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Eye on the Future

NOLHGA celebrates its 20th Annual Meeting in Dallas

By Sean M. McKenna

As he called NOLHGA's 20th Annual Meeting to order, Outgoing Chair Tom Potter noted, "anniversaries can often be mere celebrations of the past." The more than 170 people who traveled to the Four Seasons Dallas at Las Colinas in late October 2003, however, received more than a walk down memory lane or a laundry list of the many accomplishments of the life and health insurance guaranty association system.

The Honorable José Montemayor, commissioner of the Texas Department of Insurance.

Instead, they were treated to a meeting program that focused squarely on the future, with speakers from the insurance industry, the regulatory community (including three insurance commissioners), a ratings agency, and a research organization. With topics ranging from optional federal chartering to the financial strength of the industry to detecting corporate fraud, attendees left the meeting with a wealth of insight into the trends and market forces that will shape the industry and the guaranty system for years to come.

Partnership in Action

The Honorable José Montemayor, commissioner of the Texas Department of Insurance, provided the welcoming remarks for the meeting, and he began by praising the "critically important" work NOLHGA does on behalf of insurance consumers. He highlighted the importance of keeping open the lines of communication between the guaranty system and regulatory community, saying that good communication between the two yields "efficiencies in coordination that would otherwise be impossible." He also cited the success of pre-receivership involvement by the guaranty associations, cautioning that the timing of this involvement has to be carefully managed.

Montemayor pointed to the regulatory community's handling of the bankruptcy of Conseco Inc. (the third-largest bankruptcy in history) and its effects on the company's insurance subsidiaries and their hundreds of thousands of policyholders as a prime example of how valuable communication among all stakeholders in the regulatory and receivership process can be. He described the extensive efforts of the Texas Department of Insurance in keeping state insurance departments and others—including NOLHGA—abreast of any changes in the status of the insurance companies and added, "that communication very much needs to continue."

Noting that all of the insurance subsidiaries have remained solvent,

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Preserving the System a Common Theme in Chairs' Addresses

Outgoing Chair Thomas D. Potter and Incoming Chair James R. Mumford both cited threats to the state guaranty association system and the system's responses in their addresses at NOLHGA's 20th Annual Meeting.

Potter described 2003 as "deceptively quiet." Although there were no major insolvencies, he said, the guaranty system was beset by twin threats—the threat of "a truly massive insolvency" and the threat to the very existence of the system posed by a possible federal guaranty mechanism. He added that NOLHGA and the guaranty system continue to meet these threats head on. The threat of a major insolvency brought about

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Outgoing Chair Thomas D. Potter accepts a gift in recognition of his service to NOLHGA from Incoming Chair James R. Mumford.

Outgoing Chair Thomas D. Potter

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Building on the Past,

The following is adapted from the President's Address at NOLHGA's 20th Annual Meeting in October 2003.

This is the fifth time I have had the privilege of welcoming participants to NOLHGA's Annual Meeting. One thing that becomes clearer to me each year is that I step to the podium only as the representative of all those who make the success of the organization possible.

During the past year, much of the credit for what we have been able to accomplish must go to our immediate past chair, Tom Potter, who has been a terrific leader and a source of steady guidance, high standards, and good counsel. Thanks must also go to William Falck, who for the past three years has provided outstanding leadership in the Members' Participation Council.

In the coming year, we all look forward to working with our new chair, Jim Mumford, and with the new chair of the MPC, Jack Falkenbach. I know they will do justice to the high standards set by their predecessors.

Thanks should also go to the other members of the NOLHGA Board, our dedicated and capable guaranty association administrators, the members of our state guaranty association boards, and those in industry and the regulatory and receivership communities who have worked so hard with us to see that insurance consumers receive the protection they expect and deserve. Closest to home, I'd like to add a personal "thank you" to all the members of the NOLHGA staff. My own contributions would be nothing without all the hard work put in by Dick Klipstein, Bill O'Sullivan, Holly Wilding, Paul Peterson, and each of our other staff members.

Defining "Success"

Our last year has been a good one, and we hope for an even more successful year to come.

Success is somewhat paradoxical in this business. In the insurance industry, as in most for-profit businesses, success is often achieved by maximizing the numbers in certain quantifiable categories—net income, gross premiums, assets under management, investment earnings, and so on.

In our business, though, we mostly want to minimize numbers. Ideally, we'd like to see NO insolvencies, NO assessments levied against our associations' member companies, NO policyholders whose claims would have to be paid or whose policies would have to be reinsured by the guaranty associations, and NO premium tax offsets affecting state revenues.

Given that paradox—that in an ideal world, we would have no insolvencies to which we would respond—how do we define real success in the enterprise of running an organization of guaranty associations created to protect consumers from the consequences of insolvencies? The answer: we define success in terms of preparedness—in terms of maintaining, improving, and sharpening our readiness to do the job for which our organization and its member associations were created.

At our Legal Seminar in 2002, I compared the guaranty system to the fire departments. We all want to have a highly capable and professional network of first responders in our police and fire departments, though we hope against hope that there will be no fires and no crimes.

To look at it differently—and more seasonally, with the World Series just behind us—the guaranty associations operate like the relief pitcher on a good baseball team. Again, the hope is that a call to the bullpen will never have to be made. But when the call does come—as inevitably it will—it is the job of the relief pitcher to take the mound and the ball, sometimes with little or no preparation, and to save his team and those who support the team in a threatening, emergency situation. It is no coincidence that an ace relief pitcher is sometimes referred to as a "fireman."

The baseball playoffs and World Series have captured a lot of my attention recently, and perhaps also yours. Baseball may now have contenders for the title "national pastime," but I still find it the one sport where athletic achievement can most easily be seen in connection with supposedly higher notions of poetry, history, or even philosophy. Holly Wilding sometimes likes to put on our office bulletin board quotations from baseball's greatest poet/philosopher, Yogi Berra, and I can't keep out of my mind one she posted recently, where Yogi made the observation, "We're lost, but we're making good time."

Randomness and chance—even getting lost—do play a part in business as in baseball, as we'll recall from the case of that now-infamous foul ball in Chicago a few weeks back. But being prepared is always essential. A relief pitcher who hasn't been called in for several games nonetheless has to stay sharp and ready to perform the instant he is needed. The same holds true for our guaranty system. We must constantly be prepared and sharp for the inevitable moment when we will be called upon to take the mound and resolve the crisis.

The Keys to Preparedness

When I reflect upon the preparedness of our system to respond to a major crisis, I consider five key factors: skills, capacity, awareness, relationships, and commitment.

By "skills" I mean the body of knowledge and experience we need to have immediately available within our system to protect policyholders when an insolvency hits. That knowledge we acquire and hone by the work we do at events like the recently concluded Legal Seminar, by listening to knowledgeable speakers like those participating at this meeting (see "Eye on the Future" on p. 1 for coverage of the Annual Meeting), and by taking every chance we have to read and study in our field and discuss what we encounter in our work with others who share our calling and our interests. Experience we get in the trenches, working on our task forces and on the other projects we pursue.

