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Three Months To Closing: Statesman National Task Force Sets Standard

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On February 8, 1999, a small Texas insurer, Statesman National Life, was placed into confidential supervision by the Texas Department of Insurance. On June 18, 1999, the first closing was held, a mere 99 days later. The resolution of the insolvency by the Statesman Task Force sets a new benchmark in efficiency and speed for closing an insolvency. The following is a look at how the task force was able to do so.

Background

Statesman National Life was a Texas insurer headquartered in Houston and licensed in 31 states. Most of Statesman's business was Medicare supplement, with approximately $12 million in annualized premiums. In addition, the company had about $1 million in annualized premiums in major medical, and about $100,000 in annualized premiums of other accident and health business. Ninety percent of Statesman's business was written in Arkansas, Louisiana, Oklahoma and Texas.

In December 1998, Statesman National was acquired by American Capitol through its wholly owned subsidiary, Texas Imperial Life Insurance Company. American Capitol is a small life insurance holding company, also based in Houston.

The transaction included an assumption of Statesman's "pre-standard" Medicare supplement policies; a $1 million capital contribution by American Capitol, for which Statesman National issued a surplus note, and $*00,000 for which Statesman National issued preferred stock.

In preparing the year-end 1998 reserve valuation, Statesman National's consulting actuary discovered a block of processed, but unpaid claims that had not been recorded as of September 30, 1998, and that would have required a significant reserve increase. The required reserve increase would have made the company insolvent in September, 1998, and indeed, was large enough to make the company insolvent in December, 1998, despite the $1.8 million capital infusion from American Capitol.

Because of the shortfall, the Texas Department of Insurance (TDI) placed Statesman National under a Confidential Order of Supervision on February 8, 1999. TDI approached the Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association in early March on a confidential basis concerning the impairment and potential insolvency of Statesman.

MPC Chairman Peggy Parker then appointed a task force, chaired by Neil Rucksdashel of the Washington guaranty association.

Task Force Challenges

With recognition in the reserve calculation of the processed but unpaid claims, Statesman National's liabilities exceeded its assets by $560,000. The new parent, American Capitol, was reluctant to infuse more capital, and in fact sought to avoid the acquisition of Statesman National through a recission of the transaction.

The task force had to immediately deal with the results of a preliminary review by Peterson Worldwide, the claims administrator, which identified approximately 30,000 unprocessed claims at Statesman. Peterson also concluded that Statesman National did not have the resources to adjudicate this backlog of claims quickly, and policyholder complaints to TDI were anticipated. Peterson Worldwide presented a workplan to the task force, which was adopted, for supplementing Statesman National's personnel with trained claims administrators and supervisors.

Recission Pursued

After discovery of the understated reserve estimate with respect to Statesman's Medicare Supplement block, American Capitol and Texas Imperial approached the Commissioner requesting recission of the Stock Purchase Agreement and related transactions. Specifically, the companies requested that the stock purchase of issued and outstanding stock of Statesman by Texas Imperial be rescinded; that the Co-Insurance Agreement between American Capitol and Statesman concerning the Pre-Standard Medicare Supplement Policy and transfer of $1 million surplus to Statesman be rescinded; and thirdly, that the transfer by Texas Imperial of $800,000 to Statesman in return for surplus debenture be re-

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President's Column

Guaranty Associations And Receivers: We're In This Together

During my transition to NOLHGA from my prior role as a state insurance receiver, I was asked more than once if I felt odd about "going over to the opposite side." My honest answer was, "No," but I was puzzled by the question's premise: that receivers and the guaranty system should be presumed to have an antagonistic relationship. If recent successful insolvency practice teaches anything, it is that the common interests of receivers and the guaranty associations far outweigh the issues on which they might disagree. Accordingly, receivers and GAs ought to view themselves as cooperating to achieve a set of core, common objectives.

