

NOLHGA Seizes Opportunity To Use Staff Instead Of Consultants To Perform A Variety of Insolvency-Related Services

By WILLIAM P. O'SULLIVAN
Vice President and Counsel
NOLHGA

The substitution of staff resources for consultants on insolvency task forces is consistent with NOLHGA's first Strategic Plan, adopted in 1992, and 1997 Organizational Objectives, both of which were approved by the NOLHGA Board

of Directors and provide for the selective use of staff to perform insolvency work typically handled by consultants. One rationale for the use of staff is that it will save the life and health insurance guaranty system money. In addition to favorable differences

in unit costs, savings are expected because NOLHGA staff and overhead are relatively fixed-cost resources (i.e., their costs are assumed in NOLHGA's annual budget), whereas consultant services are variable cost items. To the extent that the guaranty sys-

tem, in appropriate cases, can use fixed-cost resources (NOLHGA staff) to avoid incurring additional variable costs (consultant fees), savings should result. And in addition to the economic benefits, the use of staff as consultants will

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NOLHGA JOURNAL

A PUBLICATION OF THE NATIONAL ORGANIZATION OF LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATIONS

NOLHGA Welcomes PETER C. LEONARD

Peter C. Leonard joined the Alaska Life and Health Insurance Guaranty Association as executive director in July. Mr. Leonard, a certified public accountant, has had his own accounting practice since 1980 and previously had been a partner in two CPA firms. He has a B.S. from California State University, Northridge, and a J.D. from Loyola Law School in Los Angeles.

Mr. Leonard can be reached at:

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MPC Adopts Amendments to Rules and Procedures

By DANA L. CARROLL
Manager, Insurance Services
NOLHGA

The Members' Participation Council on Aug. 20 adopted amendments to the MPC Rules and Procedures. This is the first time the rules have been amended since their creation in 1993. The MPC Executive Committee, charged with preparing the amendments, formed a special task force for this project: William Falck, chair, (Fla.), Sonya Ekart (Neb.), Mark Femal (Wis.), Don Kinney (N.M.), Dan Orth (Ill.), Tom Peterson (Ky.) and Chuck Renn (Mo.).

The task force began its work in August, 1996 and thoroughly reviewed every section of the rules, which were submitted in early June to the MPC Executive Committee. The committee met three times this summer to consider the proposed amendments and comments received after the

amendments were exposed to the Council. The final revised rules were submitted to the Council on Aug. 20 and were adopted after much discussion. The rules will take effect following approval by the NOLHGA Board of Directors, expected in October.

Many of the changes are technical in nature; however, some of the amendments are significant and new provisions were added.

Section 1.2, Purposes, was clarified to provide, among other things, that national plans should take into account and accommodate to the extent practical all members' statutory requirements. In addition, it was clarified that the Council should serve as an educational forum on current insolvencies and issues.

Section 1.3, Powers and Duties, was clarified to provide that the Council determine for itself and recommend to its members ways of fulfilling their obligations and the Council can serve as a forum for addressing major issues in a

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Reflections On The Guaranty System's Growth and Maturity

This is my last opportunity as president to comment in the Journal, and I write with mixed emotions. Although I am looking forward to my retirement, it will be difficult to say my adieux to the many wonderful people with whom I've been fortunate enough to work: my staff, the NOLHGA Board of Directors, the state administrators, state board members, and the regulatory and receivership communities. I have enjoyed working with and getting to know all of them. But I leave with the knowledge that, under Brian Donnelly's leadership, the system is in great hands. I have no doubt that future insolvencies will be handled efficiently and professionally, with service to the public the primary goal of all the people who make the system work.

A recent meeting with representatives of the Japanese life insurance industry reminded me of just how far the life and health insurance guaranty system has come. The current problems of the Japanese life insurance industry are of a different nature than those that caused the downfall of Executive Life, Mutual Benefit Life and Confederation Life, but the Japanese industry seems to feel that our experience with those insolvencies provides lessons that will benefit them in solving their own difficulties. One can no doubt find several analogies between the problems the life insurance industry and regulators in Japan are facing and those confronting the United States in 1991.

