The Insurance Receiver

PROMOTING PROFESSIONALISM AND ETHICS IN THE ADMINISTRATION OF INSURANCE RECEIVERSHIPS

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Feature Articles

Departments

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President's Message

I. George Gutfreund, CA, CIRP, CIR-ML

As most of you know, a significant number of our members do not take part in the NAIC quarterly meetings and as a result of the fall NAIC meeting being held in Anchorage, we were not successful in gathering enough attendees to have the normal spectrum of IAIR events in conjunction with the NAIC meeting. We did not have a board meeting in Alaska and the majority of the committees did not meet. We were, however, successful in having an informal roundtable for those wishing to attend. To ensure that the successful workings of IAIR continued, board meetings were held in October and November and committee meetings took place via conference calls. I look forward to the winter meeting in New Orleans where we will be able to reconvene our normal quarterly routine with a proper constituted board meeting, roundtable and committee meetings.

Late summer and early fall were a trying time for Floridians, South Eastern Americans and many inhabitants of the Caribbean Islands. As difficult as it must have been, I am pleased to report that none of IAIR's staff in Florida were injured. I would like to commend them for maintaining service to the IAIR membership during such trying times. These hurricanes affected the regular flow of our services by causing intermittent interruptions. We were fortunate that our website did not falter too often since our host provider had auxiliary power sources. The power outages did delay our website revamping project but now that hurricane season is over we are moving ahead to ensure the new website is up and running before the end of the year.

On the education front, our Education Committee and its sub committees have been very active over the last few months. The joint NCIGF/IAIR workshop in San Diego was very successful. I would like to thank all of the participants of the Planning Committee for putting together an excellent program. In addition, I would like to thank all of the speakers for their excellent presentations and for devoting their time and energy to make this program a success. Planning is well underway for the IAIR 2005 Receivership Workshop, which will take place on February 3 and 4, 2005 in Orlando, Florida. As in the past, it appears to be an excellent program that all should attend. This is the first year we have had formal sponsorship from the NAIC to allow certain members to attend this program on scholarship grant. I would like to thank the Education Committee and Doug Hartz for working with the NAIC to bring this sponsorship/scholarship program into place. Also, on the education front, plans are well underway to develop and present staff training to various insurance departments. Finally, the Education Committee continues to work on the development of the RFP for a formal education process leading to the granting of the IAIR designations.

Applications are continuing to be received for IAIR designations. The A&E Committee is actively reviewing these applications and making arrangements for the appropriate oral interviews. I again request that IAIR members review the new rules and procedures pertaining to continuing education credits and disciplinary procedures. These rules and procedures were developed by the A&E Committee, approved by the Board and have been posted on the IAIR website. It is prudent that all of our members become aware of these new rules and abide by them. If you have any queries pertaining to these rules or procedures, please contact Dan Watkins, Chair of the A&E Committee, or myself.

I hope all of you are planning to attend the IAIR New Orleans meeting in December. In addition to the normal programs and meetings that are hosted by IAIR, the Annual General Meeting of IAIR will be held. During this meeting the membership will elect five new Board of Director members for a three-year period. It is important that all of you exercise your franchise rights to vote for those people you want to lead your organization. You still have time to put your name forward to run for a Director position. To do this, contact Mike Marchman, Chair of our Nominations Committee. The opportunity to volunteer your services by becoming a member of the Board is a true expression of your commitment to the organization. Not all of us can be successful at these elections but many of us have come back and run again to be successfully elected to the Board. As a Board member, and speaking with previous Board members, this has been, and is a very gratifying and rewarding experience. So if you really want to help your organization, please put forth your name to run for one of the five positions available on the Board of Directors for the coming term. In conclusion, I would like to extend my best wishes to those of you who are running for Board, and I would like to thank all of those members of the Board who are retiring and/or cannot run again due to having fulfilled two successive mandates. The retiring board members have made a tremendous contribution to the success of this organization, and I personally want to thank them for the hard work they have done to ensure that IAIR is such a successful organization.

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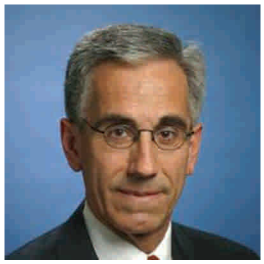
View from Washington

Charlie Richardson

Get SMART—and Even on Receiverships



Right before Labor Day, staff for US House Financial Services Committee Chair Mike Oxley and Capital Markets and Insurance Subcommittee Chair Richard Baker circulated for informal comment 300-plus pages of text on a new federal insurance regulatory system. In 17 titles, the SMART bill (State Modernization and Regulatory Transparency Act) sets out a series of proposals intended to increase uniformity of insurance regulation and encourage greater competition. It does not propose a federal charter option.

Of course, these goals require some trumping of individual state rules on entry and rate review in particular. State control over market conduct regulation would be less affected. The new regime would be coordinated by a state/federal board, which would not have full rulemaking authority, but could issue opinions on various issues. The regime would be enforced through several mechanisms involving various bad consequences for jurisdictions which do not jump on the uniformity bandwagon.

As this article is being written in September, the legislation has not been formally introduced. Although any introduced bill will not pass this Congress, it will likely be the baseline for more focused discussion in early 2005 in the next Congress.

All of you should read Title XIII of the SMART draft which deals with receiverships. Taking a cue from the NAIC which included receiverships in its own Roadmap last June—I discussed that in my column in the last issue of the Receiver—Reps. Oxley and Baker have produced 64 pages (the second largest of the 17 titles) of proposals designed to make more uniform the rules for conducting receiverships nationwide. In doing that, the draft draws heavily on the provisions of the URL, incorporating 20 key sections.

Here is a list of the sections of Title XIII that will give you an idea of its breadth:

- Sec. 1311. Short Title
- Sec. 1312. Applicability to Receivership Proceedings
- Sec. 1313. Jurisdiction of Receivership Court
- Sec. 1314. Duty to Provide Information to Other Insurance Commissioners and Guaranty Associations
- Sec. 1315. Right to Appear and Be Heard
- Sec. 1316. Automatic Stay
- Sec. 1317. Powers of Rehabilitators and Liquidators/Receivers
- Sec. 1318. Executory Non-Insurance Contracts
- Sec. 1319. Turnover of Property to the Receiver
- Sec. 1320. Preferences
- Sec. 1321. Fraudulent Transfers and Obligations
- Sec. 1322. Setoff
- Sec. 1323. Qualified Financial Contracts
- Sec. 1324. Recovery From Reinsurers
- Sec. 1325. Cut-Through Provisions
- Sec. 1326. Life and Health Reinsurance
- Sec. 1327. Fixing of Rights and Liabilities of Creditors Upon Liquidation
- Sec. 1328. Claims Filing; Late Filing

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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View from Washington

Charlie Richardson

Sec. 1329. Proof of Claim

Sec. 1330. Allowance of Claims

Sec. 1331. Allowance of Contingent and Unliquidated Claims

Sec. 1332. Priority of Distribution

Sec. 1333. Partial and Final Distributions or Dividends

Sec. 1334. Definitions

In short, the chances are good that Congress is going to get into the receivership business in a concrete way, just as it has expressed an interest in the regulation of insurance companies before they hit the wall. And that means that the bright light of Congressional review will be focused on the currently state-based receivership process for the foreseeable future. All stakeholders in that process will have their actions scrutinized by a new set of federal eyes.

