The Insurance Receiver

Promoting professionalism and ethics in the administration of insurance receiverships.

Volume 12, Number 1

Spring 2003

President's Message

by Robert L. Greer, CIR-ML

I am torn between enjoying the frigid chill of winter and the beginning of what I hope to be a long and full productive year for the International Association of Insurance Receivers.

The annual Insolvency Workshop held on February 6 – 7th in Palm Springs, CA was an excellent opportunity for the organization to move forward and become an even more productive and relevant association within the insurance industry.

Although the organization continues to grow internationally as well as within the domestic United States, we are at a point where the insurance industry as a whole finds itself in critical need of the services to which our members possess the skills.

I would like to welcome to the board our new members, the New Jersey Insurance Commissioner, Ms. Holly Bakke, and our new Treasurer, Mr. Joseph J. DeVito, MBA, CPA. We re-elected two international Board members, George Gutfreund, CIR-ML, CIP of Canada and Vivien Tyrell of England as well as Kristine Bean of Illinois at the 2002 annual meeting, and I am pleased to be a part of a new push to provide better service to your organization's international membership.

It is an honor and a privilege to have been called upon to represent the organization as President for the year 2003, a position, which I neither sought nor campaigned for but am flattered to have been elected.

As we move in to the next year I thought it would be good time to remind you of some of the ways you can be more involved in IAIR and get the most out of your membership.

Many of our members have informed us that one of the most valuable IAIR benefits they receive is the timely dissemination of both substantive and practical information regarding their insolvency practice. IAIR delivers these benefits in a variety of ways including the quarterly Insurance Receiver, the Annual Insolvency Workshop, The London Workshops, our joint programs with the Guaranty Funds and the quarterly Roundtables.

The Insurance Receiver is the official newsletter of IAIR and is loaded with articles and regular columns on a variety of insurance and insolvency topics. It is also a great way to stay abreast with what is going on in IAIR. It is published four times a year. You can read past issues of The Insurance Receiver on our website at www.iair.org. Go to the Members Services area and click on The Insurance Receiver. Check it out!

The annual Insolvency Workshop, joint Guaranty Fund programs and quarterly roundtables as well as the London Workshops are continuing education opportunities for our members. They provide a forum for our members to communicate with each other about a whole host of issues that affect their practices. It is a great way to hear the views of IAIR colleagues on a wide variety of issues.

As a member of this organization, if you believe that you have something to add to our ongoing dialog concerning the unique issues facing insolvency practitioners, please feel free to submit written articles for inclusion in The Insurance Receiver and/or volunteer your time to present your issues at an upcoming IAIR meeting. If you have an idea or a topic which you think should be addressed at one of our conferences, let us know. We are always looking for new ideas for speakers and topics or comments about our programs in general. These are just a few of the things that you can do to get the most out of your IAIR membership. Remember IAIR is an organization committed to providing value to our members. If there is a member benefit that you would like to know more about or if you would like to suggest that we should consider adding a new member benefit, please let us know. In any event, please take advantage of all that IAIR membership has to offer; by doing so you will be better able to serve you clients.

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Thank You To The Sponsors Of The 2003 Insolvency Workshop

American Insurance Management Group, Inc.

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Reinsurance Association of America

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And a special thank you to the sponsor of the Thursday evening reception

Sonnenschein Nath & Rosenthal

View From Washington

by Charlie Richardson

States Lose Another Bank Powers Case

Although the 1999 Gramm Leach Bliley Act resolved national banks' authority to market insurance products, several state insurance commissioners have challenged preemption rulings by the Comptroller of the Currency.

Last November, the U.S. Court of Appeals for the Fourth Circuit, in an unpublished decision, held that a preemption ruling by federal bank regulators negates in whole or in part five sections of a West Virginia statute that regulates the sale of insurance by financial institutions. The First Circuit is considering a similar case brought by the Massachusetts Insurance Commissioner.

National banks are still winning this battle that began several years ago. However, some observers believe these cases may stimulate Congressional hearings on the issue, especially in light of the views of Sen. Richard Shelby, new Chairman of the Senate Banking Committee. Sen. Shelby opposes bank involvement in real estate sales and appears to hold similar views on insurance.

Treasury Quickly Issues Guidance On Terrorism Risk Insurance Act Of 2002

Following President Bush's November 26 signing of the Terrorism Risk Insurance Act of 2002 (P.L. 107-297), the Treasury Department swung into action December 3 by announcing interim guidelines for implementing the law's backstop program. The new guidance stipulates that property and casualty insurers "make available" terrorism coverage in their policies. Insurers must also disclose to policyholders the premium charged for terrorism coverage, including the federal share of compensation. Current policyholders must be notified by 2/24/03. Treasury is also seeking public input on the impact of terrorism risk on the availability of group life insurance coverage.

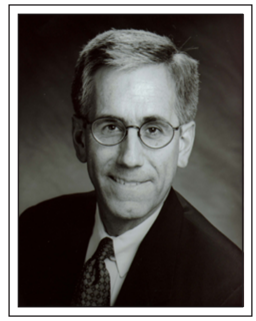
Nothing's Secret Here: Senator Shelby Calls Privacy A Top Priority

Sen. Richard Shelby (R AL), who replaced Sen. Paul Sarbanes (D MD) as Banking Chairman, has announced that enhancing privacy would be a top priority of his 2003 agenda. Shelby said the Banking Committee would hold oversight hearings on the privacy provisions contained in the Gramm Leach Bliley Act. Shelby also noted that Congressional reauthorization of the Fair Credit Reporting Act would provide a welcome opportunity to scrutinize privacy protections – which he called "insufficient." Legislative issues like insurance modernization, mortgage practices, and FDIC reform (which failed to pass during the 107th Congress) are likely to be revisited during the 108th Congress.

