NOLHGA Journal

A Publication of the National Organization of Life and Health Insurance Guaranty Associations

Summer 2002

Volume VIII, Number 3

In this Edition

National Organization of Life and Health Insurance Guaranty Associations

NOLHGA®

www.nolhga.com

State GA 101: From "They" to "We"

By Dotty Carley

It's February 20, 2002, and there's an order lying on my desk. It was filed by Alabama receiver Denise Azar in the matter of *State of Alabama v. American Educators Life Insurance Company*, and it authorizes the receiver for American Educators to close the receivership estate and distribute the remaining assets.

For any administrator, those are good words to read. But for me, this order means more than a successful resolution to an insolvency; it's a reminder of my first days in the state guaranty association system, and of how much I've learned since then.

Glazed Eyes

In 1993 I was hired as the first full-time executive director of the Alabama Life & Disability Insurance Guaranty Association (ALDIGA). My first few months on the job were a whirlwind of meetings with Board members, Alabama's Commissioner of Insurance, Department of Insurance personnel, bankers, accountants, and the people at the Receivership Division. I was also learning to deal with more than 1,300 member companies about credits and debits resulting from past assessments.

Somehow, I found time to attend my first NOLHGA meeting. I was told that ALDIGA had never had a full-time employee able to attend NOLHGA meetings consistently, and as a consequence our organization had not yet learned to take full advantage of the resources and support that NOLHGA could offer in the event of a multi-state insolvency.

The truth is that we had much to learn; until 1992, if an Alabama-domiciled company became insolvent, ALDIGA covered all policyholders regardless of their state of residency. With the next Alabama insolvency, ALDIGA would have to work with other state guaranty associations on reinsurance issues, administration of policy obligations, etc., and NOLHGA would be a vital resource in our efforts.

The details of the meeting are blurry now, but I do remember Art Dummer speaking of an Enhancement Agreement, SPGAs, SPDAs, and Muni-GICs, and how I felt like an immigrant lost in a new culture. Still, I sensed that somewhere in the discussions of blocks of business, contractual obligations, and assumption reinsurance agreements were the policyholders whom these laws were created to protect. And it was clear to me that the people at the meeting took this protection seriously. The meeting gave me a glimpse of the value of an organization that would meet the contractual obligations of an insolvent company and protect people from years of waiting for closure and distributions as sole claimants against a bankrupt company.

Explaining that value, however, was still beyond me. On the plane ride home, the man next to me asked what I did for a living. I could see his eyes glaze over as I spoke of insolvencies, liabilities, assessments, and residency requirements.

"Oh, insurance for insurance?" he said. "That's nice to have, I guess." Then he turned back to his magazine to avoid any more explanation of my chosen career—a career, I now realized, that many people didn't know existed.

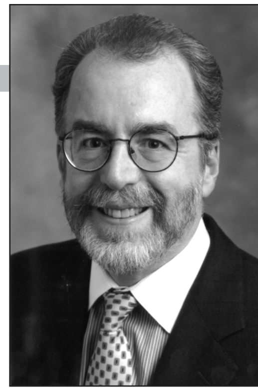
If I couldn't explain guaranty associations and what they (I made a mental note that "they" was now "we") do, I wasn't going to be able to

Continued on page 3

PRESIDENT'S COLUMN

Major Insolvency Preparedness

By Peter G. Gallanis



Even before I joined NOLHGA, I was often struck by the fact that NOLHGA and its member guaranty associations always seemed to be working simultaneously toward two different objectives: meeting the obligations of associations to policyholders in pending insolvencies, while also preparing to meet the demands of future insolvencies. I observed that dual commitment years ago by participating as an interested outsider not only in NOLHGA's direct insolvency work, but also in various educational and planning efforts of NOLHGA and its members that were aimed at future challenges.

While life and health insurance insolvency activity has diminished significantly in the past few years, even a cursory familiarity with the history of insolvencies in general and insurance insolvencies specifically would indicate that such cases ebb and flow in cycles. The cycles are different for different types of entities: industrial companies; banks; thrifts; property/casualty insurers (which are now approaching a "peak load" insolvency period); and life, accident and health, and annuity writers. Inevitably, every period of financial health for a particular economic sector has been followed by a period of economic distress, leading to the failures of some of the sector's more vulnerable members. It could hardly be otherwise in a competitive, capitalist economy.