By "capacity," I mean not only the financial capacity of the industry that stands behind this system—an aggregate assessment capacity now approaching $7 billion annually—but also the human capacity represented by our trained and knowledgeable cadre of guaranty association administrators, representatives of the companies that belong to our member associations, talented consultants who know our system and the challenges we meet, and the NOLHGA Board and staff. Our leadership realizes that, both at the level of NOLHGA and in our member guaranty associations, there is a minimum "peacetime level of readiness" in staffing below which we cannot drop without seriously compromising both our ability to provide membership services today and our ability to respond effectively to the next insolvency crisis when it arises.

Preparing for the Future

In addition to money and staff, "capacity" encompasses the tools we need to do the job—modern statutes, up-to-date management information systems, effective communications channels, and access to good data, both contemporary and historical. It also includes ready access to capable outside consultants in the relevant disciplines and access to the industry resources that were so indispensable in responding to prior major insolvencies such as ELIC, Mutual Benefit, and Confederation Life.

By "awareness," I mean the highest possible degree of understanding and vision within our system regarding the issues that will have an impact on our role in future insolvencies. To illustrate, we have been contributing to our awareness over the course of this program by considering the implications for our mission of topics such as developments in the economy and how they affect various types of products and the liabilities of insurers for those products; merger and acquisition trends, which relate directly to the challenges we face in disposing of blocks of business from insolvent carriers; initiatives within the NAIC (in which we must play our part) to institutionalize closer working relationships among regulators, receivers, and the guaranty system; and efforts in Congress to change not only the ways in which insurance is regulated, but which—at least under some proposals—would eviscerate the guaranty system that for so long has protected millions of policyholders from severe financial hardship.

We need to monitor aggressively the development of new products within the industry, such as the recent explosion of guaranty features in variable annuities, and the coverage and other implications of such products for the guaranty system. We need also to monitor developments within the domestic industry, such as the continuing trend toward consolidation at the fleet level. We need to monitor developments within the reinsurance marketplace, especially today in Europe. And we must also pay heed to information in the public domain about the problems that companies are encountering.

By "relationships," I mean tending carefully to the ties that hold our system together internally and permit the type of collegial connection that makes internal decision making both frank and efficient. I also mean by this continued efforts to nurture and cultivate our close ties with state regulators, who are our partners in consumer protection; the receivers with whom we work so closely in protecting the promises that insurers have made to their consumers; the courts, which can either expedite or hinder the resolution of a challenging insolvency; Capitol Hill, which has the potential to change so much of how insurance consumers are protected; and the insurance industry, which—as we have seen repeatedly—can do so much more for our efforts to protect consumers than simply write checks to pay assessments.

"Commitment" is a concept that needs no explanation to this group. We're committed to execute our mission for so many reasons. Yes, it is true that we will be increasingly under scrutiny by Congress and by a sometimes-skeptical media. I also agree with observations from Chairman Mumford and others that a perceived performance failure by this system could hasten federalization of the insurance safety net.

But for my money, the most compelling reason why we will meet the challenges before us is not congressional scrutiny or media attention, but rather the simple fact that this is the job we signed on to do. Every one of us signed on to work in this system because, at the deepest moral level, we believe in our mission. We believe in helping policyholders at an hour of dire need. We believe in doing what our guaranty association statutes were designed to do: seeing to it that the basic consumer promises embedded in life, health, and annuity contracts are honored to the full letter of our statutory obligations.

What History Teaches Us

Last night I read an article in a monthly Moody's publication dealing with improved ways to rate life insurer liquidity in the wake of the experiences in Mutual Benefit and General American. The article was interesting enough in its own right, but what especially caught my eye was the comment that, "Life insurance is a highly confidence-sensitive business." We're here because of that fact. We're here because consumers, regulators, and the industry need to know that there is an effective backstop mechanism to make sure a carrier's basic contractual commitments to consumers are met, even when an insolvent company is unable to meet those commitments itself. That's an important function, and we benefit so many people around this country by standing ready to perform that function, in good times and bad.

We define success in terms of preparedness— in terms of maintaining, improving, and sharpening our readiness to do the job for which our organization and its member associations were created.

It was no accident that our luncheon speaker yesterday, Mr. Winik, is a historian whose specialty is identifying the lessons that history presents to those charged with making critical decisions today. If history teaches anything in our field, it is that business fortunes for insurers are cyclical, severely testing the solvency of some life insurers at the bad end of the cycle. History also shows that theft and defalcation can cause the insolvency of an insurer at any point in the business cycle. So we will

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Montemayor nonetheless cautioned that "the Conseco story obviously could have gone the other way." He described the entire experience as a "trial by fire" for the regulatory community, concluding that "you have to believe, if we handled this problem, we can handle anything."

Mike Pickens, commissioner of the Arkansas Insurance Department and past-president of the National Association of Insurance Commissioners (NAIC).

Mike Pickens, commissioner of the Arkansas Insurance Department and then-president of the National Association of Insurance Commissioners (NAIC), picked up on Montemayor's comments on early guaranty association involvement, commenting on the "delicate balancing act" of working with guaranty associations without creating a "run on the bank" scenario. He pointed to the Conseco situation as a template for how to involve the guaranty system successfully.

Pickens also addressed the ongoing debate on optional federal chartering, saying that "I believe the congressional scrutiny of insurance regulation is a good thing" while warning against "politicizing" the industry. He acknowledged the intense competition insurance companies face from banks and securities firms that can bring products to market quickly because they are not subject to the same regulations as insurance companies: "I recognize that [insurance companies'] concerns are valid—where we differ is whether a federal regulator will help or hurt the situation."

Governor Frank Keating, president and CEO of the American Council of Life Insurers (ACLI).

In Pickens's opinion, Congress may already be predisposed to increase taxes on insurance products. He predicted that Congress could turn its eye toward the states' premium taxes as well. "Governors are concerned that if Congress ever sees the revenue that goes to states, it will end up in Washington," he said. The best solution to speed to market and other problems, he added, is continued reforms in state regulation—at an accelerated pace. "I think it's fair to say that time is running out for regulators," he said, pointing to the NAIC's work on the Interstate Compact and other initiatives as evidence that reform efforts are moving forward. "We expect Congress to hold our feet to the fire."

Governor Frank Keating, president and CEO of the American Council of Life Insurers (ACLI), stated that the ACLI still supports state regulation; the organization's support of an optional federal charter, he said, is another way of holding regulators' feet to the fire. He also echoed Pickens's call for haste, saying, "we can't wait 8 or 10 years" for reform.

Turning his attention to the industry as a whole, Keating took a page out of Dickens, describing the current economic environment as both the best and worst of times for the life insurance industry. Thanks to the aging Baby Boomer generation and their need to save for retirement, he said, "there has never been a more opportune time for the industry." For the first time in history, he explained, people are poised to outlive their assets. This makes annuities very attractive to Baby Boomers, and he feels the industry should actively encourage people in their forties and fifties to start saving.

