or (ii) the insured fails to pay a premium increase related to terrorism coverage if the insurer provides at least thirty (30) day advance notice to such insured of the premium increase and the insured's rights in regard to such coverage, including any date upon which the exclusion would be reinstated if payment is not received. The Act does not void or preempt state approval of clauses that exclude coverage for terrorist events outside of the Act (i.e. purely domestic acts of terrorism, terrorist acts with aggregate losses below $5,000,0000 or terrorist acts outside of the United States and not involving air carriers, United States flag vessels

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Meet Your Colleagues

By Joe DeVito

FRANCIS J. MULCAHY

FRANK MULCAHY is a member of the law firm of Tinsley Bacon Tinsley, L.L.C. and Global Dispute Resolution, L.L.C., an arbitration and mediation service located north of Atlanta in Alpharetta, Georgia. He has nearly twenty years experience in insurance and has been Vice President, General Counsel and Secretary of several life and health insurance companies as well as risk manager for a large financial services company.

Both Frank's law practice and arbitration/mediation practice focus on insurance and technology issues. He has represented the Georgia Insurance Commissioner in property and casualty and HMO receiverships and has been arbitrator in a life insurance / reinsurance proceeding. He is a registered arbitration and mediation neutral with the Georgia Office of Dispute Resolution as well as an arbitration panel member for International Association of Insurance Receivers (IAIR) and Reinsurance Association of America.

Frank also represents clients in legislative matters before the Georgia General Assembly. During a number of recent sessions, his clients included the Office of the Insurance Commissioner of the State of Georgia.

He speaks and publishes articles on arbitration, insurance and technology licensing.

Frank is a member of the State Bar of Georgia and the District of Columbia Bar. He is a past president of the Corporate Counsel Association of Greater Atlanta. Frank holds designations as Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Fellow of the Life Management Institute (FLMI) and Associate in Life and Health Claims (ALHC). He is trained in the requirements for obtaining the Insurance Management Standards Association (IMSA) certification. He is also member of ARIAS-US and IAIR.

Frank graduated from St. Joseph=s University in 1968 and from George Washington University Law School in 1974.

DEBRA J. ROBERTS

Debra J. Roberts has worked in the insurance and reinsurance industry for over twenty years. She is currently President and CEO of Debra Roberts & Associates, Inc., which provides specialized services to the insurance and reinsurance industry. Specific areas of expertise include due diligence for acquisitions, evaluation of complex reinsurance programs, formation of new insurance or reinsurance companies, providing expertise for troubled insurance companies and participating in reinsurance arbitrations. Ms. Roberts is also currently working with the Black Diamond Group, a merchant bank specializing in insurance company restructurings.

From 1986 until 1993, Ms. Roberts concurrently served as Vice President of two subsidiaries of the Swiss Reinsurance Group that provided financial reinsurance products, Atrium Corporation and European International Reinsurance Company Ltd. Ms. Roberts had primary responsibility for the formation of European International Re in Barbados, which included raising capital from outside sources. She also participated in structuring financial reinsurance transactions and served on the acquisition team for several U.S. acquisitions on behalf of Swiss Re.

She received an MBA in Finance from Fordham University, and holds a BA in English from Furman University. She achieved the Chartered Financial Analyst designation in 1989. In 1997, she became certified by ARIAS as an arbitrator in reinsurance disputes, and is currently a member of ARIAS and IAIR. Over the years, she has made presentations at Mealeys Insurance Insolvency and Reinsurance Roundtable, the Casualty Actuarial Society's seminar on Dynamic Financial Analysis, and IAIR's Insurance Run-off Conference. Ms. Roberts resides just north of San Diego in Carlsbad, CA.

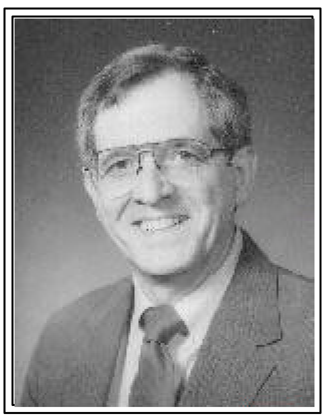
TERESA SNIDER

Teresa Snider is a trial lawyer and partner at Chicago's Butler Rubin Saltarelli & Boyd and concentrates her practice in reinsurance litigation and arbitration.