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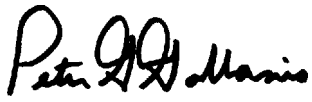
Both receivers and guaranty associations were challenged to the utmost by the unprecedented major receiverships of the late eighties and early nineties. New problems included failures of large, multi-state writers, instead of the small, single-state companies often seen before; complex books of business, including contracts that more closely resembled investment products than traditional insurance policies; obligations to contractholders well in excess of GA liability limits that threatened the system's overall capacity; and, finally, asset-recovery possibilities that were complicated, risky, and expensive. There were no roadmaps, instruction manuals, or cookbooks telling receivers and guaranty associations how to work together on these problems. In such circumstances, it was difficult for any one participant in an insolvency to make an important strategic decision. It was harder still for two or more stakeholders to agree on appropriate strategy. Consequently, disagreements sometimes arose between GAs and receivers; between receivers and other claimants; and, on occasion, between two receivers of insolvent companies whose fortunes intertwined.

Some specific early puzzles for the system involved questions of, first, which party had the job of causing consumers' policies to be assumed by a healthy carrier; and, second, what role guaranty associations would have in activities to recover assets of the failed company.

The transfer of in-force business initially requires a decision by the receiver that the company can no longer operate as a going concern. Receivers have sometimes delayed reaching that decision until far later in the receivership than was desirable from the standpoint of the guaranty system. Such delays have stemmed from understandable, laudable motives: to protect a good corporate citizen, preserve jobs and the tax base, and find a way to score a regulatory victory rather than conceding a company's failure. However, efforts to save seriously troubled companies often only delay liquidation, and in the process can prolong the uncertainties of policyholders; allow adverse selection to erode the value of the remaining book of business; and potentially drive up the ultimate cost of resolving the insolvency.

In most cases, receivers and GAs now agree that policyholders of a failed life company should have their policies assumed by a healthy carrier as soon as possible following an insolvency. Generally that cannot happen without a transfer of assets to the assuming carrier to support the policies. Such an asset transfer, in turn, can seldom occur without financial participation by the GAs, which must be statutorily triggered, usually by a final order of liquidation and a finding of insolvency regarding the failed company. For all of this to take place in a coordinated fashion, the receiver and the GAs simply must cooperate. The liquidation order must be sought and obtained by the receiver, and the GAs and the receiver must cooperate to arrange the transfer of the business. In a perfect case, the liquidation order and the transfer of the book will occur simultaneously.



Early in our collective experience with large, complex life and health insolvencies, receivers sometimes insisted on attempting to transfer blocks of business without participation by the guaranty system. But history has shown that the resources and experience brought by the GAs to these specialized and complex transactions usually result in the transfer of consumers' contracts to capable, solvent insurers in the shortest possible time, and at the lowest possible cost.

Asset recovery issues present similar tensions, whether in the context of selling traditional company assets (e.g., securities and real estate) or pursuing causes of action against those who may have harmed the company. Here the statutes and the

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NOLHGA Legal Seminar

by Joni Forsythe, *Counsel,* and Peter Marigliano, *Communications Manager,* NOLHGA

NOLHGA's eighth annual Legal Seminar was held July 15-16 in Snowmass, Colorado. Highlights from this year's event included an extensive roster of featured guest speakers, including NBC News commentator Lawrence S. Pozner, Esq.; Linda Hoffa, Assistant U.S. Attorney for the Eastern District of Pennsylvania; and Martin Weiss, Chairman of Weiss Ratings, Inc.

The program ran for a day and a half including discussion and analysis of legal issues affecting the guaranty association system. Topics included the following matters.

Confidential Communications

Charlie Richardson of Baker & Daniels, James Beckstrom of the North Dakota Association and Angela Franklin of NOLHGA discussed issues related to confidential communications, particularly those made by electronic media. Richardson led off by noting that approximately 500 million e-mails are sent per day, and that they are often less carefully written than paper communications. Richardson laid out some common sense suggestions for the management of e-mail communications.

NOLHGA's Angela Franklin addressed the rights of companies with respect to monitoring employee e-mail and voice mail. According to Franklin, employees may have little or no privacy interest when they utilize the internet, and that use should be limited to business purposes. On the other hand, employees may have a much higher expectation of privacy with respect to voice mail, and employers should consider obtaining consent for monitoring.

Finally, Jim Beckstrom explained the challenges a guaranty association administrator faces with regard to confidential communications. Beckstrom noted that as a guiding principle, maintaining the confidentiality of client communications is an ethical duty, and that a state guaranty association board may frequently be the client to whom that duty is owed. Beckstrom also noted that confidentiality may be best maintained when confidential information is conveyed by in-house counsel.

