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A Long and Winding Road: Large Deductible Begins Moving Through the States

Barb Cox and Nick Crews

Over the past decade, large insolvencies in the property-casualty industry have brought sweeping changes to the insolvency landscape. Upping the stakes have been large commercial products that have introduced new levels of challenge to the guaranty funds, entities that were never designed to handle such large, state-spanning risk management tools.

Examples of these products are the large deductible programs used by commercial insureds to manage their risks. Disagreement about how to best parse reimbursements related to these coverage mechanisms also has brought dissention to the insolvency community and not a little hot debate in the halls of The NAIC and elsewhere, most notably between the guaranty funds and receiver community.

Large deductible: outside the scope of original guaranty funds statutes

Large deductible policies are products which permit the policyholders to retain the risk for a substantial portion of their potential claim liability, thus realizing considerable savings in premium payments. Deductible amounts on these programs are commonly set at $100,000 or more. They are typically written for workers compensation, automobile and general liability lines. Under these arrangements, the policyholder agrees to reimburse the insurer dollar for dollar up to the deductible amount for each claim.

In the formative period of the guaranty fund system, state policymakers did not envision the guaranty funds as protection against large commercial insurers. The original policy intent of guaranty funds was to protect average "citizen" policyholders, those most vulnerable to the potentially crippling financial impact of insurer insolvency.

Over the past decade, however, responsibility to backstop these sometimes huge and geographically farreaching commercial products has fallen to the guaranty fund system, raising questions about how these programs should be addressed in insolvency laws. For the guaranty funds and receiver community alike, questions about how to manage deductible products in insolvency have underscored a legitimate public policy question, one that's been given expression in several forums, including the NAIC.

At the heart of the debate is the question: Are receivers or guaranty funds entitled to insolvency-related large deductible reimbursements?

During the NAIC deliberations, Thomas Jenkins and Rowe Snider of Lord Bissell weighed in on the issue. "The dispute itself is simple," they wrote. "When a guaranty fund pays claims within a policyholder's large deductible, what entity is entitled to the benefit of the corresponding Reimbursements paid by the policyholders? The lines on this issue are distinctly drawn. The guaranty funds contend that the Reimbursements belong to the guaranty funds, which generated the Reimbursements by paying the claims in the first instance. The receivers contend that the Reimbursements belong to the estate of the insolvent insurer." [1]

Ultimately, the NAIC adopted an approach wherein the guaranty funds would receive prompt early access for claim payments within deductible amounts to the extent reimbursements were forthcoming or collateral was available. However, the deductible asset would be, at the end of the day, treated as a general asset of the estate.

State legislatures have so far dealt with the issue in a very different way. The actions of the states are, of course, key to how the issue will be dealt with in insolvent estates. In the end, the legislatures that originally created the guaranty fund system will have the final say on how they handle the issue of large deductible reimbursements.

State legislatures are already taking action on the large deductible issue. To date, six states have adopted large deductible language and have woven it in to their liquidation acts. These include California, Illinois, Michigan, Pennsylvania, Texas and Utah. In addition, related legislation, which addresses the rights of the New Jersey Workers' Compensation fund, is also in place.

This groundswell of activity represents policymakers' successful efforts to update the public policy, retrofitting it to apply to today's new insolvency landscape.

Credit General Starts Debate

The large deductible debate traces its origins to the early 2000s when the Credit General companies were ordered liquidated. The liquidation marked the first time receivers and guaranty associations had dealt with large deductible policies in a significant way.

The dollars at stake were large; deductible amounts frequently were set at $100,000 or more. Not surprisingly, the debate centered on ultimately who was entitled to the large deductible asset. Should it flow at one hundred cent dollars to the guaranty association that paid the claim, or to the receiver of the insolvent company to be treated as a general asset of the estate?

The debate quickly intensified when the Reliance Insurance Company was liquidated in October 2001. This behemoth estate involved a significant book of large deductible business and sparked discussions between the Reliance receiver and the guaranty funds.

After prolonged settlement negotiations, the receiver filed suit with the Pennsylvania court to determine the character of the deductible asset. Ultimately, the matter was resolved, or approached being resolved, by the enactment of Act 46 as part of the Pennsylvania Insurance Code. The Act represented the first legislation that specifically focused on the "large deductible" issue.

Act 46 by no means was a simple piece of legislation. This is because the law sought to clarify to a degree many issues, not the least of which was the allocation of collateral should receivers need to tap collateral to fund deductible claims that were not reimbursed by the insured.

Further complicating legislative effort was the fact that the legislation was floated against the back drop of a high profile insolvency in which many stakeholders had investment in how ultimate payout would occur under this new law.

For example, some insureds had surplus lines policies on Reliance paper designed to fund the payouts within deductible amounts. Under these circumstances, payouts would not be covered by the guaranty funds. In the eyes of these insureds, however, it hardly seemed fair that insureds would be compelled to fulfill their reimbursement obligation under the deductible policy, but not be reimbursed for the coverage they purchased to fund this reimbursement. The matter was ultimately addressed in the Pennsylvania deductible legislation.