Her work typically involves complex issues and large contested matters ranging from the ownership of common account excess of loss reinsurance recoveries to the appropriate actuarial standards for calculating IBNR and ultimate net loss. Frequently, she faces insurance insolvency issues with clients and has moderated panel discussions for Mealey's on how to handle such issues. In her career, she has been involved in numerous arbitrations – with some proceedings lasting for years.

Teresa is a voracious reader of mysteries and science fiction, which serves her well in her frequent client-related travels to such regular locations as London, New York, and Manchester, N.H. When not working, traveling for work, or working-out to relieve the stress of work, Teresa is an avid moviegoer, needlepoint enthusiast, and doting owner of Paddington, arguably the world's most spoiled cat.

The daughter of parents who both worked in the insurance industry, Teresa is a summa cum laude graduate of the University of Illinois, where she received Phi Beta Kappa honors. She earned her law degree magna cum laude from the University of Michigan Law School, where she served as Executive Editor of the Michigan Journal of International Law and was a member of the Order of the Coif. A Chicago area native and resident, Teresa also speaks French, the result of a two-year sojourn at an elementary school in Canada.



JACK M. WEBB

Jack is Chairman of the Board of the Houston-based management firm of Jack M. Webb and Associates, Inc. He has worked exclusively in the insolvency area since the early 1980's. His experience includes serving as a Chapter 11 Bankruptcy Trustee for 34 companies and as a Special Deputy Receiver of 12 insurance companies. Prior to his insolvency work, he spent ten years as a corporate attorney for major oil and gas companies and ten years working in government relations in Washington DC.

While working in Washington D.C. he served as U.S. Special Ambassador to Bolivia, Finland, and Ghana and on the Advisory Board of the U .S. Peace Corps, the National Park Foundation, and the President's Commission on White House Scholars. He was also selected for Presidential delegation assignments to Haiti and Angola, as well as serving on various White House advance teams. Since his assignment in Ghana in 1992, he has served in Houston as Honorary Consul of Ghana.

An Eagle Scout as a boy, for over thirty years, he has been a Scoutmaster of a Houston Boy Scout troop and served as a leader for Boy Scout World Jamboree trips to Korea, Japan, Australia, New Zealand and Chili.

He received a Doctor of Jurisprudence from Tulane University and a Bachelor of Science in Geology from Centenary College of Louisiana prior to service as a Captain in the U.S. Army tank corps. In 1999, he attended the John F. Kennedy School of Government at Harvard University.

or the premises of United States missions). Furthermore, nothing in the Act prevents or limits an insurer from raising premium rates on policyholders or obtaining reinsurance coverage to offset the increased liability imposed on an insurer due to the Act.

Section 106(a)(2)(B) of the Act provides that "during the period beginning on the date of enactment of this Act and ending December 31, 2003, rates and forms for terrorism risk insurance coverage covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable…" However, rates remain subject to subsequent regulatory review based on the applicable rating standards in a state. Policy forms are subject to subsequent review based on all applicable laws and regulations not specifically preempted by the Act and a state could subsequently invalidate a rate as excessive, inadequate or unfairly discriminatory. Thus, a file and use system is created where insurers can immediately implement rate changes for coverage of "insured losses" related to acts of terrorism as defined in the Act. Policy language granting coverage or excluding coverage for "insured losses" is only exempt from prior approval or waiting periods to the extent that the policy language relates to insured losses as defined in the Act. Other policy language changes remain subject to current applicable state law.

The Act raises a number of questions about what can or should be done concerning policies where there is existing terrorism insurance coverage, such as workers compensation policies or standard fire policies (where there is no exclusion for fire following losses in many states) as well as cases where insureds were able to obtain insurance coverage for terrorist acts or policies which provide coverage because a state declined to approve terrorism exclusions. Also, in some cases, insureds obtained terrorism insurance coverage with certain exclusions such as for nuclear or biological events or obtained coverage with limits different than what is required to be offered by the Act. Section 106(a)(2) states that the Act's definition of terrorism "shall preempt any provision of state law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title." State insurance regulators are expected to take the position that where terrorism risk coverage has been mandatorily required by law, the new law does not affect such insurance policies. In other cases, the ability to modify or terminate existing policies by either the insurer or the insured will depend on the provisions of each policy as well as applicable state law. As new policies are issued or renewed, insurers are expected to use their "file

(Continued from page 15)

and use" authority under Section 106(a) of the Act to impose new rates and forms which conform to the Act and the changed economic circumstances caused by the availability of the federal terrorism risk insurance program. Insurers will also make clear and conspicuous disclosure of the premiums charged for insured losses covered by the premium for terrorism risk coverage and the federal share of the compensation for insured losses under the Program, as required by Section 103(b)(2) of the Act, to make sure the insurers are eligible for payment under the Program.

