

Receivership Large Deductible Workers' Compensation - Missouri Experience

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Missouri's experience with Insolvent WC Insurers with Large Deductibles

In February 2015, the largest PEO policyholder of Lumbermen's Underwriting Alliance (LUA) declared bankruptcy, after failing to pay more than \$150M in payroll and other taxes owed on behalf of its clients.

With a projected large deductible (LD) collateral shortfall of over \$85M for this one PEO, LUA was placed into Rehabilitation in May 2015, and placed into Liquidation in May 2016

In 2016, the Missouri Legislature enacted the legislation sponsored by NCIGF regarding the treatment of LD collateral, but the new law applies only to insurers placed into receivership after August 2016

The Receiver has operated LUA under the old law, collecting LD reimbursements from policyholders and treating those recoveries as estate assets, but making distributions to SGAs under a negotiated Joint Collection Agreement and a statutory Early Access Plan

Lumbermen's Underwriting Alliance, a reciprocal inter-insurance exchange

- Founded in Kansas City, MO in 1905 to offer insurance products for lumber industry
- Moved its corporate headquarters to Boca Raton, FL in 1976
- Licensed in 48 States and the District of Columbia
- For most of its history, wrote property & casualty coverages for the Lumber Industry

Mega-Deductible Workers' Compensation

- Began writing LD Workers' Compensation programs in 1991
- Greatly expanded these programs in the early 2000s
- In 2007, LUA significantly expanded its LD Workers' Compensation programs to include Mega-Deductible Programs to PEOs
- These Programs featured deductibles as large as \$1.25M. They were highly dependent upon:
 - the PEO's ability to timely reimburse LUA for Loss and ALAE payments within the Subscribers' deductible layer
 - the sufficiency and quality of the Collateral posted by the Subscriber to secure its obligations

Joint Collection Agreement

Key Points

- SGAs and Receiver entered into Joint Collection Agreement at outset of Liquidation
- Applies to post-liquidation LD Recoveries (LDRs)
- Amounts paid to the Receiver constitute a credit for amounts owed by Subscribers to the SGAs for Post-Liquidation indemnity payments (no double exposure to the Subscriber)
- If a Subscriber challenges the Receiver's ability or right to collect post-liquidation LDRs, the Receiver and SGAs cooperate in the defense of that Affirmative Defense
- Quarterly, 80% of the amounts collected or drawn from LD Collateral is paid to SGAs who have signed the Agreement. The remaining 20% is deposited in a Joint Collection Account (JCA)
- JCA balance is invested according to Investment Guidelines governing investment of the estate's General Assets

Joint Collection Disbursements

➤ 45 states have signed the JCA; 1 state eligible for payments, but has not signed

➤ JCA Disbursements to SGAs:

■ 4Q16

➤ Collected	\$2,238,057.51
➤ Admin expense	\$10,103.00
➤ Disbursement	\$1,371,592.63
➤ JCA	\$342,898.16

■ 2017

➤ Collected	\$10,991,055.57
➤ Admin expense	\$40,412.00
➤ Disbursement	\$9,227,193.08
➤ JCA	\$2,310,025.15

■ 2018

➤ Collected	\$7,603,096.56
➤ Admin expense	\$40,136.00
➤ Disbursement	\$6,050,368.45
➤ JCA	\$1,512,592.11

➤ **Total**

➤ Collected	\$20,832,209.64
➤ Admin expense	\$90,651.00
➤ Disbursement	\$16,649,154.16
➤ JCA	\$4,165,515.42

Early Access

Key Points

- Mo. Rev. Stat. § 375.1205 requires "within one year of a final order of liquidation of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to make **early access disbursements** out of marshaled assets to a guaranty association or foreign guaranty association having obligations because of such insolvency," and the "**[d]isbursements to guaranty associations [shall be] in sums as large as possible**"
- Early Access Plan approved by Court May 26, 2017
- September 22, 2017 - paid \$2,531,185
- September 21, 2018 - paid \$3,634,248