Much of the discussion implicitly conceded that the current state system was not as efficient or flexible as it needs to be

New State Faces

The November elections resulted in significant changes in the state insurance commissioner ranks. While only two new commissioners were directly elected, at least twenty three new governors were elected. Five represent new parties in their state's governor's mansion. It is too early to tell if this election may change states' approach to important issues such as modernizing insurance regulation and ensuring consumer privacy. However, some commentators suggest this election resulted in a new group of insurance regulators more supportive of consumer issues. In addition, there were fifteen new attorneys general elected. Attorneys general in the past have had great influence over whether to pursue suits against the insurance industry.



Washington D.C. To Accept Licenses From Other States

Starting in January, the District of Columbia recognized insurance companies licensed in other states. Larry Mirel, Commissioner of the District, said this is a step toward recognizing national standards for insurers. Another step in that direction, Commissioner Mirel said, is the NAIC's recent approval of the Interstate Insurance Product Regulation Compact. If adopted by enough states, the compact would give insurers a single place to file forms for the life insurance, annuities, disability insurance and long term care insurance. For the text of the compact, go to http:/www.naic.org/compact/compact_draft.htm. While regulators from some states expressed skepticism about the D.C. licensing idea, many also expressed interest in the idea. Stay tuned!

News From Headquarters

Welcome New Members

Linda Becker, CFE
Administrator
Kansas Life & Health Insurance Guaranty Association
Topeka, Kansas
Sponsored by Mike Marchman, Mark Femal and Charlie Richardson

Jon B. Fowkes
President
Icotech Systems, Inc.
Casper, Wyoming
Sponsored by Doug Hartz, Elizabeth Biaett and Rheta Beach

Ken Levine
Resident Partner
Tew Cardenas Rebak Kellogg Lehman DeMaria Tague Raymond & Levine
Tallahassee, Florida
Sponsored by Hugh Alexander, Belinda Miller and Paula Keyes

Margith Maughan
Liquidation Claims Supervisor
Southern American Insurance Company in Liquidation
Salt Lake City, Utah
Sponsored by Rheta Beach, Len Stillman and Elizabeth Biaett

Michael Maccallum, ACA
KPMG
London, England
Sponsored by Tony McMahon, Tom Riddell and Steve Goodlud

James J. Walsh
Partner
Bodman, Longley & Dahling, LLP
Ann Arbor, Michigan
Sponsored by Jan Aho, Larry Milz and James Gerber

IAIR Roundtables 2003 Schedule

NAIC Meeting - June 21 - 24, 2003
New York City, NY
Roundtable: June 21, 1:00 - 4:00 p.m.

NAIC Meeting - September 13 - 16, 2003
Chicago, IL
Roundtable: September 13, 1:00 - 4:00 p.m.

NAIC Meeting - December 6 - 9, 2003
Anaheim, CA
Roundtable: December 6, 1:00 - 4:00 p.m.

The **INSURANCE RECEIVER**

is intended to provide readers with information on and provide a forum for opinion and discussion of insurance insolvency topics. The views expressed by the authors in *The Insurance Receiver* are their own and not necessarily those of the IAIR Board, Publications Committee or IAIR Executive Director. No article or other feature should be considered as legal advice.

The Insurance Receiver is published quarterly by the International Association of Insurance Receivers, 174 Grace Boulevard, Altamonte Springs, FL 32714, (407) 682-4513, Fax: (407) 682-3175, Email: IAIRHQ@aol.com.

San Diego Roundtable Report

by Robert Loiseau, CIR-P&C

IAIR's quarterly Roundtable was held in everyone's favorite venue, San Diego, on December 7, 2002. As has often been the case, the meeting was standing room only with a dynamic panel of speakers covering a wide array of topics.

Reinsurance Collateral Obligations

First up was Debra Hall, legal counsel for the Reinsurance Association of America (RAA) who gave an in-depth report concerning collateralization of reinsurance obligations. For those of us who seldom deal with the "big picture" of collateral obligations, Ms. Hall's presentation was thought-provoking, to say the least. Broadly stated, major players in the reinsurance market including Lloyd's Syndicates are seeking to change the status quo by reducing the reinsurers' collateral obligations. The underlying premises of their position are that 1.) reinsurance ceded to non-U.S. companies should require as much as 50% less collateral depending whether they are affiliated are non-affiliated companies; 2.) "White Listing" of qualifying reinsurers so that those companies with adequate surplus and strong operating track records should be entitled to secure less than 100% of their obligation; and 3.) Certain entities, most notably Lloyd's Multi-Beneficiary Trust, should be entitled to calculate its collateral requirements net of any retro cessions.

Much of this activity is driven by the evolving global marketplace and the desire of European Union members to be able to conduct business in the United States as they do in Europe; that is, with substantially reduced collateral requirements. In this vein, the World Trade Organization, among others, seeks to promote more open and liberal financial markets through supporting policy changes such as these proposed reductions in reinsurance collateral obligations.

In reply, the RAA presents an equally compelling rebuttal: the United States already has the most open market in the world. All reinsurers, whether licensed or not, can do business stateside as long as they fully secure all of their obligations. Given the enormity of the sum of all collateral obligations within the reinsurance industry, it is likely this emerging topic will appear in industry news reports for years to come.

Japanese Insurance Insolvency

The second speaker, Sean McDermott of Ernst & Young's London Restructuring Group reported on one of Japan's few property and casualty insolvencies since World War II, the Taisei reorganization. Paraphrasing the speaker's own introduction, Mr. McDermott is an Irishman from London who came to San Diego to speak about insurance insolvency in Japan. Specifically, in the Taisei case, he reported on how the insolvency of a major carrier was dealt with in only one year. The applicable Japanese insolvency laws bear similarities to U.S. Chapter 11 procedures and UK Schemes of Arrangement. They also involve a Policyholder Protection Corporation that functions in a manner similar to domestic guaranty associations, but which served in the Taisei case in a dual capacity; it was also Taisei's Liquidator. This role came about because the PPC is funded exclusively by Japan's insurance industry and has the financial obligation to make up any shortfall with respect to covered claims.