Bush v. Kerry

By the time your eyes are on this article, the country will have chosen a President, and we'll know whether Michael Moore will be attending an Inaugural Ball on January 20. To get a sense of what is in store for us on the insurance and financial services front, depending on whether Bush or Kerry wins, here are the candidates' stated positions on a few issues:

ISSUE	BUSH	KERRY
Asbestos	Supports Senate legislation to create a federal trust fund to compensate victims of asbestos injury.	Favors legislation to provide "just compensation" to asbestos victims, but it is unclear whether he supports a trust fund solution to replace the courts.
Association Health Plans	Supports AHPs.	Opposes AHPs.
Class Action Law Suits	Strongly supports shifting class action lawsuits from state court to federal court; seeks to limit trial lawyers' fees.	Backs "sensible reforms" to the class action system; favors maintaining the rights of groups to pursue litigation (e.g., employment, civil rights, environment).
Medical Malpractice	Supports capping medical malpractice court awards at $250,000 for non-economic (pain and suffering) damages, and restricting attorneys' fees in malpractice cases.	Strongly opposes capping damages in medical malpractice lawsuits; would prohibit individuals from bringing a medical malpractice case unless a qualified specialist determines that a reasonable claim exists.
Medicare Prescription Drug Benefits	Supports Medicare prescription drug benefits he signed into law in 2003. Wants to see the new drug benefits and subsidies implemented in 2006 before suggesting further measures.	Has said, "The drug benefit deal is a dangerous move towards Medicare privatization." Did not vote on Medicare prescription drug bill (P.L. 108-173).
Terrorism Insurance	Will not decide on "TRIA" extension until effectiveness study completed in 2005.	Supports a public/private "temporary program" to share losses from terrorist acts. Voted for the Terrorism Risk Insurance Act of 2002 (PL 107-297).

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A.M. Best's Insolvency Study— U.S. Property/Casualty Insurers, 1969 to 2002

A.M. Best

Since 1969, the U.S. property/casualty industry has experienced wide fluctuations in annual impairment rates. The common denominator among these impairments is a diminished operating environment, with impairment peaks often triggered or exacerbated by external factors affecting underwriting or investment results. Still, despite recent near-term peaks in impairment rates, such events remain relatively rare.

These are some of the findings contained in a new report by A.M. Best Co. on property/casualty insurance company impairments, dating back 34 years. *Best's Insolvency Study, Property/Casualty U.S. Insurers, 1969 to 2002* is an update to the landmark insolvency study first published in 1991. The study examines 871 financially impaired companies (FICs) [1] that in the aggregate provide a broader basis for analyses of impairment causality than ever used before.

The objectives of the study were to establish a more thorough understanding of insurer financial impairments and to validate the procedures and philosophy behind a Best's Rating. A.M. Best Company is the oldest, most widely recognized, full-service rating agency specializing in the insurance industry. In its 105-year history, A.M. Best's financial information and ratings on insurance companies have helped to encourage a financially strong industry through the prevention and detection of insurer insolvency.

Since the late 1960s, insurers have experienced both the best and the worst of operating environments. On the upside were four hard markets, five economic booms and the greatest bull stock market in history. On the downside were three soft markets (the last one of unusually long duration); a series of the most costly natural and man-made catastrophes in history; six recessions; extremes of inflationary pressures and interest-rate gyrations; and two major bear stock markets. Also contributing to the downside were factors such as an increasingly litigious society, enormous environmental liabilities, global competition and state-mandated rate rollbacks.

The current study produced overall findings that are consistent with those of the first study period (1969 to 1990). First, financial impairment frequency moved in tandem with the factors affecting company earnings. Often, negative financial or underwriting surprises stressed already vulnerable companies to the breaking point. Second, the study confirmed the predictive value of a Best's Rating in signaling companies that are more vulnerable to financial difficulties.

To its credit, the property/casualty industry in the past decade has shown meaningful resiliency and improved risk management in the wake of extraordinary and sometimes unexpected events. Nonetheless, underwriting trends still follow historical patterns, and industry impairment rates have risen recently to levels last seen when impairments peaked in 1991. Even so, industry impairments have remained relatively rare, ranging from about 1-in-200 companies in the more stable times to 1-in-50 companies during the more difficult periods. Over the 34 years of the study, impairments averaged 25.6 annually, for an average annual impairment frequency of 0.80%, or 1-in-125 companies.

Scope of Property/ Casualty Impairments

Annual impairment frequency fluctuated widely over the course of this study and was generally correlated with the underwriting cycle. The number of impairments peaked at, or in close proximity to, the operating income difficulties that forced an end to the different soft markets.

The average annual impairment frequency for the industry was 0.80% for the 34-year study period. For the relatively stable 15 years prior to 1984, the average impairment frequency was half that, at 0.40%. In contrast, the 10 years following, between 1984 and 1993, had an average annual impairment frequency of 1.37%, reflecting the historic catastrophic losses from hurricanes Hugo, Andrew and Iniki and the effects of the 1991/1992 recession.

Impairments became less common after 1993, with the impairment frequency fluctuating around 0.5%, helped by strong investments, a lack of catastrophes and overcapitalization. In the mid-1990s, the industry improved its regulatory oversight with increased capital requirements and through the introduction of Risk Based Capital (RBC) standards. Best's Capital Adequacy Ratio (BCAR) model also provided a significant tool for assessing whether a company's capital was sufficient to cover its risks.

Despite these important developments, insurers' weak earnings fundamentals laid the groundwork for a subsequent rise in insolvencies. Impairments jumped in 1997, due primarily to adverse loss-reserve development in the commercial lines. In 2000, impairments spiked further,

[1] A.M. Best designates a company as financially impaired as of the first official action taken by the insurance department in its state of domicile, whereby the insurer can no longer conduct normal insurance operations. State actions include supervision, rehabilitation, liquidation, receivership, conservatorship, cease-and-desist order, suspension, license revocation, administrative order or any other action that restricts a company's freedom to conduct business normally. Companies that enter into voluntary dissolution and are not under financial duress at the time are not counted as financially impaired. A.M. Best emphasizes that the financially impaired companies (FICs) in this study might not have been declared technically insolvent. An FIC's policyholders' surplus could have been deemed inadequate to meet legal requirements, or there might have been regulatory concern regarding the company's general financial condition.

A.M. Best's Insolvency Study— U.S. Property/Casualty Insurers, 1969 to 2002

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as the economy weakened and the stock market unwound, bringing the soft market to an end. In 2001, the hardening of the market was accelerated by the terrorist attacks of Sept. 11, 2001. The market and economic conditions that fueled the turn in the underwriting cycle also contributed to the increase in impairments in 2001 and 2002.

To pay the claims of insolvent insurers in liquidation from 1969 through 2001, the net post-assessment costs to insurers have been $10.8 billion. [2] These assessments helped cover outlays related to roughly 493 insolvencies, or about 64% of this study's reported impairments in the same period, excluding New York.

The costs of these assessments, net of New York's prefunded plan, remained below 0.1% of industry premiums from 1969 until 1983, when the failures of some larger commercial lines carriers began to have a significant effect. In 1987, assessments peaked at just below 0.5%, and then generally trended lower until 1999. In 2001, assessments reached almost 0.4%, about twice the assessments from the prior year.

External Factors and Effects on Operating Results

A.M. Best compared the cyclical patterns of many operating environment factors with the property/casualty industry's annual impairment frequency. As expected, the industry's underwriting income and total operating income provided strong correlations with the impairment rate. The impairment rate hit successively higher peaks in 1975, 1985 and 1991 and was headed higher in 2001 and 2002, years around which underwriting income and overall operating income fell to respective troughs. The annual impairment rate also correlated well with the industry's combined ratio, which peaked in 1975, 1985 and 1991.