The failures that year were unprecedented. Life insurance companies with insurance liabilities of more than \$44 billion were placed in receivership. There were hearings before committees of both houses of Congress regarding the solvency of the industry and whether this relatively new system of guaranty associations could cope with the situation. The state insurance commissioners were extremely concerned, and the NAIC agenda was dominated by study after study on various insolvencies and guaranty association issues.

The focus of regulatory attention

is far different today - good news, because it reflects the healthy condition of the industry. The lessons learned from these insolvencies have strengthened the balance sheets far into the future. In addition, I think that the consolidation within the industry, begun several years ago and continuing today, will result in the acquisition, rather than the receivership, of weaker companies. I am optimistic about the continued good health of the industry but recognize that there will be failures in any industry as competitive as insurance.

I take pride in having been associated with the accomplishments of the guaranty system in the past five and a half years since I came to work for NOLHGA. Guaranty Reassurance Corporation, the guaranty association-owned company we formed in Florida to take over the insurance liabilities and troubled assets of the failed Guarantee Security Life Insurance Company; the work-out plans for Mutual Benefit Life, Kentucky Central Life and, most recently, Confederation Life, are all examples of success stories. A soaring economy in the last few years certainly has contributed. But the ingenuity and hard work of the guaranty association people involved, and the receivers working with them, created the opportunity to recover losses for the policyholders as markets for distressed assets improved. That is the message we must send repeatedly to regulators, legislators, the life insurance industry and the public for two reasons: (1) receivers must understand the common goal we have in serving policyholders and the flexibility the system has to accomplish that goal; and (2) I



NOLHGA President Jack H. Blaine
February 1992 - December 1997

have no doubt that the interest in federal legislation to create a national regulatory structure -- and with it a national guaranty fund - again will come before Congress. My experience over 30 years has been that proposals for federal regulation in some form are recycled about every seven to 10 years. After all, it was the threat of a national guaranty fund in the late 1960s that prompted the creation of the existing state insurance guaranty system.

Finally, I make a plea to the life insurance industry that it not become complacent about the insurance guaranty system. With other issues confronting the industry, insolvencies have not been foremost on industry agendas in the last few years. Also, many states now have full-time administrators, unlike 10 years ago, and thus the work once performed by the unpaid state board members is now handled for them. That has been a positive development and part of the evolution of the state life and health insurance guaranty association system. But the statutory responsibility remains with the board of directors and, as in any organization, those with proprietary interest must set policy and continue to be involved.

My very best wishes to all of you for the great future for which you have prepared and so rightly deserve.

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Guaranty Associations

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NOLHGA/IAIR Seminar Features Fictitious Case Study

NOLHGA and the International Association of Insurance Receivers will host their second joint seminar Nov. 19-20 at the Camberley bBrown Hotel in Louisville, Ky. Members from each organization will form small

teams to devise solutions for a fictitious insolvent life and health insurer with a host of twists and turns in addition to the typical problems that characterize such a company. IAIR and NOLHGA members will receive the case

study in the mail prior to the meeting. Call the hotel at 502/583-1234 and mention the seminar to receive the special rate of \$124 per night. The \$125 registration fee, payable to NOLHGA, is due at NOLHGA by Oct. 31. ▼

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multi-state insolvency. Also, the Council can take such other actions as necessary to fulfill its purposes as set forth in Section 1.2.

There has been some confusion regarding the structure of the Council and voting rights of the members. A provision was added to **Section 2.2, Membership and Structure**, that recognizes that Council business includes general insolvency matters and, in those instances, all guaranty associations are members of the Council. With respect to specific insolvency cases, there is a separate and distinct Council for each insolvency consisting of the guaranty associations affected by the specific insolvency.

Other changes in **Section 2.2** provide that candidates for Council chair must have served on at least one insolvency task force; consultants who are engaged (or whose firms are engaged) by NOLHGA cannot serve as Council chair or on the MPC Executive Committee; and no one can serve as Council chair for more than three years in any eight-year period.

The quorum requirements in **Section 3, Meetings**, were changed from 30 to 50 percent to ensure that votes of the Council represent the views of a significant percentage of affected associations. With a 30 percent quorum requirement, it would be possible for as few as 16 percent of affected associations to carry a

motion. *See example, far right.