Next up: Illinois

Illinois was the next state to enact deductible legislation. The legislation was a "standalone" measure spurred in part by the insurance industry to address significant troubled company activity in the state. The American International Group (AIG) and the American Insurance Association (AIA) spearheaded the effort to push the bill through the legislature.

A focus of the legislation was that the bill be applicable to any troubled company in line for potential imminent liquidation. In the end, effective date language was agreed to that most felt would serve the purpose.

In 2005 Texas followed with its own version of large deductible legislation. Before IRMA was finally adopted at the NAIC, there was a strong push by the Texas Commissioner to repeal the current liquidation act – described by many as antiquated – and replace it with an IRMA-based statutory scheme. It became clear to backers that this would not be possible unless the legislation addressed the large deductible issue. On the eve of adjournment of the Texas legislature, the Insurer Receivership Act became Chapter 21A of the Texas Insurance Code (later recodified as Chapter 442.)

The legislation included a deductible provision that, while different in many respects from Pennsylvania's Act 46, accomplished essentially the same goal; that is, ensuring the deductible asset flowed directly to the guaranty associations.

Other States Follow

California soon followed with a deductible provision that, once again, called for the deductible assets to flow to the guaranty associations.

For decades the case law in California had clearly stated deductible recoveries for claims paid by the guaranty association belonged to the guaranty association and were not assets of the estate. The deductible issue traditionally was governed by a 23-year-old California published opinion, In re Imperial Insurance Company, 203 Cal. Rptr.664 (App. 2d Dist. 1984) that clearly outlined who was entitled to the deductibles with respect to claims paid by the guaranty association.

Prior to the Reliance insolvency there had not been a dispute between the California liquidators and the guaranty funds on these matters; in issues arising from Reliance, however, out-of-state liquidators began to take the position that deductible claims are the general assets of the estate.

To sort through these issues, the California Department of Insurance through its Conservation & Liquidation Office began working with the California Insurance Guarantee Association to come up with acceptable statutory language to counter the efforts of out-of-state liquidators. This language took for its model the Illinois Act, with which the California language tracks fairly consistently.

Today, Section 1033.5 of the California Insurance Code clearly states that deductible recoveries are not a general asset of the estate.

In Michigan, large deductible legislation was part of a package of reforms that revised both the property casualty guaranty association act and the liquidation act. The language closely tracks a model prescribed by the NCIGF board task force.

Utah

In 2007, Utah was the site of the most recent development in large deductible legislation – as part of an expansive bill that called for repeal of the current liquidation act and enactment of so-called "IRMA based" legislation.

Utah was slow to address the deductible issue. Deductible business was neither written in a big way by Utah domiciled companies nor ever would be, or so the thinking ran. An IRMA bill was floated in the Utah legislature shortly after the adoption of the IRMA model by the NAIC. However, the original draft was silent on the deductible matter.

While IRMA had been adopted by the NAIC at the point Utah floated its proposal, the deductible matter had not yet been finally addressed. Simultaneous with the discussions regarding the Utah liquidation bill, heavy debate was in progress regarding what the deductible provision ultimately added to the NAIC model would look like.

The Utah Commissioner preferred to wait out this debate and not deal with the issue in Utah until the matter was resolved at the NAIC. However, after intensive discussion with the insurance industry over the matter, a deductible provision was added to the Utah proposal. Like the provisions in the states that came before it, the deductible statute in Utah called for the asset to flow to the guaranty associations.

In the end, liquidation act reform was enacted in Utah in 2007. In addition to resolution on the deductible matter, the Utah package contained many other differences from the IRMA model.

The Future of Deductibles

Large deductible statutes are now law in seven states. All call for the deductible asset to flow to the guaranty associations. However, the heavily debated NAIC model takes a much different approach.

Under the model, the guaranty funds would receive what has been described as "accelerated early access" for deductible amounts. The character of the asset would be, however, a general asset of the estate – meaning in most cases at the end of the day the funds would not receive a full reimbursement of their payouts within deductible amounts. Some object to provisions that in essence call for the guaranty funds to pay out in claims more than what would have been the ultimate liability of the solvent insurance company.

While some version of the NAIC model has been discussed for adoption in modified form in one jurisdiction, so far no state has introduced a bill. A development that could have significant impact on the future course of deductible legislation occurred recently in California. On July 20, 2007 Assembly Bill No. 1364 was signed in to law; the bill dealt with special deposits for workers' compensation liabilities.

These deposits are significant and designed to secure the insureds workers' compensation writings in California. In essence, the new law simply states: insurance companies domiciled in a state that calls for deductible reimbursements, or collateral draw downs, related to payments made by the guaranty associations to be general assets of the insolvent estate, will pay deposits based on that within deductible amount. California is by any measure a significant workers' compensation market; this being the case, almost certainly the insurance industry will view carefully any law development that might increase the cost of doing business in this jurisdiction.

Issue resolved in state capitals

As the large deductible debate makes its way through the states, one point remains clear: the public policy that will arise from this debate will, in the end, be shaped not by the guaranty funds, trades or the NAIC, but by individual state legislatures. The legislatures, which originally created the guaranty fund system, will make the final determination on the issue of large deductible, ultimately resolving what's become one of the most hotly debated and divisive issues faced in recent years by the insolvency community.