For that reason, it is important that NOLHGA and its members have remained committed not only to meeting their obligations with respect to today's open insolvency cases, but also to ensuring our preparedness for the insolvencies that tomorrow inevitably will bring. Some recent examples of this type of insolvency preparedness "strategic planning" include the work of the ad hoc Y2K Preparedness Committee, chaired by Jack Falkenbach, executive director of the Delaware association; and the Health Insurance Issues Committee, chaired by Merle Pederson, a member of the NOLHGA board and several member association boards.

Although our member guaranty associations have responded with distinction to the challenges of a number of relatively small insolvencies that have occurred since the mid-1990s, not since 1994 and the failure of Confederation Life have the associations had to address the insolvency of a truly large, national company.

> *...the question naturally arises, "How can we best ensure our ability to address today all of the challenges (some of them new) that would be inherent in a major insolvency?"*

Consequently, the question naturally arises, "How can we best ensure our ability to address today all of the challenges (some of them new) that would be inherent in a major insolvency?" The NOLHGA Board has addressed that question directly to staff, and our staff is now working with the member guaranty associations and the NOLHGA Emerging Issues and Legal Committees to respond.

The starting point in the analysis is to understand the specific challenges that were presented to the guaranty associations by some of the particularly large or complex insolvencies of the past, and how the associations responded to those challenges. Toward that end, staff initially targeted eight insolvencies that, because of size, complex issues, or both, appeared to merit particular study. Those were Confederation Life, Executive Life, Guarantee Security, Kentucky Central, Mutual Benefit, National Heritage, Pacific Standard, and the Thunor Trust cases.

NOLHGA Journal

Vol. VIII, No. 3
Summer 2002

The *NOLHGA Journal* is a publication of the National Organization of Life and Health Insurance Guaranty Associations dedicated to examining issues affecting the life and health insurance guaranty system.

NOLHGA
13873 Park Center Road
Suite 329
Herndon, VA 20171

TEL: 703.481.5206
FAX: 703.481.5209

Editor: Sean M. McKenna
E-mail: smckenna@nolhga.com

Working from materials prepared by the insolvency task forces and working groups for those cases and available through the Information Resource Center, staff then compiled preliminary lists of some of the specific, important issues unique to those cases, as well as the associations' responses to those issues. Such preliminary "issues and answers" lists have been circulated to the involved task force chairs and key working group members for further development and discussion.

In the meantime, it also appears worthwhile to ask whether anything has changed in the economic, legal, and industry environment relating to insurer insolvencies that might require an approach by guaranty associations that differs from our responses in prior cases. For example, might a comprehensive guaranty system response to a major insolvency be different today than in prior years because of the effect of current low interest rates on the bond markets, or the current state of the real estate market? How might the relative ease with which guaranty associations may today use notes to fund reinsurance assumption obligations affect capacity considerations? Does the demutualization of several major life companies affect the ability of the associations to transfer large blocks of business in assumption transactions? These and many other questions regarding changes in the industry and the economy since 1994 will be reviewed for their potential insolvency impact with members of the Emerging Issues Committee and other interested commentators.

Once we have identified some of the relevant factors that may have changed over the last decade, we will examine how the responses and solutions of the past may need to be modified, given any such new and relevant "environmental" considerations. To the extent that either issues with NAIC model legislation or NOLHGA and Members' Participation Council (MPC) insolvency operations may be implicated, further dialogue with the NOLHGA Legal Committee, the MPC Chair, and the MPC Rules and Procedures Committee obviously will be required.

Overall, the purpose of this project is to identify those financial, organizational, legal, and even political considerations that exist in today's environment, so that we all may determine the extent to which the tools we have used in the past require reexamination and modification. This conceptual inventory should assist guaranty associations in determining how best to work together to protect consumers in the future, as they have so often done in the past.

The issue of major insolvency preparedness is not academic. Even at the tail end of an economic boom period, our brothers and sisters in the property/casualty guaranty system have recently been confronted with a series of new insolvencies testing all the capabilities and talents within that system. Our own system narrowly avoided having to respond to a huge insolvency in 1999, when skillful management by the Missouri Insurance Director (and a multidisciplinary response team assisting him) succeeded in heading off a potential insolvency disaster.