This fascinating case study is too broad to be adequately covered in this report, but its essential elements included a claims adjudication and commutation program followed by a runoff operation for reinsurers which opted out of commuting. A Bermuda company was formed to conduct this runoff. In addition, corporate restructuring was done to facilitate the merger of Taisei's desirable operations with another major Japanese carrier that wanted to increase its market share. This process involved a split of Taisei's corporate entities with each one taking a proportional amount of Taisei's assets and liabilities. An overwhelming majority of Taisei's creditors approved this plan, and approximately 90% of its reinsurers accepted the commutation proposal. Another factor contributing, to this success story was the Trustee's ready access to an informed and educated judge overseeing the reorganization process. Mr. McDermott has been asked by the Insurance Receivers Editorial Board to draft a narrative version of his presentation for publication in a future edition.

The third speaker was John Horner, Chief Reinsurance Officer to the California Liquidation Office (CLO). During the course of his presentation, Mr. Horner walked the audience through the transitional process from the company's ongoing reinsurance operations through the takeover and during the course of receivership administration. Drawing upon his considerable experience in this area (the CLO has $3.2 billion in reinsurance assets) Mr. Horner offered some very practical advice for those on the front lines of a new receivership trying to get their hands around the insurance carrier's reinsurance operations. First, he recommends keeping key people in place because their institutional knowledge of the company and personal relationships with its reinsurers are often invaluable resources. Among the many urgent priorities that follows this analysis are the review of executory reinsurance contracts, sometimes with the assistance of outside consultants, determination of cases where premiums need to be paid to maintain coverage or, alternatively, identification of contracts that should be rejected by the receiver. Analyzing the company's reinsurance information systems is crucial too, since they are often in bad shape. Early contact with reinsurers and intermediaries is vital to establishing effective working relationships with them. Additional high priority items include identification of collection problems, evaluation of collateral (especially letters of credit), analysis of ongoing reinsurance disputes and monitoring applicable statutes of limitation.

Among the information he presented were some interesting statistics. Since 1999, reinsurance has grown from comprising 10% of insolvent carriers' total assets to almost 44% of total assets today. Moreover, whereas uncollectable reinsurance was previously a major contributor to insolvency, the advent of open ratings regulations allowed inadequate pricing, resulting underwriting losses that precipitated insolvency.

In the final segment of his presentation, Mr. Horner gave a concise and informative analysis of alternative dispute resolution techniques, addressing the pros and cons of arbitration, litigation and mediation. In closing, he shared the receiver's perspective on the best way to conclude reinsurance relationships so that receivership estates can be closed. In his experience, commutations are preferable but can't be forced and may not be viable absent unrealistically deep discounts; sometimes the reinsurer will simply wait out the receiver. Ultimately, the cost of collection and the length of time it takes to complete must be weighed against the discounted sale of reinsurance receivables to companies that are in a better position to collect them due to their ongoing relationships with members of the reinsurance community.

Jerry Cappell and Mary Jo Neville from Peterson Consulting spoke next on a difficult and technical topic, UDS reporting. After dissecting how guaranty associations and receivers interact in terms of claims payment and reporting, they persuasively demonstrated how much the administrative requirements inherent in the receivership process slow down the reinsurance recovery process. Using the concept of "Cycle Time" they presented a business case supporting the proposition that creditors, receivers and reinsurers all stand to benefit by improvements to information systems which reduce the Cycle Time, the length of time between an IGAs UDS reporting to the receiver and the receiver's ability to bill and collect from reinsurers.

In this connection, one of the most frequent complaints by reinsurers in dealing with receivers is incorrect, missing or inconsistent data. When receiver's billings to reinsurers contain bad data, the collection process bogs down. Through flow charts that cannot be adequately summarized in the limitations of this report, they presented an innovative concept showing how information used by all parties in the insolvency process could be centralized in a "data center" after quality standards had been applied and information from related narrative documents was also integrated into the data center. In essence, they made a persuasive case that currently available and comparatively inexpensive technology can achieve huge cost savings in the insolvency process by reducing the time span between a guaranty association's payment of a claim and the receiver's collection of applicable reinsurance.

The Roundtable's final speaker, Griffin Appel of In Focus an RSI Affiliate, was placed at a slight disadvantage due to time constraints and technical glitches with his visual aides. His topic was "reengineering a receivership operation" and it focused on better ways of meeting claimants' expectations in increasingly complex insurance insolvencies. Through the use of proprietary software and techniques called "Business Process Modeling and Business Process Reengineering" Mr. Appel described how a specialized project team supported by state of the art information systems might unify the processes and systems involved in the receivership process into a cohesive whole. By digitizing everything entailed in the receivership process, and utilizing the aforesaid software, vast achievements can be made in the accuracy and flow of information among receivership constituents.

Corporate Governance and Accountability in the Spotlight

by Tibor Klopfer

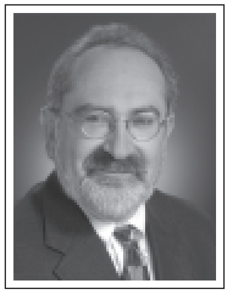
According to the Securities and Exchange Commission, Congress and many leading commentators, the Enron and WorldCom financial disasters have shaken investor faith in corporate governance standards and accountability. Other recent revelations of corporate wrongdoing, like the Adelphia cable company scandal, seem to have confirmed the accuracy of that view. All of this has led to an unprecedented level of attention being paid to a normally dull and mundane topic: corporate governance and accountability.

Congress stepped in by adopting mandates for corporate governance and by ordering the SEC to adopt further rules for public companies by January 26. The Sarbanes Oxley Act of 2002, signed by President Bush last year, is the single greatest overhaul of federal securities laws since the original Securities Act and Securities and Exchange Act were adopted in 1933 and 1934. It embodies a drive toward federal regulation of key aspects of corporate governance and accountability for publicly held companies.

While Sarbanes-Oxley applies for the most part only to public companies, private companies including mutual insurers find themselves in a business, political and legal environment where the norms and standards of "best practices" for corporate governance and accountability are changing. Owners and managers of large privately held companies, especially those with owners who are not also managers, are well advised to take the time to understand the requirements of – and the spirit behind – the new law.