Section 4.1, Purpose (of insolvency task forces), has been changed to clarify that the task force represents the interests of the affected Council members and works in cooperation with NOLHGA staff and consultants on the issues that may arise during the insolvency. In addition, Section 4.1 (2) was added to assist task forces in determining what matters should be referred to the Council for resolution.

To address concerns about protecting the confidentiality of documents distributed at Council meetings. A new sub-section, **Section 4.7, Confidential Information**, was added. This clarifies the intent that Council members have an expectation, based on common interest, that confidential information may be shared among them without waiving applicable privileges. The change also provides for necessary precautions to be taken to protect the confidentiality of information and appropriate guaranty association access thereto.

The changes in **Section 7, Decisions of the Council and Opt-Out Procedures**, seek to clarify what actions of the Council give rise to member opt-out rights. **Revised Section 7** provides that Council actions or recommendations regarding the means by which members will fulfill other statutory obligations or which significantly affect material rights or obligations of

members will be subject to the opt-out process. Any action or recommendation of the Council which is not intended to be binding on members would not need to be subject to the opt-out process. Another provision was added to recognize that some member associations are required by statute or regulatory action to opt in to Council actions and recommendations as opposed to opting out.

A new **Section 8, Conflicts of Interest**, was added to create a procedure to address conflicts that arise during the insolvency process (e.g., during bidding or when a Council or task force member takes a public or active opposition to the position of the Council or task force. The provisions seek to balance the desire to maintain an open process allowing for the free flow of information to all guaranty associations with the need to protect confidential information and the integrity of the process.

New **Sub-Section 9.1, Non-Insolvency Task Forces or Committees**, provides a procedure for appointing non-insolvency task forces and subjects the task forces to the budgeting process. In addition, it expands the universe of task forces that are eligible for expense reimbursement subject to approval by the Council chair, the NOLHGA Board of Directors and the president. ▼

The quorum requirements in **Section 3, Meetings**, was changed from 30 to 50 percent to ensure that Council votes represent the views of a significant percentage of affected associations:

If the number of affected associations for a particular insolvency were 50, then a quorum of 30 percent would equal 15 associations. The majority of the quorum to carry a motion would be eight associations, representing 16 percent of the total affected associations.

"Looking Back, Moving Forward:"

NOLHGA AND ITS MEMBER GUARANTY ASSOCIATIONS WELCOME NEW PRESIDENT BRIAN J. DONNELLY

Members and guests at NOLHGA's 14th Annual Meeting will have the opportunity to meet incoming President Brian J. Donnelly. A Los Angeles attorney with more than 25 years' experience in the life and health insurance industry, Mr. Donnelly was unanimously selected by the NOLHGA Board of Directors to succeed NOLHGA President Jack H. Blaine, who retires at the end of the year. Mr. Donnelly will work with Mr. Blaine, beginning in October, to assure a smooth transition.



Before joining the Los Angeles law firm of Paul, Hastings, Janofsky & Walker in 1996, Mr. Donnelly spent eight years with Blue Cross of California where he was senior vice president, general counsel and secretary. Prior to that he served five years at American General Life Insurance Company; nine years with Beneficial Standard Life Insurance Company; and five years with Acacia Mutual Life Insurance Company.

Mr. Donnelly is a graduate of Youngstown State University and American University Law School. He is admitted to the California, Texas, Virginia and District of Columbia bars and is a member of the Los Angeles County Bar Association and the American Bar Association.