Collateral Review

Key Points

- At the end of each calendar year, LUA initiates a review of all LD WC programs where the Receiver is holding collateral, to determine whether the amount of collateral held is adequate based on the ultimate liabilities of the Subscriber's program.
- Factors considered: **current** case reserves (set or re-set by the SGAs, or reduced by Subscriber settlement payments), IBNR, ALAE trends, contractual development factors, payment history.
- Based on this evaluation, LUA determines whether or not a decrease or return of collateral is warranted. At a minimum, the collateral held to open case reserves must be no less than a 2:1 ratio. No collateral will be returned on individual programs where the ratio is below 2:1.

Collateral Review

- Three-person Collateral Review Committee

- Collateral Following 2017 Review

- Holding a total of \$69,588,639, which consists of the following asset classes

- Letters of Credit \$18,183,158
 - Cash \$16,490,597
 - Money Market \$14,389,888
 - Certificate of Deposit \$7,945,516
 - Trust Accounts \$12,579,480

- Following 2018 Review

- Holding a total of \$48,453,323 which consists of the following asset classes

- Letters of Credit \$12,166,730
 - Cash \$12,290,079
 - Money Market \$ 6,567,577
 - Certificate of Deposit \$ 4,929,000
 - Trust Accounts \$12,499,937

Challenges to the Receiver's authority to collect LDRs - the Axcet Lawsuit

- Axcet HR Solutions - a Kansas PEO with an LUA Large Deductible WC Program
- Prior to Rehabilitation, Axcet stopped reimbursing the Receiver for amounts paid within its Deductible Layer
- At Liquidation, most of Axcet's claims rejected by the SGAs and Axcet failed to provide information to the Collateral Review Committee
 - August 3, 2016 - Axcet filed motion to intervene and verified petition declaratory judgment, arguing that collateral should be released because the Policy was cancelled and Axcet is paying its own claims
 - August 26, 2016 - Judge Joyce ruled Axcet should file a POC and challenge Receiver's right to retain Collateral through the POC claim process
 - September 13, 2016 - Receiver denied Axcet's POC
 - September 26, 2016 - Axcet appealed denial of POC
 - April 24, 2017 - Hearing with Judge Joyce on Axcet's appeal
 - May 26, 2017 - Judge Joyce denied Axcet's appeal
- Following her ruling, Axcet provided information to Collateral Review Committee
- Returned \$525,000 in collateral. Still holding collateral.

Questions?

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Bruce Baty, Special Deputy Receiver

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NAIC / IAIABC JOINT (C) WORKING GROUP

- The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight.
- NAIC members are the elected or appointed state government officials who along with their departments and staff, regulate the conduct of insurance companies and agents in their respective state or territory.

NAIC / IAIABC JOINT (C) WORKING GROUP

- The International Association of Industrial Accident Boards and Commissions, or IAIABC, is an association of workers' compensation jurisdictional regulatory agencies and industry stakeholders who find solutions to reduce harm and aid recovery from occupational injuries and illnesses.
- Today, the IAIABC is the largest trade association of workers' compensation jurisdictional agencies in North America. Along with these government entities, various private organizations involved in the delivery of workers' compensation coverage and benefits participate in the IAIABC.
- The IAIABC works to improve and clarify laws, identify best practices, develop and implement standards, and provide education and information sharing. The IAIABC strives to gather the best resources available to solve the practical administrative and regulatory challenges of its members.