Barb Cox is Vice President Legal & Regulatory Affairs and Corporate Secretary of the National Conference of Insurance Guaranty Funds (NCIGF). Nick Crews is Director of Communications of the National Conference of Insurance Guaranty Funds.

[1]Jenkins, Thomas, Snider, Rowe. "Why Large Deductible Reimbursements Belong To Insurance Guaranty Funds." NCIGF white paper 2006.

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BOARD TALK-Meet Edward B. Wallis, ESQ, J.D.

Jamie Saylor and Michelle Bolter
Veris Consulting, LLC

After having featured Ken Weine, one of our newer board members, in the summer Receiver issue, this edition focuses on outgoing board member, Ed Wallis. Ed has been a member of IAIR since 2001; his term on the Board began in 2005 and ended this December 2007. Ed is an active member of IAIR, serving on the Education Committee, the Publications Committee and the Guaranty Fund Liaison Committee.

Ed has served the insurance industry throughout his entire career. Most recently his service to IAIR and his work through the National Conference of Insurance Guaranty Funds (NCIGF) has been focused on coordinating the efforts of state guaranty associations and insurance receivers to assist policyholders through an insolvency process that can be both confusing and intimidating.

Ed was born and raised in Lafayette, Indiana. He is a Hoosier through and through, having attended Indiana University for his undergraduate business degree as well as his law degree. Ed's career started out at a small law practice in Evansville that focused on insurance company defense work, and specifically property and casualty carriers. From there Ed became in-house counsel for Lafayette Life Insurance Company where he served for 24 years as chief legal counsel and later as its president. During his tenure, Ed and his associates helped to build Lafayette Life from a company with less than $1 billion of in-force life insurance to a company with over $20 billion of life insurance in-force and $1 billion in assets.

From Lafayette Life, Ed moved to the NCIGF in 2001. NCIGF is a nonprofit association designed to provide national assistance and support to state property and casualty guaranty funds. Ed has been involved in coordination of efforts between the NCIGF and the National Organization of Life & Health Insurance Guaranty Associations (NOLHGA) to educate Congress about the importance of the role of state guaranty funds in light of recent congressional legislation attempting to create an optional federal charter. Ed retired from NCIGF in 2006 but actively consults with them on state guaranty fund matters.

While quick to point out that his greatest accomplishment was helping to raise a family of three children and six grandchildren with his wife, Nancy, Ed highlighted three professional accomplishments of which he's most proud. First was his role in building Lafayette Life Insurance Company through a philosophy of unparalleled customer service and an emphasis on professional management. Second, as a lawyer, the privilege of representing people in legal matters has given Ed a true sense of accomplishment and service throughout his career. And finally, as member of the board and management of the United Way in Lafayette, Ed has played an integral role in building five centers in Lafayette that provide twenty-four-hour child care to low income families.

As a parting thought, Ed feels that one of the biggest challenges facing IAIR is its ongoing efforts to continually involve the most talented and skilled insurance receivers in the industry in IAIR's membership. Ed feels IAIR must continue to be a place where receivers come to seek knowledge, gain knowledge and exchange knowledge.

While we encourage IAIR members to seek out Ed's wisdom professionally, we wanted to share some personal insight into Ed that we got from a few non-traditional questions that we posed to him recently.

Q: If you could have dinner with any three people in the world, dead or alive, fictional or non-fictional, who would they be and why?

A: Pope John Paul II, President Abraham Lincoln and President Dwight D. Eisenhower.

As a Catholic himself, Ed would cherish the opportunity to talk to the religious leader who was responsible for making so many of the decisions that helped to modernize the Catholic Church. From an historical perspective, Abraham Lincoln's role as both president and his daily duties and oversight of military operations as Commander-in-Chief are achievements that Ed feels cannot be underestimated. And while Ed admires President Eisenhower's service as president, Ed feels that the challenges that Eisenhower faced as general in the United States Army during World War II were more difficult than those he encountered while in office. In case you couldn't tell from this question, Ed also mentions that he's a history buff and loves reading historical non-fiction.

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

A: Ft. Lauderdale, Florida. A combination of the hotel, location and weather made this one of Ed's favorite meeting sites.

Q: What is your favorite leisure activity?

A: Fishing. Ed lives on Lake Monroe in Indiana but never has quite enough time to catch his quota of bass and walleye.

Q: Where's the last place you vacationed?

A: Ed and his wife spent some quality time in Rome, Italy in May 2007 and also made a stop at the Vatican.

Q: Give us one piece of personal information that even your good friends don't know about you?

A: Ed has recently started learning to play the acoustic guitar. While not ready for public entertaining, Ed looks forward to the peace that strumming the guitar gives him.

Thanks to Ed Wallis for his candid and insightful comments for this article.

View from Washington

Charlie Richardson

The mortgage meltdown and the debate over the Iraq war are soaking up almost every bit of oxygen in DC, but here are some things that you might find interesting.