Lobbying by GAs

Mona Jamison of the Jamison Law Firm, and Richard Bromley and Richard Riley of Hopkins and Sutter discussed the implications of guaranty association lobbying generally, and an Administration proposal to tax the investment income of 501 (c)(6) organizations, noting however, that it is unlikely that this legislation would be passed this year.

Riley discussed the implications of guaranty association administrators lobbying against the proposal, noting that guaranty associations can lobby, but expenses incurred in connection with lobbying would not be deductible. Riley went on to explain, however, that many of the guaranty associations are re-

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Protecting E-Mail Privacy

by Angela J. Franklin
Assistant Counsel, NOLHGA

Guaranty associations, their boards and their attorneys (both inside and outside) are increasingly using electronic media to communicate, and e-mail is at the forefront of this revolution in the way the system does business. Sending messages and documents by e-mail enables us to save time and money and increase efficiency, work quality, and service. While free and open communication within the guaranty system is critical, the heavy dependence on legal advice and the cloud of litigation over many decisions pose legal challenges. What follows are some ways a member might minimize exposure when sharing confidences via e-mail.

As discussed in the Summer 1999 *NOLHGA Journal,* the legal liability a company could incur related to their employees' use of e-mail is little different from the liability they could bear for other documents produced in the course of doing business. When unregulated and unchecked, however, e-mail can present new variations on such old themes as discrimination, defamation, invasion of privacy, and copyright infringement, due to the informality it encourages.

Draft and Enforce a Policy

In order to put employees on notice that e-mail should be viewed the same as any paper document they would produce in the course of doing business, an association may wish to draft and enforce an e-mail policy. The association should take into account the workings of its e-mail system and how e-mail will be used and/or monitored within the company in drafting a policy. When drafting and implementing an effective e-mail policy, the association should consider applicable law in this area, which is very much in a state of evolution, and also consider the following suggestions:

* Any form of speech appropriately prohibited in other corporate policies should be prohibited in e-mail messages.

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scinded. Upon consideration of this plan, the Texas Commissioner rejected it.

Task Force Options

Traditionally, upon entry of a liquidation order, the task force would develop a service agreement with a third party administrator, often the Receiver, who would administer the insurance business covered by the participating guaranty associations. During that same time period, the task force, in conjunction with the Receiver, would typically solicit bids from insurance companies interested in assuming business. Upon selection of a bidder, the task force would then negotiate and ultimately seek court approval for an assumption agreement with the successful bidder.

Statesman Task Force Chair
Neil Rucksdashel

Statesman Task Force Member
Chuck LaShelle

There can be several advantages to that approach, including improving familiarity with the business, obtaining a bid from a highly-rated company and achieving the highest bid possible. However, there can also be disadvantages to that approach. With respect to the Statesman insolvency, there were two principal disadvantages. First, under the traditional approach the guaranty associations incur the costs and expenses of administering a block of health care business which had not been administered efficiently for some time. At one point there were approximately 40,000 pieces of unopened mail at Statesman. Second, the traditional approach can involve substantial time delays. In this case, those delays could have significantly diminished the value of the health care business and would have required considerable claims expenditures by the affected associations.

Statesman Project Manager
Bill Howard

In light of a number of factors, including the total size of the company, the amount of administrative expenses associated with the business, the presence of a solvent owner resulting from a recent stock acquisition, the potential for sharing future profits and other factors, the task force ultimately pursued an alternative approach.

The advantages to this alternative approach included transferring the bulk of the administrative expenses to the assuming insurers, preserving the block's value and continuing coverage for the policyholders. The disadvantages included the lack of a bid process, the transfer of the business to companies which were not "A" rated and which were not licensed in all applicable jurisdictions.

On April 6, 1999, the task force met in person to outline the necessary components of a liquidation plan involving an accelerated pace and utilizing American Capitol and Texas Imperial as purchasers. This detailed term sheet was drafted and then presented to representatives of American Capitol and Texas Imperial on April 7, 1999. The term sheet was quite detailed and specified 28 different provisions which were to be included in a liquidation plan from the perspective of the guaranty associations. The concern of the task force in developing the term sheet was that if funding was too low, American Capitol's solvency might be threatened. If too generous, American Capitol would have no risk and would obtain windfall profits.

