INTERNATIONAL ASSOCIATION
OF INSURANCE RECEIVERS
PROMOTING PROFESSIONALISM AND ETHICS

THE INSURANCE RECEIVER

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"To establish a professional organization comprised of individuals who provide services associated with the affairs of insurers that are in receivership or otherwise financially troubled and in need of restructuring;

"To develop educational and training programs to enhance the qualifications of professionals working in the field of insurance company receiverships and restructurings and to provide a forum for discussion of ideas, experiences and subjects of common interest to them;

"To establish ethical and professional standards for professionals retained to conduct or advise in the affairs of insurers that are in receivership or otherwise financially troubled and in need of restructuring; and

"To recognize, through accreditation, the attainment by its members of expertise and proficiency in such pursuits."

–IAIR Mission, 10/2013 Bylaws

Donna Wilson –CIR-MIL

PRESIDENT'S MESSAGE

Throughout its 25 years, IAIR has been faithful to its mission. Our educational programs are well respected and provide opportunities to discuss a variety of subjects both during the presentations and more informally with each other, our standards are high and our members strive to serve with expertise and proficiency.

Where is IAIR going from here?

IAIR will continue to uphold our mission but it must consider new ways to do so.

As you know by the fact you are reading this newsletter, IAIR's publication "The Insurance Receiver", has been reimagined. The newsletter is an important part of fulfilling our mission to educate, to train and share ideas and experiences. It reaches the entire membership even when members are unable to attend live events. The digital format allows IAIR to publish the newsletter economically but also in a format that better meets the needs and expectations of our membership. I encourage you if you have insight on a topic or a significant event to share; please consider contributing to the newsletter.

IAIR's educational programs are being retuned. The annual Insolvency Workshop has been retitled Insurance Resolution Workshop and the topics expanded. This is reflective of regulatory changes in recent years which facilitate efforts to bring about workout resolutions that are short of a full liquidation.

Additionally, the IAIR Education Committee is working with the National Conference of Insurance Guaranty Funds to develop a series of webinar modules focusing on the basics of the resolution process. This will allow IAIR to provide education opportunities to those entering the solvency field including new members, regulators and others charged with bringing about resolution efforts for troubled insurers.

IAIR's designation programs are also under review and a new designation is being considered. While the Certified Insurance Receiver designation has served our community well, it is time for our accreditation programs to have a standardized element while respecting the expertise and proficiency of each individual. Many hours have been expended on this effort and many more will be required before it's brought to completion. IAIR will be looking to current CIR's and AIR's for assistance and I hope you will embrace the opportunity.

IAIR's Audit Committee is reviewing internal processes and formalizing those processes. While not visable to the membership, this is necessary to insure the Board is meeting its obligations to the membership and to move IAIR forward in the coming years.

IAIR has been and is able to fulfill its mission thanks to the many hours contributed by its members. Without members volunteering innumerable hours, IAIR would cease to exist.

I am honored to be IAIR's president at this time. I believe this is an exciting time for IAIR as it moves into the next twenty five years. There is much to be done and many hands are needed. To survive and serve, IAIR need to move forward. I encourage you to be involved and find your passion for our future.

REFLECTIONS FROM KAREN WELDIN STEWART, CIR-ML

IAIR's 25th Anniversary is an appropriate time to look back and remember how and why the association was started. What better person to do that other than our founder and first president, Karen Weldin Stewart.

Why did I start SIR, now known as IAIR?

In March of 1989, the National Association of Insurance Commissioners' (NAIC) Rehabilitators and Liquidators task force held a seminar on off-sets in Washington, D. C. About 30 people attended and it was well received. The one thing that most of us believed was that there was no how-to book on receiverships. With that in mind, at the next task force meeting we voted to have another seminar and I was picked to put it together. The motion was moved up to the Executive Committee and Plenary and was adopted.

I set about putting together the seminar for 1990. The new Commissioner from Indiana came in as chair of the Rehabilitators and Liquidators task force and cancelled the seminar, even though the matter had already gone up through the Executive Committee and Plenary. Therefore, the NAIC decided in December of 1990 that the event should not have been cancelled. I was asked if I would still put the event together, but now it would be in 1991. Even though I was angry that the original meeting had been cancelled, I agreed.

I formed a committee of receivers from states that I thought would be able to increase participation. Each receiver would serve as the moderator for the panel on a topic that they picked and each panel would be made up of two regulatory and two industry persons. We had subjects for two educational tracks: one elementary, the other advanced.

I put together the brochure, collected the fees, menus and logistics for our workshop in Miami. NAIC staffers expected that only 30 people would attend; we ended up with 110.

I decided that we may want to keep having the workshops and not have them be cancelled on a whim. I wondered if there might be an appetite for forming an association. Since, Delaware is so small I didn't think people would take the idea seriously. So I asked Mike Miron of New Jersey and Vincent Vaccarello of Pennsylvania to loan their name to a questionnaire that we handed out at the workshop and we mailed it to the group that was invited to the workshop. We received an overwhelming response.

I asked Mike Miron, Robert Deck of Missouri, and Ronald Rosen of California to help me form the association. Vincent Vaccarello declined to work on the formation.

I looked at the by-laws from SOFE and on a train ride from Harrisburg to Philadelphia started writing the by-laws for what would become the Society of Insurance Receivers (SIR). Martin Minkowitz and William Latza from Stroock & Stroock & Lavan Law Firm met with Mike, Bob, Ron and I and helped us formalize the by-laws. We then asked Thomas Wrigley of Iowa to join us as a member on the first board of directors so that we could set up a Delaware Corporation in September of 1991. Josy Ingersoll, Esquire, from Young, Conaway, Stargatt & Taylor in Delaware signed on to be our Delaware counsel and Stephen Phillips, CPA, signed up to be our accountant.

