

THE INSURANCE RECEIVER



INTERNATIONAL ASSOCIATION
OF INSURANCE RECEIVERS
PROMOTING PROFESSIONALISM AND ETHICS

VOLUME 27 | NUMBER 1

PRESIDENT'S MESSAGE

IAIR began 2020 looking forward to an exciting and impactful year.

In January, IAIR introduced its revised designation program. See the article in this newsletter for more information on these designations and consider pursuing one to burnish your credentials and support IAIR at the same time.

In March, IAIR held its annual Resolution Workshop. Charleston greeted us with beautiful weather, delightful location, and the excitement of the Democratic debates. We enjoyed days filled with informative presentations and energetic discussions and evenings of networking over great dining. We honored our administrator, Nancy Margolis, and wished her well in her new



Kathleen McCain, Esq., IAIR

on, your Board began to discuss how IAIR could continue to serve as a resource for our members and bring you educational opportunities.

In August, we held our first Virtual Happy Hour. It was good to see everyone and catch up. We discussed how the pandemic had changed our lives and how our various cities and states were responding.

We also held the first Virtual Issues Forum discussing how the pandemic was impacting business interruption coverage, force majeure clauses, solvency monitoring, and current issues in privacy and data security.

We just finished the second of our virtual meetings: the 2020 Technical Development Series. Almost 100 people attended 6 sessions over 3 days. The program was free for IAIR members as a "thank you" for "sticking with us" during these past 7 months of uncertainty.

Next up will be a monthly series for our Issues Forum, with the first on November 12, 2020 at 11:00 am Eastern. Edward Toy will be our first presenter: US Insurer Invested Assets & Market Control. This session will be presented free of charge to IAIR

***2020 – It has been exciting and challenging but not in any way we anticipated.
As those in our occupations do, we pivoted and adapted.***

endeavor as Executive Director of the Pennsylvania Life & Health Guaranty Association. While there was some news about a virus outbreak in China, no one anticipated what was about to happen.

Within a few weeks of returning home, we were scrambling for essentials – toilet paper, paper towels, cleansers, and various food items. We began searching for equipment for our staff to work from home, setting up our own home offices for daily use and learning about video conferencing platforms.

Like most organizations, IAIR paused for a while, adjusting to the change in our work and home environments. As time marched

members. Visit the "Upcoming Events" link on the IAIR website (www.iair.org) to register.

Event plans for the remainder of the year include another Happy Hour and a December Issues Forum. The 2021 Resolution Workshop will be a virtual event. Watch your email and the website for announcements of these events.

Best wishes and stay safe and healthy! 'Til we meet again face to face.

Virtually yours.



FIND US ON FACEBOOK
Look for Throwback Thursday





MEETING CHALLENGES, MAKING OPPORTUNITY

By Roger H. Schmelzer, President & CEO NCIGF

With daily routines, business practices and relationships all upended by the coronavirus, our patience is thin, and our connections frayed. Don't be deterred though because these are times that define us! We are leaders of an essential and honorable undertaking, the protection of insurance consumers and we must still anticipate, embrace, and plan for a hazy tomorrow.

At NCIGF, we are fully engaged in business as usual, which now includes responding to the disruptions caused by COVID-19. All our in-person meetings are cancelled through 2020 and we're evaluating options for next year. Our priority is to keep our members, volunteer leaders and staff safe while offering as much certainty as possible.

We've adapted to circumstances by capitalizing on structural readiness already in place. Resources are being deployed in multiple ways of strategic importance to both the P&C guaranty fund system and state insurance regulation. Here's what we're doing:

- Leveraging prior efforts with the NAIC to increase collaboration with receivers and regulators
- Reviewing industry trends, operational infrastructure and the unique legal issues related to the pandemic to maximize readiness
- Giving attention to all relevant public policy issues underway at NAIC, NCOIL, insurance departments and state legislatures, coordinating with national trades in the process.

Our member guaranty associations haven't missed a beat. A more dedicated and professional group, I've never seen as they've diligently gone about the work of protecting consumers. NCIGF itself is flexible in our tactical business yet remarkably still in tune with our 2020 priorities. Our staff's work on data security, support of coordinating committees, communications, outreach, and public policy has all gone uninterrupted.

At the outset of the crisis, I was reminded of September 2008 and the unfolding of the financial crisis. Both times, I was asked directly about the prospect of insurer insolvencies. Of course, NCIGF wouldn't make projections about the likelihood of insolvency activity even if we could. But the experience of 12 years ago told us to make outreach to industry on how the guaranty fund system works and to assure a key stakeholder group that the system is prepared. In this way, crisis delivered opportunity.

COVID has presented a special governance challenge. Out of 20 NCIGF board members, 15 are new since 2015. Five (5) of those were onboarded virtually in June. We moved up this program by a couple months because we felt it was incumbent to get everyone up-to-speed as swiftly as possible. Most of our newest crop have yet to meet their colleagues (and vice versa). With video conference board meetings planned for the foreseeable future, the obstacles to building camaraderie and cohesiveness are obvious. We will be creative and find opportunity.

What Does Our COVID-19 Future Hold? We're looking ahead. For example, our Legal Committee is identifying unique issues that may result from the pandemic. We think it's useful to analyze any new type of claims or operational issues that could arise from COVID that could impact the guaranty funds one day.

The way I see it, even if possibilities seem distant, the most significant economic interruption of our lifetime requires a purposeful focus on the potential discrete implications for the insurance resolution system. A targeted evaluation will serve as the foundation for ongoing research as these issues develop over an extended period. There may be no fallout at all, but we will all be the better for considering the possibilities.

This pandemic also presents the opportunity to think deeply about how to position NCIGF for the long-term value of our stakeholders-- state guaranty associations, the consumers they serve, regulators, receivers, and the insurance industry. We've always made time for strategic analysis, but what's happening now is completely different: We have a rare chance to work on the business of NCIGF rather than to be occupied primarily in the day-to-day. This is a gift.

My entire career has been spent helping lead change in organizations with diverse points of view. Long before COVID, NCIGF was already regenerating. Not only has our board turned over at a hearty clip, more than half of our guaranty fund managers are new to their jobs since 2015. Recognizing this opportunity, our board approved strategies intended to encourage members to fully activate their NCIGF affiliation. Our work has accelerated, fueled by the need to drive linkages today and for the "normal" that comes next.