NOLHGA's members have learned much from the insolvency experiences of the past decade, and that knowledge, coupled with our system's analysis of today's insurance environment, will enable us to respond successfully to the challenges we may confront in a future major insolvency. ■

Mark Your Calendar!

NOLHGA's 19th Annual Meeting will be held at the Monarch Hotel in Washington, D.C., on October 31 and November 1, 2002. An MPC meeting will be held October 30.

Be sure to check the NOLHGA Web site (**www.nolhga.com**) and the *NOLHGA Wire* for more information in the coming weeks.

State GA 101

Continued from page 1

change that. Clearly, I had a lot of work to do.

Paying Claims with Pine Trees

In late 1993, ALDIGA received word that the Alabama and Indiana Departments of Insurance were placing two Alabama companies and an Indiana-affiliated company into receivership. The affected companies were American Educators Life Insurance Company, Alabama Life Insurance Company, and Consolidated National Life Insurance Company. In addition to a new Commissioner of Insurance, a new residents-only law to apply, a new receiver, and a new chairman of the ALDIGA Board of Directors, Alabama had two new insolvent insurance companies.

New to my job, I did what I thought the most experienced guaranty association administrator would do. I called NOLHGA. Then I, with NOLHGA's considerable assistance, went to work.

A task force was appointed for each company. Consultants were hired, and assets were identified. Most importantly, NOLHGA led the due diligence involved in determining the ongoing liabilities of the companies (which were placed into liquidation in August 1994) to their policyholders. The companies' principal assets were timberlands in rural Alabama and Georgia, and I vividly recall the receiver saying he was really going to need the help of the guaranty associations because "I can't pay an insurance claim with a pine tree."

The insolvencies of American Educators, Alabama Life, and Consolidated National Life affected people in 14 states—people who had put their faith and hard-earned money into a company, only to watch it fail. Over the next few months, I had the chance to speak with many of those people. I listened to the fear in their voices, and heard it change to relief when they learned that their policies would be reinsured with a healthy company. I found people who, unlike my fellow airplane passenger, were actually *interested* in what guaranty associations did. Luckily for me, I

Continued on page 5

The Ups and Downs of Terrorism Insurance

By Charles T. Richardson

With the May 1 release of the Joint Economic Committee's (JEC's) report "The Economic Costs of Terrorism," there has been a surge of renewed interest in the efforts to push Congress to enact a government program of terrorism insurance. The JEC report suggests that the significant long-term costs of terrorism—identified most particularly as (i) the increased transactional costs and inefficiencies in the marketplace, and (ii) the diversion of private and public funds from productive activities to necessary but less productive security enhancements—warrant congressional action in terms of monetary and fiscal policy. Given the renewed focus on terrorism reinsurance, let us take stock of where we are and have been since the terrorist attacks of September 11.

The fact remains that the carnage of that day has undeniably produced major dislocations in the insurance and reinsurance markets. In the insurance guaranty system world, we need only hear the word "Reliance" to recall that carnage. After all, September 11 pushed Reliance Insurance Company into liquidation, making it the largest property/casualty insolvency in history—with a big chunk of health business covered by NOLHGA's members to boot.

Political leaders are being urged to establish a federal terrorism coverage backstop—admittedly without the sort of broad-based empirical evidence of necessity and impending economic disaster that last year led Congress to pass so quickly the airline bailout bill, the New York relief and victim compensation bills, and the Patriot Act. So the struggle has been ongoing for Congress to act—to do *something*—to protect against the disruption that has already occurred in the markets and the added disruptions that would surely envelop the insurance industry and the consumers who depend on it were there to be another terrorist attack.

Fights Over the Past

Insurance payouts from the September 11 attacks are expected to range from $30 billion to $70 billion. With losses that large and with the number of claimants running in the thousands, disputes over existing insurance policy coverage and reinsurance recoverables will be unavoidable, notwithstanding the early public assurances to the financial markets by some of the largest insurance carriers. Like it or not, there will be litigation over "war risk" and other exclusions in policies and reinsurance treaties in existence on September 11.