We planned to put together our first board meeting in December during the NAIC meeting. But I also had to put together a slate of officers for the Board of Directors. I wanted to ask receivers from various states and the UK so that that we wouldn't just be our existing "click".

I asked the following to be on the slate: Jeanne Barnes Bryant, Tennessee, Nelson Burnett, Alabama, Robert Deck, Missouri, Deanna Delmar, Arizona, John Massengale, Texas, Michael Miron, New Jersery, Philip John Singer, UK, Vincent Vaccarello, Pennsylvania, Joyce Wainscott, Alaska, and Thomas Wrigley, Iowa. They all agreed to join. By the time of the meeting 224 people had joined, with James A. Gordon, Maryland being the last one of the year. The meeting was held in Texas, and close to 100 people attended. The slate was presented and passed unanimously.

After the meeting the Board met to elect officers and I was elected Chairman of the Board and President.

REMEMBER THESE ??

Society of Insurance Receivers SIR International Association of Insurance Receivers

DOUBLE DAMAGES AWARDED TO MEDICARE ADVANTAGE PLAN

By Mark Steckbeck, Vice President, Legal Affairs, National Conference of Insurance Guaranty Funds

Liability insurers and other parties that are Responsible Reporting Entities (RRE) under the Medicare Secondary Payer (MSP) rules should take careful note of a recent decision issued by the United States Court of Appeals for the Eleventh Circuit.

In the case of Humana Medical Plan, Inc. v. Western Heritage Insurance Company, Case. No. 15-11436, 2016 WL 4169120, the court held that Medicare Advantage Organizations (MAO) had a private right of action against primary payers that failed to reimburse the MAO within 60 days of the primary payer's settlement with the beneficiary. The court further held that the statute 42 U.S.C. §1395y(b)(3)(A) required the payment of double damages to the MAO.

MAOs are private health insurers that contract with Centers for Medicare and Medicaid Services (CMS) to provide Medicare benefits under Part C of the Medicare Act. Humana was a private insurer authorized by CMS to issue Medicare Part C health plans. Humana's insured was injured as a result of a slip and fall incident at a condominium that was insured by Western Heritage Insurance Company. Humana paid the insured's/claimants medical expenses of $19,115. The claimants then sued the condominium and entered into a settlement with its liability insurer for $115,000.

After unsuccessful attempts to recover its payment from its own insured and her attorney, Humana sued the condominium's liability insurer for double damages under the MSP private cause of action statute. In holding for Humana, the court cited a 2012 decision from the 3rd Circuit, In re Avandia Mktg., Sales Practices & Prods. Litig., 685 F 3rd 353 which also held that an MAO may sue a primary payer under the MSP private cause of action statute.

Unless the liability insurer is able to recover from the claimant, it will have paid three times the medical costs originally incurred by Humana (once as part of the settlement with the claimant and then twice with the double damages award). This is clearly not a sustainable business model for any organization, unless that organization happens to be an MAO.

Primary payers can avoid this harsh result if they have in place an effective process to ensure that the interests of Medicare and Medicare Advantage Organizations are fully addressed before a final settlement is reached where claimants received payments from Medicare or a Medicare Advantage Plan. Primary payers should take this opportunity to review their claims procedures with counsel so they do not find themselves on the receiving end of the next claim for double damages.

Mark Steckbeck is Vice President, Legal Affairs for the National Conference of Insurance Guaranty Funds. He has overseen Medicare Secondary Payer issues for the organization and NCIGF members for several years.

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THE PERFECT RECEIVER: NUMBER 13 - RULES OF LIFE

Much like an old quarterback who moves to a new team as third-stringer every season and throws more completions to receivers wearing opposing jerseys than those wearing his own, this column has been thrown back into the game in a pinch. As have most of us (overtly or implicitly), over my long years I have developed a number of "Rules of Life." And, like most of us, I have honored them as much in their breach as in their observance. Nonetheless, I adjust them here and offer them humbly in the hope that you can apply them to your troubled insurer projects with good result. Two quick disclaimers: First, I do not claim originality for all of these rules. Indeed you will recognize many of them. My contribution has been simply to compile them and place them on this page as filler. Second, you will note immediately that these were not first formulated specifically for receiverships. Nonetheless, I hope that like me, you'll be amazed at how well they can be applied. That I have changed certain words selectively (mostly to avoid offense) will be evident at once.

RULE NUMBER 1: MEN ARE SCUM.

Were you my daughter or my sister I would explain this differently. For our purposes I will note simply that when the Good Lord gave us free will He forgot to put in the permanent moral filter. In negotiations and important interactions it will be helpful to bear in mind that your counterpart will act principally out of self-interest and will not assign to your needs nearly the same priority that you will. Do not be naive and struggle to induce a decision from him or her because "it is the right thing to do." Strive instead to demonstrate how it will benefit him or her.

RULE NUMBER 2: DON'T SWEAT THE LITTLE THINGS.

If you are that exceptional individual with unlimited time and resources, this rule does not apply to you. For the rest of us, it is important to be selective in the problems we will attempt to fix. Identify those that will not ruin your life if left unresolved and put them aside. Focus instead on those that will contribute materially to your eternal happiness once addressed successfully. If your OCD compels you, you can always return to the picayune items on your list once the big ones have been fixed.

RULE NUMBER 3: THEY ARE ALL LITTLE THINGS.

Attempt to understand and apply Rule number 3 ONLY after you have mastered Rule number 2. Careful analysis will reveal to you one of life's most satisfying secrets: far fewer things are "life or death" than the drama with which they are presented would suggest. You will find that you can achieve remarkable success (however you define it) even if you elect to worry about and resolve only a small but important number of the challenges that Darth Vader and his colleagues will throw at you.