NCIGF is a unique organization. We are governed by a partnership of assessment-paying industry members and dues-paying guaranty associations. The expectation is that we will be the bond for 55 autonomous state guaranty associations, each with their own accountabilities, beginning with a statute enacted by their state's legislature. To meet these needs for the long haul, we are reinventing the way we exchange information, employing ongoing virtual education, creatively revamping our member website, and introducing a more dynamic structure in which our member-driven committees can thrive. We've restructured the staff and continue to develop our employees. We are tackling change head-on.

Our service is to a culture that deliberately promotes fairness, courtesy, goodwill, and professionalism. We must

keep communication flowing consistently, in all directions and at all levels to meet this benchmark. Recognizing that every task and every project carries a communications component will fortify the connections that produce the cohesiveness and consensus necessary to act with unity of purpose.

Connectivity matters as much as it ever has in modern times. NCIGF is committed to creating more and better connections that will strengthen our organization, improve the member experience, maximize collaboration, and raise the effectiveness of the guaranty fund system. This is our shot. The long-term sustainability of NCIGF and fulfillment of our stakeholder's expectations ride on how accurately we aim

INTERESTED IN JOINING IAIR?



**INTERNATIONAL ASSOCIATION
OF INSURANCE RECEIVERS**

PROMOTING PROFESSIONALISM AND ETHICS

www.iair.org

BENEFITS OF MEMBERSHIP

- Issues Forum
- Receipt of "The Insurance Receiver" Newsletter
- Annual Resolution Workshop
- Staff Training
- Technical Development Series Programs
- Professional Designations
- Networking Opportunities
- Attendance at the IAIR Annual Meeting and Receptions
- CE and CLE Approved Programs

MEMBERSHIP APPLICATION IF YOU ARE INTERESTED IN JOINING, PLEASE [CLICK HERE](#) TO APPLY ONLINE.

THE SOIL HAS ISSUES

By Douglas Hartz

The title alone may raise a reader's blood pressure. But, do you want to understand all the discussions that have been going on at the NAIC meetings on LTC underpricing and rate increases? This article may be helpful. It was written to be useful. Caution: it contains acronyms, lots of them, allegories and some tables. But, go slow and you will hopefully be helped. When working for the United States Department of Defense (DoD) we used to create acronyms of acronyms. An acronym that may be useful here stands for 'set of interrelated issues with long term care' (SOIIL). The 'L' taking the place of long-term care (LTC). It may be best to pronounce SOIIL as "soy-ill," with two syllables, instead of one. This will cause it to sound different from any actual word. This is so the intended hearer will not confuse the acronym for an actual word. Of course, you also must think about if the intended hearer knows the acronym. But do worry too much about someone overhearing. It is meant to confuse any eavesdroppers.

There are many issues in the SOIIL. So much so that it is hard to remember that while they are all separate, many of them are interrelated. There is no silver bullet that will fix all the problems in the SOIIL. There may, however, be some 'time-warped' silver buckshot. This means we must be shooting, but not absolutely all that simultaneously, at these separate but interrelated problems. The more coordinated we can be, the more we may gain some synergies between the separate, but interrelated, solutions that need to be applied or, at least, attempted. But, the order of the solutions may be as debatable as the priority of each issue in the SOIIL. Let's focus here on just one of the problems in the SOIIL and its potential (and probably partial) solutions.



Underpricing → Under-reserving. This deals both with 1) how underpricing in the long-term care legacy blocks (LLBs) has come into being (leading to under-reserving and instability for the insurers that wrote this underpriced LTC), and 2) with how some of these LLB problems may be ameliorated, although they may not be completely solved, by better understanding the LLB pricing problems. Underpricing may be one of the main reasons why many of the LLBs are now under-reserved. Underpricing is why estimates of under-reserving in the LLBs have been as high as \$300B. However, that was a few years ago and was an estimate of how much it

could be. Such an estimate of how much it is now may be lower, but maybe not by too much. See the following in relation to the tables here. <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/51490785>

It is also why the estimate of under-reserving in the P&C lines is as high as \$200B at this point.

See, <https://www.reinsurancene.ws/casualty-risk-has-been-underpriced-for-a-decade-stephen-catlin/>.

Rate increases will not fill the shortfall created by decades of underpricing. In other words, rate increases on the existing or remaining policyholder base cannot be so large that they pay for the underpricing that benefited years, maybe even decades, of current and past policyholders. This creates something of a generational inequity between groups of prior policyholders that had their claims paid even though their premium rates were unrealistically low. While relaying a likely truth regarding LLBs, it seems more explanation is needed.

XYZ LTC Example Table 1												
Premium Stays at \$50 for Years 1 to 34.												
A	B	C	D	E	F	G	H	J	K	L	M	N
Year	Annual Prem.	LTC Policies	Rev. to Rsvs.	Cumm. Rev. to Rsvs.	Expected Nbr. 2 Years On Claim	Expected Claims Costs \$ 500	Expected Cumm. Costs	Expect Net	Actual Nbr. 5 Years On Claim	Actual Claims Costs \$ 750	Actual Cumm. Costs	Actual Net
1	50	10	500	500	-	-	-	500	-	-	-	500
2	50	10	500	1,000	-	-	-	1,000	-	-	-	1,000
3	50	10	500	1,500	-	-	-	1,500	-	-	-	1,500
***	***	***	***	***	***	***	***	***	***	***	***	***
19	50	10	500	9,500	-	-	-	9,500	-	-	-	9,500
20	50	10	500	10,000	-	-	-	10,000	-	-	-	10,000
21	50	9	450	10,450	1	500	500	9,950	1	750	750	9,700
22	50	8	400	10,850	2	1,000	1,500	9,350	2	1,500	2,250	8,600
***	***	***	***	***	***	***	***	***	***	***	***	***
29	50	1	50	12,250	2	1,000	8,500	3,750	5	3,750	26,250	(14,000)
30	50	0	0	12,250	1	500	9,000	3,250	5	3,750	30,000	(17,750)
31	50	0	0	12,250	-	-	9,000	3,250	4	3,000	33,000	(20,750)
32	50	0	0	12,250	-	-	9,000	3,250	3	2,250	35,250	(23,000)
33	50	0	0	12,250	-	-	9,000	3,250	2	1,500	36,750	(24,500)
34	50	0	0	12,250	-	-	9,000	3,250	1	750	37,500	(25,250)

Storytime. Maybe we need to move from acronyms to allegories. Understanding how underpricing has gone for the LLBs (and where the LLBs are now) may be helped by the following story. This is simplified as much as possible and uses several “XYZ LTC Example Tables.” Assume the following. First, decades ago, XYZ started selling LTC, second XYZ sold just 10 LTC policies, and third (as shown in Table 1 for XYZ) each of the 10 policyholders paid premium of \$50 a year. Remember it’s only a story and the \$50 is merely representative of what policyholders really pay.