Federal Insurance Charter Bill New House Option

On July 25, Representatives Melissa Bean (D-IL) and Ed Royce (R-CA) introduced the "National Insurance Act of 2007" (H.R. 3200), which would authorize an Optional Federal Charter for life and property/casualty insurance companies and agents. The 333-page bill is companion legislation to a Senate OFC bill (S. 40), which Senators Tim Johnson (D-SD) and John Sununu (R-NH) introduced on May 24. The bill is available at *http://thomas.loc.gov.* Hearings are possible yet this year in the House, Senate or both.

Flood Insurance Reform Floated by House

The House Financial Services Committee approved H.R. 3121, the *Flood Insurance Reform and Modernization Act of 2007.* Included in the bill is a proposal by Rep. Gene Taylor (D-MS) to cover multiperil flood and windstorm damages, addressing the wind versus water legal disputes common after Katrina. The bill limits damages to $500,000 for residential structures and $150,000 for contents and loss of use and $1,000,000 for nonresidential structure and $750,000 for contents and loss of use. Local governments would have to adopt and enforce building codes to minimize wind damage in addition to flood program requirements already in place. The Government Accountability Office (GAO) also issued a report calling for FEMA to change the way it compensates private insurers for flood insurance.

Katrina Court Stops Litigation Flood

Allstate and other insurers won a key battle over Hurricane Katrina damages when a federal appeals court in Louisiana on August 2 ruled that homeowners were not entitled to damages from insurers for levee breaches that flooded New Orleans during the 2005 disaster. "Even if the plaintiffs can prove that the levees were negligently designed, constructed or maintained and that the breaches were due to this negligence, the flood exclusions in the plaintiffs' policies unambiguously preclude their recovery," the Fifth Circuit Court of Appeals said.

NAIC Interstate Compact

One of the NAIC's key modernization initiatives — the interstate product compact that applies to life, annuity, disability and long-term care products — is now up and running. Thirty states have signed on (50% of premium volume, with more in the pipeline). The Compact's new executive director is Fran Arricale, headquartered in Washington, DC. She reported on the Compact's plans and activities so far at the NOLHGA Legal Seminar in San Francisco in July.

TRIA Extension a Question Mark

In September, the House of Representatives approved an extension of the federal terrorism insurance backstop for 15 years. The Terrorism Risk Insurance Revision and Extension Act — which passed by a vote of 312 to 110 — would also add group life to the list of insurance lines covered by the backstop, which is slated to expire December 31. The measure would also expand the program to respond to acts of both domestic and foreign-initiated terrorism and by requiring insurers to offer coverage for acts of nuclear, chemical, biological and radiological terrorism. The Bush Administration promptly issued a policy statement saying that the President would veto the bill in its current form. The Administration believes that the backstop should be steadily reduced and that the private insurance market should eventually handle terrorism risk.

The Senate Banking Committee has yet to unveil its own TRIA legislation. When the program was last extended in late 2005, the basis was a Senate measure that ignored a more detailed House extension bill and scaled the existing program back in a way that finally won Administration support.

Bankruptcy Court Defines Limitations on Foreign Company Use of Chapter 15

Harold S. Horwich
Bingham McCutchen LLP

A recent decision from the United States Bankruptcy Court for the Southern District of New York defines limitations on foreign companies' — including insurance companies — use of Chapter 15. Judge Burton R. Lifland recently held that Chapter 15 relief was not appropriate in the case of two hedge funds that had filed liquidation proceedings in the Cayman Islands, as such proceedings were neither "main" nor "nonmain" proceedings and therefore ineligible for relief under Chapter 15. The court gave the funds 30 days to file a Chapter 7 or a Chapter 11 petition if they want protection from the bankruptcy court. In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd. and In re Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage Master Fund, Ltd., No. 07-12383 (BRL) and 07-12384 (BRL) (Bankr. S.D.N.Y. Aug. 30, 2007). The decision focused on the facts of the cases, but provides meaningful guidance to foreign insurance companies that may wish to use U.S. bankruptcy law protections.

Background: Chapter 15

Chapter 15 was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). It replaced former Section 304 of the Bankruptcy Code and implements in the United States the Model Law on Cross Border Insolvency, which was prepared by the United Nations Commission on International Trade Law (UNCITRAL). The objectives of Chapter 15 are to advance: (i) cooperation between courts of the U.S. and foreign countries; (ii) greater legal certainty for trade and investment; (iii) fair and efficient administration of cross-border insolvencies so as to protect the interests of all stakeholders; (iv) protection and maximization of the value of foreign debtors' assets; and (v) rescue of financially troubled businesses. Whether a particular foreign proceeding is "main" or "nonmain" dictates the manner and extent to which relief can be granted by the bankruptcy court to a foreign proceeding. A non-exhaustive list of relief available to a foreign proceeding's representative in a Chapter 15 case includes: automatic stay of actions against the debtor, ability to operate the debtor's business, examination of witnesses, and entrusting administration of the debtor's U.S. assets to a foreign representative. As a general matter, foreign "main" proceedings will receive certain relief and benefits automatically under Chapter 15, while foreign "nonmain" proceedings may be granted relief on a discretionary basis.