"It's also the worst of times," Keating said, for a number of reasons; one of the more pressing is that "there's a tremendous amount of ignorance in Washington" when it comes to insurance. The industry has many friends but no advocates on Capitol Hill, he said, due in part to the lack of a federal presence in insurance. This can result in difficulties for the industry, such as annuities being left out of a bill offering tax breaks for profits earned on mutual funds. "We have to have victories," Keating said. "If we get left out of tax bills, people won't buy life insurance products."

Industry Overview

Pamela Schutz, president and CEO of GE Life and Annuity Assurance Company, gave attendees an

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the formation of the Major Insolvency Preparedness Monitoring Group; thanks to this group, he said, "we have found ourselves far better informed, and better prepared, than we have ever been."

The threat to the guaranty system was met by NOLHGA's educational initiative on Capitol Hill, and Potter praised the work of the Financial Services Modernization Committee in educating congressional staff and members on the history, value, and capabilities of the state-based guaranty system. He also pointed out that monitoring the optional federal chartering debate and educating participants on the role of the guaranty system, while new territory for NOLHGA, both complement NOLHGA's core mission of supporting its member associations. "In our efforts to protect policyholders," he said, "it seems only natural to protect them from the destruction of a system that has served them so well."

Mumford echoed this theme in his address. The survival of the current guaranty system, he said, hinges on the continuing support of the system's constituencies: policyholders, regulators, and the insurance industry. In particular, he noted the importance of policyholders' expectations. "If we do not continue to give them the safety net they deserve, they'll go to their regulators—or to Congress—and demand a new one," he said.

The key to maintaining support from all three constituencies, Mumford said, is an ongoing dedication to improving the guaranty system, and he used his address to announce the formation of a new task force charged with analyzing the workings of the guaranty system and identifying areas that need strengthening. He will co-chair the group with Jack Falkenbach (Del.), the new MPC chair. Mumford added that any effort to improve the system must address both real and perceived weaknesses: "We must acknowledge that perceptions, even misguided ones, can harm us."

Mumford closed his remarks by calling on members of the guaranty system to change their mindset, not only by casting a "critical eye" on the system itself but also by considering how the associations are linked to one another. "We need to think of ourselves as both state associations and members of a larger system," Mumford said. "We need always to be aware of how our actions will reflect on, and affect, the system as a whole." ✯

idea of which products consumers might be buying in the near future. Like Keating, she pointed to the Baby Boomers as a huge opportunity, saying, "the majority of workers are clearly not ready to retire." Schutz predicted a shift of assets from savings and accumulation to retirement income and added that "insurance companies are probably the most qualified to lead and provide income" to the Baby Boomer segment through income and payout annuities. The danger, she said, is that "consumers have very unrealistic expectations for returns" because they don't understand the concept of retirement income planning.

David Havens, an executive director with UBS Warburg, offered his insights into the health of the life insurance industry. He noted that "the risks for the most part are receding" but added that "the sector is a little more volatile than I would have thought."

There's an increased emphasis on maintaining strong ratings, Havens said, because "companies are selling a financial promise that can last generations." In making this promise, he added, the industry is aided by good risk management practices and a very low rate of default when compared with other industries.

Havens predicted a renewed wave of consolidation for the insurance industry as companies realize that growth goals are difficult to reach and that size helps with ratings agencies. "The urge to merge is back," he said, adding that "I would imagine almost everybody" is having discussions on possible mergers or acquisitions. He noted, however, that while bigger might usually be better, "size is not a substitute for good management."

Arthur Fliegelman, vice president and senior credit officer with Moody's Investors Service, broke down the strengths and weaknesses of the U.S. life insurance industry and their potential effects on company solvency. At Moody's, he said, "we very much view the life insurance industry in the United States as a confidence-sensitive business." He added that "our concern is that the financial services sector will lose the confidence of the public. That trust is being eroded."

Fliegelman noted, however, that there are reasons for optimism about the insurance industry. "In general, there's been good asset quality—not great—in well-diversified portfolios," he said. He also pointed to conservative financial and operating leverage and strong liquidity as pluses for the industry.

On the negative side, forces such as demutualization, capital inadequacy, and credit losses in investments are pressuring earnings and weakening some companies' flexibility. Fliegelman said that insolvency rates in the life insurance industry are low compared to bond default rates and that recovery rates for those at the policyholder level are favorable compared to those of corporate bond creditors. He cited liquidity needs, poor underwriting results, fraud, mismanagement, and high debt leverage as the primary factors in insolvencies, adding that "unlike the banking industry, there is no lender of last resort in the insurance industry." The existence of such a lender, he said, could prevent some insolvencies.

Texas Hospitality

Attendees of NOLHGA's 20th Annual Meeting got a dose of southwestern hospitality thanks to the Texas Life, Accident, Health & Hospital Service Insurance Guaranty Association and its executive director, Bart Boles. The association hosted a golf tournament at the Four Seasons Dallas at Las Colinas and also provided each attendee with a copy of *Don't Squat with Yer Spurs On!*

The Texas guaranty association also helped sponsor the "NOLHGA Reception, Texas Style" on the first night of the meeting. Esther's Follies, an Austin-based comedy and musical troupe, entertained attendees with a blend of political satire, Texas humor, and a song called the "Insurance Insolvency Blues."

Ernst Csiszar, director of the South Carolina Department of Insurance and then–vice president of the NAIC.

Possible Threats

Ernst Csiszar, director of the South Carolina Department of Insurance and then–vice president of the NAIC, also addressed solvency concerns and threats to the insurance industry in his presentation. "This is an industry that is becoming more and more integrated with other financial services sectors," he said. With this integration, he added, "the magic word these days is 'contagion'." In other words, how can a problem in one sector spread out to affect others?

Csiszar also explored systemic risks in the industry, including the sale of credit risks by banks to insurers and reinsurers. The problem with these credit transactions, he said, is that removing risk from the equation (from the banks' perspective) also has a tendency to remove underwriting discipline. In addition, there is skepticism about the transactions themselves among some in the banking industry who view the insurance sector as "the Amish of the financial industry" and wonder if "naïve capital" is supporting the transactions.

Ernst Csiszar and Arthur Fliegelman, vice president and senior credit officer with Moody's Investors Service.

Csiszar also noted the threat posed by derivatives and off–balance sheet transactions and the debate over whether derivatives help to stabilize or

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destabilize the industry. The question concerning derivatives, he said, is simple: "Are we working ourselves into a liquidity trap" because these instruments can be difficult to dispose of? With off–balance sheet transactions, the lack of a standard accounting system poses difficulties. New accounting standards are currently being developed by the International Accounting Standards Board, Csiszar said, but they do not follow the model used in the United States. "The train seems to be moving in the direction of fair market value," he explained.

Dr. Howard Schilit, president and founder of the Center for Financial Research and Analysis, discussed a different kind of threat to the industry—what he calls "financial shenanigans." His list of seven shenanigans breaks down into two subsections: techniques a company can use to "make the company look prettier" (by inflating revenue or hiding expenses) and techniques "to make the company look less profitable in the short run."