Further assume, just after it started selling LTC, XYZ stopped selling LTC so that XYZ has had an LLB with just 10 LTC policies from year 1. This is shown in the XYZ LTC Example Tables. It may be unrealistic, but it is needed to keep it simple. Along that line, continue to ignore incorrectly high assumptions on lapse rates, investment income, and anything other than simple underpricing. Insurance may be unique in that we do not know the costs of what has been sold for years and this can lead to governance trouble in insurers, especially when it is ignored or not properly addressed.

In year 21, as expected, one of the 10 XYZ LTC policies goes on claim. But, unexpectedly, it stays on claim for 5 years (years 21 to 25) instead of just the expected 2 years and instead of each year costing \$500, each year costs \$750. XYZ had expected to be paying only \$500 per year over 2 years for each of its 10 LTC policies for a total of \$10,000. If all 10 paid their \$50 each year all the way to

year 20, then at that year, there would have been \$10,000 to cover XYZ’s costs. Might have even been a profit later.

If all had gone as expected for XYZ, one more of its 10 LTC policies would have gone on claim in year 22. After that one more would go on claim each successive year. If the remaining LTC policies (see Column C in all of the XYZ LTC Example Tables) paid their \$50 each year to year 30, then at that year there would have been \$12,250 in cumulative revenue (see Column E in XYZ LTC Example Table 1) to cover XYZ’s cumulative costs of \$9,000 (Column H) leading to an expected net of \$3,250 (Column J, there is no ‘I’ in ‘team,’ or in these tables, because it looks too much like ‘1’). After year 30, if all had gone as expected, XYZ would not have had any active LTC policies or anyone on claim. But Table 1 shows years 31 to 34 because things did not go as planned. The actual cumulative costs for XYZ go to \$37,500 in year 34 (see Column M in XYZ LTC Example Table 1) and XYZ ends up with an actual net loss of (\$25,250) as shown for year 34 in Column N of Table 1. This is one possible result from underpricing – a big net loss at the end.

The figures for years 4-18 and 23-28 are not shown in Table 1 (instead *’s indicate omitted material) because the number of LTC policies ‘on claim’ and the number that remain active (at least in years 4-18) do not change from year to year in these spans or the change does not show much useful information. This is the case for both the expected and actual results, and really all of the columns, in Table 1. Similar omitted material is shown this way in

XYZ LTC Example Table 3													
Premium to \$213 for Years 10 to 34. Net 0 at Year 34.													
A	B	C	D	E	F	G	H	J	K	L	M	N	
Year	Annual Prem.	LTC Policies	Rev. to Rsvs.	Cumm. Rev. to Rsvs.	Expected Nbr. 2 Years On Claim	Expected Claims Costs \$ 500	Expected Cumm. Costs	Expect Net	Actual Nbr. 5 Years On Claim	Actual Claims Costs \$ 750	Actual Cumm. Costs	Actual Net	
1	50	10	500	500	-	-	-	500	-	-	-	500	
2	50	10	500	1,000	-	-	-	1,000	-	-	-	1,000	
3	50	10	500	1,500	-	-	-	1,500	-	-	-	1,500	
***	***	***	***	***	***	***	***	***	***	***	***	***	
10	213	10	2129	6,629	-	-	-	6,629	-	-	-	6,629	
***	***	***	***	***	***	***	***	***	***	***	***	***	
19	213	10	2129	25,791	-	-	-	25,791	-	-	-	25,791	
20	213	10	2129	27,920	-	-	-	27,920	-	-	-	27,920	
21	213	9	1916	29,836	1	500	500	29,336	1	750	750	29,086	
22	213	8	1703	31,539	2	1,000	1,500	30,039	2	1,500	2,250	29,289	
***	***	***	***	***	***	***	***	***	***	***	***	***	
29	213	1	213	37,500	2	1,000	8,500	29,000	5	3,750	26,250	11,250	
30	213	0	0	37,500	1	500	9,000	28,500	5	3,750	30,000	7,500	
31	213	0	0	37,500	-	-	9,000	28,500	4	3,000	33,000	4,500	
32	213	0	0	37,500	-	-	9,000	28,500	3	2,250	35,250	2,250	
33	213	0	0	37,500	-	-	9,000	28,500	2	1,500	36,750	750	
34	213	0	0	37,500	-	-	9,000	28,500	1	750	37,500	0	

the other tables used here.

But (going to Table 2), assume that things change by year 26 and XYZ starts planning to pay \$3,750 (\$750 x 5) over 5 years on each of its LTC policies because it then appears all too certain that all 10 of XYZ's LTC policies are going to cost that much. At the start of year 26, XYZ will have collected \$11,750 (see Column E in XYZ LTC Example Table 2) and paid out \$11,250 (see Column M in Table 2). XYZ's actual net at year 26 then is \$500 (Column N) so XYZ is getting a bit nervous.

In year 26 XYZ starts charging its LTC policyholders \$2,575. There are only 4 policyholders left at that point. XYZ figures it can no longer plan to make a \$3,250 profit on its LLB. It sets the premium at \$2,575 because that is what is needed to not suffer any loss (and avoid any profit). XYZ would surely be trying to avoid the net loss of (\$25,250) at the end of Column N of Table 1. It is trying to get to the \$0 showing at the end of Column N of Table 2. Will XYZ's policyholders pay the \$2,575 (a 5,150% increase over the \$50 they had been paying)? Their financial advisors may see the expected costs of \$3,750 if the policyholder goes on claim. Would they advise that the likely premium costs outweigh the likely benefits? Is this the actuarially justified rate? Can we already hear the groans of many actuaries?

Suppose these last 4 XYZ policyholders all reside in state A. XYZ files for the rate increase of 5,150% in state A. It is

arguably needed to avoid the insolvency of XYZ. What is the likely result?

Suppose XYZ figures in year 10 that it is going to have to pay \$3,750 (\$750 x 5) over 5 years on each of its LTC policies because other insurers are reporting that claim costs are rising this quickly. Table 3 shows the results if XYZ starts charging \$213 (still a 4+ times increase over \$50, but at least it is not a 51+ times increase) in year 10. It charges this all the way to year 29, when the last LTC policyholder goes on claim. It sets the premium at \$213 because that is what is needed to avoid a loss. The \$213 needed from year 10 and beyond is so much lower than the \$2,575 needed from year 26 because there are 16 more years in which this higher premium is collected. It is also because in most of the '16 more years' it is collected there are 10 policyholders, instead of just the four, three, two and one that pay the \$2,575 in, respectively, years 26, 27, 28 and 29 in Example Table 2.