During the soft markets of 1971-1974, 1978-1984 and 1987-2000, the industry's premium growth, as adjusted for the consumer price index, was flat to negative. During these periods, high investment returns and an excess of capital in the industry encouraged inadequate pricing. In most years during the soft markets, investment income more than offset underwriting losses, consistent with the industry's cash flow underwriting strategy. Companies use this strategy to attract new business with low pricing; then invest the added premium revenue in high-yielding assets.

At least initially, insurers using this strategy can earn a satisfactory overall operating profit in an inflationary environment or a rising stock market. Those companies whose underwriting strategies rely too heavily on high investment yields can find themselves generating far lower operating income, or even losses, especially if interest rates or stock prices decline meaningfully.

Indeed, the industry's impairment frequency rate increased significantly when interest rates declined after the three inflationary cycles that occurred during the study period, prior to the 1990 recession.

In the inflation-tamed 1990s and 2000s, equity returns became dominant in the cash flow underwriting cycle. A strong relationship between equity prices and the property/casualty impairment frequency was apparent, with the great bull market and the following bear market recording respective periods of low and high impairment rates.

The years 2001 and 2002 were relatively difficult for the property/casualty industry, with annual impairment frequencies hitting successive, multiyear highs. The accumulation of years of inadequate pricing and loss reserving emerged rapidly and caught up with insurers' weak balance sheets. While the events of Sept. 11, 2001 significantly affected the industry's earnings in 2001, operating earnings had deteriorated prior to that point. Despite the hardening market, some carriers became insolvent as a result of financial difficulties that could not be reversed by rising rates.

Impairment Analysis by State

When comparing property/casualty insurer impairments by state or territory, frequency is more meaningful than a specific count. Impairment frequency is the number of impairments as a percent of the number of insurers in the same domicile in the same period.

The count of insurers by state of domicile varies widely, since companies tend to concentrate in locations with large and compatible insurance markets, favorable laws of incorporation, and tax and regulatory environments that encourage company formation. Seven states accounted for more than half the count of the 871 impairments in the 34 years from 1969 to 2002; some of those states also were among the largest in terms of the number of domiciled property/casualty insurers, on average, during the period of the study.

New York, with its high impairment count of 64 and large number of insurers, had an average annual impairment frequency of 0.9%, not much higher than the national average of 0.8%. In contrast, Louisiana, with a high impairment count of 40 but a relatively low population of insurers, had the highest impairment frequency of any state or territory during the study period, at 4.2%. Ten states had more than double the national average.

[2] National Conference of Insurance Guaranty Funds.

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A.M. Best

Of some note is that neither Idaho nor North Dakota experienced property/casualty impairments during the entire 34 years.

A.M. Best also found a slight relative deterioration in impairments by state between the second study period, 1991–2002, and the first period, 1969–2002. Kansas, Guam, Connecticut, Hawaii and Maryland showed the greatest deterioration. Arkansas, Montana and Wyoming had no insolvencies in the second period. Colorado, West Virginia, Iowa, Delaware, Rhode Island, Virginia, Pennsylvania and Puerto Rico also showed meaningful improvement.

State Regulatory Resources

Since data on the budget allocations of state insurance departments [3] are not broken out by insurance industry segment, available regulatory resources were analyzed for both property/casualty and life/health companies.

The 2002 budgets for the 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands ranged from a high of $164.2 million in California to a low of $1.3 million in the Virgin Islands. The 2002 budgets of four states—Texas, New Jersey, South Carolina and Nevada—increased by less than inflation since 1990. Two of those states, Texas and Nevada, also had higher-than-average frequencies of impairment.

The compound annual growth of the state insurance department budgets from 1990 to 2002 averaged 6.6%. These growth rates varied from an increase of 17.0% for Missouri to a decline of 1.8% for Nevada.

It appears that the level of each state's regulatory resources and impairment frequency do not have a set relationship. Higher state budgets do not necessarily result in fewer company impairments. In fact, from a statistical perspective, there is a weak 33% correlation between the average impairment rate and budget dollars allocated per domiciled insurer. Size of insurance market also does not provide a clear correlation to impairment frequency. The five states with the largest insurance markets, as measured by net premiums written, had a failure frequency rate that was lower than the combined average of all states.

The presence and degree of catastrophe risks and other factors unique to a local market (e.g., business segments, political infrastructure) appear to be more of a determinant in the distribution of domicile-by-domicile impairment frequencies. California and Florida are among the top states in terms of size of regulatory budget, and both had higher-than-average impairment frequency.

Impairments and Company Characteristics

The financially impaired property/casualty insurers in this study tended to be stock companies and most frequently wrote commercial lines insurance, particularly during the decades of the 1980s and 1990s. Stock companies began to outnumber mutual companies in 1979. Since then, the percentage of stock companies has continued to increase, driven largely by the ability to raise capital and provide ownership incentives to management. On average, stock companies comprised 51% of the industry but accounted for 74% of the FICs during the course of this study. Mutual companies made up 45% of the industry and accounted for 16% of the impairments.

The impairment frequency of stock companies was about four times greater (1.2% vs. 0.3%) than that of mutual companies. One reason for this is that stock companies have been more active in the commercial lines and casualty classes of business, which have experienced more volatile underwriting results and lower profitability. In addition, greater demands have been placed on stock company managements by shareholders to keep capital utilized, which, in turn, can lead to higher levels of underwriting leverage.

Concurrently, mutual companies concentrated more on the personal lines and property classes of business and employed, on average, less underwriting leverage. This more conservative operating philosophy has resulted in a lower impairment frequency for the mutual company segment overall.

Other types of ownership, including reciprocals, risk-retention groups, exchanges and Lloyds organizations have held at about 5% of the industry since the late 1980s. The 1.7% average impairment frequency of this category was 40% higher than for the stock category. Reciprocals and Lloyds companies tend to take on exposures with greater risk, often writing business declined by the stock and mutual companies.

Causes of Impairments

Of the 871 financial impairments in the property/casualty study, the primary causes were identified for 562 companies. Among those, the leading cause was deficient loss reserves/inadequate pricing, accounting for 37.2%, or 209, of the identified impairments. Rapid growth and alleged fraud were the second and third causes cited. The top two causes—deficient loss reserves and rapid growth—accounted for more than half of all insolvencies since 1969.

[3] State regulatory budget data were provided by the NAIC.

A.M. Best's Insolvency Study—U.S. Property/Casualty Insurers, 1969 to 2002

A.M. Best

Deficient loss reserves/inadequate pricing as a cause of impairment escalated during or shortly after the soft markets that concluded in 1975 and 1985 and then again through the 1990s to the present. In 2000 and 2001, deficient loss reserves accounted for about two-thirds of all impairments, and in 2002, it was cited as the chief cause in 88% of all cases.

Rapid growth accounted for 17.3% of the identified impairments and occurred most frequently during soft markets. Rapid growth typically was accompanied by deterioration in loss reserves and in a company's ability to manage its book of business.

The remaining causes of impairment were: alleged fraud (8.5%), overstated assets (7.8%), catastrophe losses (6.9%), significant change in business (5.0%), impairment of an affiliate (3.7%), reinsurance failure (3.7%) and miscellaneous (9.8%).

With the possible exception of insolvency due to catastrophe losses, in A.M. Best's opinion, all the primary causes of insolvencies in this study were related to some form of mismanagement.

Outlook for Impairments

The rating environment for property/casualty companies has remained, on balance, negative, with downgrades outnumbering upgrades over the past several years. Although most ratings have remained unchanged (affirmed), net rating changes have been negative since July 2001.