RULE NUMBER 4: NO GOOD DEED GOES UNPUNISHED.

Your grandmother always told you that the "Road to hell is paved with good intentions." She was not lying and a corollary of this transportation principle is that your good deeds will often not be recognized and rewarded as they deserve. We have all experienced the frustration of devoting resources to others' benefit only to face unexpected adverse consequences rather than the eternal gratitude and admiration we have justly earned. It is important therefore to expect even our well-motivated steps to be perceived in a different light. Refer to Rule number 1.

RULE NUMBER 5: BE CAREFUL WHAT YOU WISH FOR.

As a child, every one of us (YES, you too, there are no exceptions) has grabbed from the shelf that irresistible piece of cake and chomped down on it with gusto only to face days in the little room to which the king goes alone because of its (the cake's) age and microbial content. What we learned, but even now fail to observe rigorously, is that our goals must be tempered by careful consideration of the potential consequences of pursuing them. Take for example the spirited fox terrier that finally catches the car he has been chasing. Now what?

RULE NUMBER 6: STOP ARGUING WHEN YOU WIN.

One of my personal favorites, this rule is ignored so universally as to be comical. Having finally persuaded your audience to adopt the course you have been seeking cease at once expending your considerable eloquence on explaining the virtues of doing as you suggest. First, nothing more will be gained by it. Save some brilliance for another day. Second, you risk actually undoing the good you have done. Third, it's boring! I have already agreed. Do I really need to hear more?

RULE NUMBER 7: DON'T ASK IF THE ANSWER DOESN'T MATTER.

It is a tempting trap into which we all fall occasionally to make an inquiry the answer to which will not actually cause us to alter our course. The result is to frustrate our counter party and to waste resources. Ask yourself therefore before you ask your question: do I really give a hoot how you will answer? If you do not, pick another question or request.

RULE NUMBER 8: NEVER BELIEVE YOUR OWN MALE BOVINE EXCREMENT.

We both know how brilliant and startlingly attractive you are. Nonetheless a generous dose of humility will always serve you well. Especially, avoid the pitfall of being seduced by the sheer genius of your argument. You may fail to see the

many ways in which your opponent will dismantle it and turn it against you. (Again, refer to Rule number 1). Your life will be a longer and happier one if you always analyze your argument with the critical eye of your mother-in-law before you unleash it on the unsuspecting public.

RULE NUMBER 9: ALWAYS ASSUME THAT YOUR OPPONENT IS SMARTER, STRONGER, AND CUTER.

Say, for example, ME! JK. All seriousness aside, no one is ever hurt by overestimating his or her opponent. By contrast, the result of the opposite is far too often disastrous. If there is a hidden weakness lurking in your argument or strategy, assume that your scurrilous opponent will find and exploit it with zeal. Plan accordingly.

RULE NUMBER 10: EVERY ADDITIONAL LIE MAKES IT TWICE AS HARD TO GET OUT OF THE HOLE.

Those of us who are old enough to have seen *I Love Lucy* learned this long ago at her expense. For the rest of us, it should be self-evident that the wider the gap between (1) the collection of fabrications underlying an approach, and (2) reality, the harder it will be to avoid catastrophic consequences. Not only is it incrementally more difficult to remember a growing number of distortions or falsehoods, it is even more difficult to imagine and compensate for the many unintended adverse consequences each is likely to have.

RULE NUMBER 11: IF YOU NEVER CHEAT YOU'LL NEVER GET CAUGHT!

No explanation needed. Amazingly powerful strategy, however!

RULE NUMBER 12: REMEMBER SONNY CORLEONE.

Space limitations prevent me from providing a more colorful account. Suffice it to note that a member of a team must NEVER (NO EXCEPTIONS!!) disagree with another team member (especially the team leader) within earshot of the enemy. Not only will this undermine peace and tranquility within the team, it will provide your foe a clear road-map as to where to attack.

RULE NUMBER 13: WOMEN NEVER FORGET!

I am throwing this one in for free. It is not really particularly applicable to troubled insurers but boy does every husband know this!

RULE NUMBER 14: OFTEN, NO DECISION IS A DECISION.

In the early thirteenth century, King John would often remark to me "the tide abides for, tarrieth for no man, stays no man, tide nor time tarrieth no man." I never knew what the heck he was talking about and begged him to stop smoking that funny stuff. On another note, life will go on with or without your decision. It is important therefore to understand that failing to decide is to elect the course that will follow from the vacuum you have created as to the question at hand. Either others will decide, or undesirable events you might have prevented might follow on their own.

RULE NUMBER 15: MEASURE TWICE, CUT ONCE.

This one I learned from that great carpenter, Mastro Gepetto. Its wisdom is self-evident but too freely ignored. For our purposes I would restate it as "plan as carefully as you can before acting." It is amazing how many adverse results can be prevented by careful planning.

I hope that these little suggestions will prove of value. They have helped me tremendously, outward appearances to the contrary notwithstanding.

I remain your humble servant.

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Interested in becoming involved? Join an IAIR Committee today! Click here to join.

READY… OR NOT? EXPEDITING DATA TO GUARANTY ASSOCIATIONS STREAMLINES RESOLUTION PROCESS

By Wayne Wilson, Executive Director, California Insurance Guarantee Association

While no two liquidations are alike, a truism applies to just about every estate: the faster guaranty associations get the data they need to pay claims, the more smoothly and efficiently the overall resolution process works for everyone.