Federal Cause of Action

Additional provisions of the Act create an exclusive Federal cause of action for property damage, personal injury or death arising or resulting from a terrorist event covered by the Act. Any amounts awarded as punitive damages do not count as insured losses for purposes of the Act.

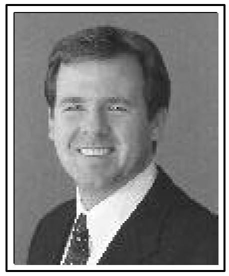
To review the text of the Terrorism Risk Insurance Act of 2002, please visit the web site address:

http://thomas.loc.gov/. The Bill Number is H.R. 3210 under the caption of Search Bill Text 107th Congress.

Richard Clemens is a partner in the Chicago office of Sidley Austin Brown & Wood and head of its Insurance and Financial Services Practice. (rclemens@sidley.com)

Chicago Welcomes Legal Seminar

by Sean M. McKenna



In his opening remarks to attendees of NOLHGA's 11th Annual Legal Seminar, NOLHGA President Peter Gallanis spoke of the challenges facing the life and health insurance guaranty associations and noted, "the crises that require emergency responses come in waves, not all of which are predictable." In the face of such unpredictability, he added, events like the Legal Seminar allow the guaranty system to hone its skills in anticipation of the next crisis.

The members of that system obviously agree, as more than 160 gathered at the Drake Hotel in Chicago on August 15 and 16 for the seminar. The largest crowd ever to attend the event, they were treated to an entertaining and challenging series of presentations on topics such as optional federal chartering, special purpose vehicles, the FDIC, variable products, the Reliance insolvency, and more—including a bit of the Socratic method that no doubt brought back memories (fond or otherwise) for the lawyers in attendance.

"Where the Ball Game Is"

Nathaniel S. Shapo, director of the Illinois Department of Insurance, used his welcoming remarks to address the issue of optional federal chartering, which he called "an umbrella issue over everything discussed in insurance today." He pointed to the congressional hearings on federal regulation of insurance as evidence that Congress "is really where the ball game is."

Shapo also pointed to a paradox at the heart of insurance regulation. The states have sovereignty, he said, "but it's delegated sovereignty" through the McCarran-Ferguson Act—and it's a sovereignty that will be revoked if it's exercised so strenuously by each state that the lack of uniformity among states grows too great.

In the face of this threat, Shapo added, states are acting to cede some of their sovereignty to retain the greater part of it. While hardly a new concept (he noted that the NAIC was founded on the idea), Shapo said that "the last two years have seen a new and ongoing level of that type of activity" as the states have worked together to increase uniformity in areas such as accreditation and product approval.

The challenge for states, he noted, is to create binding agreements to forge a national state-based system of regulation. "If the states can't do that themselves," Shapo said, "I think we'll be looking at a system of federal regulation."

In addressing the concept of federal regulation, a panel on the Federal Deposit Insurance Corporation gave attendees a "pros and cons" look at the FDIC's role as a guaranty system for the banking industry. William F. Kroener III, general counsel of the FDIC since 1995, took care of the "pro" side by providing an overview of the history and workings of the FDIC and by explaining its regulatory system and risk-based assessments. Kroener also reviewed the enforcement actions the FDIC can take against banks—such as administrative hearings, civil monetary penalties, and termination of insurance—and noted that "these enforcement authorities exist when the bank is open and continue when it is closed."

Kroener added that the FDIC investigates each failed institution with the goal of holding accountable those whose actions caused the failure. The organization's professional liability actions peaked in the early 1990s during the banking crisis, he said; "as the crisis has been resolved, the cases have gone away."

John K. Villa, a partner at Williams & Connolly LLP in Washington, D.C., had a decidedly less-rosy view of the FDIC and its regulation of the banking industry. According to Villa, who specializes in corporate- and financial services–related litigation and has opposed the FDIC in a number of civil and administrative proceedings, the FDIC "holds most of the cards" in litigation.