Nonetheless, A.M. Best's outlook for the property/casualty industry has shifted from "negative" to "mixed" to "stable" over the past two years. Although recent economic, environmental and geopolitical events will continue to stress a number of insurance companies financially, preliminary results for 2003 indicate that impairments may have reached a near-term peak in 2002. Improvement is expected for 2003 and 2004, albeit still at an elevated level of impairment frequency compared with the late 1990s. This outlook is based on the following seven factors/assumptions:

1. Overall, premium growth is expected to exceed the increasing loss-cost levels, thereby improving cash flow and increasing invested assets. Accordingly, the industry's operating profitability should improve, leading to the first growth in industry surplus since 1999. Still, the industry will be challenged in several other areas:
   - Adverse loss reserve development will continue to erode near-term earnings for certain insurers with asbestos and environmental exposures.
   - Experience in the specialty markets, such as medical malpractice insurance, will be affected by divergent state laws and regulations.
   - Large commercial carriers, though less prone to insolvency from any one line of business, continue to be affected by historically inadequate cash reserves and asbestos and environmental lawsuits.
   - Private passenger automobile insurance and the potential for mold claims also remain problematic in certain jurisdictions.
2. The hard market is expected to last at least through 2004.
3. Merger and acquisition activity in the property/casualty sector is expected to pick up after having slowed to almost a standstill during the difficult economic times of the early 2000s.
4. The heightened corporate governance and financial disclosure requirements due to the Sarbanes-Oxley Act are expected to have positive implications for the financial strength of the industry in general, although there have been some negative implications for the balance sheets of a few individual insurers.
5. Guaranty fund assessments are expected to abate in the near term after the Reliance Insurance Co. insolvency—the largest insolvency in guaranty fund history.
6. Federal regulation of insurance in any form should not impact industry impairments significantly.
7. Passage of the Terrorism Risk Insurance Act of 2002 is expected to provide significant protection for the industry from catastrophic loss exposure generated by terrorist activity, but only in the short term.

Best's Ratings of Impaired Companies

The ratings development of companies beginning three years before impairment were analyzed. As impairment neared, there generally was an accelerating rate of degradation in a company's Best's Rating. Overall, the higher the rating, the lower is the risk of impairment, and vice versa. Impairment frequencies are higher for the total industry than for companies with a Best's Rating.

A.M. Best formally followed more than two-thirds of the 871 financially impaired insurers covered by this study for at least one year prior to impairment. A.M. Best provided letter financial strength ratings (FSRs), or the equivalent, to 321 of the 871 impaired companies. The Best's Rating system identified nearly all rated companies approaching impairment by significantly lowering or eliminating their Best's Ratings.

Of the total 871 FICs, 854, or 98.0%, were rated "B" or below, in the Vulnerable cat-

A.M. Best's Insolvency Study— U.S. Property/Casualty Insurers, 1969 to 2002

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egory, or were among the nonletter-rated companies (including those not followed), in the year of impairment. Only 17 of the total 871 FICs during the 34-year period of the study were rated Secure ("B+" and above) in the year of impairment.

Putting those numbers in perspective, consider that for the 34 years covered by the study, the annual average number of all property/casualty insurers rated Secure by A.M. Best was 1,348. The 17 FICs rated Secure in the year of impairment averaged only 0.50 companies per year, which translates into an average annual financial impairment rate for companies with a Secure Best's Rating of 0.04%, or just 1-in-2,500 companies. That 0.04% impairment frequency contrasts with an overall 0.80% impairment rate for the entire property/casualty industry during the period of the study.

A.M. Best currently reports on approximately 2,850 U.S. property/casualty insurers. Best's Rating system has proven to be extremely effective in monitoring this large number of companies representing 99% of the industry's premium volume. A.M. Best evaluates the financial strength of insurance companies using both macro- and micro-level analysis, focusing on both quantitative and qualitative aspects of each insurance company's operations.

The rating activity and modifiers that can be a part of a Best's Rating also are important indicators of an insurer's current financial strength. As a company's financial strength begins to deteriorate, rating activity (i.e., A.M. Best's interactive rating process with company management) typically accelerates. Best's Rating analysis is ongoing and any change in a company's rating, modifier or outlook is made immediately. Although in this study A.M. Best shows only one rating for each of the three years leading up to an impairment, there might have been a number of rating actions leading up to the final rating for the year. These rating actions often can involve the assigning of rating modifiers.

In A.M. Best's opinion, the procedures and philosophy behind a Best's Rating are the most effective approach to developing consistent and reliable ratings.

Best's Impairment Rate and Rating Transition Study

A.M. Best recently released an analysis of long-term financial impairment of rated insurers—a related study, but distinct from Best's insolvency studies. The report, *Best's Impairment Rate and Rating Transition Study—1977 to 2002* [4], responds to the need of investors and other capital market participants for data to use in insurance-related structured finance transactions. Therefore, the study focuses exclusively on impaired companies that had, at one time, a Best's Rating.

In contrast, A.M. Best's insolvency studies (property/casualty and life/health [5]) focus on the entire insurance industry, not just companies with a Best's Rating. Data for all three studies were derived from A.M. Best's proprietary database of financially impaired companies.

Best's Impairment Rate and Transition Study calculates one-year to 15-year cumulative average impairment rates by applying the static-pool methodology commonly employed by the credit rating industry in issuer default studies. This research establishes impairment risks related to historical Best's Rating levels.

Rating transition tables (from *Best's Impairment Rate and Rating Transition Study*) can reveal how stable ratings are across different periods. In general, as ratings decline, the percentage of companies that maintain the same rating over a one-year period also declines. For example, 90.18% of the companies with an "A/A-" rating remained in that same rating category one year later, but only 79.77% of companies with a "B++/B+" rating stayed in that category one year later. Overall, the likelihood of a Secure company keeping its Secure rating over a one-year period is 97.93%, while the likelihood of a Vulnerable company keeping its Vulnerable rating over the same time period is 90.13%.

Combining and comparing the results of A.M. Best's insolvency studies and its impairment and transition study offer insight into the predictive value of a Best's Rating. The statistics that follow are for combined property/casualty and life/health insurers for the 25 years 1978 to 2002.

On average, companies with a Best's Rating are less likely to default than are nonrated companies. An insurer that did not have a Best's Rating (letter or equivalent) at the beginning of a year was 59% more likely to face impairment in that year than a company that did.

Interactive Best's Financial Strength Ratings are able to separate insurers meaningfully into rating levels that are less likely and more likely to face financial impairment. Generally, the higher or stronger the letter (or equivalent) rating is at the beginning of the year, the lower is the risk of impairment in that year. Companies rated in the Vulnerable category are 1,400% more likely to face impairment than are companies rated in the Secure category.