NOLHGA's 14th Annual Meeting will be held in San Antonio, located on October 1; fees are \$225 for members and \$250 for guests. It is expected that about 100 attendees will witness the guaranty systems accomplishments and awards ceremony. The agenda includes:

WEDNESDAY, OCTOBER 15

State Board Chairs and Guaranty Association Presidents Luncheon
Attendees will discuss the "Survival of the Fittest: Guaranty Expenses" 3:30 - 5:30 pm, Salon B/F

THURSDAY, OCTOBER 16

What's New: Issues Affecting the Industry

Moderator

Roger F. Harbin, NOLHGA Director

Panelists

Charlotte Liptak, Counsel, Transamerica

George T. Coleman, incoming NOLHGA President

The Prudential, genetic testing

Walter C. Welsh, Senior Vice President, American

Company, Congressional activity

possible implications for guaranty

Luncheon

Bart Schwartz, Esq., president of

Decision Strategies, a private investment

Noon - 1:30 pm, Salon B/F

Saying Good-bye...Jack H. Blaine Retires After Nearly Six Years As NOLHGA President

The upcoming Annual Meeting will be Jack Blaine's last as president. Mr. Blaine will retire at the end of the year after representing the industry for 30 years. Before joining NOLHGA in February, 1992, he was of counsel to the law firm of LeBoeuf, Lamb, Greene & MacRae in Washington, D.C. He served at the American Life Convention and spent 25 years at the American Council of Life Insurance, the last 10 of which as vice president, until he left ACLI in 1989 to become president of the Reinsurance Association of America and joined LeBoeuf, Lamb in 1991.



Mr. Blaine has been active in professional activities, having served on the Council of the Tort and Insurance Reform Commission, as well as numerous committees and task forces of the TIPS Section. He is admitted to practice in the District of Columbia, the Supreme Court of the United States and the United States Court of Appeals, Fifth Circuit. Mr. Blaine is a director of a life insurance company organized and owned by the state life and health insurance guaranty associations to which he is an insurer.

Mr. Blaine, a native of Ohio, served in the U.S. Army's 82nd Airborne Division from 1954-1956. He attended the University of Dayton in 1958, and earned his law degree from the University of Wisconsin School of Law in 1961.

NOLHGA's 14th Annual Meeting

Meeting will be held Oct. 15-17 at the Marriott Rivercenter at 101 Bowie Street. NOLHGA's registration deadline is for members, \$425 for non-members and \$85 for spouses or 200 members and guests will convene to reflect upon the events and plan for the year ahead. Meeting highlights

Guaranty Association Administrators Forum

Review of Guaranty Association Administrative Practices and

Life Insurance Industry

Director and Senior Vice President, SAFECO

America, equity indexed annuities

NOLHGA Chairman and Vice President, Government Relations,

President and Director of Government Affairs, Hartford Life Insurance
Presented this year on banking/insurance litigation issues and the
regulatory associations. 10:30 am, Salon E

Investigation firm

NOLHGA's President

has worked in the life insurance industry for more than
30 years in Washington, D.C. He began his career in 1966
as a state relations and general counsel. He

is a past President of the Practice Section of the American Bar Association as
well as a past member of the Bars of Columbia, Illinois, and Wisconsin, and before the
Supreme Court of Florida. He was Director of Guaranty Reassurance Corporation, a Florida
company that manages the assets and liabilities of an insolvent Florida

He graduated from Bowling Green State University, received his B.S. from
Bowling Green State University in 1961.

More Annual Meeting Highlights...

THURSDAY, OCTOBER 16

GRC: Lessons Learned

Presented by John Ericson, President and CEO, GRC
2 - 2:45 pm, Salon E

Case Studies

Confederation Life Insurance Company

Presented by Charles LaShelle, CLIC Task Force Chair, and
H. Edwin Trusheim, retired chairman of General American, past
chairman of the Federal Reserve Bank of St. Louis, and NOLHGA
representative to the Payout Annuity Separate Account Committee

Executive Life Insurance Company

Presented by Arthur O. Dummer, ELIC Task Force Chair
3 - 4:45 pm, Salon E

FRIDAY, OCTOBER 17

Address

North Dakota Insurance Commissioner Glenn
Pomeroy
8:30 am, Salon E

Address

Edwin L. Rosane, President and CEO, USAA Life

Implications of Market Conduct Class Action Litigation for Life Insurance Solvency