While it's not difficult to imagine why a company would want to make its financials look better (Dr. Schilit referred to Enron as "the poster child of hiding liabilities off the books"), companies can also have an incentive to look bad in the short-term so that they can show improved performance at a later date. In a bear market, Dr. Schilit explained, a company might be tempted to "save something till the market will reward you for better results." For example, a company might take a one-time restructuring charge and bundle in other transactions, such as writing off inventory, and then sell that inventory at a later date and report it as 100 percent profit.

Revenue can be manipulated in a number of ways, according to Dr. Schilit. He noted that when a company changes the way it reports revenue, "that is an important signal that the company's revenue may be suspect." A merger between companies with different ends to their financial years, he added, "always presents opportunities" to shift money from one company to the other. ✯

Best-selling author and historian Jay Winik (left) served as the luncheon speaker for the Annual Meeting and offered guests his insights into how history can provide "context and perspective" on current events. Drawing a number of parallels between modern-day America and America during the Civil War, Winik explored the importance and role of the commander in chief, public opinion, and civil liberties in wartime.

Sean M. McKenna is NOLHGA's director of communications.

Friendly Faces in the Crowd

As always, the NOLHGA Annual Meeting gave attendees a chance to catch up with old friends and make new ones.

The Future of Insurance Receiverships—

Transparency & Accountability

Principles of Sarbanes-Oxley as the basis for insurance receivership reform

By J. Lee Covington II

While most agree that past efforts to achieve national insurance receivership reform have largely been unsuccessful, with the current focus and energy being applied to creating a more effective regulatory system for today's insurance marketplace, the opportunity for reform has never been better. Efforts have been made by the National Association of Insurance Commissioners (NAIC), individual regulators in their home states, and all stakeholders to address the long-held criticisms of the existing receivership system. However, the NAIC and other stakeholders recognize much more needs to be done, and they continue to work diligently on this important initiative.

Full implementation of past plans and completion of additional reform efforts are necessary to most effectively protect policyholders and creditors when they are most vulnerable and to support the guaranty association system, which is critical to that effort. As this work continues at the NAIC and in individual states, the principles embedded in the landmark Sarbanes-Oxley Act—transparency and accountability—should serve as the underlying basis for all reform initiatives.

Sarbanes-Oxley Underlying Principles

Passed in the face of corporate scandals that dramatically eroded investor confidence and threatened market stability, the Sarbanes-Oxley Act of 2002 forever altered the rules governing corporate responsibility and reporting. The legislation, which was aimed at reducing corporate malfeasance and protecting consumers, established a new system of checks and balances and is seen by many as the foundation for rebuilding investor confidence.

Sarbanes-Oxley is all about transparency, accountability, and ensuring the independence of corporate boards and auditors as the means by which these goals are achieved. *Transparency* involves providing all the information needed by stakeholders to make decisions regarding a particular company. In the corporate context, information is transparent when it provides the reader with a clear understanding of a company's financial condition, results of operations, cash flows, and other aspects of its business. While no single, accepted standard of transparency exists, corporate transparency should be defined as reporting information to stakeholders at a level that allows them to view the company through the eyes of management, giving investors the opportunity to gain the insights they need to make informed decisions. *Accountability* means that each person in the corporate reporting supply chain must take responsibility, in collaboration with all others, for carrying out a fundamental role in the chain.

To achieve transparency and accountability, Sarbanes-Oxley reaffirmed that the CEO and CFO carry the primary responsibility for company reporting and required them to provide a certification of the completeness and accuracy of reports, as well as the adequacy of internal financial reporting controls. Sarbanes-Oxley established new rules and responsibilities for audit committees, including a competency requirement for the chair; an independence requirement for all committee members; responsibility for appointment, compensation, and direct oversight of the external auditors; and responsibility for approval of all non-audit services provided by external auditors to ensure auditor independence.

Most significantly, Sarbanes-Oxley expanded the role of auditors to include an attestation of the newly required management assertions on the effectiveness of the company's internal controls over financial reporting. Auditors now must also communicate to the audit committee all critical accounting policies and practices

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Uncharted Territory

A look back at the innovative approach to reinsurance issues in the Inter-American insolvency

After almost 12 years, the Inter-American Insurance Company of Illinois estate was recently closed. While a relatively small insolvency (at least by 1991 standards), Inter-American presented a multitude of unusual challenges. Because there was no rehabilitation period prior to entry of the liquidation order, the guaranty associations were unable to prepare for the coming insolvency. As a result, the task force was not able to transfer the business immediately and the affected guaranty associations had to assume responsibility for payment of claims and administration of policies until covered obligations could be transferred to an assuming carrier. Additional challenges included the estate's paucity of liquid assets, significant administrative difficulties, and some unusual coverage questions.

The most unique aspect of this insolvency, however, was the guaranty associations' innovative use of Inter-American's reinsurance contracts to facilitate the transfer of covered obligations and the continuation of coverage for the policyholders. The associations' handling of the estate's reinsurance contracts was so creative, in fact, that it was later incorporated into the NAIC's Life and Health Insurance Guaranty Association Model Act.

The Reinsurance Challenge

Inter-American, an Illinois-domiciled company, was placed in liquidation on December 23, 1991. At the time of the liquidation order, there were approximately 30,000 individual policies and over 2,800 group contracts in force. Inter-American's dominant lines of business were individual and group life and annuity insurance, although it also provided excess accident and health loss coverage. Forty-five state guaranty associations were impacted by the liquidation.

Following entry of the liquidation order, covered obligations to Inter-American policyholders were paid and administered by the individual guaranty associations (acting through the task force and with Swanson & Associates as administrator, or on their own) until a suitable assuming carrier could be found. In April 1993, an agreement was finalized transferring covered obligations to Jackson National Life Insurance Company. Given the limited available liquid assets of the estate, the guaranty associations provided all of the funding to support the transaction.

The utilization of Inter-American's existing reinsurance contracts played a significant role in facilitating the transfer and reducing costs to the associations. At the time of its insolvency, Inter-American had an array of reinsurance arrangements consisting principally of risk-transfer reinsurance, which was profitable to Inter-American, and approximately $68.5 million in surplus relief reinsurance—a very large amount compared to Inter-American's total size and surplus.

Given the profitability of the risk-transfer reinsurance, the task force determined that the continuation and transfer of this reinsurance was in the interests of both the guaranty associations and the assuming carrier. Jackson National agreed and demanded the continuation of reinsurance arrangements with certain reinsurers as a condition to assuming the covered obligations. Accordingly, the task force was faced with the challenge of developing a strategy for continuing this reinsurance and transferring it to Jackson National as part of the assumption transfer.

Innovative Solutions

One substantial challenge initially faced by the task force was how to ensure continuing payment of premium due under Inter-American's risk-transfer agreements so as to provide ongoing coverage. To resolve this issue, the task force proposed that the liquidator transfer premiums to NOLHGA, which would hold and invest them on behalf of the guaranty associations and use a portion of the amount received to pay premium on specified risk-transfer reinsurance treaties deemed favorable to Inter-American. In order to reach this result, it was necessary for the guaranty associations to enter into an agreement among themselves, which provided for a subsequent accounting and reconciliation.

