RECEIVERSHIP & INSOLVENCY (E) TASK FORCE

Receivership and Insolvency (E) Task Force Sept. 22, 2009, Minutes
Receivership and Insolvency (E) Task Force Aug. 27, 2009, Conference Call – (Attachment One)
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Receivership and Insolvency (E) Task Force
Washington, DC
September 22, 2009

The Receivership and Insolvency (E) Task Force met in Washington, DC, Sept. 22, 2009. The following Task Force members participated: Susan E. Voss, Chair, represented by Jim Mumford (IA); Karen Weldin Stewart, Vice Chair, represented by Linda Sizemore (DE); Steve Poizner represented by Dard Wilsm (CA); Thomas R. Sullivan represented by John Arsenault (CT); Michael T. McRaith represented by Pat Hughes (IL); Carol Cutter represented by Elizabeth Lovette (ID); Sandy Praeger represented by Ken Abitz (KS); James J. Donelon represented by Arlene D. Knighten (LA); John Huff represented by Fred Heese (MO); Roger A. Sevigny represented by Richard McCaffrey (NH); James J. Wrynn represented by Francesca G. Bliss (NY); Joel Ario represented by Joe D. Memmo (PA); Joseph Torti, III represented by Elizabeth Dwyer (RI); Leslie A. Newman represented by Mark Jaquish (TN); Mike Geeslin represented by James Kennedy (TX); and Mike Kreidler represented by Gayle Pasero (WA).

1. Updates on Receivership Matters

Francine Semaya (Nelson Levine de Luca & Horst) updated the Task Force on recent legislative developments from her personal perspective and experience.

David Vacca (NAIC) updated the Task Force on reporting requirements under Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 as it relates to receiverships. Commissioner Voss sent a letter to the Centers for Medicare and Medicaid Services (CMS) regarding their concerns on how the act applies to insurers in receivership. As a result of the letter and a review of the Aug. 18 town hall conference with CMS, it appears CMS has provided some leniency with regard to the threshold of amounts that must be reported over the years and when a company in liquidation would need to report such amounts. Mr. Vacca stated that the NAIC is attempting to compile some statistical evidence to prove that such amounts are immaterial in total, so the NAIC can request that CMS consider extending, as well as increasing, the dollar threshold limits for insurers in receivership into the future.

2. Comments Regarding Solutions to Address Concerns with the Timing and Collection of Reinsurance Recoverables Held by Insurers in Receivership

David Brietling (Reliance Insurance Company) summarized his comment letter (Attachment Three). He stated that while it is the responsibility of the receiver to provide appropriate information to the reinsurer, there is disparity between the behavior of the reinsurers, regardless of whether they were U.S. domestic reinsurers or not. The reasons are enumerated in the letter. Many of the reinsurers professed not to understand the insolvency process and what it means. The experience by Reliance is that although Reliance in receivership had several million dollars in collectibles, it collected virtually nothing for six to eight months, with the exception of some of the larger reinsurers. One thing the receiver was able to do was have meetings immediately following liquidation with groups of the estate's reinsurers, trying to communicate what the insolvency meant and how to handle offsets. The letter outlines specific practices with certain reinsurers. That process continues today with five to seven insurers.

Matthew Wulf (Reinsurance Association of America—RAA) summarized the RAA's comment letter (Attachment Four). He stated that the RAA doesn't doubt that nationally there are some collection problems. He stated that some items in the Insurer Receivership Model Act (IRMA) help to correct certain issues. He said the right people must talk to each other in the reinsurance and receivership business, and the RAA can help coordinate that. Another observation he stated was the danger in using the initial statistics inappropriately, as it really does not tell the story of how much has already been paid. He said he looked at some of the Schedule F filings of one of the large reinsurers, and there is an equally large part that has already been paid by reinsurers, and that part kind of gets missed.

Mr. Mumford agreed that the Task Force does need to watch how the receivership survey results are used. Mr. Vacca stated that with regard to the recoverable figures collected, the NAIC was very clear in the survey to receivers. Few receivers had any questions understanding the request, so he did not fear the information was inconsistently compiled among receivers.

Mr. Vacca stated that there have been several regulators and interested parties who have mentioned IRMA language that can help, and he asked if the RAA could clarify their position. Mr. Wulf stated that there are a number of sections based on a passage of time or a particular percentage, and those procedures kick in related to arbitration, commutation, putting amounts in trust and things of that nature. The RAA has no problem with those sections in particular. He stated that the RAA was able to work with Texas to improve the language. One clarification is that incurred but not reported (IBNR) does not get wrapped

up into the sections as well. Mr. Vacca asked the RAA to provide the information in a comment letter, as it is likely that the sections in IRMA will be referred to the E Committee as stand-alone sections that they should consider encouraging states to adopt.