2016 WORKERS' COMPENSATION LARGE DEDUCTIBLE STUDY GROUP PARTICIPANTS

Study Group Participant List

NAIC/IAIABC Joint Working Group Members

Full Name	Company
Mr. William Lacy	Arkansas Insurance Department
Mr. Ronald A. Dahlquist	California Department of Insurance
Mr. George B. Bradner	Connecticut Insurance Department
Ms. Jennifer Wolf Horesh	IAIABC
Mr. John Gatlin	Illinois Department of Insurance
Ms. Robin Coombs	Kentucky Department of Insurance
Mr. Robert A. Wake	Maine Bureau of Insurance
Ms. Angela Nelson	Missouri Department of Financial Institutions & Professional Registration
Ms. Joan W. Dutil	Missouri Department of Financial Institutions & Professional Registration
Mr. Gennady Stolyarov II	Nevada Dept. of Business & Industry Division of Insurance
Ms. Tracy Klausmeier	Utah Insurance Department

Interested Regulator

Name	State
Ms. Carol Stiffler	Arkansas Insurance Department
Mr. Thomas Taggart	Connecticut Insurance Department
Ms. Cyndi Cooper	Florida Office of Insurance Regulation
Ms. Robin Coombs	Kentucky Department of Insurance
Mr. Charles Hansberry	Louisiana Department of Insurance
Mr. Warren Byrd	Louisiana Department of Insurance
Mr. James Mills	Oklahoma Insurance Department
Mr. Michael R. Shinnick	Tennessee Department of Commerce & Insurance
The Honorable Michael D. Riley	West Virginia Offices of the Insurance Commissioner

Interested Parties

Name	Company
Mr. Steven Politis	Alcott HR Group LLC
Mr. Robert F. DiUbaldo	ACE Group
Ms. Robyn S. Crosson	ADP TotalSource
Mr. Tom Glasson	AIG
Mr. Arunesh Sohi	AIG
Ms. Sandra J. Robinson	American Guaranty Fund Group
Mr. Bruce Wood	American Insurance Association (AIA)
Mr. Steven A. Bennett	American Insurance Association (AIA)
Ms. Nancy R. Treitel-Moore	Liberty Mutual
Mr. Thomas Jenkins	Locke Lord Bissell & Liddell LLP
Ms. Farrah Fielder	NAPEO
Ms. Barbara F. Cox	National Conference on Ins. Guaranty Funds (NCIGF)
Ms. Mona T. Carter	National Council on Compensation Insurance (NCCI)
Mr. Edward Marynowitz	National Council on Compensation Insurance (NCCI)
Ms. Rita Nowak	Property Casualty Insurers Association of America (PCI)
Mr. David Kodama	Property Casualty Insurers Association of America (PCIAA)
Mr. Glen Distefano	SUNZ Insurance Company
Ms. Jessica Mayer	Travelers Insurance Company
Mr. Mike Ignatowicz	Travelers Insurance Company
Mr. John Zillmer	Zurich

2016 WORKERS' COMPENSATION LARGE DEDUCTIBLE STUDY

The paper focuses on six areas:

- Employer insurance buying trends.
- Solvency concerns.
- Claims.
- State filing requirements.
- Special considerations for workers' compensation underwriters.
- Unique concerns of professional employer organizations (PEOs).

2016 WORKERS' COMPENSATION LARGE DEDUCTIBLE STUDY

The specific recommendations are as follows:

- Enact legislation establishing financial requirements for large deductible workers' compensation coverage, including the following:
 - A definition of large deductible coverage that includes traditional policies subject to endorsements or side agreements that shift risk back to the employer.
 - Size and financial strength requirements for insurers writing large deductible policies.
 - Limitations on the risk employers may retain, relative to their financial capacity.
 - Requirements for collateral, including prohibitions against commingling it with other assets of the insurer or pledging it for other competing purposes.