The task force also had to overcome vigorous objections and challenges raised by the individual risk-transfer reinsurance carriers in order to ensure the continuation of risk-transfer coverage. Inter-American's contracts with two of these reinsurers were particularly valuable to Inter-American; however, these contracts were costly to the reinsurers, and both reinsurers sought to terminate the contracts. Each reinsurer contended that it had the right to terminate due to non-payment of premiums and, in any case, was entitled to refuse to agree to an assignment of its agreement to Jackson National.

To overcome these objections, the task force agreed to certain economic concessions for these reinsurers in exchange for the reinsurers' agreement to the assignment of their contracts to Jackson National. A third reinsurer

By John N. Gavin

The Inter-American Task Force

Members	*Consultants*
William Falck (Florida): Chair	Actuarial: Wolfman and Moscovitch
Bart Boles (Texas)	TPA: Swanson & Associates
John Colpean (Michigan)	Legal: Hopkins & Sutter
Bob Ewald (Illinois)	
Doug Furlong (New Jersey)	
Peter Leonard (California)	
Ernie Long (California)	
Dan Orth (Illinois)	
Joni Forsythe (NOLHGA staff)	

refused to agree to such a transfer in light of its ongoing dispute with the liquidator regarding its separate surplus relief reinsurance treaties with Inter-American. Jackson National, on its own, obtained reinsurance with another entity to cover the risks previously covered by the third reinsurer. All other risk-transfer reinsurers agreed to a transfer of their agreements to Jackson National.

In addition to the risk-transfer reinsurance, Inter-American had approximately $68.5 million in surplus relief reinsurance. The task force determined that this reinsurance did not provide any real benefits with respect to ongoing guaranty association coverage obligations, and the surplus relief contracts were not transferred to Jackson National.

However, during the negotiation of the assumption agreement with Jackson National, the liquidator undertook a substantial investigation into the surplus relief reinsurance agreements and initiated demands against the surplus relief carriers for amounts due Inter-American under those agreements. The liquidator's position was that the reinsurers owed to the liquidator an amount approximately equal to the surplus relief in force as of the liquidation date. These matters were litigated, and the liquidator ultimately settled with some reinsurers for $17.3 million (with the encouragement of the task force) and secured an additional $12 million through litigation.

Addressing Other Concerns

Although many aspects of the assumption transaction with Jackson National were handled in a typical fashion, some unique issues and challenges arose due to the peculiar circumstances of the Inter-American reinsurance. Jackson National wanted to ensure that Inter-American's risk-transfer reinsurance agreements would continue in effect after it assumed the guaranty associations' covered obligations. In order to alleviate this concern, a provision was inserted into the assumption agreement allowing Jackson National to reject covered obligations that were subject to specified reinsurance agreements if those agreements were not continued in effect. As a result of the arrangements described above, this provision was never invoked. Moreover, as a result of the arrangements made with two risk-transfer reinsurers, the consideration paid to Jackson National was increased.

In addition, the agreement of the liquidator (as the successor to Inter-American) was essential to the transfer of the risk-transfer reinsurance to Jackson National and, on an interim basis, to the guaranty associations for the period prior to the Jackson National assumption. In order to effect this transfer, the liquidator entered into an agreement (i) assigning reinsurance proceeds to the participating guaranty associations for the period after the liquidation date and prior to the assumption reinsurance date, and (ii) assigning reinsurance proceeds to Jackson National after the date of the assumption reinsurance agreement.

However, the liquidator was concerned that, if reinsurance proceeds went to the guaranty associations during the period prior to the assumption reinsurance date, the guaranty associations could receive reinsurance proceeds in excess of their coverage limits. Each guaranty association therefore agreed that any reinsurance proceeds recovered by the association would be applied first to pay any death benefits payable under the Inter-American policy that remained unpaid (after payment by the association of death benefits subject to statutory limitations) and then to the guaranty association to repay any death benefits paid by it.

In the end, the task force was able to address all of the concerns of Jackson National and the liquidator, and the guaranty associations' covered obligations were successfully transferred to Jackson National along with most of the risk-transfer reinsurance. With the continuation and transfer of Inter-American's reinsurance contracts, the task force had embarked into uncharted territory to fashion a creative solution to a difficult situation in a manner that both facilitated the continuation of coverage and reduced guaranty association costs. Notably, the solution developed and employed by the Inter-American task force ultimately provided the basis for the current provisions in Section 8N of the NAIC's Life and Health Insurance Guaranty Association Model Act, which governs the rights and obligations of guaranty associations with respect to the continuation of reinsurance contracts. ✯

John N. Gavin is an attorney with Foley & Lardner in Chicago, Ill. He served as the task force legal counsel for the Inter-American insolvency and also serves on the AMS Life, Executive Life, London Pacific, and Monarch Life task forces.

Dynamic Duo

A Montana insolvency serves as an example of what an insurance department and guaranty association can achieve when they work together

By Wilson D. Perry

Over the past several years, the Montana Life and Health Insurance Guaranty Association (MLHIGA) has committed significant resources in respect to a single-state insolvency, that of Montana Benefits and Life Company. Each insolvency is unique, but it's safe to say that the eventful history of the Montana Benefits case had more than its fair share of challenges.

While the insolvency may have been unusual, the way the Montana Department of Insurance and MLHIGA worked together to resolve it was not. In fact, the degree of communication, cooperation, and mutual respect evidenced throughout the entire insolvency resolution process serves as a wonderful example of how insolvencies should be approached. So too does the result. Thanks to the tireless efforts of the department and the guaranty association, policyholders and insureds were delivered to the proverbial "warm, safe new home" without loss or significant cost to the association's member insurers.

Storm Clouds

Since the failure of Life of Montana Insurance Company in 1988, there have been no life or health insurance companies of any size domiciled in the state and none represented on the MLHIGA Board of Directors. Under the leadership of nationally prominent companies, the association has endeavored to establish good communications with the insurance commissioner through participation in annual meetings and visits in Helena (where the insurance department is headquartered) with new incumbents. MLHIGA's Local Counsel, Mona Jamison, keeps in touch with the insurance department and monitors legislative and regulatory developments for the association. When there has been a matter of mutual interest or concern, communication has been very good.

In the late 1990s, the Montana Insurance Department was dealing with two companies undergoing financial difficulties. One was a small domestic life insurer. The other, a Montana-licensed health service plan, was in serious financial condition. The health service plan indicated in its December 31, 1999, financial statements that it had nearly $570,000 in surplus, which would have met the required minimum capital and surplus of $500,000. However, the insurance department's chief examiner determined that the financial statements overstated assets and capital and surplus by as much as $300,000.

At the same time, the life company's block of life and annuity business was extraordinarily small and could not be run profitably. The department also found that the company's 1999 financial statements were overstated by $60,000, although its restated capital and surplus of over $580,000 met the $300,000 statutory minimum. However, the chief examiner determined that in 2000, the life company was incurring losses at a rate that would have caused minimum capital and surplus to fall below the requirement before year-end.