Villa said that the FDIC "has all the money in the world" to hire lawyers to pursue claims against officers and directors, and that it does so frequently; he added that the FDIC can exercise administrative enforcement even against a bank that is still open and insured. In his opinion, "in today's world, if your bank fails, you can pretty much be sure the FDIC is going to come after you."

"We're Not Banks, We're Insurance Companies"

The pros and cons format of the FDIC presentation was also used in a discussion of the potential benefits and drawbacks of federal chartering, as Michael S. Helfer and Wayne F. White engaged in a spirited debate in the panel entitled The Federal Charter Option: Practical Business Perspectives.

Helfer, president of Nationwide Strategic Investments and chief strategic officer for Nationwide, said that an optional federal charter would save his company money by allowing it to deal with one regulator rather than 50 or more; he noted that Model Acts don't create the same sort of uniformity, since many states change them and even identical wording can be interpreted differently by different states. He added that "a federal charter holds out the possibility of us doing business in every state," noting that Nationwide currently does not do P&C business in three states due to those states' regulatory mechanisms.

Helfer also stressed that a federal charter could solve a major problem for the insurance industry. "There's virtually no insurance expertise in Washington,"

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he explained, noting that the debate over terrorism insurance dragged on because there were no insiders at the White House with insurance industry knowledge.

White, president and chairman of Home Mutual Fire Insurance Company in Conway, Ark., took the opposing view. He pointed out the challenges in regulating insurance as opposed to regulating banking ("we're not banks, we're insurance companies"), while acknowledging that a lack of uniformity on pricing and prior approval of forms "is a stumbling block to a competitive marketplace."

The states, White maintained, "have made significant progress" in overcoming this stumbling block, and he stressed that the process cannot be rushed. White noted several "onerous provisions" in the bill offered by Senator Schumer (D-N.Y.); he pointed out that licensing done on the federal level leaves no incentive for companies to license on the state level as well, warning states that "you're going to lose every nickel of your licensing revenue." He also warned that federal regulation could result in the government telling companies where to write business and how to price it.

After the presentations, moderator Peter Gallanis called on the Socratic method familiar to many in the audience and asked White and Helfer a series of probing questions designed to test the strengths and weaknesses of their positions. Helfer agreed with Gallanis that appointing a federal "insurance czar" who was unqualified or even hostile to the insurance industry could pose serious problems for the industry, but he also noted that "the state system is not immune" from this sort of difficulty and stressed that the larger question is which regulatory system will benefit the industry in the long run.

Gallanis also pressed White about how much time the state regulatory system, in existence for 150 years, should be given to enact reform. White joked that he'd avoided the same question while testifying on Capitol Hill and added, "certainly, at some point you have to draw the line and say, 'This is not going anywhere.' Hopefully, we won't reach that point." He also noted that in his opinion, the discussion is really about federal regulation, not an optional charter. "It's not a choice," he said.

"Not Much Consensus at This Point"

As part of the seminar's Legal Update, William P. O'Sullivan (senior vice president and general counsel for NOLHGA) briefed attendees on the June 2002 hearings of the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Entities, which were held to examine regulation and competition within the insurance industry and consider proposals for increasing the efficiency and uniformity of insurance regulation.

O'Sullivan reported that there was a general consensus among the 19 witnesses who testified at the hearings that the state insurance regulation mechanism is in need of immediate reform, especially in the areas of new product approval, producer licensing, company licensing, and market conduct. However, he also noted that "there's really not much consensus at this point in terms of what the solution is."

Some witnesses believed that the state-run system has been given enough to time to reform itself and so supported an optional federal charter. Others recommended giving the states more time, and some suggested that the government intervene to help states establish a uniform system of regulation. One committee member voiced support for a tiered regulatory plan in which the federal government would regulate larger insurers or certain types of business.

Three of the witnesses at the hearings spoke on guaranty association issues; all three agreed that the current system is doing a good job of protecting policyholders and saw no need for federal involvement. O'Sullivan noted that the committee members showed an appreciation for the complexity of the issues before them. Roundtable discussions are scheduled for the fall, and O'Sullivan predicted, "Congress will continue to carefully consider its options." He added that the likelihood of rapid action on this issue is small.

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"It Was Mass Confusion"

Attendees got a different look at a familiar face in the presentation The Other Side of the Mountain: Reliance Insurance Company from the P&C Perspective, a panel discussion involving some of the key P&C players in the Reliance insolvency.