Key Provisions of Sarbanes-Oxley

Sarbanes Oxley runs to well over 60 pages. Here are a few key provisions relating to corporate governance and accountability:



- The majority of the board of directors must consist of independent directors, and there must be a determination that each independent director has no material relationship with the company.
- The non management directors must meet regularly, without management present.
- The board must have specific committees, consisting of independent directors:
- audit committee (at least one member of which must have special financial and auditing expertise),
- nominating and corporate governance committee, and

The reforms are also affecting the terms of private contractual arrangements.

- compensation committee.
- The audit committee must have the sole authority to hire and fire the independent auditors and to approve any significant non audit relationships with the independent auditors.
- The CEO and CFO must personally certify financial information and internal controls and disclosure procedures.
- Loans to directors and executive officers are prohibited.
- Bonuses paid to the CEO and CFO based on financial performance may be forfeited if financial statements are later restated.

Spillover to Private Companies

The corporate governance and accountability reforms represented by Sarbanes Oxley have taken on a life of their own, beyond the scope of public companies. The spirit of the reforms is already affecting private companies. In some cases, even without specific legislation, government agencies may be inspired to act. For example, there has been informal discussion at quarterly NAIC meetings about requiring additional financial certifications from company officers and about limiting consulting work performed by a company's auditing or actuarial firms.

New State Legislation

At the state level, legislatures are likely to be asked to toughen laws protecting against financial crimes. This theme was certainly a major part of the election campaign platforms of several state candidates this past year.

On the corporate governance side, some observers believe that corporation laws may also be subjected to review, scrutiny and possible change. State corporation laws and principles of fiduciary duty generally do not distinguish between public and private companies.

Changes in Contracts

The reforms are also affecting the terms of private contractual arrangements. One of Baker & Daniels' corporate transactions lawyers has reported that she has seen new representations and warranties in a business sales agreement concerning the independence of the accountants who audited the company's financial statements. Our banking lawyers believe that bank loan agreements for large private companies may begin requiring certifications like these mandated by Sarbanes-Oxley.

D&O Insurance

The impact of this changed climate is already being seen in the cost of increased renewal premiums for directors' and officers' insurance. This important source of personal protection for directors and officers of both public and private companies is becoming more expensive. Changes in the corporation laws that increase the risk of director liability, coupled with D&O insurance rates that compel companies to drop the coverage, may make it more difficult to convince qualified persons to serve on corporate boards.

New Standards for Best Practices

The corporate reforms embodied in Sarbanes Oxley are likely, over time, to reshape corporate governance and accountability expectations for large private companies and other companies, like mutual insurers, where the owners are not also the managers. Ultimately, the new standards may shift the meaning of reasonable care, which is at the core of director fiduciary duties. It will become natural to apply the public company standards to any corporation where there are shareholders or owners who do not themselves manage the company or sit on its board. Companies and boards in this position who ignore the new "best practices" do so at their own risk.

Tibor Klopfer is a corporate insurance, transactions and securities attorney with Baker & Daniels. Views expressed here are the writer's.

Meet Your Colleagues

By Joe DeVito

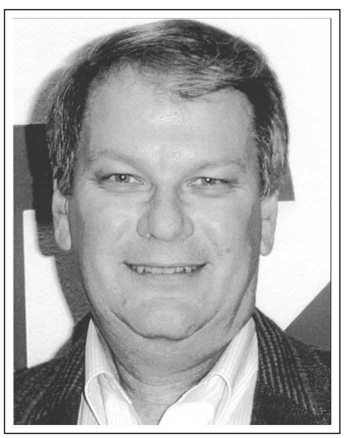
Cynthia Starrett

Cynthia was destined to become an insurance accountant. The daughter of a former CFO of a life insurance company, she grew up in a family where her father prepared annual statements and her mother typed them on those old, oversized typewriter carriages. She studied at Indiana University where she grauated in 1983 with a Bachelors in Science in Accounting. She began her career with Coopers and Lybrand in Indianapolis, a firm she chose to pursue her interest in insurance. Within four months she was preparing her first annual statement and calling home for help making sense of the Reconciliation of Ledger Assets schedule.

From Indianapolis, Cynthia's accounting career has lead her to various cities over the years. After being promoted to Manager, she was transferred to Hartfort, CT to serve the insurance clients of the Hartford, Boston and Springfield offices. From there she accepted an opportunity to assist one of her clients with implementing its first computerized accounting system. A futurist step for the 146 year old mutual company when its auditors convinced the controller that photocopies don't distinguish red ink in the ledger book as a credit.

After her years in Connecticut, Cynthia returned to Indiana to work with Ernst & Young. She was responsible for serving the firm's insolvency clients and various other life and P&C companies. It was during that time she became a charter member of IAIR (then SIR) and began attending the NAIC meetings and workshops. Branching out on her own in 1992, Cynthia continued to work with the Indiana Insolvency Office and other clients. She has worked on various projects including serving as temporary controller, working with reinsurance recoveries, and consulting an investment banker specializing in insurance.

Those who have seen the pink flamingos in Cynthia's home were not surprised when in 1998 she was lured away from Indiana for a financial officer position in sunny Florida. Although the move took her away from insolvency work for a few years, she's back to consulting again. Last year she commuted to Nevada and served as controller for an insolvent property and casualty company. Now she's looking for a new project, but prefers one a little closer to home - it's winter up north you know.



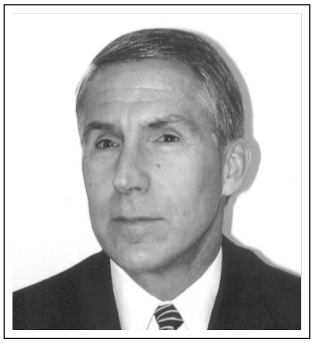
Charles A. Taylor

Charles A. Taylor is President of Alexander, Charles & Associates, an insurance consulting, litigation support and runoff management firm. ACA has worked for several SDR's in the liquidation of in excess of twenty insurance companies, and works with solvent insurers to manage runoff. It is located in Dallas, Texas.