A proposal was developed to have the life company acquire most of the business of the health service plan by bulk reinsurance. Although both companies were in serious financial difficulty at the time, the owners of the life insurer submitted a business plan for making the combined business successful and profitable. Upon learning of the proposed transaction, the guaranty association was deeply concerned about whether the enterprise had a real chance of gaining and maintaining solvency. The MLHIGA Board retained financial consultant Fred Buck to work with Legal Counsel Frank O'Loughlin to analyze the proposed transaction.

When the analysis led to the conclusion that the business plan as structured had little prospect for success, MLHIGA filed a brief in the approval proceedings stating its belief that the proposed combination under the plan was no improvement over the current situation without capital infusion, strict control of assets, a significant reduction in expenses, and the appropriate repricing of premium rates. The brief proffered seven specific recommendations for terms and measures to improve the prospects for a successful rescue of the business. The insurance commissioner incorporated some of the concepts and provisions in his July 2000 order approving the transactions. The life company bulk reinsured the active health business of the health service plan, which continued in existence to run off residual claims under terminated contracts.

Working Together

The guaranty association continued to have serious concerns about the viability of the reconfigured enterprise, Montana Benefits and Life Company. In September 2000, Frank O'Loughlin wrote to the commissioner on behalf of MLHIGA submitting recommendations—as authorized and sometimes required under the Montana Guaranty Association Statute—regarding the detection and prevention of member insurer impairments and other duties and responsibilities. The letter requested access to all information relevant to the performance and solvency of the combined company and offered guaranty association resources in the review of documents and information obtained pursuant to the reporting and monitoring provisions of the commissioner's order.

In November 2000, John Morrison was elected to the position of Montana State Auditor, who serves as Commissioner of Insurance and Commissioner of Securities. The association sought a meeting with Commissioner Morrison to apprise him of the purpose, organization, and work of MLHIGA and the resources the association and NOLHGA could make available in dealing with troubled companies. The board also had a revised Plan of Operation pending approval and wanted to discuss its plans to revise the Guaranty Association Statute as well.

Information received about Montana Benefits indicated that its financial condition was deteriorating, and so the MLHIGA Board scheduled a February 2001 meeting in Helena that included a visit with the commissioner and department staff. At that meeting, the association was informed that the company was unlikely to survive without an infusion of capital and that the owners were addressing the problem. The board, noting its statutory duties and obligations to insured residents, offered assistance and resources in evaluating the company and any related proposals.

Upon receipt of a Form A from the owners of the company contemplating a new investor and change of control, the insurance commissioner's staff contacted the association and requested advice and recommendations with respect to the company, its possible acquisition, the potential for rehabilitation, and related matters. The request, pursuant to Montana Code Ann. §33-10-217(2), was confirmed in a letter from Commissioner Morrison to MLHIGA Chair Merle Pederson and Counsel Frank O'Loughlin.

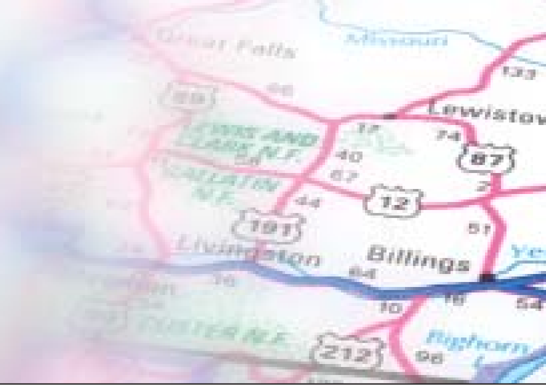
Shortly thereafter, upon determining that Montana Benefits appeared to have a negative net worth of between $300,000 and $1 million, the commissioner obtained a Consent Order of Supervision on March 14, 2001. He appointed a former deputy insurance commissioner to supervise operations of the company. Under Montana law and the order, the company's owners had 60 days to correct deficiencies, including the significant shortage of capital and surplus.

On June 19, 2001, the commissioner obtained a Rehabilitation Order in receivership court pursuant to a consent petition. The special deputy receiver's primary efforts focused on providing seamless administration of the insurance and reassuring policyholders. Fortunately, he was able to retain nearly all of the employees of the insurer needed to administer the business. He also instigated expense reduction measures and retained actuarial consultants to evaluate the health claims and pricing.

Fred Buck conducted a review of the business and financials, enabling the association to provide evaluations and recommendations to the department and receiver. Premiums were adjusted based upon the recommendations of the receiver's consulting actuary and Mr. Buck. A key point emphasized by the association was the necessity of prompt action to avoid rapid deterioration of the block of business and commensurate loss of value to prospective purchasers.

New Plans, Murky Backgrounds

During the spring and summer of 2001, the owners submitted a proposal for infusing new money into Montana Benefits and growing its business. Their initial plan was evaluated by the department and the association and found to be speculative and incomplete. Over the course of the next year, the owners proceeded to present various plans involving new investors and financing schemes, all with serious problems and deficiencies. The problems ranged from lack of detail and information about the form and amount of investment in the venture to the reputa-



The successful outcome once again demo
timely communication between the insurar

tions and records of the persons who were to provide funding.

The brief submitted in support of the Plan of Rehabilitation by the department's chief legal counsel reviewed the various bids by the owners to recapitalize the company and take it out of receivership. The first prospective investor came to the department with a proposal for a cash infusion from a trust established by his family, with other consideration being stock in a company organized in the Netherlands Antilles. While the department was seeking audited financial statements of that company and the proposed investor, it conducted a background investigation and learned from sources, including a feature article in the September 2000 issue of *Forbes* magazine, that the prospective investor's father was a notorious white-collar criminal who had been sentenced to prison in 1986 for 27 years. It was estimated that the father had bilked investors out of as much as $400 million. The article reported indications that business contact between father and son was continuous and ongoing.

In April 2002, the owners presented a new proposed plan involving two investors—one who would invest $500,000 in the company and a second who would invest $1 million. The department's due diligence investigation revealed that the second investor had declared bankruptcy five times in the past 10 years. When the department requested a sworn biographical affidavit from him, he was dropped from the proposed plan.

Another investor was proposed who was to contribute $2 million in cash to the company. This investor submitted a biographical affidavit revealing that he was also known by an alias and had filed for bankruptcy in 1995 and 1999, in the latter case listing his assets at $2,500. He listed a number of corporations in which he served as president or in other officer positions. The department's investigation discovered that the investor had posted a statement on an Internet bulletin board saying that his company could provide "loans to startup companies as well as lease bank balances to present your company in a more liquid financial position."

The investigation also revealed that the prospective investor had been convicted of slumlord violations in Los Angeles and was a defendant in a RICO action filed in 1994, which alleged that he and other defendants controlled numerous entities that made loans on slum properties and set up "straw men" for these loans. The complaint asserted that the president of at least one of this prospective investor's corporations was listed as "Grover Black," who was in fact the investor's dog. He (the defendant, not the purported president) settled the RICO suit upon payment of a fine. If finding the finances of this investor to be wholly inadequate and his past business conduct to be highly questionable were not enough, the department also was informed that the money to be invested was not to be in cash but would instead be available from a bank account that would be put at the company's disposal.