David S. Brietling, a member of the Pennsylvania Insurance Department Liquidation Team responsible for administering the estate of Reliance, spoke about the size and complexity of Reliance's operations. The company's decentralized structure and use of more than 170 TPAs, he said, made things difficult for the team. "There were no policy files or claims files for a huge amount of business they wrote," Brietling said. After the liquidation, he added, "quite frankly, it was mass confusion."

The sheer size of Reliance (the largest P&C insolvency ever) and the number of units that operated autonomously made for "a difficult three- to four-month period to get claimants the help they needed," Brietling said, noting that two million proofs of claim were mailed out in the first four months. Reinsurance is the single largest asset in the Reliance estate, and Brietling considers it the key to a successful resolution to the insolvency. However, the intricate operations of the company have made things difficult.

Kevin D. Harris of the National Conference of Insurance Guaranty Funds (NCIGF) noted that before the terrorist attacks on New York and the Pentagon on September 11, 2001, the P&C guaranty funds working on Reliance's rehabilitation hadn't been planning for liquidation. "In hindsight," he said, "it would have been very smart to work along two tracks."

In fact, Harris believes one of the biggest lessons the P&C guaranty funds have learned from Reliance is the need to acknowledge that once a company is taken over, insolvency is all but inevitable. "If there's anything we can do better as an insolvency system," he said, "it's recognize that reality" and plan for an orderly transition into liquidation from day one.

Harris also noted that Reliance's large-deductible business, which made up roughly one-third of the company's business overall, presented some problems in handling the insolvency. The P&C guaranty association laws and liquidation acts "haven't really kept pace with the evolution of commercial products on our side," he explained. "The insolvency laws haven't really worked well with Reliance." However, he added that the NCIGF, the state guaranty funds, and the Pennsylvania Insurance Department have largely been successful in overcoming these difficulties.

Mark H. Femal, executive director of the Wisconsin Insurance Security Fund, gave the audience a "view from the trenches" as he recounted his duties as the NCIGF's on-site liaison in the Reliance insolvency. According to Femal, the merging of many companies into Reliance presented a host of problems for the liquidation team; it was sometimes difficult to pinpoint which company had written a particular policy, and the merging of an unlicensed company with a licensed one led to questions of what business was covered by guaranty funds.

The multiple units that made up Reliance raised other obstacles as well. The company had two main offices, in Philadelphia and New York, and each office had "completely different systems," Femal said, with no interaction between them. Other offices employed their own claims systems, making things even more difficult.

While there was no shortage of problems for Femal to tackle in his days at Reliance, he noted that one of the advantages of his being on-site was his ability to explain to Reliance personnel the challenges guaranty funds face and their priorities in protecting policyholders. "A real benefit to the Reliance people was having me there to give them an idea of why guaranty funds were operating the way they do," he said.

Sean M. McKenna is the communications manager for NOLHGA.

Sidebar 1: Salami for Lunch

Salami wasn't on the menu at the Legal Seminar luncheon, but it was on the mind of the guest speaker, Richard A. Epstein. Epstein, the James Parker Hall Distinguished Service Professor of Law at the University of Chicago and the author of Takings: Private Property and the Power of Eminent Domain, entertained the luncheon audience with a lecture on property rights and how they apply to regulation of the insurance industry. According to Epstein, it all boils down to what he calls "the principle of how you slice the salami."

Epstein explained the concept of requiring the government to compensate its citizens when it confiscates their private property and the importance of the theory that property—like salami—is still property no matter how thinly you slice it. Since use of property is part of ownership, the government "takes" property not only when it confiscates it but also when it restricts its use.

The same principle applies to government regulation of business. In this case, however, the government needn't always provide monetary compensation; it can also justify its actions (such as rate regulation) by showing how they benefit the public.

Under this theory of providing a benefit to the public, Epstein explained, rate regulations are only appropriate in the oversight of monopolies. "There is never justification for rate regulation when you're dealing with a competitive industry," he said. In fact, rate regulation of such an industry runs the risk of driving prices to an artificially low level, since there are no market forces to limit how low prices can be set.

Government regulation also plays a role in preventing fraud and maintaining public confidence in an industry, Epstein said, and in that sense there is "some justification for solvency regulation." The danger to the insurance industry, he added, is when government action (and regulation) extends beyond the limited scope Epstein described.