Charles graduated from the University of Texas at Austin with a degree in Insurance and Finance. He holds professional designations of Chartered Property Casualty Underwriter, Associate in Reinsurance and Associate in Risk Management.

Charles began his insurance training in commercial underwriting with Chubb. After ten years in New York, New Jersey, Dallas, Houston and Montreal, and four as a retail broker, he joined Ranger Insurance Company. There he served in senior management in a variety of capacities including Product Manager on Special Accounts and Chief Underwriting Officer for the company. It was there that he obtained his first experience in runoff, closing the Special Risk Division and segregating those operations. Charles moved to the Nobel Insurance Group where he served as Chief Insurance Officer of the corporation and as President of a Risk Retention Group. He remained President of the RRG when it spun off from Nobel until the time of its sale to an admitted insurer. For the past ten years, Charles has been involved in the development and managment of ACA.

Charle's wife, Elizabeth, is a real-estate agent in Dallas. They have just become "empty nesters" without having to change the door locks and getting an unlisted phone number. They enjoy a second home in Ruidoso, New Mexico where Charles would like to open a branch office of ACA. Both are searching for a way for Liz to do her real-estate business from the 600-mile distance.



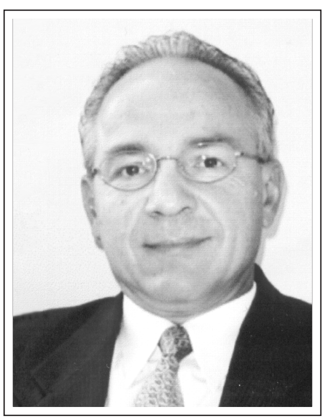
Glenn Taylor, ACAS, MAAA

Glenn Taylor, ACAS, MAAA is president and owner of Taylor-Walker & Associates, Inc., an actuarial consulting firm whose home office is located in Salt Lake City, Utah. Glenn's firm works with many state insurance departments throughout the United States performing the actuarial portions of financial examinations. This relationship has proven to be a valuable tool when working with insurance departments who are rehabilitating or liquidating an insurance company, which is also a function of the firm.

Glenn graduated from the University of Utah with a Bachelor of Arts Degree in Mathematics/Statistics. He began his career working for the State of Utah as a property and casualty rate analyst and actuary. While there he became involved with solvency surveillance. After several years in that position, he moved to California where he worked for Transamerica Insurance Group as Assistant Vice President. The mountains of Utah together with a longing for reduced travel time commuting to work, beckoned Glenn back to his home state where be began working with the actuarial firm he would soon own, Walker & Associates.

Many organizations have benefited from Glenn's membership. He has given numerous presentations across the United States. One of those organizations, The Society of Financial Examiners (SOFE), produced a film on one of his presentations which was distributed to all state insurance commissioners and chief examiners. He is also an active member of the Casualty Actuarial Society and the American Academy of Actuaries.

Glenn has a love for any outdoor activity as evidenced by the time he tries to spend on his boat at Lake Powell water skiing with his wife, LaVon, and their two children. He liked to golf until someone showed him how bad he was. Occasionally, he can still be persuaded to carry sticks around a course and beat the ground at every shot. He also enjoys travel. Glenn lived two years in France, and just recently returned from an extended vacation in Portugal.



Martin P. Sheffield

Martin Sheffield is the Executive Director of Ward Financial Group's Strategic Consulting Division, a specialized insurance consulting firm in Cincinnati, Ohio. The Ward Group is widely recognized as the insurance industry's leading provider for benchmarking and best practices, as well as its annual selection of the Ward 50 leading property/casualty and life insurers.

Martin has been actively involved with state regulators managing target assessents, rehabilitations and liquidations, as well as playing an active role in the sale of corporate shells and books of business.

Prior to joining Ward, Martin was a Vice President of A. M. Best Company, a leading insurance rating agency, where he headed up several analytical teams covering property-casualty insurers. Beyond the rating responsibilities, Martin was the key contact regarding personal line issues, technology, excess and surplus lines, and workers compensation state funds. He was a regular speaker and author of industry topics for A.M. Best.

Martin was also President of the Co-operative Insurance Company of Western New York for over twenty years. This company demutualized and was purchased by the Erie Insurance Group and Martin was responsible for the initial launch of Erie's expansion into New York.

Martin is a CPCU, and was an instructor of CPCU for St. Bonaventure University. He has been an officer, committee member, and board member of several state and national insurance associations.

Receivers' Achievement Report

by Ellen Fickinger

Reporters:
Northeastern Zone - J. David Leslie (MA); W. Franklin Martin, Jr. (PA);
Midwestern Zone - Ellen Fickinger (IL); Brian Shuff (IN)
Southeastern Zone - Eric Marshall (FL); James Guillot (LA)
Mid-Atlantic Zone - Joe Holloway (NC)
Western Zone - Mark Tharp, CIR (AZ); Bob Loiseau (TX); Evelyn Jenkins (TX)
International - Jean Akers (England); John Milligan-Whyte (Bermuda)

Our acheivement news received from reporters for the third quarter of 2002 is as follows:

Wayne Johnson (FL) reported that Florida settled with Deloitte & Touche for $9,000,000 in the **TransFlorida/Guardian** estate and with the same firm for $1,000,000 in the **Atlantic General Life** estate. He further advised that they also obtained a $3,500,000 judgment against the **Gulf Atlantic Management Group** and David Sanz, its former president in the **Florida Employers Safety Association (FESA-SIF)** estate. Additionally, **Union American** was successfully rehabilitated and the Receivership discharged on 12/20/01.