Wayne Mehlman (American Council of Life Insurers—ACLI) summarized ACLI's comment letter (Attachment Five). He said it was his understanding that this charge relates to concerns involving reinsurance recoverables in insolvncies of property and casualty insurance companies rather than those involving life insurance companies. This topic applies to life reinsurance recoverables as well. Mr. Vacca confirmed that there were life insurers in the survey results, and the balances were material.

Mr. Vacca asked if the ACLI still supports the Task Force's consideration to E Committee and the state's adoption of Section 612, considering Mr. Mehlman's comment that "Section 612 of the IRMA clarifies the handling of life reinsurance in an insolvency, which is why we believe that it should be considered a 'critical' and 'non-controversial' provision for purposes of advancement in the states." Mr. Mehlman stated that the ACLI did support the section.

Mr. Vacca stated that one solution would be for the Global Receivership Insolvency Database (GRID) to add a screen that would capture recoverables more than 90 days overdue. The Receivership Technology and Administration Working Group was directed to look into that feasibility. Mr. Mumford asked if anyone thought life insurers should not be included in that enhancement, and no Task Force member objected.

Mr. Vacca discussed a matrix of comment letter solutions and potential Task Force action.

3. Reports

Ms. Bliss made a motion to adopt the Aug. 27 interim conference call minutes (Attachment One). Mr. Kennedy seconded the motion, and the motion carried unanimously.

Mr. Kennedy made a motion to adopt the 2010 charges (Attachment Two). Ms. Bliss seconded the motion, and the motion carried unanimously.

Having no further business, the Receivership and Insolvency (E) Task Force adjourned.

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Receivership and Insolvency (E) Task Force
Conference Call
August 27, 2009

The Receivership and Insolvency (E) Task Force met via conference call Aug. 27, 2009. The following Task Force members participated: Susan E. Voss, Chair, represented by Jim Mumford (IA); Steve Poizner represented by Harry Levine (CA); Kevin McCarty represented by Wayne Johnson (FL); Michael McRaith represented by Kevin Baldwin (IL); James J. Donelon represented by Arlene D. Knighten (LA); Wayne Goodwin represented by Jeff Trendel (NC); Joel Ario represented by Joe DiMemmo (PA); Leslie A. Newman represented by Mark Janquish (TN); Mike Geeslin represented by James Kennedy (TX); Kent Michie represented by Neal Gooch (UT); and Mike Kreidler represented by Gayle Pasero (WA). Also participating were: Robin Westcott (FL); Mike Cosentino (IL); Ralph Gaubert (LA); Glenn Stillman (UT); and Ron Patuch (WA).

1. Review Remaining Comment Letters Regarding Solutions to Address Concerns with the Timing and Collection of Reinsurance Recoverables Held by Insurers in Receivership

    a. Utah Department

Mr. Gooch said the comment letter from the Utah Special Deputy Receiver (Attachment One-A) indicated that there were numerous delays with the collection the reinsurance owed to an insurance company in liquidation.

    b. Paragon Strategic Solutions Inc.

Barbara Ledezma (Paragon Strategic Solutions Inc.) said Paragon is a provider of services to receivers in departments of insurance, so their issues are from the perspective of a service provider. Ms. Ledezma indicated that in their comment letter (Attachment One-B), the first issue addressed is the level of reinsurance knowledge of liquidation personnel and service providers, which should be increased. Receivers should have more technical staff available to look at systems and data, a better format for gathering that data, and a standard template regarding reinsurance. Another issue is the amount of time it takes to get the data transferred to the guaranty associations. Again, increasing knowledge and number of staff is recommended.

Mr. Mumford asked if there is anything the Receivership Technology and Administration Working Group could do to increase efficiency. Mr. Johnson said this is not a technology issue, but a personnel issue. Mr. DiMemmo said the Pennsylvania Department of Insurance receives monthly feeds from the guaranty associations on three liquidations, and it works very well; however, the Department hasn't focused on claims specific to reinsurance. Ms. Ledezma agreed that once set up, the transfer of data is great. However, when first going into liquidation, sometimes the data that is needed is not captured. She said Paragon ends up going in the back door to get the data needed to create the correct calculations. Paragon has to do things inception-to-date, because Paragon wasn't given what it needed to be able to pay the outstanding balances.