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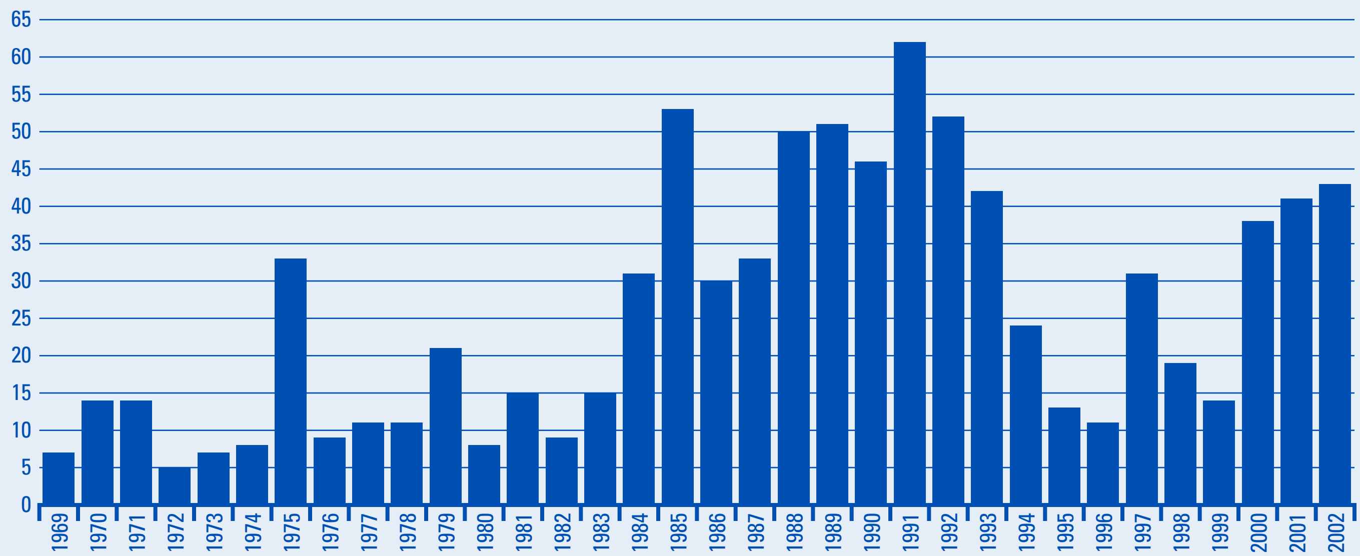
[4] Complete report available at www.ambest.com

[5] A subsequent article will highlight the results of Best's Insolvency Study—U.S. Life/Health Insurers, 1976 to 2002.

A.M. Best's Insolvency Study—U.S. Property/Casualty Insurers, 1969 to 2002

A.M. Best

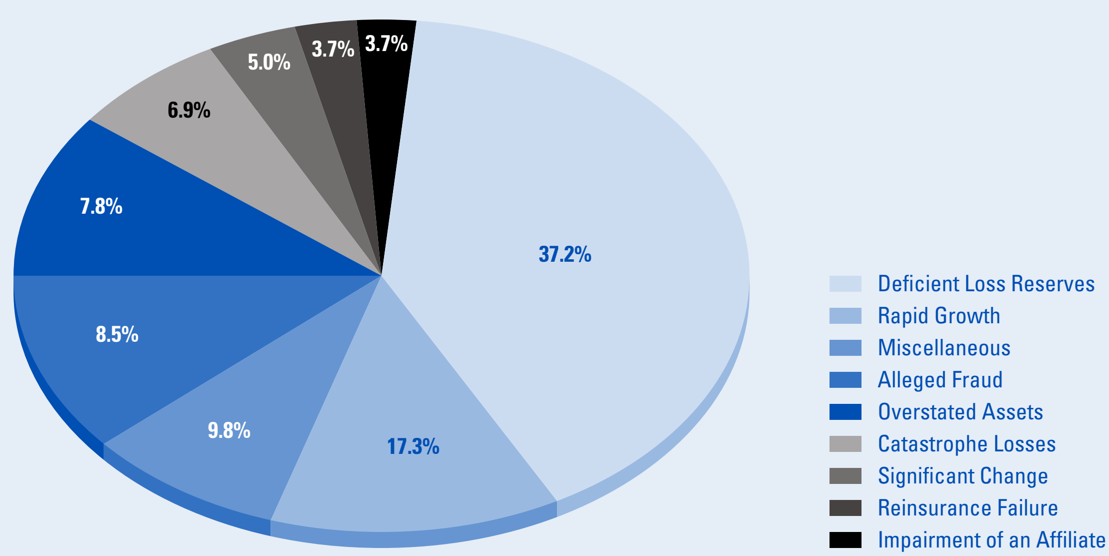
ANNUAL NUMBER OF PROPERTY/CASUALTY IMPAIRMENTS



	Total Impairment Count	Average
1969 to 2002:	871	25.6
1969 to 1990:	481	21.9
1991 to 2002:	390	32.5

SOURCE: A.M. Best.

PRIMARY CAUSES OF PROPERTY/CASUALTY IMPAIRMENTS (1969–2002)



Percentage breakout based on 562 of 871 companies in the period where a primary cause of impairment was identified. Also, the "Impairment of an Affiliate" as a cause classification option was introduced in 1990.

SOURCES: State Insurance Departments, A.M. Best.

As Trials "Vanish," ADR Plays a Dominant Role in Dispute Resolution

Paula M. Young [1]

For nearly 20 years, I described myself as a litigator, but harbored an unspoken insecurity that I could not call myself a trial lawyer. "Huh?" you say. Let me explain. For over 10 years, I served as general counsel to the receiver of the then-largest property and casualty insurance insolvency in U.S. history. During that time, I successfully "litigated" nearly $60 million in claims against reinsurers, but actually participated in one trial involving those claims. I appeared in many hearings before the supervising judge and before special masters whom the court had appointed to manage discovery and pre-trial motions. Even in the disputed claims context, in which we litigated with policyholders and third-party claimants, I participated in about 50 informal hearings before a claims referee. These hearings resembled informal arbitrations, not trials.

We resolved the remaining claims by negotiation or mediation. Even outside this insurance insolvency context, I resolved most of my clients' disputes by negotiation, mediation, or arbitration.

Steep Decline in Trial Disposition of Suits

A recently published study finally puts my insecurities at rest. You see, I am not alone. Most litigators never see a jury or try a case to a judge. Most resolve cases long before the scheduled trial date. The statistics are quite eye opening. The study considered jury and bench trials in federal courts. In 1962, judges and juries resolved 5,802 civil cases, defined as tort, contract, prisoner, civil rights, labor, and intellectual property cases. These trials constituted about 11.5 percent of the dispositions of the 50,320 cases filed with the courts. By 2002, parties had increased civil case filings to nearly 259,000—an increase of 146 percent over 1962 filings—but the dispositions by trial fell to 1.8 percent. *See* Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts* 8–19, *www.abanet.org/litigation.*

The criminal trial picture looks similar. In 1962, trials disposed of 5,097 cases or 15 percent of all indictments. In 2002, the number fell to 3,574 criminal trials or 5 percent of all indictments. During this period, the number of prosecutions doubled from 33,110 in 1962 to 76,827 in 2002. *Id.* at 48-49.

These statistics, taken from data compiled by the Administrative Office of the United States Courts, show that federal judges tried fewer cases in 2002 than they did in 1962. Judge Patrick Higginbotham reported, in an article published before Galanter published the *Vanishing Trial* report, that in 2001 "each United States District Court judge presided over an average of just over fourteen trials a year. Over half of these trials lasted three days or less in length and 94% were concluded in under ten days." See Patrick E. Higginbothan, *Judge Robert A. Ainsworth, Jr. Memorial Lecture, Loyola University School of Law: So Why Do We Call Them Trial Courts?,* 55 S.M.U. L. Rev. 1405, 1405-06 (2002). In other words, most judges spent less than 42 days presiding over trials. Each judge handled six "other contested matters," but taken together, the traditional trials and the "other contested matters" averaged a day or less in length. *Id.* at 1406. In 1962, the average federal judge conducted 39 trials each year.