Mike Rauwolf (IL) reported that under OSD supervision **American Mutual Reinsurance, In Rehabilitation** continues to manage the reinsurance run-off of their business. Total claims paid inception to date, Loss & Loss Adjustment Expense $30,449, Reinsurance Payments $155,326,340, and LOC Drawdown disbursements $9,613,386. Another company under OSD supervision, **Centuar Insurance Company, In Rehabilitation**, continues to manage the run-off of their business as well. Total claims paid inception to date, Loss & Loss Adjustment $53,294,740, Reinsurance Payments $4,945,493, and LOC Drawdown disbursements $13,876,555.

Continuing to provide updates on **Fidelity Mutual Life Insurance Company (FML), In Rehabilitation** is **Frank Martin (PA)**. As of September 30, 2002, **FML** showed a statutory surplus in excess of $107,000,000 after reserving for all policyholder liabilities and paying most creditors. The moratorium on cash surrenders, withdrawals, policy loans and other contractual options which was imposed by the November 6, 1992 rehabilitation order was terminated effective October 1, 2001. Policyholders are now able to fully access their cash values. Death benefits continued to be paid and policyholder dividends and interest continued to be credited. The termination of the moratorium has had minimal impact on lapse rates, largely due to the high dividends and crediting rates paid in 2001, 2002 and planned for 2003. All general creditor claims have been paid except for one where we are awaiting a release to be returned to the Rehabilitator. Settlement of only one premium tax claim is still pending with state authorities.

Additionally, the Commonwealth Court approved policyholder dividends for 2003 totaling up to $42.5 million and crediting rates for 2003 of approximately $11.4 million. In May, the Commonwealth Court issued an order preliminarily approving the Third Amended Plan for Rehabilitation with minor modifications. All but one of the substantive objections filed by the Policyholder Committee were overruled. The court wanted revised plan documents filed before issuing a supplemental order authorizing the bid process to begin. Another round of plan amendments was necessary and more issues have surfaced which are being negotiated with the Policyholder Committee.

James A. Gordon (MD) reported that collections during the 3rd quarter of 2002 for **Grangers Mutual Insurance Company** totaled $21,991.65.

Florida (Wayne Johnson, State Contact Person)

New Estates Opened	**Date of Order**	**Type**	**Primary Line of Business**
Aries Insurance Company	05/09/2002	Rehabilitation	P & C
Fortune Insurance Company	07/06/2001	Liquidation	P & C
N.A.P.T.	08/03/2002	Liquidation	UAI
Unisource	10/25/2001	Liquidation	P & C

Distributions	**Estate**	**Amount**	**Type of Distribution**
Guaranty Funds:			
FIGA	Armor	$5,000,000.00	Early Access
	Dealers	$2,000,000.00	Early Access
	Fidelity	$2,000,000.00	Early Access
	First Alliance	$2,000,000.00	Early Access
	General	$3,000,000.00	Early Access

(Continued on Page 13)

Receivers' Achievement Report

(Contined From Page 12)

	Great Oaks	$8,000,000.00	Early Access
	Great Republic	$2,000,000.00	Early Access
	International Bankers	$1,000,000.00	Early Access
	Nova Southern	$2,000,000.00	Early Access
	Ocean Casualty	$4,000,000.00	Early Access
	Rumger	$7,000,000.00	Early Access
	Union General	$5,000,000.00	Early Access
FWCIGA	American B & C	$4,000,000.00	Early Access
	Armor	$1,000,000.00	Early Access
	FESA	$5,000,000.00	Early Access
	First Alliance	$1,000,000.00	Early Access
	FTBA	$1,000,000.00	Early Access
Policy Loss Claims Paid			
(Other than Gas)	EWC	$287,026.00	Final Distribution
	Rumger	$6,518,847.00	Final Distribution
	American P & C	$7,935,853.00	Final Distribution

Estates Closed	**Date**
MCA	06/20/2002
American Financial Life	06/28/2001
Central FL Physicians	05/15/2001
Union American	12/20/2001

Significant Recoveries (Reinsurance)

Estate	Recovery
Fla. Workers Comp Fund	$130,64,291.00
Fortune Insurance Co.	$6,934,156.00
FTBA Mutual	$3,519,710.00
Assoc. Business & Commerce	$736,401.00
Caduceus SIF	$695,325.00
USEC_SIF	$560,379.00
FESA_SIF	$584,343.00
All Other Estates	$320,849.00

Illinois (Mike Rauwolf, State Contact Person)

EARLY ACCESS & OTHER FUNDS PAID TO GUARANTY FUNDS OR ASSOCIATIONS AND DISBURSEMENTS TO POLICY/CONTRACT CREDITORS
THIRD QUARTER 2002

Estate	**Loss and Loss** Adjustment Expense	**Early Access** Distribution	**Return** Premium	**Reinsurance** Payments
Alliance General Ins. Co	869	53,968	0	0
Alpine	0	69,555	0	0
AMRECO	0	0	0	6,954,249
Back of the Yards Risk Mgmt Asso	407	0	0	0
Centaur Insurance Company	1	0	0	0
Coronet	22	800,000	0	0
Delta Casualty Company	2,553	0	0	0
Equity General Insurance Co.	1,284,383	1,237,991	0	0
Illinois Earth Care Workers Comp	89	0	0	0
Illinois Insurance Co.	96	80,777	0	0
Inland American Insurance Co.	176	0	0	0
Inter-American Insurance Co. of IL	302,891	18,2411,11	336	0
Intercontinental Insurance Co.	0	5,911	0	0
Millers National Insurance Co.	0	4,612	0	0
Optimum Insurance Company	0	126,003	0	0
Pine Top Insurance Co.	1	1,021	0	0
Prestige Casualty Company	0	16,678	0	0
United Capitol Insurance Co.	22,016	0	0	0
Western Specialty Insurance Co.	5	0	0	0

(Continued on page 14)

New York (F.G. Bliss, State Contact Person)

(Continued from page 13)