The American Bar Association's Tort & Insurance Practice Section devoted its entire Spring 2002 magazine issue to the subject of "Terrorism, Catastrophe & Insurance." In one article aptly titled "Terrorism: The 'New War' in Insurance Agreements," the authors said this about the coverage disputes about to hit courts and arbitration panels with a vengeance:

> There is ample ground for dispute on the historical policies, however, because insurance law is only beginning to develop clear answers. Concepts continue to clash, with the square peg of "terrorism" struggling to fit into the round peg [sic] of insurance policies' language on "war." In the roughly three decades since terrorism—a distinctly modern phenomenon—first began intruding on the essential nineteenth century doctrines of war risk insurance, there has been strikingly little advancement of the relevant legal rules. Perhaps a morass of litigation related to the events of September 11 will ultimately produce some clearer rules, and certainly new policy language will avoid future disputes. But until high courts resolve these issues, the industry could be in for an extended period of uncertainty, of conflicting precedents, and of resulting forum shopping to resolve disputes concerning most historical policies.

"Hooray, hooray," say some of the litigation lawyers. But "boo-hoo" say the rest of us. We are worried about the economy's ability to absorb an "extended period of uncertainty" as it plans for the future in a world where the reality of a new brand—and degree—of terrorism risk has so emblazoned itself in the public mind.

Planning for the Future

From the September 26 House Financial Services Committee hearing until the last week of 2001, the insurance industry pushed for a federal backstop for terrorism insurance as hard as it had on almost any other issue in recent memory. The industry's story was simple; it could cover the costs of September 11, but it needed help in case of future violence—and it needed that help by January 1, 2002, when a majority of commercial reinsurance contracts came up for renewal. The industry had the support of the NAIC, the Bush administration, and many business and labor groups.

The House passed the Terrorism Risk Protection Act (H.R. 3210) on November 29, 2001. Under the federal cost-sharing program in H.R. 3210, private insurers are responsible for up to $1 billion in losses (H.R. 3210 sets a lower threshold "trigger" of $100 million for smaller insurers). The government pays 90 percent of claims from $1 billion to $20 billion but assesses insurers to repay the loan.

For losses of $20 billion to $100 billion, the government again pays 90 percent of the claims, assesses the industry, and recoups the loan through surcharges on policyholders. H.R. 3210 would allow insurance companies to set aside tax-deferred moneys to handle future terrorism claims. The bill would also establish a five-member federal commission that would study and make recommendations regarding the life insurance industry and future acts of terrorism.

But the Senate failed to act. The purported excuse was that Democrats would not agree to tort reform measures being pushed by Republicans in H.R. 3210 but opposed by Majority Leader Daschle and others, emboldened by their trial bar allies. These measures, which would have limited the legal rights of victims of terrorists, included a prohibition on punitive damages and a limit on attorneys' fees in terrorism-related lawsuits. But it is also clear that the Senate was uncomfortable with the January 1 deadline pressure and wanted to wait and see what really might happen.

New Year's Eve came and went. The sky did not fall, and the dire consequences forecast by proponents of a federal terrorism backstop didn't materialize in obvious or politically compelling ways. Instead, insurers and reinsurers started seeking to include specific terrorism exclusions in policies and reinsurance treaties and began engaging insurance regulators and the NAIC in the exclusion language debate.

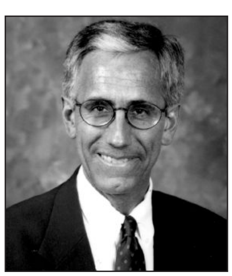
Proponents of a federal insurance backstop began urging business and labor interests to come forward and articulate to Congress the dislocations that this whole terrorism cloud was causing in the commercial insurance markets. In February 2002, the Government Accounting Office published a report documenting these dislocations. In March and April, the Bush administration—with public support from business, labor, municipalities, NCOIL, and the NAIC—started another push, this time based on the drag that the lack of terrorism coverage would have on the country's economic recovery. In a March 20 Treasury Department press release concerning her remarks before the American Conference Institute's "Reinsurance: Global Solutions and Opportunities" conference, Sheila Bair, assistant secretary of the treasury, said:

> The combination of higher insurance costs and higher financing costs associated with inadequate insurance coverage has the real potential to reduce economic activity. These effects will not likely dissipate in the near future. More reinsurance treaties will come up for renewal. More primary insurance contracts will come up for renewal. And investors will more seriously evaluate their risk exposure to terrorism if it becomes clear that Congress will not take action.
>
> Lack of Federal action on terrorism insurance, in addition to placing a drag upon our economic recovery, paralyzes private sector initiatives to address terrorism risk. The lack of firm government action, one way or another, is itself costly as insurers, financiers, and businesses wait to see what if any new institutions the government might set up before going forward with new plans to address terrorism risk.
>
> Finally, there is a real concern about the potential costs to the Federal government and the economy in the event of another attack if no backstop is in place. Private insurance covered a significant percentage of losses arising from the September 11 attacks in an efficient and timely manner. Trying to devise such a scheme on short notice and in the aftermath of another terror attack would be considerably less effective and would slow the recovery.