That proposed investor was dropped—and replaced by a man purported to be presiding bishop of the "Old Catholic Church," who was put forth as a potential investor of $2 million in cash. In its investigation, the department received documentation that this new prospective investor had been excommunicated by The Catholic Apostolic Church of Antioch. Investigators were also informed that he had been convicted in 2001 for securities fraud and theft and subsequently learned that he was arrested in September 2002 on other felony investment fraud and theft charges.

A Great Example

In the spring of 2002, while continuing to evaluate these rescue plans and investigate the potential investment sources put forth by the owners, the insurance department determined that it needed to proceed with a request for proposal (RFP) to be sent to insurance companies that might be interested in assuming the insurance obligations of the insolvent insurer. The association provided input into the for-

nstrates the critical importance of early and
nce department and guaranty association.

mulation of the RFP and, through NOLHGA, obtained a list of insurers that might be interested.

The RFP went out in June 2002, and several responses were received by the rehabilitator. At the request of the insurance department, MLHIGA Counsel Frank O'Loughlin and consultant Fred Buck worked with the department in evaluating the responses. It soon became clear that the bid submitted by a Montana health service company located in Helena offered the best prospects for taking over the obligations of the insolvent insurer. This bidder was selected, and the department negotiated the terms of the transaction with the participation of the association in respect to its obligations to policyholders.

On September 6, 2002, the deputy insurance commissioner and department counsel presented the Plan of Rehabilitation to the Receivership Judge in Helena. Many others were in attendance, including department and association representatives, officers of the successful bidder and its newly formed life and health insurance subsidiary that would be the acquiring company, and the former president of the failed insurer (who brought along a cameraman to tape the proceedings). The court, noting that there was no opposition to the plan, issued an order approving the transfer of the business and ordering the liquidation of the insolvent insurer.

Closing of the bulk reinsurance transaction took place on October 1, 2002, with the acquiring insurer assuming the block of heath insurance and a very small block of life insurance. A service agreement among the acquiring company, the liquidator, and the association provided for the administration of all pre-liquidation health claims. Over the course of the past year, claims have been handled efficiently and paid on behalf of the estate and MLHIGA with the oversight of the special deputy liquidator and the association. The last claim appeals are currently being processed, and the liquidator is in the process of resolving issues regarding the remaining assets and liabilities.

This single-state insolvency is a success story—and perhaps a template for how other single- as well as multi-state insolvencies can be handled—from many perspectives. Policyholders and insureds benefited from continued protection during the receivership period and were given the opportunity to stay with the acquiring insurer. The estate is expected to have sufficient assets to pay all policyholder claims, as well as some portion of the claims below that level. Most of the employees of the company were retained by the receiver and then given the opportunity to work for the new carrier.

From an institutional perspective, the Montana Insurance Department and the guaranty association gained heightened awareness of and respect for the resources and dedication each brought to the resolution of the problems resulting from the failure of this health insurer. Although not directly involved, NOLHGA was both a contributor to and beneficiary of the good results achieved in this case. The successful outcome once again demonstrates the critical importance of early and timely communication between the insurance department and guaranty association; involvement of the association; and cooperation among the insurance department, receiver, and guaranty association in effectively working through an insurer insolvency and, most importantly, minimizing costs and losses for policyholders and insureds.

Commenting on the insolvency, Commissioner Morrison said, "as Montana's Insurance Commissioner, I was proud to work together with MLHIGA to help 12,000 Montanans who were insured with Montana Benefits and Life Company keep their insurance—an accomplishment we can all be proud of."

Speaking for the association, I can assure the commissioner that we are. ✯

Wilson D. Perry is the executive director of the Montana Life and Health Insurance Guaranty Association.

["Transparency & Accountability" continues from page 7]
used by the company, all alternative treatments with generally accepted accounting principles, the ramifications of those treatments, and the treatment preferred by the auditor.

These and other Sarbanes-Oxley regulations are aimed at achieving greater transparency and accountability in corporate reporting, and they will undoubtedly help rebuild the public's trust.

Implications for Regulators

Like corporate boards and management, insurance regulators and their appointed receivers have a responsibility—a statutory responsibility—to protect the vested interests of policyholders and creditors of regulated insurance companies. In the receivership arena, they do this by maximizing the estate value and facilitating effective operations of the guaranty association system for the benefit of policyholders. As in the corporate world, receivership transparency (including effective communication) and accountability are necessary to protect and provide the greatest value to policyholders, creditors, and other stakeholders.

While transparency and accountability may initially be viewed as separate and distinct, the two are integrally linked. Transparency is a condition precedent for accountability, and together they form the basis for most if not all of the receivership reform recommendations advanced since the early 1990s—first by the Focus Group on Insurer Receiverships in 1992; then by the interstate compact states in the mid-1990s; most recently by Dr. Robert Klein, director of the Georgia State University Center for Risk Management and Insurance Research; and by countless regulators along the way.

Some have advocated a more far-reaching restructuring of the current system, including federal intervention in one form or another. However it is important for regulators and receivers to recognize that the Uniform Receivership Law (URL) contains most of the elements necessary to achieve the desired level of transparency and accountability, which, if fully implemented, would undoubtedly lead to greater value for policyholders and creditors. These elements include:

- a requirement for estate plans to be filed with the court within one year of the liquidation or rehabilitation order
- a definition of the legal standing necessary for stakeholders to intervene
- a new receivership court
- claims estimation and mandatory negotiation/arbitration of reinsurance recoverables under certain circumstances
- reporting requirements to the court and public

The URL has been endorsed by the National Conference of Insurance Legislators. Industry trades also support the URL, and the NAIC Insolvency Task Force is currently working under a charge to revise the current NAIC model by incorporating the URL where appropriate. At this point, timing for the completion of the NAIC's work and the ultimate model provisions are uncertain.

Key Strategies

States should ideally move forward with adoption of the URL or the expected new NAIC Model, assuming it contains the key provisions of the URL. During the interim, however, individual regulators can and should begin to adopt the principles of transparency and accountability by employing processes incorporating the spirit and intent of the URL. The following strategies can be used by regulators to most effectively carry out their public responsibilities.

Estate Plans and Experienced Insolvency Practitioners. Accountability is difficult if not impossible to achieve without established performance measurements. Estate plans should be developed and presented to the court and/or the insurance commissioner for approval. At the very least, these plans should be formulated in consultation with key stakeholders such as guaranty associations and large creditors, who have the same interests as other policyholders in maximizing estate value. In formulating these plans, receivers should:

- consider alternative and innovative plans, such as the pre- or post-liquidation schemes of arrangement commonly used in the United Kingdom
- develop aggressive plans for reinsurance commutations/collections and asset recovery litigation
- address early access issues, including opportunities for and impediments to early access payments and strategies for overcoming those impediments
- focus on estate closure from the very beginning of the process

Plan implementation should then be reviewed with stakeholders throughout the process, and modifications should be made where necessary. Ultimately, receivers should be held accountable for meeting the plan goals, maximizing estate value, and closing estates.