Statesman Legal Consultant
Frank O'Loughlin

Among other provisions, sections of the term sheet specified that Statesman would be placed into a voluntary liquidation with all parties consenting thereto; it also contained specific provisions for the transfer of each block to assuming parties; the elimination of litigation potential between the Commissioner and American Capitol and Texas Imperial concerning rescission and related issues; general financial terms of an ultimate Liquidation Plan, and other provisions for seamless coverage for policyholders. The term sheet was finalized on April 20, 1999.

The Term Sheet set forth the parameters of the Liquidation Plan, but considerable negotiation remained in order to reach a liquidation plan. The Texas Department of Insurance, the NOLHGA Task Force, the Receiver and the assuming insurers negotiated numerous drafts of a finalized Liquidation Plan, in person, by mail, by e-mail and by telephone conference in a continuous process from the end of April, 1999 to the date the Liquidation Plan was executed, June 10, 1999.

The Liquidation Plan

The Medicare Supplement Pre-Standard insurance business was assumed by American Capitol, before Statesman was placed into liquidation, without any guaranty association funding. American Capitol agreed to as-

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sume all of thisbusiness regardless of the date of a claim. Also, individual life policies were assumed by Southern Financial Life Insurance Company, effective before Statesman's insolvency without guaranty association funding.

With respect to the assuming insurers under the Liquidation Plan, American Capitol subsidiary, Texas Imperial Life, assumed the medicare supplement issue age business in exchange for a payment (in cash and notes) of approximately $8.3 million. American Capitol assumed the medicare supplement attained age insurance business, the hospital indemnity insurance business and the companion life insurance business for a payment (in cash and notes) of approximately $2.4 million.

The guaranty associations directly assumed the major medical policies with annualized premiums of approximately $420,000, with the majority of the business in Louisiana and Texas. The guaranty associations also assumed the individual life policies' claims incurred before the effective date of the agreement with Southern Financial.

After these assumptions, it appears that there are no uncovered policyholders.

Closing the Liquidation Plan

The initial closing occurred June 18, with guaranty associations accounting for 85 percent of the covered obligations participating. This was 99 days after the formation of the task force. A second closing occurred June 28 with guaranty associations holding all but $5,000 in covered obligations participating.

Lessons Learned

Once the task force working group had its first meetings and recognized the opportunity for a novel and rapid solution to the Statesman problem, the task force worked diligently to ensure the quick resolution of the insolvency. Of course, the rapid turnaround envisioned by the task force entailed some challenges.

From a legal perspective, relevant transactional documents can be drafted on an accelerated basis but some difficulties arose. The Liquidation Plan itself includes a Liquidation Plan, a Co-Insurance Agreement, two Assumption Reinsurance Agreements, Assumption Certificates, a Promissory Note, policy and claim administration standards, settlement of intercompany transactions and numerous accounting and financial exhibits. All of these documents were being negotiated simultaneously and a change in one document impacted the content of other documents. Thus, it is essential that legal counsel maintain a "big picture" of the entire transaction so that changes negotiated during the proceedings could be made consistently throughout the documents.

The overall cost analysis was an essential component to the decision making to do an "in-place" deal. The cost analysis was an estimate of the savings of the approach. In the future it might be worthwhile to review the estimated costs to the actual costs incurred to date to determine the validity of some of the assumptions used.

Liquidation Plan Development

Utilizing one comprehensive Liquidation Plan had many advantages, particularly in an insolvency which we were attempting to resolve at an accelerated pace. Among other things, the comprehensive approach increases the likelihood that one, consistent, approach would be taken with respect to the various policies, coverage issues and other developments.

In the Statesman case, a Liquidation Order and the comprehensive Liquidation Plan were approved simultaneously, meaning that all of the guaranty associations' obligations to their resident policyholders were met immediately upon the triggering of the guaranty association.

The Liquidation Plan provided a seamless resolution to a complicated health insolvency with numerous unique blocks of health business. The comprehensive Plan resulted in minimal administrative expenses by the associations and quicker, more comprehensive claims servicing for policyholders.