Higginbotham notes that most of the filings in federal court concern prisoner rights cases, few of which ever go to trial. The *Vanishing Trial* study confirms this statement. In 2002, prisoners filed nearly 57,000 cases, but trials disposed of less than 0.9 percent of them. Between 1992 and 2002, prisoners' filings exceeded in number tort (49,588 cases) and contract (38,085 cases) filings. These statistics suggest to me and to many other scholars that the caseload crisis is one of pre-trial management and disposition, not one of limited trial resources. Higginbotham, for instance, reports that his court—the Fifth Circuit—employs about fifty lawyers, who work primarily to dispose of the prisoner case docket. Higginbotham, *supra* at 1422.

State court statistics give a similar, but yet incomplete, picture. Based on data provided by the National Center for State Courts for 22 states, jury trials fell by 33 percent during the period of 1976 through 2002. Jury trials disposed of .06 percent of total civil dispositions in 2002. Bench trials fell to 15.2 percent of total civil dispositions in 2002. *See* Patricia L. Refo, *The Vanishing Trial,* 30-2 Litig. 2, 3 (Winter 2004); Hope V. Samborn, *The Vanishing Trial: More and More Cases are Settled, Mediated or Arbitrated Without a Public Resolution. Will the Trend Harm the Justice System?,* 88 ABA J. 24, 27 (Oct. 2002).

People looking at the shift in dispute resolution processes quickly point out that while the decline in the number of trials has been dramatic, even in the "good old days," most cases settled before trial. They suggest we should not be too nostalgic about a process that disputants have not warmly embraced any time during the last 30 years. Some people,

[1] Paula M. Young is an assistant professor at the Appalachian School of Law located in Virginia teaching ADR. You can reach her at *pyoung@asl.edu.*

As Trials "Vanish," ADR Plays a Dominant Role in Dispue Resolution

Paula M. Young

including judges, argue that a trial represents the failure on the part of many people to resolve the dispute in a more timely, cost efficient, and fair way.

Reasons for the Decline

Scholars, practitioners, and judges have posed several reasons for the decline in the number of trials:

- Judges are trained to "clear dockets" quickly. One writer notes: "The sheer time it takes to manage these large caseloads may place such pressure on court resources that there simply isn't the time to try cases…In many jurisdictions, judges are evaluated based on their case disposition rates, an evaluation system that is uniquely hostile to trial dispositions because, by definition, they take longer." Refo, *supra* at 3.
- Judges are managing their dockets by creating scheduling orders that encourage an earlier exchange of information that parties need to assess the merits of their cases. Earlier disclosures, especially without burdensome discovery procedures, encourage earlier settlements. *See* Hon. John Coselli, *Session B6: Improving the Administration of Justice Through Effective Trial and Case Management: The Collaborative Scheduling Conference,* ABA Section of Dispute Resolution Conference, March 20–22, 2003.
- Discovery has become prohibitively expensive for most litigants and continues to be one of the biggest costs of litigation. Even in 1978, it consumed nearly 17 percent of litigators' time spent on trial preparation. Higginbotham, *supra* at 1417. I would guess that discovery takes up even more lawyer time some 30 years later. Judges do little to control discovery abuses. In fact, the magistrate judge system exists for the "care and nurture" of discovery. *Id.* Attorney billing models create incentives to conduct discovery even into tangential issues or for documents and other evidence a court is not likely to allow admitted at trial. *See* Jeffrey S. Leon, *Rethinking How We Litigate to Ensure We Continue to Litigate,* 15-5 The Advocate's Brief 1 (Jan./Feb. 2004), *www.advsoc.on.ca/publications/pdf/eBrief/E-BRIEF%20-%20Jan-Feb%202004.pdf.*
- The length of civil trials has increased, also increasing the cost of litigation. Refo, *supra* at 3.
- Lawyers, who have little trial experience, are afraid to try cases. Leon, *supra* at 2; Refo, *supra* at 4.
- The 1986 decisions in the *Celotex* trilogy reinforce a more active role by judges to dispose of cases by summary judgment long before trial. (Higginbotham's article suggests, however, that summary dispositions have remained fairly constant from 1981 to 2000, running between about 0.18 percent to and 0.14 percent of dispositions. Higginbotham, *supra* at 1421, Chart II.)
- The Sentencing Reform Act of 1984 and the adoption of sentencing guidelines and minimum sentencing in 1986 and 1988 made criminal trials far more risky for defendants.
- Corporate America perceives trials as expensive, slow, and risky. Corporations increasingly rely on pre-dispute arbitration clauses to force employees, suppliers, and customers into arbitration. From 1989 to 1999, the American Arbitration Association (AAA) reports that arbitrations conducted through it rose from 55,520 to 144,000. By 2001, AAA reported 218,032 arbitration filings. In other words, without taking into account filings with other third-party administrators like JAMS or the National Arbitration Forum or arbitrations occurring outside third-party administrators, the number of arbitration filings nearly equaled the number of total filings in federal courts during a similar time period! These statistics, however, do not explain the drop in trial dispositions. Most of the arbitrated disputes never get filed with a court, unless the defendant seeks to enforce an arbitration clause. Higginbotham, *supra* at 1414. *See also www.arbitration-forum.com/articles/emprcl_study_04/copy.asp* (reporting that 78% of trial and business attorneys find arbitration faster than lawsuits; 56% of trial attorneys find arbitration less expensive than lawsuits). However, these statistics suggest that corporate managers who find themselves in court will try to avoid the risks of trial, if possible.
- In 1999, Congress required federal courts to design and use ADR plans to dispose of cases. The plans are working to divert cases to ADR processes.
- For instance, in the United States District Court for the Eastern District of Missouri, mediators helped parties resolve 51 percent of referred cases in 1999, 48 percent in 2000, and 57 percent in 2001. *See www.moed.uscourts.gov/ADR/ADR%20Satisfaction%20Survey.pdf.* Several state circuit courts in Illinois report mediated settlement rates of 48 to 62 percent. *See www.caadrs.org/statistics/reports.htm.*
- Finally, unassisted negotiations resolve the majority of cases before trial. Negotiation plays a dominant role even though most lawyers have no, or less than five hours of formal training in negotiation skills and strategies. *See* Bobbi McAdoo & Art Hinshaw,

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> *The Challenge of Institutionalizing Alternative Dispute Resolution: Attorney Perspectives on the Effect of Rule 17 on Civil Litigation in Missouri,* 67 Mo. L. Rev. 473, 486-87 at Tables 4 & 5 (2002) (Reporting that 86 percent of Missouri attorneys responding to a Missouri Supreme Court sponsored survey had no (62 percent) or less than 5 hours (24 percent) of training in negotiation in 1997. Only 5 percent of the Missouri attorneys had more than 20 hours of training.)

Other scholars will continue the debate about the implications this "cultural shift" will cause to "justice," participation by citizens in basic institutions of democracy, and our system of *stare decisis.* I simply discuss the topic here to suggest, again, that the most valuable skills a lawyer can possess are good negotiation skills and the ability to effectively represent clients in mediation, arbitration, and other dispute resolution processes. Two new books published by the National Institute for Trial Advocacy (perhaps itself an irony) provide excellent advice to attorneys on these topics and skills. See Harold I. Abramson, Mediation Representation: Advocating in a Problem-Solving Process (NITA 2004) and John W. Cooley & Steven Lubet, Arbitration Advocacy (NITA 2003).

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Seminal Bermuda Innovations in International Insolvency Practice

John Milligan-Whyte [1]

Bermuda companies and the Supreme Court of Bermuda have been at the cutting edge of important innovations in international insolvency law and practice.

In 2002, Asia Global Crossing, Ltd was in Chapter 11 in the United States and in provisional liquidation in Bermuda when its assets were sold. Milligan-Whyte & Smith and Conyers Dill & Pearman were recipients, along with other firms, of the International Financial Law Review's 2002 Asian M&A Deal of the Year Award for their role in the sale of the its assets. This deal was selected from among 400 deals because of the use of Chapter 11 and provisional liquidation to facilitate the global expansion of the Chinese state-owned telephone company.