On the other side of the debate, a few commentators continue to point out that insurance coverage for terrorism risks is generally still available and that market dislocations have not been as clearly demonstrated as the arguments of the proponents of a federal backstop would have led Congress to believe.

So what's the bottom line? Right now, it's a toss-up what Congress will do. Clearly, though, there's an impetus for Congress to act. In a press release accompanying the May 1 JEC report, Congressman Phil English stated, "Efficiently functioning insurance markets are crucial to the economy. Without a federal partnership on terrorism insurance, we are clearly going to see a loss of jobs. The federal government has an important role to play by ensuring the smooth operation of the markets in an area that is obviously beyond the capacity of the private sector."

If the business community, with help from the insurance industry and other segments of the economy most directly affected, can articulate clearly, loudly, and with political force the need for standby help from the federal treasury well before the August congressional recess, there is a chance that consensus legislation can pass this year. But given Congress's preoccupation with Enron, the budget deficit, defense and homeland security measures, and other arguably more compelling issues, the next Congress may have terrorism insurance as a major unfinished piece of business when it convenes in January 2003. ■



Charles T. Richardson is a partner in the Washington, D.C., office of Baker & Daniels and chairs the firm's Insurance and Financial Services Group.

State GA 101

Continued from page 3

also learned that people in Alabama like to hear it all explained in a southern accent.

The Teacher Becomes the Student

For me, the American Educators insolvency was more than just my first big test as an administrator. Through the years, I've noticed that an insolvency can sometimes hit a particular industry or group of people the hardest. With American Educators, that group was teachers.

My first job after college was teaching at Smith Station High School in Lee County, Ala. I remember the first meeting when employee benefits were discussed—and I remember not understanding the benefits that were explained. My father, an insurance agent for as long as I could remember, would have been appalled. But at that time in my life, insurance was something to be taken for granted.

Graduate school and parenthood changed all that. I began to appreciate the importance of the insurance industry and the protection that insurance, annuities, and retirement savings offer. Like many parents, I asked myself nagging questions: "What would happen to my children if something happened to me? Would my life insurance be enough for their needs, and would my insurance company meet its obligations?"

As I dealt with the schoolteacher policyholders of American Educators, my understanding and respect for the purpose of the guaranty association system deepened. I identified with many of the teachers. They seemed much like I had been early in my career, trusting in a system that would certainly provide benefits when called upon. I developed a sense of pride in the guaranty association system that was created to protect these people; I was still learning my place in that system, but the value of the system itself grew clearer with each policyholder I met.

In September 1994, an Assumption Reinsurance Agreement was signed in Montgomery, Ala. Under the agreement,

Continued on page 6

State GA 101

Continued from page 5

the policy obligations of American Educators, Alabama Life, and Consolidated National Life were assumed by a solvent carrier, New Era Life Insurance Company. The affected guaranty associations provided a large amount of funding to support the agreement.

For many who attended the meeting, the day represented the culmination of a tremendous amount of work and tremendous cooperation among many parties. The day also represented an amazing achievement; through the coordinated efforts of the affected state guaranty associations, NOLHGA, the receivers, and the state Departments of Insurance, the policyholders were reinsured in record time. We had achieved our charge successfully in only nine months.

How could we have been so successful with virtually no experience in multi-state insolvency matters? Like many successes, it was a combination of good fortune and hard work. We were fortunate that the insurance departments, commissioners, and receivers shared the guaranty funds' commitment to solving potential consumer problems. Also, we benefited from the relationships that had already been forged between the Alabama and Indiana guaranty associations and their state Departments of Insurance. Finally, working with NOLHGA staff and other state guaranty associations was a huge help in identifying consultants and potential reinsurers and in devising a successful approach to resolving the insolvencies.