That danger has grown in the past months as accounting scandals and large company bankruptcies have spooked the government and the public alike. According to Epstein, the onus is now on the insurance industry to prove that it doesn't need federal regulation to fix its problems.

"Clean your house before somebody else decides to bring a crew in," Epstein said. "And they'll not only clean the house, they'll break most of the furniture too."

Sidebar 2: Risk, Reinsurance & More

Other highlights of NOLHGA's 11th Annual Legal Seminar included:

It's Not Your Father's Oldsmobile: Use & Regulation of Special Purpose Vehicles in the Insurance Industry: Marc A. Siegel (Center for Financial Research & Analysis), Michael P. Goldman (Sidley, Austin, Brown & Wood), and Arnold L. Dutcher (Illinois Department of Insurance) gave the audience a detailed explanation of the various types of special purpose vehicles and their impact on business accounting.

The Roller Coaster of Risk: Where Are We on the Ride?: Larry M. Gorski (Illinois Department of Insurance), Daniel J. McCarthy (Milliman USA), and John R. Barmeyer (ING Americas) looked at how risk is evaluated, the risks presented by some of the products currently being sold in the industry, and the practice of operational risk management.

Reinsurance for Lawyers: Craig M. Baldwin (Transamerica Reinsurance), Arthur O. Dummer (Utah Life & Disability Insurance Guaranty Association), and Jeremy Starr (The Guardian Life Insurance Company of America) provided a primer on the different types of reinsurance and the laws and provisions affecting them.

Legal Update: In addition to William P. O'Sullivan's report, Brian J. Spano (Rothgerber, Johnson & Lyons) provided a review of stop loss policies and ERISA, and Tad Rhodes (Kerr, Irvine, Rhodes & Ables and the Oklahoma Life & Health Insurance Guaranty Association) detailed a situation in which the Oklahoma guaranty association provided loans to a troubled company under supervision before the association was triggered.

Who Cares About Long-Term Care?:

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Peterson Consulting's Timothy H. Hart, Steve F. Stanton, and Garrett W. Rush gave an in-depth analysis of the growing market for long-term care insurance and its implications for the guaranty association system.

Separate Accounts with Guarantees: What Happens When Variable Products Don't Vary?: Kevin P. Griffith (Baker & Daniels) and Thomas A. Campbell (Hartford Life) explained the different permutations of variable products (such as guaranteed minimum death benefits and variable annuity guaranteed living benefits) and examined the question of how—or if—these products are covered by guaranty association statutes.

Resolving Legal Ethical Dilemmas: The Good, the Bad, and the Ugly: William P. Hoye (University of Notre Dame) used clips from films such as The Verdict and Witness for the Prosecution to engage the audience in a lively discussion of legal ethics and the difference between ethical dilemmas and moral ones.

Receivers' Achievement Report

by Ellen Fickinger

Reporters:
Northeastern Zone - J. David Leslie (MA); W. Franklin Martin, Jr. (PA);
Midwestern Zone - Ellen Fickinger (IL); Brian Shuff (IN)
Southeastern Zone - Eric Marshall (FL); James Guillot (LA)
Mid-Atlantic Zone - Joe Holloway (NC)
Western Zone - Mark Tharp, CIR (AZ); Bob Loiseau (TX); Melissa Eaves (CA)
International - Jean Akers (England); John Milligan-Whyte (Bermuda)

Our achievement news received from reporters for the third quarter of 2001 is as follows:

Mark Tharp (AZ) reported that the Receiver for **Premier Healthcare of Arizona** was successful in settling claims resulting from a Medicare Risk Medical Quota Share Reinsurance Agreement entered into in March 1999 between **Premier** and **Select Reinsurance, Ltd.** and **PXRE Reinsurance Co.** On April 15, 2002, the Court entered its Order Re Petition No. 71, <u>Petition For Order Approving Settlement between **Premier Healthcare, Inc., Select Reinsurance, Ltd.**, and **PXRE Reinsurance Co.**</u>, resulting in payment to the estate of $12,840,844.

Mike Rauwolf (IL) provided updated information on the management of the reinsurance run-off of **American Mutual Reinsurance, In Rehabilitation (AMRECO)**. Total claims paid inception to date for Loss & Loss Adjustment Expense are $30,449.00. Reinsurance payments stand at $148,372,091.00 and LOC Drawdown disbursements at $9,613,386.00. The reinsurance run-off of another estate, **Centaur Insurance Company, In Rehabilitation**, evidences total claims paid inception to date for Loss & Loss Adjustment Expense at $53,294,739, reinsurance payments at $4,945,493.00 and LOC Drawdown disbursements at $13,876,555.00.