Absence of a Bid Process

Generally, NOLHGA task forces prefer an open market bid process in order to achieve the best financial arrangement with a qualified purchaser. However, the bid process requires a considerable investment of time. In Statesman, a purchaser was already in place and the purchaser was at financial risk, while the TDI was at risk with respect to policyholder claims and administration issues and the potential for considerable litigation with the purchaser.

By means of the accelerated approach, the open market bid process was eliminated and a multitude of issues were resolved in an expedited fashion. One potential disadvantage to this approach is the loss of financial advantages that might be realized by the affected guaranty associations through competitive bidding in the marketplace. In Statesman, this potential disadvantage was mitigated through the negotiation of a profit-sharing formula between the associations and the assuming insurers. The NOLHGA task force actuary projected anticipated profits from the various blocks of business transferred, and a formula was devised whereby profits exceeding expected profits would be shared with the guaranty associations after a three-year period. This approach mitigates the potential for overfunding by the associations while capping the associations' ultimate exposure regardless of the performance of the business.

Cooperation amongst the task force and regulators was a major contributor to the speed with which the task force was able to close this insolvency.

Claims Processing

The cost of eliminating the 30,000 claim backlog was more

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NOLHGA Legal Seminar

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quired by statute to report developments that may affect the association to their insurance commissioner, and noting opposition to commissioners would not be considered lobbying.

Mona Jamison gave an account of lobbying efforts on behalf of the Montana guaranty association. Jamison noted some important benefits that lobbying efforts may bring, including the education of legislators as to the purpose of the guaranty system, building long term support for the system, identifying philosophically friendly legislators and strengthening the overall relationship with the state's insurance department.

Recalcitrant Management

NOLHGA's Peter Gallanis, Christopher Wilcox of LaFollette & Sinykin and Joel Glover of Rothgerber, Johnson & Lyons discussed some of the challenges insolvency task forces face when former management inserts itself into liquidation proceedings. According to the panelists, one frequent challenge arises when former owners, attempting to get as much money out of the estate as possible, cloak their interest as the interests of shareholders. One of the best responses, it was suggested, might be to raise the "shareholder" issues and concerns in the context of the proceedings quickly so that they can be addressed and resolved, noting that the courts generally provide a high level of discretion to insurance commissioners as they work to liquidate an estate.

CLO v. Altus

Carlisle Herbert of Hopkins and Sutter provided a brief report on non-confidential information with respect to litigation arising out of the Executive Life Insolvency. According to Herbert, the California Liquidation Office (CLO) has brought suit against Altus for the return of profits related to the sale of ELIC bonds that the CLO alleges were obtained fraudulently by Altus. Herbert also provided a brief overview of related actions tied to the Altus litigation.

Lawrence S. Pozner

Larry Pozner, an NBC legal commentator and one of the lead attorneys in guaranty association litigation against Dain Bosworth in the Midwest Life cas,e shared with attendees his views of the case and of the "unsung heroes" of the guaranty association system.

HIPAA

Jacqueline Rixen of Gilman, Nichols, Hebner & Rixen, PC, and Rebecca Richards of Rothgerber, Johnson & Lyons, LLP, updated attendees on the implications of canceling health policies under either the model act or the Health Insurance Portability and Accountability Act (HIPAA). The panelists noted that differences between HIPAA and the model act make it important for task forces to consider how to cancel policies, and that model act language may provide the best approach for guaranty associations.

Ethics Jeopardy

A panel consisting of Meg Melusen of NOLHGA; Kevin Griffith of Baker & Daniels; Anthony Buonaguro of Metropolitan Life; Martin Heulsman, Deputy Liquidator of Kentucky Central Life and Beryl Crowley of the Texas Center for Legal Ethics and Professionalism discussed a series of ethical dilemmas that may confront guaranty association attorneys.

Year 2000

Jack Falkenbach of the Delaware guaranty association, Paul Peterson of NOLHGA and James Mumford of Equitable Life Insurance of Iowa, brought attendees up to speed on some of the key issues addressed by NOLHGA's Year 2000 Insolvency Contingency Plan Committee, and possible dilemmas a task force could face in dealing with an impairment that includes Y2K problems. The key concern cited was the possibility that a number of companies could have short-term cash flow problems and could be unable to pay claims in a timely manner. Depending on the state statutes, impairment may activate some guaranty associations, while other guaranty associations are only activated upon a finding of insolvency.