Background: Case Facts

The two hedge funds involved in this decision had suffered losses to their portfolios as a result of the highly publicized crash of the sub-prime lending markets earlier this year. These losses resulted in margin calls from the funds' trade counterparties that could not be met, resulting in defaults and the exercise of rights to sell off assets of the funds. The funds are "exempted limited liability companies" organized and registered under the laws of the Cayman Islands. The boards of directors of the two hedge funds authorized the filing of wind-up petitions in the Cayman Islands. The Cayman Grand Court entered orders appointing Joint Provisional Liquidators (JPLs). The JPLs then sought relief from the Bankruptcy Court for the Southern District of New York pursuant to Chapter 15, contending that the Cayman proceedings should be recognized as foreign "main" proceedings on the basis that the Cayman Islands are the "center of main interests" for the funds or, in the alternative, as foreign "nonmain" proceedings as, at a minimum, the funds have an "establishment" in the Cayman Islands. A Chapter 15 case would protect the funds against the seizure of assets located in the United States.

The Bankruptcy Court Decision: Judge Lifland

Judge Lifland recognized that while Chapter 15 gives the courts substantial discretion and flexibility to give relief to foreign proceedings, the recognition of a Chapter 15 petition is a threshold prerequisite that must be met. Thus, a court must first determine whether a foreign proceeding is "main," "nonmain" or neither before any relief is granted.

Foreign "Main" Proceeding

Under Chapter 15, a foreign "main" proceeding is a foreign proceeding pending in the country where the debtor has the center of its main interests (COMI). Under the Bankruptcy Code, the COMI is presumed to be the location of the debtor's registered office, absent evidence to the contrary. Judge Lifland held that the evidence showed that the COMI was in the United States, not in the Cayman Islands, thus rejecting the assertion that the Cayman Islands proceedings were foreign "main" proceedings. The funds had no employees or managers in the Cayman Islands, the investment manager for the funds was located in New York, the back-office operations were located in Massachusetts, all of the funds' liquid assets were located in the United States and the investor registries were maintained in Ireland. The only connection with the Cayman Islands was that the funds were registered there.

Foreign "Nonmain" Proceeding

Judge Lifland also rejected the assertion that the Cayman proceedings were foreign "nonmain" proceedings. Lifland held that to be considered "nonmain," there must be an "establishment" in the Cayman Islands. Under Chapter 15, an "establishment" is "any place of operations where the debtor carries out a nontransitory economic activity." Judge Lifland interpreted this to mean a "local place of business." Referring to the evidence listed above, Judge Lifland concluded that there had been no pertinent nontransitory economic activity conducted locally in the Cayman Islands by the funds. By contrast, Judge Lifland did note that in another case involving a Cayman Islands fund, Chapter 15 relief was granted, and the Cayman proceedings were recognized as foreign "main" proceedings, where the investment manager and the administrator were Cayman Islands' entities who maintained the books and records in the Cayman Islands and managed the debtor's day-to-day business in the Cayman Islands. Amerindo Internet Growth Fund Limited, Case No. 07-10327 (Bankr. S.D.N.Y. 2007). Although he denied the motion for recognition of the cases under Chapter 15, Judge Lifland did specifically state that U.S. bankruptcy law was available to assist the funds, under Chapter 11 or Chapter 7 should the funds so choose, and further noted that if a Chapter 11 or Chapter 7 case was commenced, U.S. law still provided for the ability of a U.S. bankruptcy court to cooperate with the Cayman proceedings.

Comment

The decision takes a step in defining the contours of Chapter 15. Bankruptcy judges will continue to recognize Chapter 15 cases and provide foreign representatives with access to and cooperation from the bankruptcy courts where debtors have sufficient connections with the foreign jurisdictions. See In re Hollinger, No. 07-11029 (PJW) (Bankr. D. Del. Aug. 28, 2007) (recognizing Canadian proceeding as foreign "main" proceeding and granting Chapter 15 status). See also Bancredit Cayman Limited (In Liquidation), Case No. 06-11026 (Bankr. S.D.N.Y. 2006) and Amerindo Internet Growth Fund Limited, Case No. 07-10327 (Bankr. S.D.N.Y. 2007) (discussed by Judge Lifland in his opinion). Judge Lifland's message is that the courts should not merely rubber stamp Chapter 15 recognition requests, even in the absence of objections by sophisticated creditors, but that each request for recognition calls for a fact-based inquiry in which the foreign representative must provide evidence that the threshold requirements of Chapter 15 are met.

For insurance companies (particularly captives), an analysis as to the availability of Chapter 15 relief is likely to be complex. Many captive insurers have no more contact with their jurisdiction of incorporation than the hedge funds had in the Bear Stearns case. This would suggest that they too should be denied Chapter 15 relief in favor of initiating proceedings under Chapter 7 or Chapter 11. This would appear to be the correct result unless regulatory authorities advocate a different result.

If the regulator in the jurisdiction of an insurer's incorporation takes an active interest in the insolvency proceedings, it should be expected that a Bankruptcy Court will find that the COMI of the business is in that jurisdiction. However, in the case of captive insurers, experience suggests that the regulator is unlikely to take an active interest.