RECEIVERSHIP LARGE DEDUCTIBLE WORKERS COMPENSATION (E) WORKING GROUP

Financial Condition (E) Committee

→ Receivership and Insolvency (E) Task Force

→ Receivership Large Deductible Workers Compensation (E)

Working Group

James Mills, Chair
Laura Lyon Slaymaker, Vice Chair
David Phifer
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Toma Wilkerson
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Oklahoma
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Alaska
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Kevin Baldwin
Robert A. Wake
Tamara W. Kopp
Matt Holman
Christopher Brennan
Mark Jordan
James Kennedy

Illinois
Maine
Missouri
Nebraska
New Jersey
New Mexico
Texas

RLDWCWG 2018 CHARGE

The Receivership Large Deductible Workers Compensation (E) Working Group will study states' receivership laws and practices regarding receivership of insurers with significant books of large deductible workers' compensation business, and evaluate the need for a model act/rule, or amendments to existing models, that governs the rights and duties of the various parties regarding large deductible business in insolvencies, including, but not limited to, consideration of a provision that expressly permits the collection of large deductibles from insureds during an insolvency proceeding. Provide any other recommendations for possible enhancements to the U.S. receivership regime based on this study. Complete by the 2018 Fall National Meeting.

RLDWCWG 2018 ACTIVITIES

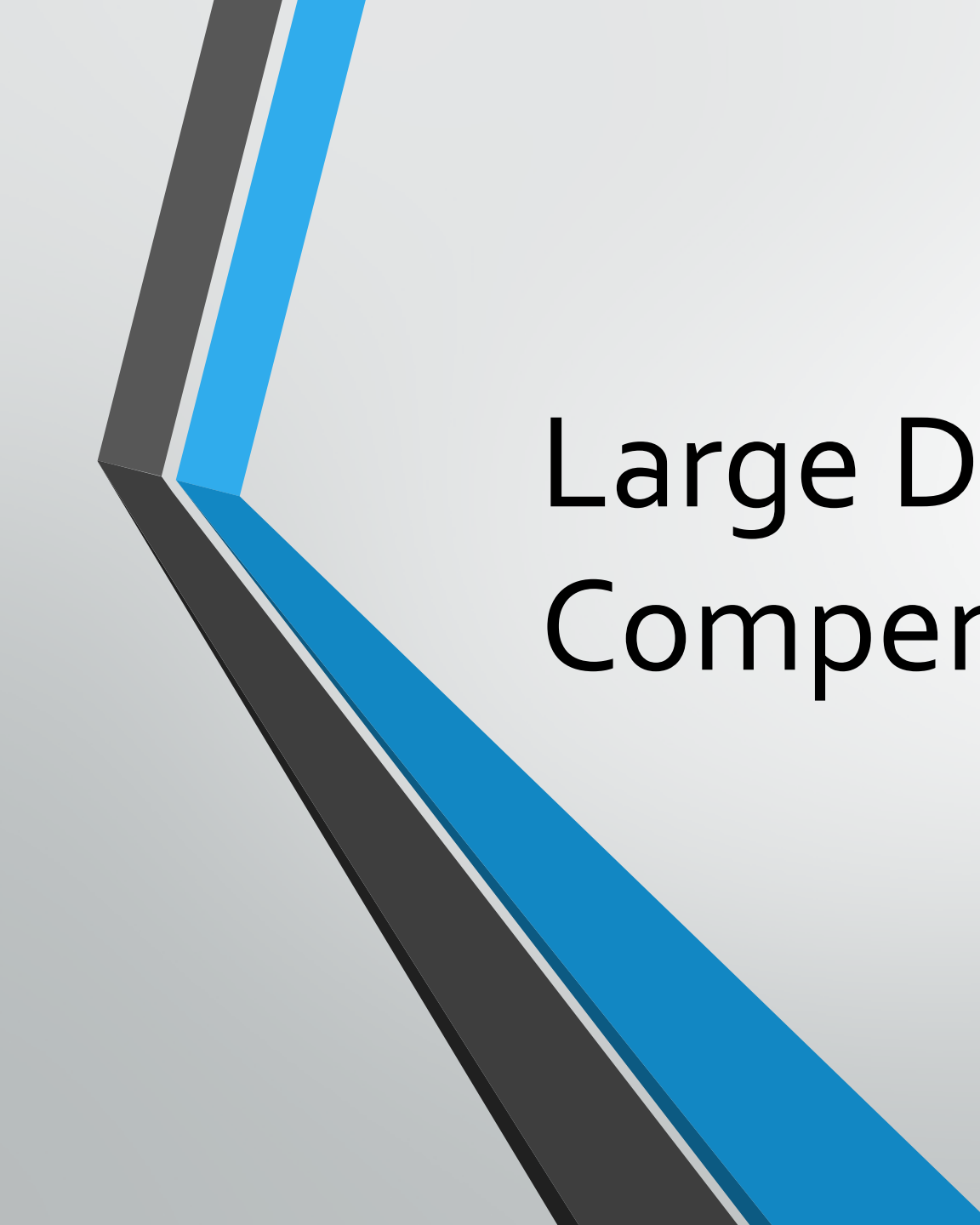
The Working Group heard presentations from the National Conference of Insurance Guaranty Funds (NCIGF) and nine states and insurers with experience with a receivership involving large deductible workers' compensation, and reviewed survey results from 27 states regarding their laws, practices and recommendations.