If XYZ had started charging \$153 (\$153.06 to be more precise, which an MS-Excel file lets one do) from year 1 (instead of the \$213 from year 10) it would have broken even. But in year 1, could XYZ have foreseen that its LTC policyholders would be on claim for 5 years instead of 2 years and at a 50% higher annual cost? XYZ could not predict what would happen 20 to 30 years in the future so it must be punished? However, if XYZ gets to year 10

XYZ LTC Example Table 4													
Premium to \$213 for Years 10 to 25 except 4 at \$50.													
A	B	C	D	E	F	G	H	J	K	L	M	N	
Year	Annual Prem.	LTC Policies	Rev. to Rsvs.	Cumm. Rev. to Rsvs.	Expected Nbr. 2 Years On Claim	Expected Claims Costs \$ 500	Expected Cumm. Costs	Expect Net	Actual Nbr. 5 Years On Claim	Actual Claims Costs \$ 750	Actual Cumm. Costs	Actual Net	
1	50	10	500	500	-	-	-	500	-	-	-	500	
2	50	10	500	1,000	-	-	-	1,000	-	-	-	1,000	
3	50	10	500	1,500	-	-	-	1,500	-	-	-	1,500	
***	***	***	***	***	***	***	***	***	***	***	***	***	
10	213	10	1477	5,977	-	-	-	5,977	-	-	-	5,977	
***	***	***	***	***	***	***	***	***	***	***	***	***	
19	213	10	1477	19,274	-	-	-	19,274	-	-	-	19,274	
20	213	10	1477	20,752	-	-	-	20,752	-	-	-	20,752	
21	213	9	1265	22,016	1	500	500	21,516	1	750	750	21,266	
22	213	8	1052	23,068	2	1,000	1,500	21,568	2	1,500	2,250	20,818	
23	213	7	839	23,907	2	1,000	2,500	21,407	3	2,250	4,500	19,407	
24	213	6	626	24,532	2	1,000	3,500	21,032	4	3,000	7,500	17,032	
25	213	5	413	24,945	2	1,000	4,500	20,445	5	3,750	11,250	13,695	
26	50	4	200	25,145	2	1,000	5,500	19,645	5	3,750	15,000	10,145	
27	50	3	150	25,295	2	1,000	6,500	18,795	5	3,750	18,750	6,545	
28	50	2	100	25,395	2	1,000	7,500	17,895	5	3,750	22,500	2,895	
29	50	1	50	25,445	2	1,000	8,500	16,945	5	3,750	26,250	(805)	
30	50	0	0	25,445	1	500	9,000	16,445	5	3,750	30,000	(4,555)	
31	50	0	0	25,445	-	-	9,000	16,445	4	3,000	33,000	(7,555)	
32	50	0	0	25,445	-	-	9,000	16,445	3	2,250	35,250	(9,805)	
33	50	0	0	25,445	-	-	9,000	16,445	2	1,500	36,750	(11,305)	
34	50	0	0	25,445	-	-	9,000	16,445	1	750	37,500	(12,055)	

and many other insurers that wrote LTC starting about the same time are having to raise their LTC rates, and XYZ doesn't raise its rates, does XYZ then deserve to be punished? What if XYZ cannot raise its rates everywhere in all jurisdictions? Or XYZ gets all the way to year 26 and finally sees it must raise rates, and by then it must raise them 51+ times just to break even, does it then deserve to be punished? Again, I can hear echoes of complaint that these examples do not take all the complexity of the LTC situations into account. But if all the complexity is considered, is it then inexplicably complex? Isn't this a case of clarity requiring focus?

Suppose for the same last 4 XYZ policyholders from Table 2, that they reside in State A, and the other 6 reside in state B. State A disallows the rate increase to \$213 in year 10, but State B allows it. Does this create an inequity between the policyholders in state A (who keep paying only \$50) and those in state B (who start paying \$213 in year 10)?

Is receivership the likely result of this? Instead of \$2,129 of revenue each year when the \$213 is applicable to all

10 LTC policyholders (at least while there are 10 – note XYZ's annual revenue decreases to \$1,916 in year 21 when its policyholder count goes down to nine from 10 and goes down from there as more policyholders go on claim) annual revenue goes down to \$1,477 ((6 x212.90) + (4 x50.00)) in the years with 10 LTC policyholders and goes down after year 21 as more policyholders go on claim. This results in an actual net loss of (\$12,055) at year 34. See, Column N of the XYZ LTC Example Table 4. Is it the case that this net loss of (\$12,055) at year 34 is foreseeable in year 10 when State A disallows the rate increase? Can it be argued at that point that the loss means that XYZ will not be able to pay claims after year 28? The last positive value in the actual cumulative net column (Column N in XYZ Table 4) for XYZ is in year 28 at \$2,895. Could a court order a rate hike in year 10? Could a domiciliary commissioner of insurance order this without a court or some form of receivership?

All states have adopted some version of the NAIC's Receivership Models (or Liquidation Models – from the 1930s) and thus, arguably, have agreed to abide by a domiciliary state's supervising court's orders given the

emergency, and potential for unpaid claims, whenever an insurer is ordered into receivership, even for rehabilitation. This states' deference to the domicile is explored below.

States, generally, have not ceded such a degree of their sovereignty, in this manner or in many of the other areas of ongoing insurer regulation. Relinquishing sovereignty in deference to the insurer's domicile or its courts is usually only prevalent where insolvency emergencies (or financial condition or market conduct issues that can lead to such emergencies) are being contemplated. Insolvency is more problematic for the insurance industry and its state regulators than rate increases (although this does not mean that the problems that may be created by rate increases can be completely ignored). Insolvency can destroy the trust the insurance market must have on a national basis.

It can be said that solutions should be applied at the level of the problem. Each state in the national state-based regulatory system takes a different approach to rate regulation. This is workable while insurers remain ongoing and solvent. However, once an insurer is financially troubled, that insurer becomes an emergency for the whole national state-based regulatory system.

Prior to the 1930s, state courts would often seize the in-state assets of an insolvent insurer and pay some (and not necessarily all) of the in-state claims. This resulted in the residents in different states (and sometimes within each state) getting different percentages of their claims paid. Often the first claimants to court would get their claims paid in full and later claimants would get less or nothing. This led to race-to-the-court scenarios.