The other regulator that might take an interest is a regulator in the United States. Section 109(b)(3)(A) makes Chapter 7 and Chapter 11 unavailable to foreign insurance companies engaged in such business in the United States. Legislative history indicates that the reason for this exclusion is that other insolvency laws exist for the disposition of insolvent insurance companies that do business in the United States. Such laws exist at the state level and all of them provide that insolvency proceedings must be initiated by the regulator rather than the company. If the regulator does not express an interest in the affairs of the foreign company, state insolvency proceedings are unavailable. In this situation, Chapter 7 or Chapter 11 relief is probably appropriate. While it would be possible for creditors to argue against Chapter 7 or Chapter 11 relief on the basis that a foreign company did business in the United States, it seems unlikely that a court would deny relief where state regulators had determined that there was insufficient business activity in the U.S. for them to exercise jurisdiction.


SIMPLIFY THE COMPLEX

Press Release- For Immediate Release

Double Celebration For Tawa

Monday 29 October 2007

Tawa plc is pleased to announce that at the annual dinner of the Association of Run-Off Companies (ARC) held last Thursday night 25 October 2007 at Plaisterers Hall in the City of London, Philip Singer chairman of Tawa Management received the ARC Award for Services to Run-Off. This is a lifetime achievement award designed to recognise "a real and significant contribution in an influential capacity over a considerable period of time to the run-off market." The judging panel noted that Philip had been involved in the run-off market for more than 30 years during which time he had been responsible for introducing and developing a number of techniques for dealing with the problems of run-off which had now become standard practice in the industry.

David Vaughan, COO of Tawa plc said "we are all delighted that Philip's lifetime contribution to the run-off market has been formally recognised by this award. It is well-earned and reflects his many contributions to the industry over the years. Not the least of these was his massive contribution to run-off closure innovation by way of the crystallisation methodology, which he first introduced for insolvencies, with his ground breaking accelerated closure of the Cambridge Re liquidation in Bermuda during the late 1980's, and which he then migrated to drive the closure of substantial numbers of solvent run-offs via what is now referred to as the "solvent scheme" exit route. I can't think of anyone more deserving of the award."

Philip Singer said "the award has come as a great surprise and I am deeply honoured to have received it."

In addition Tawa plc itself received a special commendation from ARC as the runner-up in the Run-Off Company of the Year category for its flotation in 2007 on AIM. Tawa plc is first and only UK quoted consolidator of non-life insurance run-off.

Gilles Erulin, CEO of Tawa plc said "we are very pleased that Tawa plc's flotation on AIM has been recognised by ARC in this way. The flotation was a ground-breaking step for Tawa but also for the industry providing, as it does, a listed exit route for anyone with discontinued operations. Tawa will willingly offer listed shares as part of an exit strategy thus reflecting Tawa's innovative approach to run-off and its intention of being a leading consolidator in the run-off market."

Note for Editors

Tawa plc was formed in 2001 with the purpose of acquiring and managing the run-off portfolios of non-life insurance and reinsurance companies. It also provides run-off related services through a dedicated subsidiary, Tawa Management.

As a consolidator of the non-life run-off market, Tawa's strategy is to acquire companies and portfolios in run-off in the UK, US, continental Europe, Bermuda, Australia and elsewhere as opportunities arise.

By creating a diversified portfolio of run-off businesses at different stages of the run-off process Tawa will gain economies of scale whilst also enhancing and stabilising earnings.

Since its formation, Tawa has acquired CX Reinsurance Company Limited (CX RE) and KX Reinsurance Company Limited (KX RE) and is managing the run-off of these businesses.

In July 2007 Tawa plc was floated on AIM.

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Law Firms Plan to Merge

Merger Plans Announced Between Edwards Angell Palmer & Dodge LLP and Kendall Freeman of London

New York, NY and London, UK - October 30, 2007 US law firm Edwards

Angell Palmer & Dodge ("EAPD") and Kendall Freeman of London today announced a plan to merge effective January 1, 2008. The merger will significantly enhance the capabilities of the firms' insurance and reinsurance practices and offers synergies in their commercial litigation and corporate practices by providing an international platform to serve clients on both sides of the Atlantic. The combined firm will have more than 600 attorneys and solicitors practicing in 11 offices.

"This is a fantastic opportunity that will add value to many of the services our firms provide to clients in the financial services sector, in particular in the insurance and reinsurance industries" said Terrence M. Finn, Co-Managing Partner of EAPD. "This merger fits within the firm's overall plan, and is a natural step in the continued development of the firm's international footprint," he added.

Both EAPD and Kendall Freeman are internationally recognized, particularly in the United States, Europe, Bermuda and Hong Kong, for their work in the insurance and reinsurance industry. Uniting the two legal teams will enable both firms to enhance their service to this industry and will provide a competitive advantage. EAPD Partner, Alan J. Levin and Kendall Freeman Senior Partner, David Kendall, will chair the firm's 100-attorney Insurance & Reinsurance Department.

"We are very excited about this merger," said David Kendall. "This merger will give our clients an unparalleled depth and breadth of experience in the global insurance market. EAPD has a highly regarded insurance and reinsurance practice with strengths in coverage, reinsurance, regulatory and corporate law that is supported by a strong corporate and securities practice. In addition the combined experience and expertise of the merged firm's litigation department will provide a powerful global dispute resolution practice."