James F. Jorden, Esq., Jorden Burt Berenson & Johnson LLP

RECEPTIONS

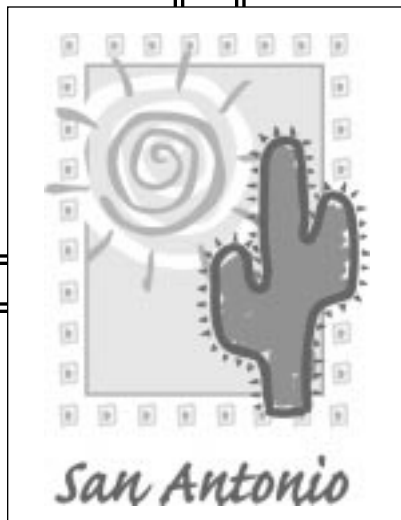
WEDNESDAY, OCT. 15

NOLHGA and the Texas Life, Accident, Health &
Hospital Insurance Guaranty Association co-host a

welcome reception for members and guests
6 - 7 pm, Atrium Lounge

THURSDAY, OCT. 16

"Cross the Border" Fiesta, Maverick Plaza, La Villita. Annual meet-
ing registrants will receive information about the reception, includ-
ing attire and directions, in their confirmation packages.
6:30 - 8:30 pm





Use of Staff Should Save Money, Increase Expertise

STAFF USE, *from Page 1*

enhance NOLHGA's in-house insolvency skills and capabilities. This in turn will benefit the guaranty system, because NOLHGA will be able to provide a higher level of service on future insolvencies.

Of course there are limitations on the extent to which NOLHGA staff can be substituted for outside consultants. In various circumstances, it would not be a feasible option. At a minimum, factors such as the size and complexity of an insolvency, and staff's competing work load, must be evaluated. One of the initiatives contained in NOLHGA's current Strategic Plan is to better define the appropriate use of staff to perform what traditionally had been consultant work on insolvencies. This is a vital issue and hopefully the experience gained from the American Life Assurance Corporation insolvency will provide valuable insights in addressing it.

American Life Assurance Corporation (ALAC) was ordered liquidated on May 30 by the Montgomery County Circuit Court in Alabama. The company initially became subject to regulatory action in January with the filing of a notice of impairment by the Alabama Department of Insurance. ALAC's management, apparently recognizing that it would be impossible to cure the impairment, consented to the filing of a rehabilitation order on Feb. 26.

ALAC's troubles can be traced to the legal and financial problems of its subsidiary, First National Life Insurance Company (FNLIC), which was placed in rehabilitation in early October, 1996, because of cash flow prob-

lems exacerbated by a \$1.3 million punitive damage award against it. Since FNLIC's capital stock represented a material portion of ALAC's assets, it was only a matter of time before FNLIC's insolvency led to ALAC's failure.

Shortly after ALAC was placed in receivership, Members' Participation Council Chair Frank Gartland appointed a NOLHGA task force consisting of the same guaranty association representatives who served on the FNLIC task force. In addition, NOLHGA staff were designated to provide project manager, legal, actuarial and financial services to the task force, which also had been the case in the FNLIC insolvency.

Compared to other insolvencies affecting guaranty association, ALAC is not a particularly remarkable case. The company's deficiency in assets for the purpose of meeting policyholder obligations is about \$750,000, and only five guaranty associations (Alabama, Florida, Georgia, Louisiana and Mississippi) are expected to have covered obligations. Additionally, there do not appear to be novel or precedent-setting coverage or other issues to resolve. The company's business, over 90 percent of which resides in Florida, consists mostly of individual accident and health policies (Medicare supplement and major medical) and a small number of deferred annuities and whole and term life policies.

The ALAC insolvency seems well-suited for using NOLHGA staff resources in place of outside consultants. As indicated, the case is neither large nor is it anticipated to be so complex as to require outside expertise. It is a case, however, which will gener-

ate a significant amount of work which typically would be handled by task force consultants. Unlike FNLIC and other cases in which NOLHGA staff have been used in place of consultants, ALAC has in-force policy obligations for which guaranty associations have coverage responsibility. Consequently, NOLHGA staff, acting in place of consultants, will need to provide substantial services on this case. To date, staff have performed the following "consultant type" work: a due diligence review of the company's business; the production of schedules summarizing the company's policy obligations; the preparation of bidder confidentiality agreements; the preparation and distribution to bidders of a comprehensive information package on ALAC's business; and the negotiation of a service agreement for administering guaranty association policy obligations pending the closing of an assumption. There remains a significant amount of work to be accomplished. Responses from bidders must be analyzed and a winning bidder selected; assumption and early access agreements must be negotiated; closing schedules describing the company's business and guaranty association funding obligations must be created; and the closing of the assumption must be coordinated. In addition to its regular responsibilities, NOLHGA staff will support the ALAC Task Force by providing project manager, legal, actuarial and financial services in connection with these activities. ▼