Today's electronic claims data have brought many challenges to the liquidation process. Gone are the days when boxes of claim files from an insolvent insurer were off-loaded from trucks at guaranty fund offices. The widespread and ongoing migration from paper to electronic claims files over the past several decades has brought a wholesale change in the way claims files are administered. With this change has come increasing digital data management challenges, including those related to the sheer size of the aggregated imaged files of some insolvencies and the inability of guaranty associations to get the data they need to pay claims due to a variety of issues.

Today's electronic claims management challenges have made it more important than ever that receivers and guaranty associations work together, especially in the pre-liquidation phase of liquidations, to identify and address a range of data issues and requirements.

UDS and Liquidations' Varying Degrees of Urgency

As most know, Uniform Data Standards (UDS) is an NAIC standard created in cooperation between guaranty funds and receivers and approved by the NAIC. UDS is an electronic communication protocol that uses a series of defined computer file formats to permit guaranty associations and receivers to electronically exchange with receivers the essential claim "records" guaranty associations need to pay claims. These records contain a full array of claim information, including basic loss claim data (A-Records), claim note data (F-Records), company payment history (G-Records), imaged document data (I-Records), Medicare Third Party Payer (MSP) history (M-Records) and unearned premiums (B-Records.)

When it comes to marshalling data guaranty associations need to pay claims, liquidations have varying degrees of urgency. Those with significant or even some Workers' Compensation exposure require near-immediate data to keep essential, life-sustaining payments flowing to claimants.

Workers' Compensation claims have immediate requirements related to UDS Record marshalling. This is because guaranty association Workers' Compensation claim payments often cover essential claimant living and medical expenses. Everything from indemnity benefit payments, to medical treatment payments, to requests for medical treatment, to avoidance of penalties for late payments and hearing appearances are dependent in varying degrees on guaranty associations' receipt of acceptable UDS Records.

Liquidations with Auto and Homeowners exposure have less, though some, immediacy requirements. General Liability and Complex Commercial, which typically are the slowest claims to resolve, usually do not require immediate data marshalling. While immediacy requirements vary, mostly due to the fact that individual claims types move at differing rates in the resolution process, a key fact remains: regardless of claim type, guaranty associations cannot pay claims without having the necessary UDS records and having those records be accurate.

For Auto and Homeowners claims, A-Records are the most important. This is because they tell the guaranty association the claim has been recognized by the liquidator. F-Records are also essential; without them the adjustor has no claim file notes. Absent F-Records, an adjuster would have to start the adjustment process over, possibly resulting in a claimant receiving incorrect or contradictory information related to the claim. G-Records ensure duplicate bills are not paid. Without I-Records, a wide range of claims information would need to be recreated, including accident reports, home inspection reports, witness statements, and so on, essentially requiring the adjustor to start from scratch on the investigation of the claim.

UDS Records also have relative degrees of urgency related to how they can directly impact Auto or Homeowners claimants. A guaranty association having incomplete or incorrect A- F- G- and I-Records, for instance, could mean the difference between a claimant getting his or her car out of the repair shop, or not. A- and B-Records are basic to guaranty associations' ability to pay unearned premium claims. Living expense reimbursements, which are essential to those who may not have the financial ability to pay for replacement housing, for example, are tied to guaranty associations' receipt of acceptable A- F- G- and I-Records. While other claimant needs may have less urgent UDS record-related requirements, such as the settlement of a bodily injury claim, or rebuilding a damaged home, nevertheless, the overall ability to marshal accurate UDS records quickly after a liquidation is essential.

Simplifying the Process: UDS Data Mapper

In 2011, the NCIGF developed and deployed the UDS Data Mapper. This proprietary utility gives receivers and liquidators a way to easily, quickly and inexpensively convert digital data into the UDS format.

Over the years, the application has become a welcome and

popular solution, especially for receiverships that have limited IT resources and on-staff UDS expertise, or lack resources to retain outside UDS consultants.

The UDS Data Mapper is a Web-based software that assists liquidators in extracting, mapping and converting claims data into UDS for any liquidation large or small. The UDS Data Mapper minimizes delays and costs associated with data conversions, and helps receivers early identify possible data issues. As of October 7, 2016, the UDS Data Mapper has processed 52.4 million UDS records.

Since the UDS Data Mapper first was introduced in 2011, liquidators have used it with growing frequency to marshal UDS records. Today, the utility is widely used. While the UDS Data Mapper does not relieve liquidators from the requirement to collect and understand claims data, it does greatly simplify and streamline data collection for liquidators and their staffs.

Issues with UDS Records

Even when UDS Records are forthcoming soon after liquidation, guaranty associations sometimes experience issues with the records that hinder the associations' ability to pay claims quickly. A-Records may be incomplete; data may appear in the wrong fields: for instance, the transposition of first and last names.

F-Records may contain unpermitted characters in notes. The records may be transmitted as one virtually unusable large note instead of a more workable separate, date-identified note. In addition, UDS's 1000-character limitation results in notes split into separate lines. In some claims systems, a specific image or document may be linked to a specific note, causing the note to lose meaning when divorced from the overall context of the claim, a phenomenon known as the "UDS Gap."

There are a number of problems that can plague G-Records. Coverage codes may not be consistent with A-Record coverage codes. UDS does not contemplate transmissions of recoveries on claims, although liquidators do, through negative transactions. In G-Records, also, it is hard to distinguish a void check from a recovery. Finally, some guaranty association systems require matching of voids to the original transactions; this is a manual process unless the full check number is provided in the void G-Record transactions.

A variety of formatting issues exist related to I-Records. Images may not tie properly to the metadata. In addition, there is no standardized method by which a liquidator can validate the format of the images before transmission. Perhaps the most significant I-Record issue is related to the size and volume of the record. Because of the typical size of I-Records, imports can take much time: 1,000,000 images (not pages) can take up to 2,000 to 3,000 images per hour to import. Compounding the issue is the fact that images cannot be used until they are in the system.