The NAIC's insurer receivership and related insurer guaranty association (the Property and Casualty, P&C IGA and the Life & Health, L&H IGA) models have been updated, over the decades, to minimize the chances of any receivership resulting in unpaid claims for an insolvent insurer's customers (the regulator's consumers to be protected and the legislator's constituents to be served). Unpaid claims erode trust in every major area (Life & Annuity, Health, and Property & Casualty) of the insurance markets. Trust is critical in the insurance markets. As trust erodes, the demand for insurance (and its positive impacts on states' economies) erodes.

Prior to the 1930s there were a great many more chances for claims to not be paid. The December 2017 updates to The NAIC Life and Health Insurance Guaranty Association Model Act (L&H IGA Model), https://naic.org/documents/cmte_legislative_liaison_brief_life_health.pdf, are simply

the latest in a decades-long series of updates to the receivership and guaranty models to continually improve in avoiding unpaid benefits, other losses and difficulties for customers, consumers, and constituents.

As noted, rate increases should not be the only tool used to address a troubled insurer situation. The timing of these can also affect whether they will be effective. The situations set out in XYZ LTC Example Tables 1, 2, and 4 above appear to be unworkable.

Among the problems that may be created by LTC rate increases is the situation where consumers on fixed incomes cannot afford to pay the increased rates. This sometimes happens with solutions; they often lead to other problems. That does not necessarily mean that the solutions should not be applied, but their resulting problems need to be seen realistically and managed. In relation to the LTC underpricing problems, is it obvious from the XYZ LTC Example Tables here, that the scenario set out through Table 3, which maybe can be summarized 'raise rates across most, if not all, states to more realistic levels as soon as it appears that they are going to have to be raised,' represents more of a solution? This may be done through a court order or some other means that the commissioners may devise along the thought applied in receiverships that trust in the industry is primary. It is why we have guaranty associations, receivership laws that should be respected among all of the states that have adopted similar laws, and why some method for achieving rate increases across most, if not all, states will likely be found. It may not be that far a step from how the industry, regulators, and consumer reps came together in forming the receivership and guaranty association national state-based systems.

A possible solution for the situation on fixed income insureds not being able to pay the increased rates may be for the industry, regulators, and consumer reps to work together to set up administration of a fund to cover these costs. This would need to be a carefully designed administration to ensure only verifiable unaffordability is covered. This might be similar to what was done in setting up the administration of a fund to cover claims for amounts over the guaranty association caps (generally \$300,000 in most states) from very large annuities sold from an insurer that finally had to move to liquidation after many years in rehabilitation. At the end of the day, these stakeholders seem to find a way.

THE PERFECT RECIEVER NO 2: DOING THE RIGHT THING

By Patrick Cantilo, Cantilo & Bennett



Patrick Cantilo, Cantilo & Bennett

Two lawyers walk into a bar (uh oh!). They order drinks they can barely pronounce, let alone of which they know the ingredients. Proud that they remember the cocktails from the current Broadway hit, they let the spirits lead them into a philosophical discussion. The one on the left (yeah, the one with the red mustache) observes: "Two of

my partners can't be trusted. Last week I discovered that they had padded their *pro bono* and administrative hours to increase their compensation at everyone else's expense!" The other (the one in the middle) thought for a minute and weighed in. "That's terrible! If you can't trust your partners, who can you trust?" At which point the bartender joined in, "You think that's bad? Last week we caught our pastor skimming from the till!" A few tables away, the partners and pastor in question were sharing their own drinks while preparing the pastor's defense, and one observed "What whiners! What the heck did they expect?" "Yeah ..." added the pastor "... when it's so easy, how do they expect you to pass up the opportunity?"

We've all grown up with the old adage: *Doing the right thing is its own reward*. Too many of us have searched high and low for that reward and, having failed to find it, scoffed at the naivety of the author and proceeded to pursue "enlightened self-interest." In many cases, we have been able to rationalize that, in reality, we were owed what we took, no one would really be hurt, and everyone else is doing it anyway. So why am I distracting you from the current episode of "Survivor: A Night in Portland in Uniform" with this dribble that is beginning to smell an awful lot like a morality piece?

In a nutshell, because I am old. One of the few advantages of putting more decades, even quarter centuries, under your ever-expanding belt, is that you have seen a lot. How much you choose to learn from it is the subject of a different article that (if there is any justice) I will not have the insensitivity to write. But a few lessons stand out. Of course, we all know the key lesson: *You really are not the most interesting man in the world; she's just after your last few bucks*. But a couple of others are important too. The

one I emphasize endlessly to my kids is: *The probability that you will be one of the few who doesn't get caught is smaller than the probability that an unknown Ukranian uncle will leave you a giant inheritance. Everyone gets caught eventually*. But another that is less obvious and more important is *Doing the right thing actually does improve your quality of life!* Okay, okay, quit throwing stinky shoes and let me explain!

In our receivership world, we are frequently faced with difficult decisions that cannot fairly be characterized as black and white. We are required to choose from among two or more courses of action, each with its anticipated advantages and disadvantages. In such cases, it is often not difficult to assume that none of the options is clearly more "right" than the others. But I submit to you that in most of those instances, more careful and disinterested analysis will quickly compel the conclusion that one option is "more right" than the others.

Let me stop here and explain what I mean by "more right" (which in proper English would be "better" or, more precisely, "morally preferable"). We start with the recognition that all of our decisions will be guided by a set of imperatives derived principally from legal and other constraints on our conduct and from our goals. Thus (in no particular order and therefore not numbered):

- !! We conduct our receivership to produce the best result for creditors while adhering to the applicable rules.
- !! We strive to avoid expenditure that will open us to criticism.
- !! We endeavor to produce results that will enhance our reputation and chances of getting repeat business.
- !! We don't take unnecessary chances that endanger these goals.
- !! We try to avoid antagonizing those who can hurt us or might be able to help us in the future.
- !! We prefer the course that is not too complicated or difficult to explain.

We all like to think that we always do the right thing. The reality, however, is that if we are honest with ourselves, that goal does not generally appear at the top of our list.

"Cut the excrement!" you say with some justification. "Explain what the heck you mean by the right thing!" you insist. Fair point! For our purposes, I elect an arbitrary and subjective definition. "The Right Thing" is a decision or course of action that, to the best of our knowledge:

1. Is consistent with applicable law,
2. Puts the interests of policyholders above all others,
3. Does not depend on the ignorance of others in the absence of which it would be indefensible,
4. Does not rely on the inability of those who might make justified criticism to do so for economic reasons, and
5. Is not made defensible solely or principally by the inclusion of improper considerations.