James A. Gordon (MD) continued to provide updates on collections for **Grangers Mutual Insurance Company** in the amount of $11,257.23.

An update was also received from **W. Franklin Martin Jr. (PA)** on **Fidelity Mutual Life Insurance Company (FML), In Rehabilitation**. As of June 30, 2002 **FML** showed a statutory surplus in excess of $114,000,000 after reserving for all policyholder and creditor liabilities. The moratorium on cash surrenders, withdrawals, policy loans and other contractual options which was imposed by the November 6, 1992 rehabilitation order was terminated effective October 1, 2001. Policyholders are now able to fully access their cash values. Death benefits continued to be paid and policyholder dividends and interest continued to be credited. The termination of the moratorium has had minimal impact on lapse rates, largely due to the high dividends and crediting rates paid in 2001, being paid in 2002, and planned for 2003. All general creditor claims have been paid except for a few where they are awaiting a release to be returned to the Rehabilitator. Settlement of some of the premium tax claims is still pending with state authorities.

In July of 2002, the Rehabilitator filed a petition with the Commonwealth Court for authority to pay policyholder dividends in 2003 totaling up to $42.5 million. No objections were filed and they are awaiting the order from the Court. In August, the Rehabilitator filed a petition with the Commonwealth Court for authority to pay crediting rates of approximately $11.4 million. In May, the Commonwealth Court issued an order preliminarily approving the Third Amended Plan for Rehabilitation with minor modifications. All but one of the substantive objections filed by the Policyholder Committee were overruled. It will be necessary to file the revised plan documents with the Court for a supplemental order before the bid process can begin. They expect to be contacting investors this fall.

Jean Akers (PriceWaterhouse-Coopers, UK) reports that solvent schemes of arrangement ("Schemes") are increasingly being considered by solvent companies as part of their strategy for finalizing a run-off and effecting a planned exit from the market. **PwC** are currently advising a number of companies and pools members who have opted to use this solution as a means of obtaining certainty, crystallizing liabilities, achieving finality and extracting shareholder value. In particular, for **Hassneh Insurance Company (UK) Limited**, in February of 2002, the High Court sanctioned a meeting of Scheme creditors to consider and vote on the Scheme. At a meeting held in mid April 2002, the proposed solvent Scheme was unanimously approved by Scheme creditors. The Scheme was subsequently sanctioned by the High Court and became effective towards the end of April 2002. The bar date for Claims was July 31, 2002. In June of 2002, the High Court sanctioned a meeting of Scheme Creditors for **City General Insurance Company Limited** to consider and vote on the Scheme. The creditors' meeting was scheduled for July 12, 2002.

Following a review of the latest financial position, **Jean Akers (UK)**, reports that the Scheme Administrator of **Trinity Insurance Company Limited (Trinity)**, **Paul Evans** of **PricewaterhouseCoopers**, has set a revised Payment Percentage of 60% under **Trinity's** Scheme. Creditors will benefit from a further 5% of their

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Receivers' Achievement Report

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Established Liabilities above the current payment level. **Trinity's** Scheme of Arrangement became effective on March 18, 1993 after receiving High Court Sanction. The initial Payment Percentage was set at 10% in January 1994 and has been increased in various stages to 55% in July, 2001. **Trinity** had paid Scheme Creditors a total of $69 million at the end of 2001. The financial position of **Trinity** at the end of 2001 showed estimated total assets of $158 million and estimated total liabilities of $245 million, an estimated deficiency of $87 million. **Omni Whittington Insurance Services Limited**, the run-off management company for **Trinity**, will be processing the additional payments to Scheme Creditors in the next few weeks.

Jean Akers (UK) further reported that one of the largest insolvent run-offs ever undertaken in the international insurance industry has made a ninth distribution with increased payments to creditors. Creditors of the five failed **KWELM** insurance companies have received a further distribution on their claims. The new level of payments ranges from 32% to 48% across the individual companies compared with 25% to 41% last year.

$2.2bn has now been paid to creditors with agreed claims or set aside for payment to existing and future creditors.