RLDWCWG RECOMMENDATION

- Encourage states to adopt statutory authority for receiverships that include provisions for the collection of large deductibles; or where direct statutory authority is not adopted, encourage states to implement alternatives for accomplishing such goals in a receivership (e.g. an agreement between the receiver of the estate and the involved state guaranty funds)
- Recommend the Working Group draft best practices/guidance regarding large deductible workers' compensation receiverships for state insurance regulators in the *Receivers' Handbook for Insurance Company Insolvencies*

RLDWCWG 2019 CHARGE

The Receivership Large Deductible Workers' Compensation (E) Working Group will perform work based on recommendations for possible enhancements to the U.S. receivership regime, as approved and directed by the Receivership and Insolvency (E) Task Force, resulting from a study of the states' receivership laws and practices related to the receivership of insurers with significant books of large deductible workers' compensation business. Complete by the 2019 Fall National Meeting.



Large Deductible Workers' Compensation

A Florida Perspective

Introduction / Background

- **Tom Streukens** – Executive Director, American Guaranty Fund Group (Management Company for the Florida P&C Guaranty Funds)
- **Florida Workers' Compensation Insurance Guaranty Association**
- **Florida Department of Financial Services – Division of Rehabilitation and Liquidation**

Receiver / Guaranty Association Coordination

- Receiver / GA Communication
- NCIGF Coordinating Committee
- Guaranty Support Inc. (GSI)
- Pre-Pay / Pre-Funding Agreement and Escrow Account

Florida Statutory Treatment of Large Deductible Assets

- Who does the asset belong to?
- Florida Receiver has historically treated large deductible assets to belong to the entity that paid the claim
- Receiver pre-liquidation / Guaranty association for post-liquidation
- LD collateral and recoveries are not an estate asset
- Florida law changed in 2017 to formalize LD ownership – HB837

Guarantee Insurance Company (GIC)

- Placed in liquidation on November 27, 2017
- Licensed in 40 states and the District of Columbia
- Wrote business in 31 states and the District of Columbia
- Approximately 8,600 workers' compensation policies in force
- 6,300 open claims in 32 jurisdictions at liquidation
- Numerous large deductible and captive cell arrangements

GIC 9/30/2018 Financials

ASSETS	
Cash-Company Operating	\$94,499.15
SPIA-Restricted	369,470.62
Pooled Cash in SPIA Due from the Admin Fund	23,805,835.07
Short Term Investments	3,134.29
Short Term Investments-Restricted	36,050,278.74
Allowance - Short Term Investments	(36,050,278.74)
Accrued Interest Receivable	37,497.05
Reinsurance Recoverable	9,139,676.58
Allowance Reinsurance Recoverable	(9,139,676.58)
Accounts Receivable	21,358,954.89
Allowance - Accounts Receivables	(21,358,954.89)
Marshaled Inventory	1,170,000.00
Long Term Investments	328,188.41
Allowance - Long Term Investments	(6,353.69)
Other Assets	3,396,199.47
Total Assets	\$29,198,470.37