Just as Sarbanes-Oxley requires the right people to serve on corporate audit committees, it is critical to have the right people, and the right mix of skill sets, in place to develop and implement the appropriate estate plan. While different challenges to identifying and retaining experienced insolvency practitioners exist in each state, with enough due diligence, regulators can make receivership appointments and select lawyers and consultants

based on demonstrated experience and competence. Three very good places to start this process are the International Association of Insurance Receivers, which has a receiver certification system, and the two national guaranty fund associations—the National Organization of Life and Health Insurance Guaranty Associations and the National Conference of Insurance Guaranty Funds—both of which have worked for years with receivers and insolvency professionals across the country.

Once selected, it is particularly important to hold lawyers and other consultants accountable for developing aggressive case or project plans and for ongoing reporting and performance according to the plan. Millions of dollars are at stake. Regulators need the right people to do the job, and those people need to be held accountable.

Reporting and Communication. Effective reporting, good communication, and cooperation are the hallmarks of transparency, and every receivership can employ best practices in these areas. As stated earlier, transparency means providing all the information stakeholders need to make decisions. In the case of an insolvency, stakeholders (especially guaranty associations and non-domiciliary regulators) need accurate and up-to-date information to achieve the best result for consumers—maximum estate value, good customer service, and finality.

An important step in achieving transparency is uniform and consistent reporting of information necessary to compile NAIC reports, including the NAIC Report on Receiverships and the Financial Reporting Questionnaire, as well as use of the Uniform Data Standards. These reports, which are currently voluntary, are limited in value because of the number of states that report and inconsistency in reporting.

Under the leadership of NAIC Past-President Mike Pickens and New Jersey Insurance Commissioner Holly Bakke, chair of the Insolvency Task Force, the NAIC has given high priority to a promising project to create a Global Receivership Information Database (GRID). This database would allow states and stakeholders to uniformly update and retrieve receivership information online. By working today to provide the information in the format that GRID will eventually require, receivers will be in a perfect position to assist in the final development phases and quick implementation of GRID later this year.

Receivers are accountable not only to the public at-large but also to non-domiciliary regulators, and these regulators have long complained about the inability to obtain information about the status of insolvent estates in other states. In addition to reporting and tracking, the NAIC has adopted other accountability measures in areas affecting multiple states, including troubled companies or market conduct issues. As suggested by Dr. Klein, the NAIC Insolvency Task Force should strongly consider how it can place more emphasis on its existing charge to monitor the management of insurer insolvencies and, considering its current limited resources, explore strategies to accomplish this work in a manageable way. This could include required reporting for nationally significant insolvencies or estates not closed after a specified number of years.

Prior to and during the liquidation process, good communication and cooperation between the receiver and the guaranty associations can significantly benefit consumers and add greater value to the estate. Pre-liquidation planning and file transfers enable guaranty associations to respond quickly to consumer claims and questions regarding the impact of the insolvency. Sharing of information facilitates the marketing of blocks of business before they age and lose the best risks and ensures that restructured or transferred contracts do not eliminate benefits to which the consumer was entitled under the guaranty association system.

Guaranty associations can also provide an enormously helpful historical perspective and draw on a wide array of experiences from across the country that can be very helpful to receivers and financial regulators prior to and during the liquidation process. In addition, guaranty associations have provided assistance on asset recovery matters and related litigation, such as offering advice prior to asset sales or participating in litigation through intervention or *amicus* briefs. NOLHGA's recent comment letter to the Insolvency Task Force reflects that most if not all of its recommendations focus on good communication and cooperation—in other words, transparency.

Most regulators and receivers endeavor to hold themselves accountable and provide a transparent receivership process. The strategies and processes discussed here, and the tools provided by the NAIC, can be used by all regulators to achieve greater accountability and transparency in the receivership process and, ultimately, the greatest amount of value possible for policyholders and creditors. Change and progress certainly take action, and there is no better time than now. ✯

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["President's Column" continues from page 3]

have more insolvencies, some of them occurring at times when they are totally unexpected.

There is always a temptation when giving a speech like this to "parade the horribles"—to over-emphasize the risks and challenges confronting us, to suggest that if we're not on the eve of destruction, then we're damned close to it. I'm not going to succumb to that temptation. To be sure, the life industry and the guaranty system do face challenges, and there are serious risks to our shared future. But particularly on this occasion, the twentieth anniversary of the establishment of NOLHGA, I'm drawn to think initially of the past—of the long string of challenges we've met and risks we've overcome to bring us successfully to this anniversary.

Then I think of the present, and of the enormous reservoir of knowledge, ability, and strength represented by our guaranty associations and their member companies, boards, and administrators; by the NOLHGA Board, and the individuals and organizations providing support to it today as in the past; by the fine NOLHGA staff that against all odds makes me look better than anyone would reasonably think possible; by our outstanding consultants in the legal, accounting, actuarial, and management fields; and by our close friends in industry and the regulatory and receivership communities. Drawing from that past, represented as ably as we are in the present, and bringing to bear the skills, capacity, awareness, relationships, and commitment represented in this room, I know that we will meet every challenge the future can bring.

That brings me back to baseball. This time I'm recalling not Yogi Berra, but rather a genuine philosopher, and a man who—had he only been Catholic—might now have more supporters for beatification than Mother Teresa: the late general manager of the Brooklyn Dodgers, Branch Rickey. Mr. Rickey once said, in a remark that epitomized his career: "Luck is the residue of design." We've had some good fortune along the way in this system, and I hope we'll have more, but throughout history the surest way to capitalize on good fortune has been to prepare for the mission we are assigned. Committing to that preparation is the best way I know to give ourselves another 20 years as successful as the past 20 have been. ✪

Peter G. Gallanis is president of NOLHGA.

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The views expressed herein are those of the authors and do not necessarily reflect those of NOLHGA or its members.

2004 NOLHGA Calendar of Events

Date	Event
February 4–5	**NOLHGA Board Meeting** **Dallas, Tex.**
February 16–18	**NOLHGA MPC Meeting** **Naples, Fla.**
March 13–16	NAIC Spring National Meeting New York City, N.Y.
May 8–9	NCIGF Annual Meeting Ft. Lauderdale, Fla.
May 10–11	**NOLHGA Board Meeting** **Tubac, Ariz.**
May 24–26	**NOLHGA MPC Meeting** **Reston, Va.**
June 12–15	NAIC Summer National Meeting San Francisco, Calif.
July 20–21	**NOLHGA MPC Meeting** **Seattle, Wash.**
July 22–23	**NOLHGA's Guaranty Association Law/Insolvency Seminar** **Seattle, Wash.**
August 10–11	**NOLHGA Board Meeting** **Reston, Va.**
September 11–14	NAIC Fall National Meeting Anchorage, Alaska
October 25–27	**NOLHGA's 21st Annual Meeting** **Las Vegas, Nev.**
December 4–7	NAIC Winter National Meeting New Orleans, La.