"Since we started talking about a merger, we have all been struck by how similar our approaches and cultures are" said Laurence Harris, Managing Partner of Kendall Freeman. "Over the years our size and specialisms have made us a natural target for other firms to talk to. None were as good a business fit as EAPD; none offered the opportunity to build leading international insurance and reinsurance practices and first class international litigation and corporate practices. EAPD is a firm where we can maintain the valued culture of collegiality and support that we have in London. We are very excited about the merger and about the international capability it offers our clients."

Terrence Finn and Charles E. DeWitt will continue to serve as Co-Managing Partners of Edwards Angell Palmer & Dodge. Laurence Harris will serve as Partner-in-Charge of the firm's London office and will join EAPD's Executive Committee along with David Kendall.

About the Firms

Kendall Freeman is a London-based law firm focused on handling high value and complex transactions and disputes for clients in the insurance and reinsurance markets, banks, corporations and the public sector. www.kendallfreeman.com

Edwards Angell Palmer & Dodge LLP offers a full array of legal services to clients worldwide with offices in Boston, MA; New York City, NY; Providence, RI; Hartford and Stamford, CT; Madison, NJ; Fort Lauderdale and West Palm Beach, FL; Washington, DC; and Wilmington, DE. EAPD's mission is to create value by providing superior legal advice and business counsel to protect and advance the interests of its clients. For additional information visit www.eapdlaw.com.

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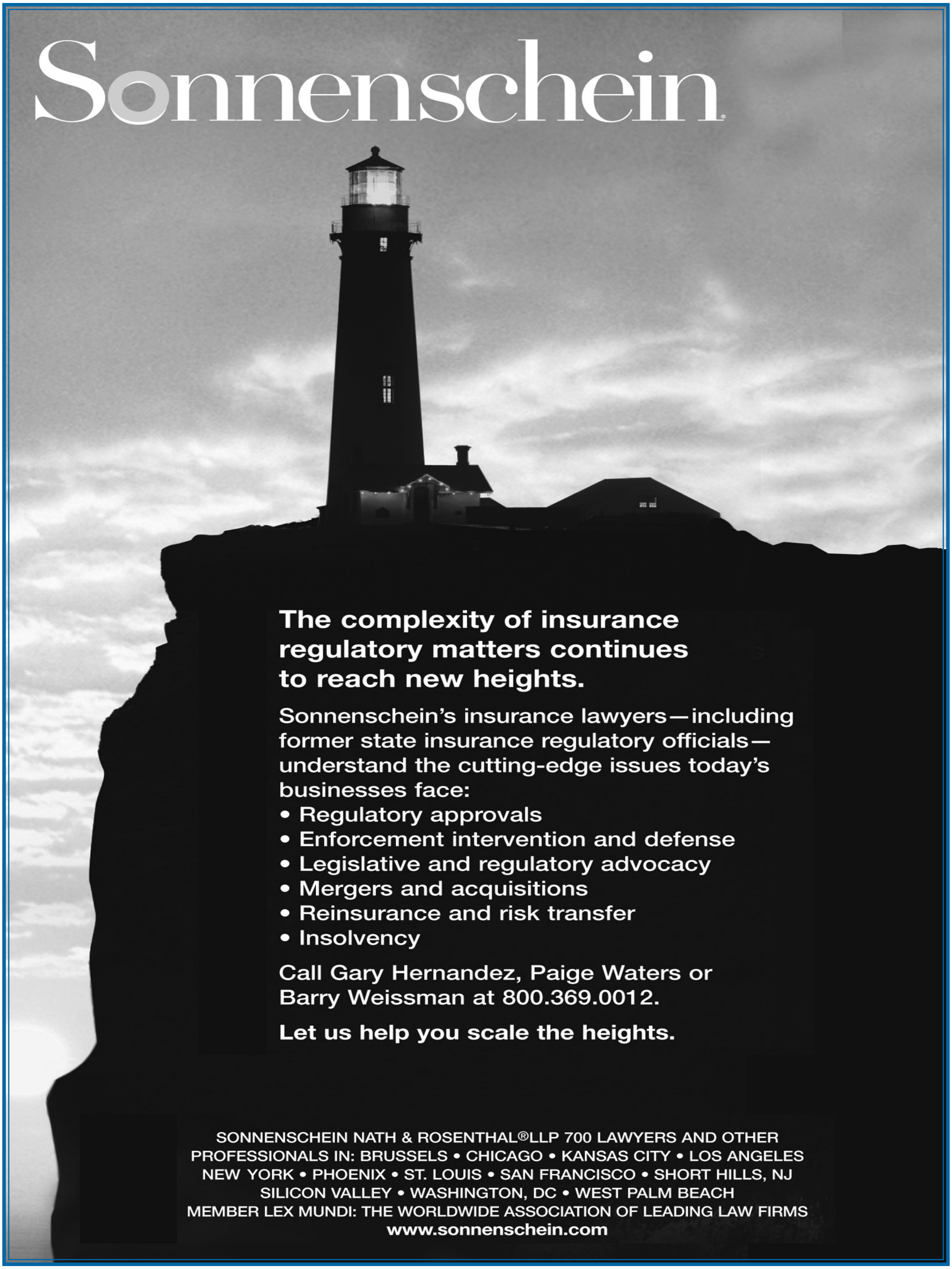
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Recap of Annual Meeting: Francine Semaya of Cozen O'Connor Elected New President of IAIR