Dain Bosworth Litigation

Gerald McDermott of McDermott & Hansen, William O'Sullivan of NOLHGA and Daniel Reilly of McKenna & Cuneo provided a summary of the lengthy and contentious litigation in the Midwest Life insolvency. The panelists discussed many of the challenges faced in coordinating this large scale multi-state litigation, noting that, in this litigation, the defendants mounted a vigorous defense. Notwithstanding the aggressive defense, the panel reported favorable results for guaranty associations in this litigation.

Health Insurance Insolvencies

A panel consisting of Andrea Bowers of the South Carolina guaranty association; Chuck LaShelle of the Texas guaranty association; T. Randolph Cox of Spilman, Thomas and Battle and Jamie Kelldorf of the Colorado, Wyoming and Montana guaranty associations, reflected on the insolvency of Centennial Life to highlight and contrast some of the challenges that guaranty associations face in a health insolvency. Kelldorf shared her experiences in managing a high volume of policyholder inquiries related to claims payment. Kelldorf noted that a letter to policyholders explaining the situation and their right to appeal denials of claims may be helpful in managing the volume of such inquiries.

Andrea Bowers agreed, noting that most policyholders will tolerate delays in claims processing if they are explained and a timetable is set. The key challenge in Centennial was the large claims backlog. Bowers went on to explain that, in a health insolvency, developing a claims processing system is critical.

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Randy Cox explained how, in the case of Centennial, the task force worked to cancel policies. Cox pointed out that political sensitivities may become a factor in policy cancellations.

Chuck LaShelle addressed the challenges of dealing with the multitude of health care provider organizations that had contracted with Centennial, noting that the guaranty associations do not stand in the shoes of the company when provider organizations are seeking repayment. Instead, they must look to the receiver.

Financial Services Modernization

Scott Kosnoff of Baker & Daniels, Craig Barrington of American Insurance Association, John McBride, Wyoming Commissioner of Insurance and Charles Chamness of the National Association of Mutual Insurance Companies, discussed the outlook for and possible shape of financial services modernization legislation pending before Congress. Chamness sketched the evolution of the current system, and noted that in some cases, banks were already involved in underwriting in some localities. Barrington outlined the key provisions contained in pending legislation, including continued state regulation of insurance. Finally, McBride noted a concern among insurance commissioners that states may be prevented from regulating insurance offered by banks.

Case Law Review and Update on Model Insolvency Legislation

Tad Rhodes of Kerr, Irvine, Rhodes and Ables lead this panel with a discussion of trends in guaranty association litigation, focusing on GIC litigation and opt-in /opt-out litigation relating to policy restructurings.

The update on model insolvency legislation was provided by Jana Lee Pruitt, Assistant General Counsel for Transamerica Occidental Life Insurance Company and Joni Forsythe, counsel for NOLHGA. Pruitt provided an historical overview of the Interstate Compact, the Receivership Law Advisory Committee and the structure and organization of the proposed Uniform Receivership Law adopted by the Interstate Compact Commission in September, 1998. Forsythe focused attention on the key provisions of the Uniform Receivership Law that will likely affect the administration of life and health insolvencies.

Analyzing Insurance Company Statements

This panel consisted of Mark Femal, Executive Director of the Wisconsin Insurance Security Fund; Charles Renn, Executive Director of the Missouri Life and Health Insurance Guaranty Association; Timothy Hart of Arthur Andersen; and Brian Spano of Rothgerber, Johnson and Lyons, LLP. The panel presented an overview of the types of issues that insurance departments are confronted with when analyzing annual statements from a solvency perspective, including a review of common warning signs.

RICO Forfeiture

Linda Dale Hoffa, Assistant U.S. Attorney for the Eastern District of Pennsylvania , and Frank O'Loughlin of Rothgerber, Johnson & Lyons, LLP presented a hypothetical scenario to demonstrate the investigation and prosecution of an insurance fraud case under RICO. According to Hoffa, one of the guiding principles to unwinding sophisticated insurance fraud schemes is simply to follow the money, noting that insurance fraud is increasingly sophisticated and often involves multiple transactions among closely affiliated companies.