David Vacca (NAIC) said he can reach out to Francesca Bliss, chair of the Receivers Handbook Working Group, regarding the newly revised Handbook to see what guidance on reinsurance is available to receivers. He suggested a training session be set up, with Florida and Pennsylvania leading a discussion of best practices in this area. Mr. Johnson said the Task Force may want to consider whether there is some best practices guidance that could go out regarding insurers' systems. Mr. Mumford said the Task Force could develop some. Ms. Ledezma said being able to support an inception-to-date position for both premium and losses is important, as it seems to be the weakest point, and receivers have to be able to re-create this position to the satisfaction of the market. She said it is not unrealistic for the market to expect this standard, and it is good business practice. She said many insurers, including viable companies, do not have this data available inception-to-date. Mr. Mumford said if it is not there when the receiver takes over, there is not much a receiver can do to speed it up, unless receivers give it more priority at the beginning of the receivership process. Ms. Ledezma agreed to put emphasis at the very beginning. The environment now is to pay more attention to reinsurance, but it needs to be brought to the forefront. Every receivership is unique, and every company's handling of records is unique. Being able to delve into that at the onset at a granular level is instrumental in accelerating the gathering and presentation of the records, and in order to get billings and collections moving again, which in many cases haven't happened in years. Mr. Mumford directed NAIC staff to follow up with Ms. Bliss on the Receiver's Handbook, as well as some other states in order to explore efforts to get receivers reviewing reinsurance practices of an insurer sooner in the process.

Ms. Ledezma said the third issue is related to inception-to-date position and having necessary documents, reinsurance agreements and what was previously settled. Paragon's suggestion is that when states are conducting their examinations, states test for key records associated with reinsurance. Paragon is in favor of minimum standards for company systems that support this function. Mr. Mumford said the Task Force might ask Financial Condition Committee to refer this suggestion to the Financial Examiner's Handbook Technical Group. He directed staff to follow up with the group that looks at examination standards. Doug Hartz (Insurance Regulatory Consulting Group) said this is something the actuaries may want to review as well, because if the company does not have adequate systems to bill the reinsurance, their assessment of the gross verses net exposures for the company could be affected.

Ms. Ledezma said the fourth issue is related to documentation and data not being available to bill. It was inception-to-date billing, even if Paragon can't prove what has previously been settled due to lack of records, etc. In Florida statutes, section 154 provides that if the reinsurer or market has not provided substantial information to dispute the claim, the reinsurer has to pay. This statute works within the U.S., but not internationally. One of the things that helps receivers going forward is that there are sample calculations included on demonstrating how everything fits together. In regard to disputes, Paragon would generally turn calculations over to the client, and Paragon would provide support for the disputes. In looking at if from an outsider's perspective, Ms. Ledezma said if several of the states were having the same dispute with a reinsurer, the states could find a more cost-effective method to solve those disputes if there were several states joining in the efforts, which goes along with issue number six in the comment letter. Regarding issue five—slow pay of undisputed balances—Florida has the statutes in place; however, a lot of states do not. Ms. Ledezma said she would request greater regulatory support be put in place to help those other states. Ms. Ledezma said she is not sure that liquidators are aware of the legal options that their own state's statues provide to assist in these collections. She said one of the other responders mentioned that the commercial deceptive trade practices laws be amended, as well as the fair claims settlement practices regulation. She said there is no reason these balances should not be settled by the market. Mr. Mumford asked if she is talking about more enforcement action against slow pay. Ms. Ledezma said, for example, if ABC Company owed $100 million, and the reinsurer doesn't pay $97 million because of a dispute for $3 million, there is no reason to delay payment on the $97 million. Ms. Ledezma said she sees this tactic repeatedly. Regulatory action might bring that money in faster.

Mr. DiMemmo said that when Pennsylvania started out with Reliance, the Department sat down with the Reinsurance Association of America—RAA to learn what the Department had to do the keep the reinsurance flowing. Reinsurance was a significant asset of Reliance. The Department went through a checklist to try to identify the best way to collect the reinsurance timely. The Department developed a compensation plan to keep the Reliance staff in place, which included the people who did the reinsurance on a daily basis. The claim staff who evaluated the claims continued to be part of the process. The Department continued to bill the reinsurers timely, based on information provided by the guaranty funds and also information related to proof the evaluated claims not covered by the guaranty association. The Department would bill those, and collections that would usually take 30-90 days prior to receivership now were taking 6-12 months. The Department addressed staffing and systems issues, and established a set-off policy that was sent to reinsurers. The Department told the reinsurers that if the reinsurer overpaid, they would be reimbursed. However, it was still a difficult collection. The reinsurer might dispute one item for $1,000, when there is a $200,000 outstanding balance due. Until there is some kind of enforcement or regulatory action that a liquidator can use to pursue that, it is a very difficult collection. The Department has tried visiting reinsurers and providing them up-to-date information, and it is still difficult compared to what it was prior to the company going into receivership. When the Department has a disputed issue, it tries to go to arbitration quickly, as arbitration is very costly and not that much quicker.