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

First Quarter 2002

RECEIVERSHIP	SECURITY/ GUARANTY FUNDS	POLICY/ CONTRACT CREDITORS	OTHER CREDITORS	TOTAL
Consolidated Mutual	$2,565.00			$2,565.00
Cosmopolitan Mutual	$8,928.00			$8,928.00
Horizon	$8,441.00			$8,441.00
Dominion		$205,773.00		$205,773.00
Ideal Mututal	$5,506,677.00	$27,660.00		$553,4337.00
Whiting National	$3,678.00			$3,678.00
TOTAL	**$5,530,289.00**	**$233,433.00**	**$0.00**	**$5,763,722.00**

Second Quarter 2002

RECEIVERSHIP	SECURITY/ GUARANTY FUNDS	POLICY/ CONTRACT CREDITORS	OTHER CREDITORS	TOTAL
American Consumer	$2,964,377.00	$25,451.00		$,2989,828.00
American Fidelity	$7,731,769.00	$191,469.00		$7,923,238.oo
Consolidated Mutual	$148,484.00			$148,484.00
Cosmopolitan Mutual	$254,747.00			$254,747.00
First Central	$6,802,957.00	$122,624.00		$6,925,581.00
Horizon	$36,508.00			$36,508.00
deal	$266,341.00	$3,896.00		$270,237.00
Long Island	$11,133.00			$11,133.00
Whiting National	$7,598.00			$7,598.00
TOTAL	**$18,223,914.00**	**$343,440.00**	**$0.00**	**$18,567,354.00**

Third Quarter 2002

RECEIVERSHIP	SECURITY/ GUARANTY FUNDS	POLICY/ CONTRACT CREDITORS	OTHER CREDITORS	TOTAL
American Consumer	$1,528.00			$1,528.00
American Fidelity	$1,346.00			$1.346.00
Cosmopolitan Mutual		$392,633.00		$392,633.00
Dominion		$60,398,144.00		$60,398,144.00
First Central	$3,271,301.00	$32,945.00		$3,304,246.00
Ideal	$143,463.00	$12,469.00		$155,932.00
TOTAL	**$3,417,638.00**	**$60,836,191.00**	**$0.00**	**$64,253,829.00**

Pennsylvania (W. Franklin Martin, Jr., State Contact Person)

Early Access and other Funds paid to Guaranty Funds

Estate	Guaranty Funds
PHICO Insurance Company	$47,938,000.00

Texas (Evelyn Jenkins, State Contact Person)

New Estates Opened

	Date of Order	Type of Order (rehab, liq)	Primary Line of Business
ABP	03/06/2002	TRO	
Amcorp Ins. Co.	08/30/2002	Agreed TI	
Colonial Casualty Ins. Co.	08/30/2002	Agreed TI	

(Continued on page 15)

Legion Ins. Co. and Villanova Ins. Co.	10/23/2002	TRO	(Continued from page 14)
Amcare Health Plans of Texas, Inc. & Amcare Management	12/16/2002	Agreed TI	

Distributions to:

	Estate	Amount	Type of Distribution (Final, Partial or Early Access)	
1 Guaranty Funds	Eagle Ins.	$4.7 mil	Final	GF
2 Policy Loss Claims other than guaranty funds	Standard Financial	$2.9 mil	Partial	GF
	Sir Lloyds	$2.6 mil	Partial	GF
3 General Creditors	American Guardian	$4.5 mil	Partial	GF
	Members Mutual	$13.8 mil	Final	Shareholders

Estates Closed

	Date Closed	Date Opened	Liquid Assets at Liquidation	Total Amount Distributed	% Dist. For Policy Loss Claims
ETL	11/29/2001	02/11/1994			
Eagle Ins. Co.	08/05/2002	10/18/1993			
Members Mutual	08/15/2002	07/21/1992			
International Lloyds	08/23/2002	03/13/1996			
Standard Financial	08/30/2002	09/10/1991			
American Guardian	11/26/2002	10/18/1990			

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What Every Defendent Needs To Know

By Victoria Anderson and Louise Brace

What happens if you are a reinsurer defending proceedings brought by the reinsured and the claimant insurance company becomes insolvent? The following is an account of what can happen in the UK and in other jurisdictions where the law is based on English law. The first time that the defendant will become aware that the claimant is insolvent, will most likely be when he is notified of this by the appointed insolvency practitioner. Often on the insolvency of an insurance or reinsurance company in the UK, a winding-up petition is presented and Provisional Liquidators (PLs) will be appointed thereby providing a moratorium period during which the PLs will consider if a scheme of arrangement or liquidation would be in the best interests of creditors. Sometimes, alternatively, a winding-up order will be made creating a full liquidation from day one. This happened more often in the past prior to the surge of insolvencies at the beginning of the 1990s.

The PLs secure the company's assets, maintain the status quo and prevent creditors from securing preferential treatment through actions or proceedings taken against the company. The powers of the PLs will be detailed in the order appointing them and can be quite elaborate. For example, the PLs of a company which is in litigation are likely to be given the power to bring or defend any action or other legal proceedings in the name of or on behalf of the company.

Stay of Proceedings

By virtue of section 130(2) of the Insolvency Act 1986 (the Act), one effect of the appointment of PLs (or of a winding-up order with full liquidation) is that an automatic stay of proceedings is put in place, as follows: "…no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose".

The purpose of section 130(2) is to prevent a scramble by creditors for the assets of the company about to be wound up or which is in the course of being wound-up (Re Dynamics Corporation [1973] 1 WLR 63). This power complements a similar power given by section 126 of the Act which allows the company, a creditor or a contributory to seek a stay when the hearing of a winding-up application is pending. Similarly, a judgment creditor may not execute its judgment against the company after a winding-up petition has been presented (section 128 of the Act). Section 130(2) completes this ring of protection by preventing a creditor from commencing or continuing proceedings against the company once PLs have been appointed or a winding-up order has been made.