M-Records, the newest UDS record, allows guaranty associations to identify what claims have been previously reported to Medicare, as well as what was reported. The M-Record is the least time-critical of all UDS records; nevertheless, time requirements do exist. The M-Record remains important because guaranty associations must accurately report whether an M-Record is provided.

"UDS Plus" Issues and Workarounds

Not all hindrances to efficient data transfer are related to problems with UDS records. These issues fall into the "UDS Plus" category. Data beyond minimal UDS is important for the guaranty associations to do their job efficiently and effectively. Yet some of that data resides in insolvent insurer data systems, or is tied to them. Examples include medical bill review history, which typically can be transmitted from the original bill review company. The various formats are common among those who conduct bill review; for this reason, there is no need for a UDS standard. Other areas in which non-UDS data issues may present themselves are Pharmacy Transition and Utilization Review Transition. In both of these issues access to the transaction history is extremely helpful to guaranty associations. Also MPN – transfer of care history, which remains effective until cancelled or replaced, is very beneficial.

Several "workarounds" can help negotiate data issues and keep data flowing between receivers and the guaranty associations. These include continued and ongoing access to failed companies' policy, claims and other systems, although it should be noted that such a workaround is far from an optimal solution. When a more desirable data transfer solution is not ready or possible, such emergency measures may be necessary to keep claims data flowing to the guaranty funds, enabling them to pay the claims.

The Keys to Success

There are several actions that can limit data issues between receivers and guaranty associations, especially when they are pursued early in the pre-liquidation planning phase of an insolvency. These include:

Data-focused pre-liquidation planning. Don't wait until a month before liquidation to address data issues. Start planning as soon as rehabilitation or a receivership begins.

Think like a claims examiner. Like a practiced claims adjuster, know what claims data guaranty associations need for adjusting and paying claims. Receivers who begin marshalling data with the mindset of a claims examiner are a step ahead in understanding claims needs from the guaranty associations' perspective, and in forestalling potential data issues.

Understand what data there is and where it is. Recognize that while Managing General Agents (MGAs) or Third Party Administrators (TPAs) may hold the necessary data, they may not adequately understand the process of conveying that data to guaranty associations or navigating through issues related to data or UDS records.

Know where the data resides. Is the data on a company system, on one or multiple TPA systems, or a mix of systems? How will the data be combined and marshalled at the

company level and moved to the guaranty associations?

Know how much data must be moved. Does data amount to one terabyte or 10 terabytes? Are there systems in place that will expedite the transfer of the data? If not, work early in the process to identify and implement a data transfer solution.

Finally, find the right data and store it in a logical place and understand system transfer speeds and options.

While these recommendations may seem a case of "easier said than done," especially to receiverships with few resources or little experience with managing electronic claims files, there is assistance available that can greatly aid receivership in the efficient marshalling of all-important data.

NCIGF: A Resource for Receiverships

For the past 10 years, the National Conference of Insurance Guaranty Funds has worked to broaden the organization's expertise and expand its tools related to data marshalling and transfer. These tools are available to receiverships through the NCIGF's Guaranty Support Inc. (GSI) subsidiary.

Receiverships seeking assistance with data issues, either in the pre-liquidation or later phases of a liquidation, are invited to consult with the NCIGF. The NCIGF has years of experience and a proven track record in addressing the many data-related issues that can plague a liquidation, and that will, unless addressed, slow the resolution process. Those interested in discussing data issues with the organization can contact the NCIGF's Andrew Holladay at 317-464-8179 or aholladay@ncigf.org.

Ready… or Not?

Ensuring the smooth and efficient transfer of electronic claims data between the data systems of failed companies and guaranty associations via receiverships is essential if guaranty funds are to fulfill their statutorily mandated charge of paying claims quickly.

To work in accord with the state statutes that govern them, guaranty associations must have the requisite accurate claims data in the proper UDS records formats before they can pay claims. For this reason, it is essential that receiverships and guaranty associations work together to conduct comprehensive pre-liquidation planning to identify and address any data issues well in advance of liquidation. In addition, the NCIGF can provide to receiverships that seek them an array of data support services and tools.

If, when asking "Ready…. or not?" in assessing data issues that can, and often do, arise with pending liquidations, the answer is "not," a receiver might well consider working with the guaranty associations and the NCIGF's GSI to address these issues as early as possible in the resolution process.

Wayne Wilson is the Executive Director of the California Insurance Guarantee Association. As chairman and member of numerous coordinating committees over the years, he and his staff have helped identify and resolve many data issues.

IAIR PROVIDES INSIGHTS TO LAW STUDENTS AND INSURANCE LAWYERS

By William Goddard, Attorney at Law, Day Pitney L.L.P.

It's an exciting time in insurance company solvency regulation with all that is going on at the NAIC, in Washington and around the world. IAIR and the Society of Financial Examiners (SOFE) have been very active in sharing their expertise as regulation evolves.

In 2016, the Insurance Law Center at the University of Connecticut School of Law re-launched a course in insurance solvency regulation with help from IAIR, SOFE and regulators from many jurisdictions. Students included those studying for their Juris Doctor law degree, those pursuing a post-JD LLM degree in insurance law and international students from China, Italy and the United Kingdom.

The course began with an introduction to solvency and insolvency principles, followed by a session providing a state regulator's perspective on the Insurance Holding Company Act. Next, thanks to IAIR/SOFE link Jenny Jeffers and the SOFE Board of Governors, SOFE Governors Mark Murphy and Rick Nelson (currently the SOFE President) gave students an insightful, bird's eye view of the role of a financial examiner and how they look at insurance company solvency, a unique opportunity for law students to see an insurance company from an examiner's viewpoint.