LIABILITIES	
Secured Claims	461,727.12
Administrative Claims (Class 1)	
Class 1 - Guaranty Associations	62,085,865.06
Loss Claims (Class 2)	
Class 2 - Guaranty Associations	424,025,331.15
Class 2 - Other	12,716,518.81
Unearned Premium Claims	
under Non-assessable Policies (Class 3)	
Class 3 - Guaranty Associations	1,566,364.86
Class 3 - Other	15,230,947.28
Employee Claims (Class 5)	27,804.05
General Creditor Claims (Class 6)	
Class 6 - Other	285,697,769.53
State & Local Government Claims (Class 7)	553,515.75
Surplus Notes/Unearned Premium Claims	
under Assessable Policies (Class 9)	
Class 9 - Other	28,601,000.00
Shareholder Claims	401,269.39
Total Liabilities	\$831,368,113.00
EQUITY	
Contributed Equity - State of Florida	116,415.82
Estate Equity	(802,286,058.45)
Excess (Deficiency) of Assets over Liabilities	(\$802,169,642.63)
Total Liabilities and Equity	\$29,198,470.37

Highlights:

Assets - \$29 Million

Liabilities \$831 million

GA Claims \$487 million

GIC – Current Statistics

- 10,500 claims handled by GA – up from 6,300 at the date of liquidation
- \$487 million in GA claims – up from \$265 million at liquidation
- Florida Only – 2,061 claims / \$151M incurred up from 1,300 claims / \$62M reserves at liquidation

GIC Large Deductible

- 2,973 large deductible policies dating back to 2008
 - 94 unique insureds
 - 293 policies with open claims
- Approved to write large deductibles from \$100,000 to \$10 million per claim
- Actual policy deductibles ranged from \$100,000 to \$1 million
 - 96% >= \$250K 60% >= \$500M 20% = \$1M
 - Premium credits 44% - 79%
- Primarily PEO MCP and Master Policies with a few Non-PEO Policies
- 1,035 claims on large deductible policies
 - 761 at liquidation - 93 new - 181 reopens

GIC Large Deductible

- Collateral Requirements
 - Initial percentage of premium (16% to over 100%)
 - Greater of percentage of premium OR Paid claims plus set amount (\$250K-\$1M) plus 200% of O/S reserves
- \$23.2 million in identified loss fund collateral
 - \$18.3 million comingled with general assets and unaccounted for
 - \$4.9 accessible to the Receiver
 - \$311,543 in Cash and \$4.575 million in LOC's

Large Deductible Billing and Collections

- Post-liquidation Billing
 - \$6.4 million
- Post-liquidation Collections
 - \$5.9M loss funds offsets, \$232K in cash and \$217K outstanding
- Collateral Review / Release
 - Annual review – initial review target of July 1, 2019
 - Some pre-liquidation collateral deficiencies
 - Commingled pre-liquidation
 - Collateral received post-liquidation held as a secured claim
- Litigation – 5 policyholders - \$4.5M

GIC Early Access Agreement

- GA community worked with Receiver to craft an agreement acceptable to all parties
- Receiver obtained court approval
- All but two guaranty associations have executed early access agreement

Recent Insurance Company Failures with Significant PEO Policyholder Liabilities

Date of Liquidation	Carrier Name	Florida GA Exposure	National GA Exposure
Nov-09	Park Avenue Property & Casualty	\$24 million	\$75 million
May-10	Imperial Casualty	Not Licensed	\$40 million
May-13	ULLICO	\$7 million	\$385 million
Aug-14	Freestone (formerly Dallas National)	Not Licensed	\$124 million
May-16	Lumbermens Underwriting Alliance	\$10 million	\$110 million
Nov -17	Guarantee Insurance Company	\$151 million	\$488 million

Questions?

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