A Snapshot of Success

Not surprisingly, that wasn't the end of the story. In the years since the Assumption Reinsurance Agreement, the remaining details of the liquidation efforts in the American Educators, Alabama Life, and Consolidated National Life insolvencies became more and more complicated for the receivers who administered the estates. The most significant of these "details" was a complex lawsuit filed by the former owner of the companies and his associates against multiple defendants. For example, the "Second Amended Complaint" filed listed 8 plaintiffs, 24 defendants, and 51 fictitious defendants "to be named later."

The receivers also had to contend with the sale of mortgages and property, title issues, real estate leases, and the sale of real estate assets. Meanwhile, the former owner continued to halt the liquidation efforts by filing a Chapter 11 bankruptcy of the parent company in the U.S. Bankruptcy Court in Georgia. This blocked foreclosure efforts on defaulting mortgages and the sale of real estate parcels that would otherwise have been available for sale by the receivers of the estates.

Perhaps issues like these—and there are many—help explain my sense of pride as we neared the closing of the American Educators estate. In addition to American Educators, the receiver for Consolidated National closed the receivership in August 1999, and the Alabama Life receiver has recently petitioned the court to approve a plan to close the final receivership proceeding. Clearly, the end of a long but successful journey is in sight.

> *I was still learning my place in [the guaranty association] system, but the value of the system itself grew clearer with each policyholder I met.*

As I drove to the Troy, Ala., courthouse for the hearing on the receiver's petition to close the American Educator's estate, I saw that the town hadn't changed much in the years since American Educators was declared insolvent. In fact, a storefront window near the courthouse still read "American Educators Life Insurance Company." I suppose the office space was never filled.

For a case that had touched thousands of people at one time, it seemed odd to have our final meeting in a small conference room. But I realized that the thousands who had been affected by the failed companies had long since been reinsured with a healthy member insurance company. Their needs had been met by the guaranty association system long ago, and there was no need for them to attend.

On the courthouse steps, I requested a snapshot of the few people who attended the last hearing: Receiver Denise Azar; Counsel for Receivership Connie Walker; Tom Eden, counsel for ALDIGA and representative for the other affected state guaranty associations; and myself. Also in the picture was a stockholder who had driven an hour to attend the hearing. As is often the case, there were not enough remaining assets in the company for the stockholder to receive any of the pending distributions. But he heard the story of the guaranty associations' efforts. He appreciated what we had done for the policyholders, and he wanted to be in my picture.

Anyone who has worked in a guaranty association, even for a short time, can testify that each insolvency is unique. Each has its own story, with new lessons to be learned. American Educators was the first insolvency I saw through from start to finish, and so in a way it's my story—a story told not only in legal documents, but also in my growing understanding of how guaranty associations work and the value of what we do.

In the end, it's a story of my transition from what "they" do to what "we" do. What we do is pretty special. And now, when I'm sitting next to someone on a plane, I can explain the true value of the state guaranty associations much, much better. ■

Dotty Carley is the executive director of the Alabama Life & Disability Insurance Guaranty Association.

A New Accountability

By Larry Henry

The Press Room at the NOLHGA Web site (www.nolhga.com) provides the latest news concerning the state of the life and health insurance industry. In each issue of the NOLHGA Journal*, we will take a look into the issues that are shaping the insurance landscape.*

A recently filed lawsuit against the officers and directors of an insolvent company alleges that they signed misleading financial statements and "knew or should have known that specific legitimate intercompany accounts were used for improper purposes," such as funneling money away from the parent company.

The accused? Not who you might think.

In a May 11 article from insure.com, Liz Strillacci reported that Lee Covington, Ohio's insurance commissioner and a speaker at the recent MPC meeting, filed a suit against the directors and officers of American Chambers Life Insurance Company alleging that the company "was diverting [money] into other company affiliates" instead of paying policyholders' claims.

Citing business practices eerily familiar to the Enron scandal, the suit further alleges that the financial advisors for the company "knew the company was diverting the funds and lied about the company's reserves." While not nearly of the magnitude of Enron's alleged subterfuge, the alleged American Chambers financial skullduggery serves as another example of the mismanagement that can contribute to the demise of an insurer. And as this and other recent articles show, some regulators aren't shy about initiating legal action in the face of financial mismanagement, not to mention out and out thievery.