IAIR President Donna Wilson (Oklahoma Receivership Office, Inc), IAIR Education Committee co-chairs James Kennedy (Special Counsel to the Receiver, Texas Department of Insurance) and Kathleen McCain (Michelman & Robinson), along with IAIR stalwarts, Evan Bennett (Evan D. Bennett LLC) and Mary Cannon Veed (Mary Cannon Veed & Associates) presented a thorough class segment on how receivers do their jobs from the role of the regulator to marshalling assets to closing estates.

In the following session, IAIR Immediate Past President Bart Boles (Executive Director, Texas Life & Health Insurance Guaranty Association) and IAIR member Mike Marchman (Executive Director, Georgia Guaranty Associations) gave students a rare opportunity to understand the workings of the national guaranty fund systems and how they backstop policyholder liabilities in the event of company insolvency.

In an unprecedented panel discussion on state insurance insolvency apparatus, IAIR members David Wilson (Chief Executive Officer and Special Deputy Insurance Commissioner, California Conservation & Liquidation Office); James Kennedy (Special Counsel to the Receiver, Texas Department of Insurance) and Scott Fischer (Special Deputy Superintendent, New York Liquidation Bureau, and now Executive Deputy Superintendent for Insurance at the New York Department of Financial Services) joined with J. Kevin Baldwin (General Counsel & Director of Receivership Operations, Illinois Office of the Special Deputy Receiver), to give students perspective on the similarities and differences in how states resolve insurer insolvencies.

After sessions on Rhode Island's revised Regulation 68, the Federal Insurance Office and the Federal Reserve, IAIR returned to the spotlight with a dynamic, interactive discussion of the Executive Life of New York Liquidation Plan led by IAIR Vice President Jonathan Bing (Jackson Lewis PC), who managed the ELNY proceedings as head of the New York Liquidation Bureau, and Kevin Griffith (Attorney for the National Organization of Life & Health Guaranty Associations (NOLHGA)).

The culmination of the course arrived when former IAIR President Patrick Cantilo (Cantilo & Bennett, LLP) and IAIR's Peter Gallanis (President of NOLHGA), led the class in an exciting deep dive into the highly complex legal issues surrounding the receivership of the Penn Treaty Network America Insurance Company and regulatory questions regarding long term care insurance.

All in all, it was a very remarkable semester and provided students with a real understanding of the challenges and opportunities in insurance solvency regulation. I am deeply grateful to everyone who participated in this effort, especially the many IAIR members who gave of their time and shared their insights with the class. The class will begin again in January of 2017.

WORKING TOGETHER: NEW NAIC STUDY SHOWS BENEFITS WHEN MEMBERS OF THE STATE-BASED RESOLUTION SYSTEM JOIN HANDS TO ADDRESS ISSUES

By Sandra J. Robinson, President of the American Guaranty Fund Group and NCIGF Board Chair

If one sought an example of a positive outcome that results when members of the state-based resolution system work together, one would need to look no further than the efforts to develop the National Association of Insurance Commissioners' (NAIC) 2016 Workers' Compensation Large Deductible Study.

The fruit of the NAIC/IAIABC Joint (C) Working Group Property and Casualty (C) Committee Workers' Compensation Task Force, the 62-page study provides an excellent illustration of the issues related to large deducible and Professional Employer Organization (PEO) programs that challenge today's resolution system, and ideas for addressing these issues.

The study is intended as a supplement to a similar study on large deductible programs prepared by the NAIC in 2006. The new study enhances and extends the scope of the earlier study by exploring the 10 years of experience with these programs since the 2006 study was published.

Finding tools

The study puts in a fresh perspective the receivership community's challenges in addressing the downsides of large deductible and PEO programs, and the significant costs the programs bring to related insolvencies. The study gives regulators and receivers suggestions for specific tools that permit enhanced oversight of the programs and guidance for dealing with a range of insurance company insolvency issues, now and in the future. At the same time, the study acknowledges the programs as an important and valued part of the modern insurance marketplace.

Adopted at the Workers' Compensation Task Force level at the NAIC 2016 Summer Meeting, the study fulfills the 2016 charges of the NAIC/IAIABC Joint (C) Working Group Property and Casualty (C) Committee Workers' Compensation Task Force to study issues of mutual concern to insurance regulators and the International Association of Industrial Accident Boards and Commissions (IAIABC). The study is expected to move through the NAIC (C) Committee soon and be presented to the NAIC for final adoption by year end.

While drafting of the NAIC Study officially began in the spring of 2015, discussion of the issues addressed in the paper had been occurring on many fronts for some time.

Discussions started when state regulators began noticing an increase in the use of "mega" deductible policies. In addition, state receivers were encountering challenges related to collecting large deductible reimbursements in several insolvencies. State guaranty associations also were incurring increasing costs to pay claims that instead should have been reimbursed by large deductible policyholders.

Over time, several states tried to address the issues through legislation that sought to detail and clarify the rights and responsibilities of receivers and guaranty associations in the collection of large deductible reimbursements. At the same time, additional states worked on legislation to strengthen collateral requirements.

An important milestone

While there was some success on the legislative front, the effort to bring all the parties together to update the 2006 NAIC Workers' Compensation Large Deductible Study went far toward raising the awareness of large deductible issues overall, resulting in a more thoughtful, comprehensive approach to addressing problems related to recent workers' compensation company insolvencies.

The completion of the study represents an important milestone. As such, the study is an outstanding example of the benefits that arise when the guaranty fund, regulatory and receivership communities unify to collectively analyze problematic issues and work collaboratively to address them.

Large deductible policies: a troubled legacy

Large deductible policies were created more than 20 years ago as an alternative to self-insurance.