In 2003, an even more remarkable innovation was used to reorganize an insolvent Bermuda company and protect its assets for the benefit of some of its shareholders. The company, which was traded on the New York Stock Exchange, had its stock collapse when its U.S. insurance company subsidiaries were put into supervision by state insurance regulators. This resulted in shareholder suits in the United States. The company successfully implemented a Scheme of Arrangement, which used familiar legal mechanisms from the U.S., Bermuda and Great Britain. However, this combination, manner and international enforceability of claims adjudication, estimation, and rejection had never been seen before.

The familiar features included the following:

- An American debtor in possession concept from Chapter 11,
- A scheme of arrangement filing in Bermuda, but without the filing of a winding up petition; therefore, the Chairman of the company was not displaced as the Scheme Administrator by an insolvency practitioner,
- Very short bar dates for claims to be submitted, adjudicated, estimated or rejected, and
- The appointment of the former Chief Judge of the American Bankruptcy Court as Claims adjudicator.

The most profound aspect of this important innovation was making the adjudications, estimations and rejections of claims UNCITRAL [2] Arbitration Awards. This was accomplished by means of Court orders in Bermuda and the U.S. approving and implementing the Scheme and procedure. This, in effect, used the UNCITRAL Treaty. The UNCITRAL Treaty is binding in over 130 signatory countries, *as an international insolvency treaty.* This means of enforcing internationally the adjudication, rejection and estimation of claims in a rapid procedure with few appeal rights is the most significant innovation in international insolvency procedure in many years.

Creditor pressure led the scheme to be amended to permit a short period to allow for appeal to the court of the adjudication, estimation and rejection. Without that amendment, the UNCITRAL Arbitration Awards regarding claims would only have been appealable on the basis of fraud in the obtainment of the award, if at all. Additionally, appeal would need to take place in a proceeding where the whole mechanism for handling claims had been previously sanctioned by the American Bankruptcy Court, the Bermuda Court and the claims adjudicator, a highly respected former Chief Judge of the Federal Bankruptcy Court in America.

[1] John Milligan-Whyte is a partner at Milligan-Whyte & Smith in Bermuda.

[2] UNCITRAL is an acronym for the United Nations Commission on International Trade Law.

Seminal Bermuda Innovations in International Insolvency Practice

John Milligan-Whyte

The daringness of the Scheme was reflected, among other ways, in the use of only one class of shareholders and one class of creditors in voting on the Scheme of Arrangement. This deprived dissident shareholders and creditors of the protection of different classes of shareholder and creditor voting on the proposed Scheme before the results of the meetings were reported to and sanctioned by the Courts. This aggressiveness, itself, could have doomed the Scheme, but the point was not taken and the Scheme was sanctioned by both the American and Bermuda courts and then implemented.

The Scheme itself, apart from the improper definition of class interests in the voting on the scheme, contains many important and laudatory innovations that will be highly useful in sorting out future international insolvencies in many jurisdictions.

Lawyers who use this innovation in future insolvencies should eschew its more daring features as they could blight the effectiveness and the acceptability of the useful innovations. Courts in different jurisdictions will need to be made aware of the unusual features of the innovation, so that creditor's rights are suitably protected. In at least one international insolvency, an English Judge has initiated regular conference calls with the American Bankruptcy Judge handling the same insolvency. "Protocols" are also being negotiated among those dealing simultaneously in different jurisdictions with the same multinational insolvency to prevent unnecessary problems.

The Debtor in possession concept, central to Chapter 11, has never been accepted in English law. In the U.K., it is thought that an objective third party, an insolvency practioner, should be the Scheme Administrator. In this way, the Scheme Administrator's fiduciary duties can be carried out without the inherent conflicts of interest of having the management of the company and its dominant shareholders control the Scheme of Arrangement and claims adjudication, rejection and estimation processes.

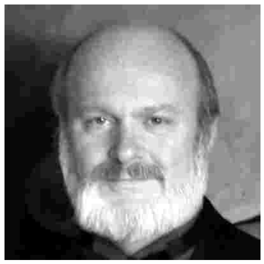
Nonetheless, this innovative Scheme is another example of the leadership role Bermuda Courts have taken in the development of judge-made international insolvency law. Another example is the introduction of the estimation of claims in a reinsurance company's liquidation by Price Waterhouse Coopers Bermuda in 1987. This was done in order to speed up the liquidation and payment of claims in the Cambridge liquidation and was then followed in many other jurisdictions.

This trend is likely to continue and will be assisted by the appointment of Dr. Ian Kawaley as a Puine Judge of the Bermuda Supreme Court in 2003, after the sanctioning of the innovative scheme described above. Dr. Kawaley is well known to the international insolvency bar and is an editor, along with Gabriel Moss, of *Cross-Frontier Insolvencies of Insurance Companies* published by Sweet & Maxwell. In addition, Richard Ground Q.C. has recently been appointed Chief Justice of The Supreme Court of Bermuda.

Meet Our Colleagues

Joe DeVito

Patrick H. Cantilo, P.C.



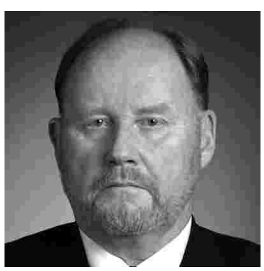
Patrick Cantilo, who first joined SIR, IAIR's predecessor, as a Charter Principal Member, is a founding and managing partner of Cantilo & Bennett, L.L.P., in Austin, Texas. He has devoted much of his legal career to insurance and health-care regulatory issues throughout the country, with emphasis on insolvency and reorganization.

Patrick started working in this arena in 1978, when he served as a law clerk for the Texas receiver, and went on to serve as staff counsel for the receiver for three years, before leaving for private practice. In the ensuing decades he has continued to concentrate on insolvency matters, though he has also spent years in malpractice defense and other litigation, and has become well known in managed care regulation and insurance restructuring, including involvement in the proposed conversion of Blue Cross plans in more than a dozen states.

Throughout the years, Patrick has been very active at the NAIC, NAMCR and IAIR, having been involved in the drafting of a number of model acts and position papers in these areas. In addition, Patrick has been a frequent presenter at seminars covering these topics, having served on the faculty of more than three dozen such programs, for a number of which he also served as organizer or chairman.

Over the years, Patrick has represented or worked for state regulators in more than fifteen states as well as The United States (HCFA), NAMCR and the NAIC. Currently he serves as the Special Deputy Receiver of a large life company and a large P&C company, and as chief counsel of another large P&C company in receivership. When not at work (a rare occurrence) he likes to travel in large family groups. He received his B.A. and J.D. from the University of Texas at Austin, where he remains a nearly obnoxious sports-fan.

Joseph A. Fink



Joe Fink is the senior regulatory and insurance litigation attorney for the Michigan and Washington, D.C. based firm of Dickinson Wright PLLC, and he maintains offices in Lansing, Michigan, and Detroit, Michigan. He is a graduate of Oberlin College and Duke University School of Law. Joe directs his firm's insurance industry practice, is the representative of a Michigan domiciled insurer to the Insurance Institute of Michigan, is a member of The Association of Life Insurance Counsel, as well as a member of IAIR, and is also a director of two property and casualty insurers, one of which is publicly traded.