Admittedly, subjecting our decisions to this exacting standard can be a daunting challenge. Why should we bother in cases that are unlikely to be scrutinized in this way or even challenged at all? In a nutshell, because time does not end with that decision. This has two important consequences. First, that the course of action is not challenged today does not bar the possibility that changing circumstances might prompt a later retrospective challenge. By then, it will be difficult or impossible to reverse course and to defend the decision. Second, there is always the possibility that every such decision will become precedential in a way that erodes the integrity and reliability of the collection of principles on which we rely for our common good. Most embarrassingly, that precedent might be used against us in a future matter.

Whether we acknowledge it readily or relegate it to that dusty corner of our psyche in which we lock up the past decisions of which we are ashamed, we will know that we made that moral compromise. Cumulatively, those compromises will have two consequences: (1) we will know that the potentially harmful precedent lies in wait for the right chance to make us pay; and (2) to the extent that we strive to wear shining armor, each will add ever-growing bits of dullness to our appearance, whether only we notice them or they are more widely visible.

"Fascinating" you say (actually meaning the opposite) "but what the heck does this have to do with receiverships. Isn't this better left to those formally charged with providing us moral guidance?" you ask with a measure of impatience. Perhaps so. But I say this to you my brothers and sisters: Ours is an important mission. In generous measure, it is we who protect those ill-equipped

to protect themselves. What we do now will guide what is done in the future. In all human endeavor, few things are as much cherished as predictability. We want to know that when the "WALK" sign appears we can cross the street safely without fear of being flattened by the Monster Truck stopped at the red light. We want to be able to rely on the label identifying the contents as "pasteurized whole milk" as not concealing that in fact it was simpler not to pasteurize it and to dilute it with melamine. We rely on the blind faith that our bank will not simply take \$100 from our account every day to bolster its profits. We sleep better because we know that our neighbors will not choose that time to rummage through our property to bolster their own possessions. In short, we rely on others doing The Right Things.

Undeniably, some transgressions are more easily detected and remedied than others. The underlying principle, however, is not eroded by that distinction. It is precisely in the matters that are less transparent and less easily understood that our reliance on the good of others is greatest. Our receivership world offers many opportunities for compromise of The Right Thing. It will be a better world if we become slavish adherents to the principles we are proud to proclaim. Certainly, there will be tasks made more difficult by avoiding the compromise. In the long haul, however, we will find adherence to the highest standards to be its own reward. We will not need to fear the post facto discovery of an infelicitous decision, and we will gain confidence from the knowledge that those who learn from us will be more likely to act for the collective good. So I close with an illustration.

Our friends at the bar turn from their unreliable partners to their day at work. Mr. Mustache explains, "today we received a \$2 million asbestos claim from a widow that opted out of a class and now can't afford a seasoned lawyer to litigate it. My claim manager thinks she could probably recover twice that amount if she had good counsel, but he believes that he can talk her into taking \$575 thousand. If he does, should I give him a bonus?"



Patrick Cantilo is a "mature" Texas lawyer and national receiver who once was president of IAIR and served on its board of directors for ten years until they stopped telling him where they were meeting and he couldn't go anymore! He practices law with Cantilo & Bennett, L.L.P. in Austin. Over the decades he has represented or worked for about half the states in various insurance insolvency or regulatory projects.

AIRD AND CIRD DESIGNATIONS: ENHANCE YOUR CREDENTIALS

By Wayne Johnson

Effective January 1, 2020, IAIR implemented changes to its professional designations program to address the broader skill sets needed to assist with all types of troubled insurer resolutions. The changes to IAIR's professional designation program are also intended to allow individuals with a more limited knowledge of insurer resolutions to obtain a professional designation.



The Accredited Insurance Resolutions Director (AIRD) designation is awarded to individuals that have demonstrated a broad knowledge of insurance resolutions and the tools available to insurance regulators to resolve troubled company situations. Applicants for this designation are not required to have insurance receivership experience, but must meet general education, experience and ethical standards in order to apply for the designation. Applicants that meet those standards must then achieve a passing score on an AIRD designation test. The 2020 test is comprised of 50 multiple choice and true/false questions. The AIRD designation is an excellent way to demonstrate your skills to assist a regulator with a troubled company or work as a part of a team administering the resolution of a troubled insurer. The requirements are more fully described on the IAIR website at IAIR.org.

IAIR's seven Certified Insurance Resolutions Director ("CIRD") designations are awarded to individuals with substantial responsible experience in one or more aspects of the resolution of insurers. The CIRD designations are:

- CIRD Specialty Designations:
 - Accounting and Financial Reporting;
 - Actuarial;
 - Claims and Guaranty Associations;
 - Information Technology;
 - Legal;
 - Reinsurance.
- CIRD-Resolution Management.