Chris Hughes and **Ian Bond**, the Scheme Administrators, report strong performances in the three principal aspects of the run-off – reinsurance recoveries, claims settlement and investment return. The run-off is expected to be completed within the next four years, with ultimate returns to creditors significantly higher than initial expectations.

The **KWELM** companies are subsidiaries of the failed **London United Investments plc**. They comprise **Kingscroft Insurance**, **Walbrook Insurance**, **El Paso Insurance**, **Lime Street Insurance** and **Mutual Reinsurance**. They specialized in US casualty, professional indemnity, and other liability insurance business and over 90 percent of the **KWELM** policyholders are based in the United States. The companies and their creditors entered into a Court approved "Scheme of Arrangement" in 1993, the objective of which is to pay out to valid creditors the maximum sum in the minimum timescale.

The payouts across the five companies are as below:

Company	Revised payment percentage (2002) %	Previous payment percentage (2001) %
Kingscroft	43	36
Walbrook	34	26
El Paso	48	41
Lime Street	47	40
Mutual	32	25

The Annual Report for the year to 31 December 2001 issued to creditors highlights:

- Cumulative reinsurance recoveries are now in excess of $1.6bn. A further $120m was recovered during the year.
- Funds for distribution to creditors are now in excess of $2.2bn.
- $306m claims were agreed in the year – cumulative agreed claims are now in excess of $2.7bn.
- Investment return for year was $143m.
- Invested funds are now in excess of $1.7bn.

Ultimate liabilities are now estimated at $6.5bn compared with $7.4bn in 2000. Progress with claims settlements and increasing maturity in certain books of business contributed to the reduction in liabilities, the level of reduction being offset in part by an increase in the provision for asbestos related losses.

Receivers' Achievement Reports By State

Alaska (Gloria Glover, State Contact Person)

Distributions	Estate	Amount	Date	Type of Distribution
Policy Loss Claims	Life Ins. Co. of Alaska	$2,115.38	6/14/2002	Partial

Arizona (Mark Tharp, State Contact Person)

Distributions	Estate	Amount	Date	Type of Distribution
Guaranty Funds	AzStar Casualty Co.	$32,094.00	4/30/2002	Final
Policy Loss Claims	AzStar Casualty Co.	$15,579,951.00	4/30/2002	Final
General Creditors	AzStar Casualty Co.	$601,447.00	4/30/2002	Final

Illinois (Mike Rauwolf, State Contact Person)

Distributions

Estate	Loss and Loss Adjustment	Early Access Distribution	Return Premium	Reinsurance Payments
Alliance General Ins. Co	147	377,515	0	0
Alpine	0	0	0	6,253
American Healthcare	0	404,335	0	0
AMRECO	0	0	0	152,084
Coronet	80	625,001	0	0
Equity General	37,502	0	0	0
First Oakbrook	110	0	0	0
Illinois Insurance Co.	225	169,123	0	0
Inland	0	98,184	0	0
Millers	0	0	0	45,182
Optimum	0	700,000	0	0

Maryland (James A. Gordon, State Contact Person)

Distributions	Estate	Amount
Policy/Contract Creditors	Grangers Mutual Ins. Co.	$3,971.75 (MD) $951.31 (DC) $567.00 (VA) $1,965.51 (TN)
	Prime Health Corp.	$5,758,897.10 (45%)

Pennsylvania (W. Franklin Martin, Jr., State Contact Person)

Distributions	Estate	Amount
Guaranty Funds	National American Life Ins. Co.	$9,978,090.00

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Receivers' Achievement Reports By State

(Continued from page 25)

Texas (Dan Heiman, State Contact Person)

Distributions	Estate	Amount	Type of Distribution
Guaranty Funds	Eagle Ins.	$4.7Mil	Final (GF)
	American Eagle	$5.5Mil	Early Access (GF)
Policy Loss Claims	Standard Financial	$2.9Mil	Partial (GF)
	Sir Lloyds	$2.6Mil	Partial (GF)
General Creditors	American Guardian	$4.5Mil	Partial (GF)
	Members Mutual	$13.8Mil	Final (Shareholder)

Estates Closed	Date Closed	Date Opened	Liquid Assets at Liquidation	Total Amount Distributed	% Dist. for Policy Loss
Employers Texas Lloyds	10/12/2001	2/11/1994	$1.9Mil	$1.9Mil	10.20%

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