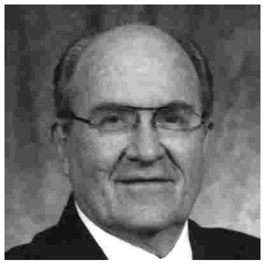
Over the last 15 years, Joe has dealt with substantial numbers of troubled and insolvent insurers in Michigan. During this time period, he has been appointed by Missouri and Michigan as a Supervisor, appointed by Michigan as a Special Examiner, a Conservator, a Deputy Receiver, and an Assistant Michigan Attorney General with regard to receivership estates, and has represented numerous Insurance Commissioners with regard to the receiverships as well as in litigation arising out of or related to receiverships. He has additionally represented numerous insurers and guarantee associations with regard to complex receivership issues in Michigan and elsewhere. Joe's practice focuses on technical receivership issues as well as litigation aspects relating to receiverships, insurers, reinsurers and other complex commercial relationships, both within the insurance industry, where he is currently defending five putative class actions for insurers and health care companies, as well as litigation and commercial transactions wholly unrelated to the insurance industry or receivership matters.

He is married to the beautiful Marcia Horton, has two sturdy adult sons, three lovely granddaughters, resides on a lake in the Lansing, Michigan, area, maintains an apartment in Detroit, and escapes from time to time in the winter to North Palm Beach, Florida.

Meet Our Colleagues

Joe DeVito

Arthur O. Dummer



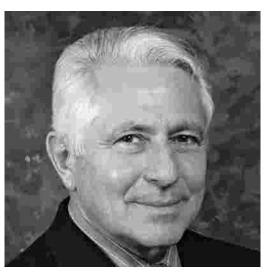
Art is the President of The Donner Co., a Salt Lake City, Utah firm which provides actuarial consulting services and reinsurance consulting and intermediary services in the life and health insurance arena. He received a B.S. degree from the University of Utah in 1959, and was elected to Phi Beta Kappa and Phi Kappa Phi, honorary academic societies. He is an FSA, MAAA and FCA.

The 45 years of his career include a stint as the Chief Examiner for the Utah Insurance Department, a senior officer of Beneficial Life Insurance Company, over 25 years as a consulting actuary and concurrent directorships in several life insurance companies. He is currently a member of the Board of Directors of American National Insurance Company of Galveston, TX and American Community Mutual Insurance Company of Livonia, Michigan.

A significant part of his work has involved turnaround situations and receiverships involving life and health insurance guaranty association activities. In particular, for the National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA"), he has been Chairman of the following Task Forces: Baldwin United Insurance Companies, Executive Life Insurance Company, Mutual Benefit Life Insurance Company and others. He is past Chairman of the Board of the Utah Life and Health Insurance Guaranty Association, past Chairman of the Planning Committee and member of the Executive Committee for the Utah Insurance Laws Recodification Commission, and past Chairman and Director of the National Organization of Life and Health Guaranty Associations.

Personal interests include a wide variety of reading, playing bridge, boating and houseboating, off-road and road motorcycling, bicycling, hiking and golfing.

Donald T. DeCarlo



Don DeCarlo focuses his practice on insurance regulation, product development and alternative dispute resolutions.

Don has 38 years of experience in the insurance industry, including nine years as General Counsel to the Travelers Group of Insurance Companies, which grew from under $4 billion in premiums to over $100 billion during his tenure. At the American Insurance Association, he served as Senior Vice President Counsel to member companies concerning workers' compensation, employers' liability law and related matters.

Don served 14 years as General Counsel at the National Council on Compensation Insurance (NCCI), where he provided legal advice to NCCI officers on insurance law and chaired several major insurance industry and NCCI committees. The first nine years of his career were spent in insurance sales management with Government Employees Insurance Company (GEICO).

Don is the founder of the American Society of Workers' Comp Professionals, Inc. (AMCOMP), a professional society that certifies those who work in the highly specialized field of workers' compensation. He also was appointed a Commissioner of the New York State Insurance Fund by Governor Pataki, and confirmed by the State Senate. Don has authored two books; a number of journal articles, and writes a monthly column for Risk & Insurance magazine.

Don graduated from Iona College (B.A., 1960) and St. John's University (J.D., 1969).

Joe DeVito

Receivers' Achievement Report

Ellen Fickinger

Chair: 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); Evelyn Jenkins (TX)
	International:	Jane Dishman (England); John Milligan-Whyte (Bermuda)

Our achievement news received from reporters for the second quarter of 2004 is as follows:

Mark D. Tharp (AZ) provided an update on **Premier Healthcare of Arizona, Inc.** Premier Healthcare is an Arizona health care service organization (HCSO) that was placed into receivership on November 16, 1999. The Superior Court, Maricopa County, Arizona, issued an Order that medical providers contracted with the HCSO are considered creditor claimants of the estate. On April 20, 2004, the Arizona Court of Appeals upheld the Superior Court's ruling.

In Illinois, **Mike Rauwolf (IL)** continues to provide information on the two companies under OSD supervision, **American Mutual Reinsurance, in Rehabilitation (AMRECO)** and **Centaur Insurance Company, in Rehabilitation.**

Total Claims Paid Inception to Date	**AMRECO**	**Centaur**		
Loss and Loss Adjustment Expense	$	30,449 $	53,294,714	
Reinsurance Payments	$	69,343,555	$	4,945,493
LOC Drawdown Disbursements	$	9,613,386	$	13,876,555

RECEIVERSHIP ESTATES OPENED

State	**Name of Insurer**	**Date of Order**	**Type of Order**	**Primary Line of Business**
AZ	Old West Annuity & Life Insurance Co.	March 2, 2004	Rehabilitation	Annuities

(Mark Tharp, State Contact Person)

RECEIVERSHIP ESTATES CLOSED

State	**Name of Insurer**	**Category**	**Licensed**	**Year Action Commenced**	**Payout Percentage**
IL	Intercontinental Insurance Company	P&C	Yes	Liquidation 1/12/1990	Class A 100% $ 420,996
					Class D 11.3% $13,493,227

(Mike Rauwolf, State Contact Person)

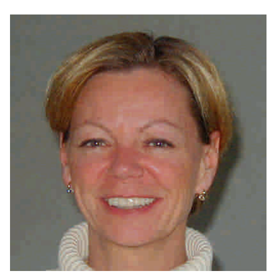
Receivers' Achievement Report

Ellen Fickinger

DISTRIBUTIONS

Early Access and other funds paid to Guaranty Funds or Associations and disbursements to policy/contract creditors.

Estate	Loss and LAE	Early Access Distribution	Return Premium	Reinsurance Payments
Alliance General Insurance Co.	$ 389	$ 20,169		
Alpine Insurance Company	$ 2,639			
American Horizon Insurance Co.		$ 786,595		
American Mutual Reinsurance Co.				$ 706,179
American Unified Life and Health Co.		$ 133,884		
Associated Physicians Ins. Co.		$ 346,479		
Coronet	$ 89			
Delta Casualty Company	$ 119	$ 22,077		
First Oakbrook Corp. Syndicate	$ 120			
Gallant Insurance Company	$ 836	$1,300,000		
Illinois Healthcare Insurance Co.	$ 718			
Illinois Insurance Co.	$ 249	$ 480,000		
Inland American Insurance Co.		$ 1,812		
Legion Indemnity Co.	$22,314	$ 417,087		$2,428,456
Oak Casualty Insurance	$ 1,440	$1,200,000		
Prestige Casualty Co.	$ 1,903			
Statewide Insurance Co.	$ 105		$41,422	
United Capital Insurance Co.		$ 251,110		
Valor Insurance Co.	$ 4,223	$1,300,000		
Western Specialty Insurance Co.		$ 150,000		



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