Staff will let readers know how this arrangement is working out in a future edition of the *Journal*.

AMERICAN LIFE
ASSURANCE CORPORATION
TASK FORCE

Mike Marchman
Georgia, *chair*

Dotty Carley
Alabama

William Falck
Florida

Rusty Haydel
Mississippi

Phil Hammond
Indiana

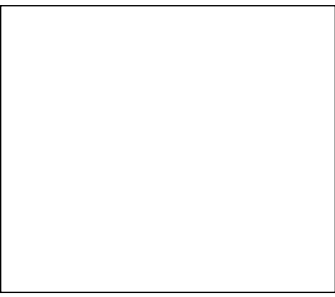


JOHN C. COLPEAN, GENERAL COUNSEL AND ADMINISTRATOR
Michigan Life and Health Insurance Guaranty Association

Mr. Colpean, a principal in the law firm of Colpean & Associates, P.C., is general counsel and administrator of the Michigan guaranty association. Before entering private practice, he served as legal counsel to the Michigan legislature. His current practice concentrates on insurance and other state regulatory matters, as well as legislative consulting services. Mr. Colpean is a graduate of Michigan State University and Thomas M. Cooley Law School. He chairs the Kentucky Central Task Force and serves on many others.

GORDON "RUSTY" HAYDEL, EXECUTIVE DIRECTOR
Mississippi Life and Health Insurance Guaranty Corporation

Mr. Haydel, a certified public accountant, has been executive director of the Mississippi guaranty association since 1990. Before opening his CPA practice in 1985, he spent 10 years with Consolidated American Life Insurance Company. Mr. Haydel, a Major (Ret.) in the U.S. Army Reserve, has a B.S. from Belhaven College and an M.B.A. from Mississippi College. He served a tour of duty in the Republic of Vietnam from June, 1969 to December, 1971. Mr. Haydel serves on many of NOLHGA's insolvency task forces.



CHARLES F. RENN EXECUTIVE DIRECTOR
Missouri Life and Health Insurance Guaranty Association

Mr. Renn has been executive director of the Missouri guaranty association since 1992. He had been employed for 12 years by the Missouri Department of Insurance and was director of the Division of Company Regulation when he left in 1992. Mr. Renn is a summa cum laude graduate (Business Administration - Accounting) of Columbia College. He chairs the Accounting Issues Task Force and serves on many other task forces and committees.

Sixth Annual Legal Seminar
June 23-24, 1997 Orlando, Fla.



Seminar Chair Tad Rhodes updates attendees on the status of cases in litigation



More than 100 people attended the Legal Seminar, which was awarded continuing legal education credits by 32 states.



The Hon. Robert H. Henry of the U.S. Court of Appeals for the 10th Circuit makes the keynote speech.

1997-1998 CALENDAR



OCTOBER

1 **Deadline to register for NOLHGA's 14th Annual Meeting**

OCTOBER

15 NOLHGA Board of Directors
San Antonio

15-17 14th Annual Meeting
San Antonio

NOVEMBER

18 Members' Participation Council
Louisville, Ky.

19-20 NOLHGA/IAIR Meeting
Louisville, Ky.

DECEMBER

7-10 NAIC Winter Meeting
Seattle

25-26 NOLHGA closed for the holiday

JANUARY, 1998

1 **HAPPY NEW YEAR!**
NOLHGA closed for the holiday

FEBRUARY

23-25 Members' Participation Council
San Diego

MARCH

14-18 NAIC Spring Meeting
Salt Lake City

APRIL

23-24 NCIGF Annual Meeting
Washington, D.C.

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