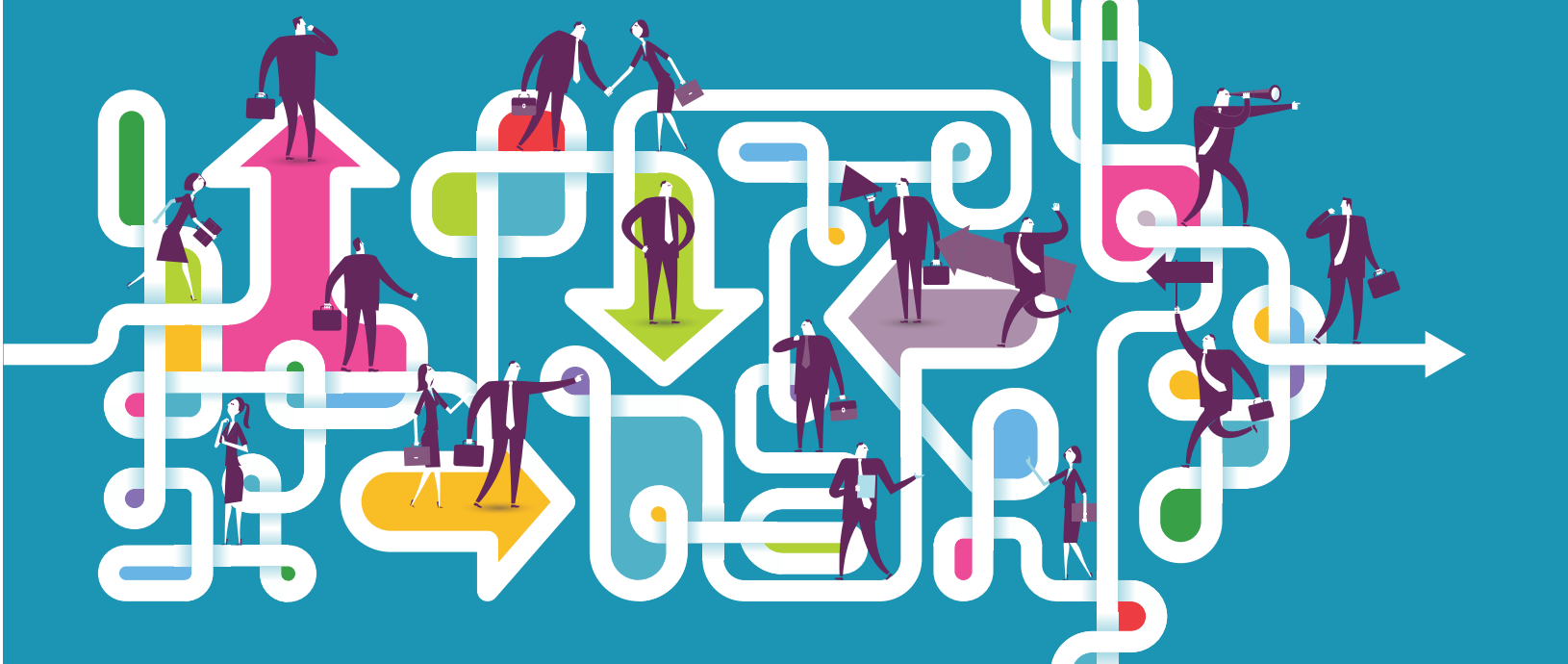
In order to apply for a CIRD designation, an applicant must possess an AIRD designation and meet the same education and ethical requirements as the applicant for an AIRD. In addition, the CIRD applicant must have experience specific to insurance resolutions. With the exception of the CIRD-Resolutions Management designation, the applicant is also required to achieving a passing score on a test specific to each of the six specialty areas listed above for which he or she is applying. As with the AIRD designation the test for each of these designations is comprised of 50 multiple choice and true/false questions.



The CIRD-Resolutions Management designation is intended for those individuals that would be in charge of the resolution of a troubled insurer. Similar to the AIRD designation, the successful applicant must achieve a passing score on the CIRD- Resolutions Management examination. The examination for this designation is 120 multiple choice and true/false questions and would include questions from each of the CIRD specialty designation areas. Applicants for a CIRD designation are also required to complete an oral interview conducted by members of the Ethics Committee.

Once the application process is complete, IAIR's Ethics Committee will process the application and make a recommendation to IAIR's Board. IAIR's Board of Directors has final approval authority on all designation applications. The IAIR website has more detailed information on all of the designations as well as the forms necessary to apply. A list of the current designation holders is posted on the IAIR website.

The IAIR Ethics Committee encourages you to apply for one or more IAIR designation(s) and to talk to your friends and colleagues in the industry and encourage them to do the same. It is a great way to burnish your credentials and support IAIR at the same time.



IAIR'S 2020 TECHNICAL DEVELOPMENT SERIES

By Douglas Hartz, TDS Co-Chair, Entrepreneur in Insurer Governance P.S. & Others



Douglas Hartz, TDS Co-Chair

The IAIR 2020 virtual Technical Development Series (TDS VII) program was a smashing success!! Well, as much a success as it could be in the Time of COVID (with much respect for Love in the Time of Cholera by Gabriel García Márquez). There were, at points, 70 plus people on the Zoom Webinar sessions. I am not sure, but that may be a higher attendance than at live versions

of these events. Maybe that is as it should be since it can be easier to attend webinar sessions. On the other hand, putting a virtual program together, can be tougher. Whenever and however we do whatever in the Time of COVID, it at least seems much more difficult to complete than it would be in a non-pandemic environment. We should all stand in wonder at anything that gets completed. As noted more, toward the end this recap, IAIR plans on completing a lot.

Given this circumstance, there are many 'thank you notes' that need to be extended because of the enormous effort that went into producing this TDS VII educational event. First, IAIR's entire Education Committee (Co-Chaired by IAIR President, Kathleen McCain, and Evan D.

Bennett) whose other members can be seen by [clicking here](#), showed remarkable foresight in agreeing that IAIR needed to present this TDS this fall and needed to start having monthly educational programs. Would it be workable to have each of these programs Co-Chaired by a newer IAIR Education Committee member and one or two more experienced members? This idea also gets looped back to toward the end of this recap. Please join the Committee, especially if you are a newer member, so that we do not run short of folks to mentor into these roles. If you really want to learn something, try teaching it. It is just tragic that we did not have a "New Orleans-style breakfast before the presentations began," (See, Rowe Snider's recap of the last IAIR Resolution Workshops in the [Spring 2019 IAIR Receiver](#)), but such is how 2020 has gone.

Second, tying to the above idea on Co-Chairs, I had the extreme honor of formally Co-Chairing this TDS VII event with Evan D. Bennett, reinsurance expert witness, consultant, and longstanding continually active, supportive IAIR member. However, William (Bill) Goddard, investor, professor, and author was an informal Co-Chair of this event. Without Professors Bill Goddard, Peter Kochenburger, and the University of Connecticut Insurance Law Center, which can be seen by clicking [here](#), any TDS for 2020, in the Time of COVID, would have been much less interesting and harder, if not almost impossible, to put together.

Third, the IAIR sponsors, many of which I tried to thank before each session, need to be thanked again and again, and they can be seen on IAIR's Home screen of its site. Many of these sponsors also had several of their professionals attending the virtual event, including Jim Odiorne, Jolene Nansel, Elena Byron, Wayne Johnson, and Jan Moenck for RRC, IAIR's Platinum sponsor. Many of the other sponsors, including Faegre Drinker, FitzGibbons & Company, Locke Lord LLP, Noble Consulting, Stradley Ronan Stevens & Young LLP, Veris Consulting, the Law Offices of Daniel L. Watkins and our President, Kathleen McCain, also had one or more of their professionals attending. Also, Jan Moenck for RRC, and Michelle Avery for Veris have served as Co-Chairs for an earlier IAIR Workshop (one with a better-looking Doug). There are surely others that I am missing here but being a sponsor and having someone serving as a Co-Chair of an IAIR education event is pulling significant double duty for a sponsoring organization. It is and should be applauded.