A prime example of such criminal behavior can be found in the continuing saga of Martin Frankel. In a May 15 article from the washingtonpost.com, Diane Scarponi reported that Frankel recently pleaded guilty to 24 federal corruption charges for his role in bilking the Thunor Trust insurance companies out of more than $200 million. The charges included "20 counts of wire fraud and single counts of securities fraud, racketeering, racketeering conspiracy and forfeiture."

Frankel could face up to 150 years in prison and $6.5 million in fines. However, the article noted that prosecutors "would support a lower sentence if he helps recover missing money." An article in the Bergen County, N.J., *Record* reported that Frankel, whose sentencing was set for May 2003, has agreed to cooperate with prosecutors and is expected to travel later this year to Tennessee and Mississippi to plead guilty to similar charges in those states.

In reaction to Frankel's plea, Missouri insurance commissioner Scott B. Lakin remarked in his department's press release, "We are encouraged by Frankel's agreement today to cooperate in getting full restitution and recovery of the stolen funds and ill-gotten gains of his enterprise."

The "ill-gotten gains" are considerable, as those familiar with the Thunor Trust insolvencies can attest. Frankel fled the country three years ago, Scarponi reported, "leaving behind piles of smoldering documents" and leading authorities on an international manhunt until "he was found at a hotel in Hamburg, allegedly with nine fake passports and 547 diamonds."

While Frankel may have been caught with a bag of precious stones, the Pennsylvania guaranty funds have been "left holding the bag" thanks to a relative flood of insolvencies hitting their property and casualty insurers. In a recent article in the *Philadelphia Inquirer*, Joseph DiStefano described the impact of the Reliance and PHICO insolvencies on the state's citizens and the Insurance Department's strategy of filing suit against directors and officers in an attempt to recover millions of dollars.

DiStefano reported that, "since 1997, Pennsylvania has recovered more than $130 million from 'officers, directors, accountants and lawyers whose wrongdoing caused the companies' demise,' said David F. Simon, chief counsel of the state Insurance Department."

While Ohio's commissioner is going after the directors and officers of American Chambers, as discussed earlier, Pennsylvania's department chief "is preparing to sue people connected with its biggest-ever target, investor Saul P. Steinberg's $11 billion-asset Reliance Insurance Co., of Philadelphia, which collapsed last year."

To date, the money recovered by the Pennsylvania Insurance Department has amounted to a fraction of the failed companies' total losses. However, the strategy of pursuing a company's executives, lawyers, and accountants brings a new—and welcome—accountability to insurer insolvencies, according to Theodore Bausher, a former chief financial analyst for the Pennsylvania department who is quoted in the article: "They cost the policyholders and the guaranty funds a lot of money, and too many of them just walked away."

If the events of recent weeks are any indication, the days of insurance executives simply walking away from an insolvency they helped bring about are becoming more and more rare. As American corporate governance seems to be moving toward a "post-Enron" hypersensitivity to mismanagement and executive malfeasance, the articles on American Chambers, the Thunor Trust companies, and Reliance make clear the critical role mismanagement can play in many insurance failures—and the aggressive stance receivers are taking to make executives and officers accountable. ■

Larry Henry is manager of insurance services for NOLHGA.

Calendar

2002		
June 8–11	NAIC Summer National Meeting	Philadelphia, Pa.
June 20–21	Southeastern Regional Guaranty Association Meeting	Little Rock, Ark.
August 6–7	**NOLHGA Board of Directors Meeting**	**Chicago, Ill.**
August 13–14	**NOLHGA MPC Meeting**	**Chicago, Ill.**
August 15–16	**NOLHGA 11th Annual Legal Seminar**	**Chicago, Ill.**
September 9–12	NAIC Fall National Meeting	New Orleans, La.
October 13–15	ACLI Business Solutions 2002 (Annual Conference)	San Diego, Calif.
October 30	**NOLHGA MPC Meeting**	**Washington, D.C.**
October 31–November 1	**NOLHGA 19th Annual Meeting**	**Washington, D.C.**
November 7–8	NCIGF/IAIR Joint Workshop	Henderson, Nev.
December 7–10	NAIC Winter National Meeting	San Diego, Calif.
2003		
March 8–12	NAIC Spring National Meeting	Atlanta, Ga.

NOLHGA®

National Organization of Life and Health
Insurance Guaranty Associations
13873 Park Center Road, Suite 329
Herndon, VA 20171

www.nolhga.com