Initially, the reasoning behind large deductible programs was that the focus of the market would be self-insurers and entities that could qualify as self-insurers (but didn't want to undergo the process of qualifying in multiple states).

Many assumed that large deductible programs would constitute a small percentage of the marketplace: perhaps 10 percent. However, in some states the programs make up as much as 40 percent of the total premium written. Further complicating the issue is the fact that in most states regulation of the large deductible product has not evolved over time, despite the changing marketplace.

The 2016 NAIC study recommendations will enable states to enact consistent legislative changes that will address the

underlying problems arising from the widespread use of large deductible policies for entities that were not originally envisioned when the product was developed. These include groups now utilizing large deductible policies that don't have the financial wherewithal to qualify as a self-insurer, yet that, by offering the large deductible product with a $1 million (or more) per claim deductible, are assuming essentially the same risk as if they were self-insured.

Shortfall: Under-deductible losses are more than $700 million

An estimate of the cost of under-deductible losses paid by guaranty associations from just five workers' compensation insolvencies between November 2009 and May 2016 is in excess of $700 million. Distributions from large deductible reimbursements have been less than $24 million.

Regulators require tools to ensure the large deductible mechanism is judiciously used and not abused. For their part, receivers need these tools to collect large deductible reimbursements.

The failure of the large deductible concept to work as it was originally envisioned hurts all parties in the resolution system. The guaranty associations are required by law to pay the claims (from the first dollar). This cost is passed on either to taxpayers (in premium tax offset states), businesses (in surcharge states) or industry (through rates that cannot be completely recouped).

Receiverships also incur additional costs in collecting reimbursements and have a more limited distribution pool. When receiverships fail to collect, all creditors in the estate (not just the guaranty funds) may receive smaller distributions.

Katie School PEO Study

The NAIC's 2016 Workers' Compensation Large Deductible Study, which also looks at issues related to PEOs, cites the Katie School of Insurance and Financial Services' study "The Role of Large Deductible Policies for PEOs in the Failures of Small Workers' Compensation Insurers."

This study provides a clear-eyes assessment of PEOs and their industry impact, as well as case studies of several recent workers' compensation insolvencies and the complicating role PEOs played in them. The study can be found by clicking here.

The Power of Team Work

Many stakeholders contributed to the development of the NAIC's 2016 Workers' Compensation Large Deductible Study over the last 18 months. Involved were not only regulators, receivers and guaranty funds, but also insurance company representatives and many large deductible policyholders, all of whom shared ideas for improvement of the programs and their administration. This effort was supported by the dedicated and tireless efforts of NAIC staff who kept the project moving.

This collective approach to the task at hand has promoted much worthwhile and insightful discussion of large deductible and PEO issues. More important, it has produced a solid, illuminating study, one that has been thoroughly vetted among key players and that offers every confidence the study will pave the way for enactment and adoption of its recommendations.

Apart from the obvious benefits of addressing the challenges posed by the large deductible mechanism and PEOs, the study brings a collective, partnership-like approach to the task. In a large sense, this ability to work together reflects the source of the real strength of the state-based resolution process.

Although the resolution system can at times be slow and cumbersome, such joint efforts as the drafting and approval of the study show that, when faced with daunting challenges, the guaranty association, regulatory and receivership communities can and do come together to drive positive outcomes and solutions. The end result is regulation that strengthens and improves the insurance industry and resolution system and safeguards the insurance consumer.

Such outcomes not only enable the insurance industry to live up to its traditional cornerstone "promise to pay," they also ensure entities that employ the large deductible mechanism live up to their promises to pay individual claims.

Regulators require tools to ensure the large deductible mechanism is judiciously used and not abused. For their part, receivers need these tools to collect large deductible reimbursements. Guaranty funds, on the other hand, shouldn't be "the screen" to mask the abuse of the large deductible policy by stepping in to pay claims, only to spread those costs among others in the industry.

With the adoption phase of the National Association of Insurance Commissioners' (NAIC) 2016 Workers' Compensation Large Deductible Study almost behind us, it is my hope, and likely the hope of all those who contributed to this milestone study, that all the interested parties in our "resolution family" will continue to work together now to enact the study's recommendations.

View the 2016 Workers' Compensation Large Deductible Study by clicking here.

Sandra J. Robinson is President of the American Guaranty Fund Group and NCIGF Board Chair. Ms. Robinson participated in many of the study's drafting calls, providing information on large deductible and Professional Employer Organization (PEO) programs. She also was a chief contributor to "The Role of Large Deductible Policies for PEOs in the Failures of Small Workers' Compensation Insurers," a study by The Katie School of Insurance and Financial Services, which is referenced in the NAIC study.

WELCOME IAIR'S NEWEST MEMBERS

Jodi Adolf

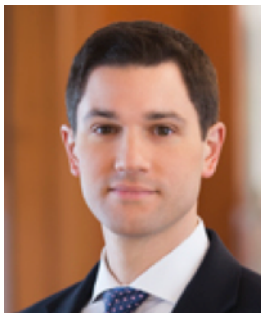
Jodi Adolf is a Partner with Denton's and a member of their Insurance Practice Group. Her practice is in regulatory and compliance matters related to life, accident and health, and property and casualty insurance. Jodi serves as general counsel to the Liquidator of National States Insurance Company. While in law school, Jodi was editor-in-chief of the Washburn Law Journal and was a recipient of the Koch Scholarship, the premier scholarship at Washburn. Following graduation, she served as a judicial law clerk for the Honorable Kathryn H. Vratil of the US District Court for the District of Kansas.