Fourth, thanks to the session moderators and panelists, all of which can be seen on the [IAIR website](#) pages. This TDS VII agenda, moderator and panelist material, including the brief biographies, will be open to anyone visiting [IAIR's site](#). However, the recording of this TDS and all its related materials should be available only for IAIR members (and for those that missed this – and dozens did – they are strongly encouraged to go to [IAIR's site](#) to catch the TDS VII) and all paid attendees. These will be on [IAIR's site](#), as soon as they can be placed there allowing for only proper access. Aside from the previous, encouraging readers of this to refer to the [IAIR site](#), the fact that Professors Bill Goddard and Peter Kochenburger were also moderators and panelists, and some other moderators deserve special mention. This was this first time Jodi Adolf moderated a panel for IAIR. But, like she had done it dozens of times before (she had done the Heartland Insurance Symposium for so many years it was no real surprise to some of us), she did a marvelous job of getting Bruce Baty, Nick Thompson, (the following were also first-time panelists – I think) Dimitar (Mitko) Kotzev, Mohammed Awad, Michael Dickey, and Joseph Cherubini set up to cover how COVID-19 has changed so many insurer problem-resolution best practices.

Fifth, In introducing many of the moderators and speakers, one form of high praise I could give many of them is that at some point, in one of my roles over the last 33 years, I have hired them, and would do so again. This list included Francine Semaya (a two-term past President of IAIR – I did one term and bolted), Bruce Baty, and Susan Salch of the Cantilo (another two-term

past President of IAIR) & Bennett firm. Many others that I have worked with in some role, and would again, include Peter Gallanis, Peter Kochenburger, Jenny Jeffers, Michael Morrissey, Michael Marci, Mark Femal, my Co-Chair Evan D. Bennett, and last but absolutely not least (since we both worked with Harold Horwich – who I think has agreed to be a panelist in an IAIR education event very soon), the oft-mentioned, Bill Goddard. There is much more to commend all of the moderators and panelists who worked with IAIR to present this program, the details of which can be seen at the [IAIR site](#), which you should all be checking at least every other day.

The “Time Will Tell: Power of Receivership Court” sessions on Wednesday were very much tied to each other. These sessions covered the critical questions of how future courts may view the case-created-law on the powers of the receivership court and whether some more legislatively created law on the topic may be needed. As with all good academic inquiries these questions were not absolutely answered but were thoroughly explored. Courts and legislatures will have to coevolve the law to answer to these questions. In such never-ending evolutions, solutions will generate new problems needing new solutions. These sessions included some discussion of solutions fitting the scope of the problems they aim to address. They explored the importance of identifying the dimensions of both the problems and solutions as being local, state, interstate (between some states), national, international, or global (between all nations).

The “Time Will Tell: Best Practices” sessions on Thursday were also related to each other. Bruce Baty covered how future receiverships of all types of insurers and related companies will be affected by the pandemic (both pre-vaccine and post-vaccine). He also covered how the trend toward ubiquitous third-party administration of nearly everything an insurer used to do itself, is complicating resolution of troubles in the insurers. Nick Thompson gave a thorough and forthright assessment of how health insurers would need to be reacting to the pandemic and the problems it may create and resolutions that may be needed. The four younger IT professionals gave many details of how their organizations have dealt with the pandemic and what they plan to do going forward. I think all were from Guaranty Associations or related management companies. It was interesting to hear how some of the same (and some different) IT issues (as well as some general management issues) were viewed from the different perspectives of on-going insurers and their examiners in the discussions by Jenny Jeffers, Michael Morrissey and Jerry Wynne. Getting diverse perspectives

on defining problems, generating, and then implementing solutions to them, leads to better results.

The "Time Will Tell: Careers in Receiverships and Resolutions" sessions on Friday focused on both how we need to bring new talent to these areas (the Insurance Law Center student-panelists, whose bios and presentations can be seen, for most if not all of them, by visiting [IAIR's site](#), subject to previously noted rules) and how well the existing talent (Michael Marcin, Susan Salch and Mark Femal) are set to mentor the new talent in the insurer resolution fields. The two sessions hopefully caused, and will continue to foster, more communication between our seasoned talent and the next generation of lawyers, accountants, claims, IT and other specialists about the usefulness and importance of insurance resolution. There is more than the justice of people getting their claims paid or otherwise getting what they have paid for. There is keeping the trust that people need to even think about spending their money on insurance. If people don't

spend on insurance, then there will be fewer insurers, fewer premium taxes, fewer lawyers, accountants, claims, IT and other specialists employed and (last but not least important) fewer financial and market conduct analysts, examiners and other regulators.

At the end of the TDS, President Kathleen McCain informed everyone that IAIR would be holding one or more events (of one form or another - Issues Forums, Receivers & Guaranty Funds Relations [Committee](#) Meetings, etc.) every month (especially while the Time of COVID drags on and on and ...) to keep ensuring that IAIR and its members are ready for the challenges of the coming years.

Be safe, keep pursuing life, liberty, and happiness, and getting ready, everyone!

"Note: that is not necessarily the same as stand down and stand ready. The editor apparently thought it good to put this lighter piece in with the heavier LTC piece."

MARK YOUR CALENDARS FOR THESE UPCOMING IAIR EVENTS



IAIR ISSUES FORUM SERIES #1: US INSURER INVESTED ASSETS & MARKET CONTROL

November 12, 2020



NAIC FALL 2020 MEETING

December 3-4 & 7-9, 2020



IAIR ISSUES FORUM SERIES #2: TOPIC TBD

December 10, 2020



IAIR ISSUES FORUM SERIES #3: ETHICS

January 14, 2021

LIST OF BOARD MEMBERS/OFFICERS

OFFICERS

President

Kathleen McCain, Esq. – 2021

1st Vice President

Donna Wilson, CIR-ML – 2022

2nd Vice President

Evan Bennett – 2020

Treasurer

Kevin Tullier – 2022

Corporate Secretary

Jan Moenck – 2020

Immediate Past President

James Kennedy, Esq. – 2019

DIRECTORS

Chad Anderson – 2021

Mark Bennett – 2021

John Doak – 2021

Jenny Jeffers – 2020

Wayne Johnson – 2020

Frank Knighton – 2022

Tamara Kopp – 2022

Joseph Holloway – 2022

John D. Murphy – 2020

Douglas Schmidt – 2021

THANK YOU TO OUR CORPORATE SPONSORS

Platinum Sponsor



Gold Sponsor



Silver Sponsors



KATHLEEN M. MCCAIN

LAW OFFICES OF DANIEL L. WATKINS

Become a **Corporate Sponsor Today!** [Corporate Sponsor Information](#)