Developing an E-Mail Policy

E-mail, *From Page 3*

* Employees should be cautioned against entering and disseminating materials that are protected by copyright laws.

* The policy should describe what privacy, if any, an employee may legitimately expect in e-mail communication and under what circumstances an individual employee's e-mail messages will be monitored.

* If employees will be required to share their e-mail passwords with managers, the association should state this in the policy and enforce the procedure.

* If the association chooses to monitor e-mail communication for the limited purpose of ensuring e-mail is being used predominately for business purposes, then it should periodically exercise that right.

* The policy should require employees to acknowledge that they agree to abide by the policy. The association should include an explanation of the policy as part of any e-mail system training that employees receive.

E-Mail as Documentation

One approach to the issue of controlling e-mail as documentation is to incorporate e-mail into a document control policy, and to develop procedures governing the retention, organization and storage of information. In this way, in the event a discovery request is received, the association will be in a better position to respond with respect to e-mail, as appropriate. An association should consider all protective privileges and rules applicable to paper documents when faced with such a request. These privileges, among others, could include attorney client privilege; work product doctrine; non-testifying expert exemption; critical self-analysis privilege; and the common interest rule.

As the use of e-mail grows, organizations must be prepared to deal with the legal implications of this oftentimes less than formal means of communication. Development of an appropriate e-mail policy is critical step.

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than twice the original estimate. Because of the inability of the computer system to accept the daily volume of transactions, the time required (and related expense of Peterson consultants and temporary staff) substantially exceeded initial estimates. Consultants identified the system weakness and implemented required changes. These weaknesses were not apparent early on. The lesson here is to test a system's ability to process daily transaction volume before developing cost estimates.

Assuming Insurer Licensing

In the Statesman case, the assuming insurers were not licensed in all relevant jurisdictions and that lack of licensing created some difficulties for certain guaranty associations. The assuming insurers and the guaranty associations are working together to address any licensing issues, and regulators around the country have been cooperative in that regard, often because of the small amount of policyholder exposure of those states. In addition, a determination was made that licensing difficulties, if any, faced by the assuming insurers and the guaranty associations, would be less than the administrative difficulties if the more traditional process were utilized.

While the insolvency of Statesman was certainly one tailor-made for a rapid resolution, the task force did face some daunting challenges. Clearly, smaller insolvencies can serve as proving ground for "thinking outside the box," and it is the task force's hope that our experience will prove useful when the system is confronted with larger insolvencies that might also be resolved in such a fashion.

For a calendar of events, please visit NOLHGA's website at www.nolhga.com

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case law – largely developed before the existence of GAs – contemplate that the primary asset recovery role belongs to the receiver. Nonetheless, GAs almost always comprise the largest group of creditors in an insolvency; sometimes GAs are the only creditors at the policyholder level. Thus GAs have become increasingly interested in the cost-effective maximization of asset recoveries, which both reduces the net costs of an insolvency to GAs, taxpayers, and insureds, and also preserves the capacity of the GA system to respond to other insolvencies.

Many GAs would prefer, when possible, to have informal input on asset recovery matters, while leaving to the receiver direct responsibility for that function. Sometimes, however, the management of traditional assets over time is such an essential component of a GA-supported receivership resolution plan that both the GAs and the receiver benefit from a jointly managed liquidating trust that maximizes asset returns for the benefit of policyholders, the GAs and other creditors. Similarly, participation by GAs in litigation against third-parties sometimes provides otherwise-unavailable resources, and permits the pursuit of tactics and strategies that could not be pursued if the receiver were the only plaintiff.

Traditionally viewed, the receiver's mission is simple, though not easy: to marshal assets of the insolvent company, reduce those assets to cash, and distribute the cash to parties with valid claims. The role of the GAs, at least on the L,A&H side, is also straightforward: to pay claims and ensure continued coverage, and to protect the capacity of the GA system by recovering as creditors the costs of providing guaranty protection. A commitment to cooperation and communication, driven by the largely mutual and overlapping interests of receivers and GAs, will reflect well on both "sides" and optimize resolution of an insolvency for the benefit all affected constituencies.

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