Amanda Barbera

Amanda Barbera is the General Manager of the Oklahoma Property and Casualty Insurance Guaranty Association (OPCIGA). Prior to becoming the General Manager, she worked at OPCIGA in several positions including as a Claims Examiner and Information Systems and Technology Administrator. Amanda is active with the National Conference of Insurance Guaranty Funds and has presented at their events several times. She has a Bachelor's of Science in Marketing/ Advertising and MBA from Oklahoma State University.

Bruce Baty

Bruce Baty is the co-chair of Denton's Insurance Regulatory Practice Group and the Firm's Insurance Sector. With more than 30 years of experience, his practice focuses exclusively on representing property & casualty and life, accident and health insurance companies and reinsurance companies in regulatory, transactional and litigation matters. Bruce is a member of the Association of Life Insurance Counsel, AIDA Reinsurance and Insurance Arbitration Society (ARIAS) and the Board of Directors of the Notre Dame Law Association, his alma mater.



Benjamin Cordiano

Benjamin Cordiano of Morgan Lewis focuses his practice on financial restructuring and insolvency as well as financial services transactions. He represents financial institutions in complex US and cross-border insolvencies and financial transactions, including workouts, creditors' rights matters, and corporate reorganizations. Ben also has experience with insurance, reinsurance, and insurance insolvency matters, including insurance company and insurance brokerage transactions, and financings, both domestically and in cross-border transactions. He also regularly assists creditors in interpreting professional liability policies in bankruptcy situations.

Kimberly Hammer

Kimberly Hammer has represented the Texas Insurance Department since 2007 and currently represents the Receiver in the Millennium Closing Services LLC d/b/a Millennium Title and Santa Fe Auto Insurance Company estates. Kimberly received Bachelor degrees in Advertising and English from the University of Kansas and Juris Doctor from the University of Utah S.J. Quinney College of Law. She also holds a CFE designation.

Warren Jones

Warren Jones is a Director at PwC in the US Actuarial and Insurance Management Solutions (AIMS) Practice and has more than 37 years of experience as an actuary. He provides actuarial consulting services and assistance regarding audits of insurance company clients. Before joining PwC, Warren was the Vice President of LTC Valuation at Genworth Financial and previously was Chief Actuary at the Transamerica LTC Division of Aegon. He is an active volunteer with the American Academy of Actuaries chairing various work groups and presents work of the Academy to the NAIC. Warren has a BBA from the University of Texas, is a Fellow of the Society of Actuaries, a Fellow of the Conference of Consulting Actuaries and a Member of the American Academy of Actuaries.

Crystal McDonald

Crystal McDonald serves as Project Director with the Pennsylvania Department of Insurance for a wide variety of administrative and substantive projects, including litigation assigned to outside counsel. Prior to joining the Pennsylvania Department, she was an Adjunct Professor at Berks Technical Institute. Crystal received her Bachelor of Arts in Political Science from Coastal Carolina University and her Juris Doctor from Widener University School of Law.

Michael Morrissey

Michael Morrissey is the Principal and Lead Consultant of Morrissey Consultants, LLC. He has over 15 years of experience working in the insurance and regulatory compliance fields specializing in information technology. He has worked on financial and market conduct examinations for healthcare, property and casualty, life and reinsurance companies. Michael has also conducted operational reviews of workers compensation and medical malpractice funds, and worked on special projects related to the Affordable Care Act. Prior to Morrissey Consultants, LLC, he was a Managing IT Specialist for Examination Resources LLC and Manager of the IT Regulatory Insurance Consulting Practice for RSM McGladrey. Michael has a Bachelor of Science in Agriculture from Colorado State University and Master Regional Planning at University of Pennsylvania. He is an Automated Examination Specialist, Certified Information System Security Professional and Certified Information Systems Auditor and regularly presents to the Society of Financial Examiners.

John Murphy

John Murphy is Vice President with Noble Consulting Services, inc. He has focused his professional career on insurance regulatory matters. He has been with the law firm of Ice Miller LLP for 33 years, where he is now Of Counsel. His practice concentrations as a lawyer have been in insurance regulatory law, market conduct examinations, insurance company mergers and acquisitions, insurance insolvency law, and insurance litigation. John heads Noble Consulting's Market Regulation division, working as a non-lawyer on market conduct examinations, targeted financial examinations, and troubled company matters. John received his Bachelor of Business Administration at the University of Notre Dame and Juris Doctor from University of Michigan Law School.

Carl Poedtke

Carl Poedtke is a Partner at DLA Piper and has a broad range of litigation experience in domestic and international insurance, reinsurance and insurer receivership matters, including state and federal court litigation, arbitration and mediation of disputes. Carl's receivership work spans various estates across the country. Most recently he has been representing the Pennsylvania Insurance Commissioner in In re Penn Treaty Network America Insurance Company, In Rehabilitation. He received a Bachelor's in Art from Stetson University and Juris Doctor from John Marshall Law School.

Lisa Warrum

Lisa Warrum is the Vice President and Managing Director with Noble Consulting Services, Inc. She has more than 12 years of experience in the insurance regulatory environment with Noble, along with 5 years in public accounting. In addition to examination oversight and special projects, her responsibilities with Noble include assisting state insurance departments including the supervision of two potentially troubled companies and assisting with the day-to-day operations of Noble. Lisa graduated in 1994 from Indiana University with a Bachelor of Science in Business with a major in accounting. She is a CPA and CFE.

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SOFE/IRES BREAKFAST AT THE NAIC

SOFE and IRES will be having a joint educational breakfast at the Fall NAIC Meeting on **Sunday, December 11, 2016** from **7:00-9:00 am**. Steve Guest and Shelly Schuman of The INS Companies will present the topic Collaborative Examinations with Market Regulation Risk Assessments. Click here for more information.

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