By Paula Keyes,
CPCU, ARe, AIR, CPIW, DAE, Executive Director

Francine Semaya, Chair, Insurance Corporate and Regulatory Practice Group, Cozen O'Connor, located in its New York City office, was elected the 10th President of the International Association of Insurance Receivers at the Board Meeting immediately following the 2007 Annual Membership Meeting.

During the Annual Meeting, five new Directors were elected by the membership. They are:

Harold "Hank" Sivley, CIR, Regulatory Technologies, Inc.
Patrick Cantilo, CIR, Cantilo & Bennett LLP
Daniel A. Orth, III, Illinois Life & Health Guaranty Fund
Karen Weldin Stewart, CIR, The Weldin Group
Wayne Wilson, California Life & Health Guaranty Association

Congratulations to all of you.

The Annual Meeting was conducted by Immediate Past President, Joseph J. DeVito, Navigant Consulting, Inc. His comments included a big thank you to the Planning Committee of the Capital Markets Program, which was held on October 24th in New York City. The program was an innovative and timely event for IAIR and was hugely successful thanks to the hard work and effort of Chair, Pam Woldow, her committee of Patrick Cantilo, Ed Wallis, Doug Hartz, Holly Bakke, James Veach, John Milligan-Whyte, and Bill Goddard and Project Manager, Jenny Jeffers.

Joe DeVito then presented plaques of appreciation to the retiring directors. Doug Hertlein and Bill Barbagallo were not present and their plaques will be mailed to them. Ed Wallis was present and Joe personally thanked him for his dedication to the association.

The various committee chairs then gave their reports. Dan Watkins, CIR, Chair of A&E advised that the committee is currently reviewing two CIR applications. Activity during 2007 was slow and he encourages everyone to apply for the AIR or CIR designations. The committee spent its time this year in improving the interview process.

Mary Cannon Veed, Co-chair with Dan Orth, of the Designations Standards said that it is important to apply now for the designations, because new and more difficult requirements to obtain IAIR's designations will be implemented.

Joe DeVito gave a brief recap for absent Education Co-chairs, Holly Bakke or Barry Wells. He thanked James Kennedy for the informative round table meeting earlier in the day. He also reminded members that if they want to host a round table in 2008 to take a look at the schedule and let the Education co-chairs know which event they want to organize. In 2008 the meetings will be in Orlando (March), San Francisco (June), Washington D.C. (September) and Grapevine, TX (December).

Ed Wallis, Co-Chair with Doug Hertlein, of the Receiver's/Guaranty Fund's Liaison Committee, thanked the association for creating this committee. It met three times in 2007 and attendance has been very good.

Mary Jo Lopez, Chair of Marketing, was not in attendance. Joe DeVito advised that he recently received her resignation from the position. She thanked the association for allowing her to serve for two years. Joe thanked her for all of her hard work and effort. Mary Jo was behind the creation of member name badges and the quarterly hospitality suites. A new chair will be named by President, Fran Semaya.

Alan Gamse, Website, advised that with the transfer of the website to a new association management company, any changes or updates that are in the works will be put on hold until that transfer is completed.

Hal Horwich, Publications, advised that as soon as one more article is received for the Winter issue, it will go to press. He encouraged members to author articles for the quarterly newsletter.

Doug Hartz, Finance, advised that given the challenges faced by IAIR during 2007 with the Capital Markets Program and now the departure of Executive Director, Paula Keyes, the association needs to use this opportunity to make financial and strategic changes to IAIR. The main contribution that members can make is to be proactive in recruiting new members. Also he suggested that IAIR chair another Capital Markets program.

Joe DeVito's closing remarks addressed the direction of IAIR. He referenced the e-mail sent last week by Mary Cannon Veed to the IAIR membership. IAIR is at a crossroads and it needs all of our help. We can react to the current situation in a positive manner and make the changes needed to continue growing the association or we can lose what we have established over the years. Less receiverships are for the public good, but they are not necessarily good for IAIR and its members. So we need to look beyond receiverships and change/expand what we are doing. It has not helped our cause that the NAIC has cancelled all receivership meetings at the quarterly conferences. As a result individuals are not coming to the NAIC meetings and IAIR is losing attendance. As most of the membership is aware, Paula Keyes has resigned as the Executive Director. Her contract terminates December 31, 2007 and she will continue on a month to month basis until the Board is able to find a replacement.

During this time of change for the Association we can create new opportunities for ourselves. We can offer more and different programs, such as the Capital Markets Program. Joe called upon the members to think about where we want the association to be, what we can do to get there and then DO SOMETHING ABOUT IT. He finished by saying that it has truly been an honor and a privilege to represent IAIR as its President for the last two years.