The aim of the legislation is to maintain an orderly and formal distribution of the company's assets to creditors with creditors having to "prove" or make a claim in the scheme of arrangement or liquidation as the case may be. In doing so, claims against the company can often be dealt with in a more cost effective manner in the scheme or liquidation, ie, they are to be agreed or subject to adjudication rather than be subject to continuing costly litigation. If therefore a claimant wishes to commence or to continue proceedings which have already commenced against an insolvent insurance company, often leave will be refused where the issues can be solved with less delay and expense by the creditor lodging a proof in the scheme or winding-up rather than by way of litigation. However, it is open to the court to lift the stay if the circumstances show that the claim would be better dealt with in litigation. For example, a secured creditor is usually permitted to bring proceedings to enforce its security.

The Insolvent Claimant

However, where the insolvent company itself is the claimant, different considerations apply. The claimant will have begun the proceedings while solvent usually claiming against a reinsurer in respect of disputed reinsurance claims. The regime aims to protect the insolvent company's assets from creditors' actions not the continuation of actions already commenced against an alleged debtor. The following words in italics can therefore be impliedly added to the above statutory words "… no action ... shall be proceeded with………. against the company in which the company is a defendant ….." On a proper interpretation of these words, following the appointment of PLs or if a winding-up order is made, there is no restriction (no stay) upon the company's right to bring or continue proceedings against a defendant alleged to be a debtor of the company. Equally therefore, the defendant in ongoing proceedings need not apply to have a stay lifted.

What if there is a counterclaim by the defendant as well as a defence? Whether there is a stay depends on what type of counterclaim is advanced. If the counterclaim is merely, for example, a declaration that the debtor is not liable then this will not be an "action" within section 130(2) and there will be no stay. However, a substantial counterclaim requiring payment by the insolvent company may be considered by a court to be "an action or proceeding" and so the litigation will most likely be stayed and court permission will be necessary for the defendant to commence or continue his counterclaim.

To "adopt" or not to "adopt" and security for costs

US readers must be aware that in the UK a losing party in proceedings almost invariably will be ordered to pay the winning party's costs.

As stated earlier, if the order appointing the PLs of a company involved in litigation provides them with the power to bring or defend any action or any other legal proceedings in the name of or on behalf of the company then they can themselves decide whether to continue an action or proceedings which had been commenced by the company prior to their appointment. If they do so they will have "adopted" the proceedings. The concept of "adoption" of the proceedings arises out of the case of Re London Drapery Stores [1898] 2 Ch 684. This case involved a company which whilst a going concern commenced an action against the defendant. The company soon afterwards passed an extraordinary resolution for voluntary winding-up, and subsequently the voluntary winding-up was ordered to be continued under the supervision of the court. The liquidators obtained the leave of the court to continue the action but the defendant obtained judgment against the company which was ordered to pay their costs. It was held that the principle of Boynton v Boynton (1879) 4 App. Cas. 733 applied, namely as the liquidators had adopted the action ab initio, the defendant was entitled to be paid all his costs in full, and not merely the costs as from the commencement of the winding up, with liberty to prove for the costs previously incurred. There is no authority clarifying what constitutes adoption of the proceedings. However, taking further steps in the proceedings and acting in a manner consistent with the role of an interested party could be considered to be adoption. For example, the service of amended statements of case or appearance at a hearing. Once the PLs have made their decision to adopt then they will inform the defendant that the proceedings are continuing as normal.

The PLs' decision whether to adopt proceedings which have already been commenced is an important one. If the PLs adopt, they will run the risk that any adverse costs of the proceedings, including costs relating to the period prior to the date of their appointment might, subject to the general discretion of the court in relation to costs, fall to be borne as an expense of the provisional liquidation in priority to the unsecured claims of creditors: otherwise, costs prior to the date of their appointment would merely rank pari passu as an unsecured claim.

A defendant may receive an assurance from the claimant that there are sufficient funds available to the PLs which would meet his costs in full if he were to win the action. This might be so notwithstanding any other actual or prospective costs of the provisional liquidation (including the costs of any other litigation which the PLs have adopted or intend to adopt). However, if no such assurance is given the defendant cannot be sure that the mere fact of its costs having priority, as costs of the provisional liquidation, will mean that he will receive payment of such costs. In these circumstances, the defendant should consider applying for security for costs from the claimant on the basis that the claimant is unable to meet such costs.

The fact that the company is in liquidation is sufficient to establish its inability to pay the defendant's costs unless evidence to the contrary is given. The defendant can therefore apply under Part 25.12 of the UK's Civil Procedure Rules (CPR) for security for costs of the proceedings. If there is a substantial counterclaim (see above) and the proceedings have been stayed, then permission from the court will be required prior to making such an application. If security for costs is ordered but the claimant fails to comply with the order, the defendant will be successful in applying to have the claim struck-out.

The judge in the first instance decision in Smith v UIC Insurance Co Ltd [2001] BCC 11, where an arbitration was continued by the PLs, dismissed an application for security for costs. It was held that justice and fairness required that costs should come out of the assets of the company and be paid in full and immediately. However, the Judge held that where the evidence showed that the insolvent company would be able to pay any adverse costs ordered against it despite its insolvency, it had not been shown on the facts that the company would be unable to meet the defendant's costs. Security for costs, therefore, would not be ordered. Importantly, the judge also held that the principles identified in relation to the payment of legal costs in the context of liquidation were equally applicable to provisional liquidation.

Conclusion

When the defendant is informed of the claimant's insolvency he should immediately assess his position and decide what action to take. In the circumstances where there is no counterclaim of substance, there will be no automatic stay of proceedings and the defendant should apply to court (without the need for leave) for security for costs to protect his position and force the PLs' to decide to proceed or not. Because there is no law on the point, the PLs are likely to argue that a stay exists. In such a situation, it may be necessary to have this point clarified by the court which appointed the PLs (normally, in the UK, the Companies Court) prior to issuing an application for security. The alternative could be a protracted wait while the PLs decide whether or not to adopt the proceedings. While he waits the defendant will not know whether the costs he has incurred and continues to incur will be paid in full (ie if the PLs adopt and he wins the action); or whether the most he can expect (ie if the action is not adopted) is to claim for his costs in the insolvency and merely receive a dividend.

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