Mr. Mumford asked if Mr. DiMemmo was suggesting the need for more enforcement statutes. Mr. DiMemmo said enforcement or collateral. These issues don't improve until the receiver has some teeth to bite back. Mr. Vacca asked if there are any fines that could be pursued during the regular examination process of a reinsurer. Mr. DiMemmo said that once the receiver got to a point that the estate was not collecting and they were billing accurate information, the commissioner would send the reinsurer a letter. The reinsurer will say they dispute a balance. Thus, he said, it is difficult for an examiner to take a position on whether a number of claims are under a treaty or not under a treaty. However, if there is a balance that no one disputes, but the reinsurer is just not paying, it is easy to identify. It is easy for a reinsurer to say it disputes that balance and until it has some resolution of that understanding, it is not going to pay. Mr. Mumford said separating non-disputed from the disputed amounts appears key, and the Task Force will visit this topic again.

Mr. Johnson said the part of the Florida statute referred to by Paragon allows the receiver to make a demand and gives the other party 20 days to pay in full or request a hearing to dispute the amount. The hearing would be held before the receivership court in a short timeframe. Should the receivership court find that the receiver was correct, the other party would be responsible for the receiver's attorney's fees and costs. Mr. Vacca asked if this is unique to Florida. Mr. Johnson said a version of it is in the Model and in Insurer Receivership Model Act—IRMA. Mr. Mumford said that when going to E

Committee with solutions, the Task Force should highlight this section in IRMA. Mr. Johnson said that if states used this section in IRMA, receivers might not need to go to a hearing, as it would be settled before. Mr. Johnson said receivers still need to have the data first. However, if the receiver presents the data and the party still doesn't want to pay, then the statute is a speedier road. Mr. Mumford said this may be one of the sections out of IRMA that states should universally adopt.

Mark Bennett (Cantillo & Bennett) said to the Task Force might consider if reinsurers can continue to be accredited if they are not paying the balances to receivers. He said he had an example much like that described by Mr. DiMemmo, but didn't have the processing issues described by Paragon. He said the receiver processed everything, submitted the claims and got from various reinsurers invalid reasons for not paying the claims—in some cases the receiver was told, "The insolvency clause does not apply to us." The reinsurers also didn't pay the claims after being billed over and over again. Mr. Bennett had tedious and time-consuming litigation against several reinsurers. Finally, when nearing a summary judgment motion, trial date or after Mr. Bennett had litigated for a long period of time, the reinsurer finally paid the reinsurance balances. In some cases, Mr. Bennett said he had to compromise. He said he agreed with the notion of additional teeth from the standpoint of penalties and things that would tie their hands if the reinsurer didn't give good reasons for denying claims. He said states should consider whether the reinsurer should be an accredited reinsurer, if they are not going to pay claims. Francine Semaya (Nelson Levine Deluca) said the Credit for Reinsurance Act would have to be amended. If a state takes away the right of a reinsurer to be authorized or accredited, the state takes away the ceding company's ability to take credit for reinsurance. Mr. Bennett said a state could decide that a change in the reinsurer's accredited status affects existing reinsurance arrangements, or the state could take the path that from that point forward, the reinsurer can no longer be accredited until the reinsurer makes good on balances that should be paid. Ms. Semaya said it could negatively impact other companies. She said if the reinsurers are accredited and authorized to ceding companies that are solvent or precariously solvent, the action could trigger more insolvencies. Mr. Bennett said if no longer accredited on a prospective basis, insurers would lose the ability to use that reinsurer. Mr. Mumford said the Task Force should consider this topic for a Subgroup to review and come up with possible solutions.

Ms. Ledezma said issue number six in the Paragon letter is related to working with intermediaries in domestic and foreign jurisdictions and the delays created—the reinsurers wanting records from those intermediaries who aren't providing the information necessary to fulfill the obligation and get those balances settled. Paragon's suggestion is to create ways to approach those where there are similar instances, especially with foreign jurisdictions. Ms. Ledezma said the proposal is some sort of clearing house, so information can be shared. She said if there are others with the same situation, and the total unsettled balance is significant, then everyone with uncollected balances should present a united front to provide a better possibility for collection. Mr. Mumford said this is another topic that the Task Force can discuss in more depth. Mr. Vacca said the Global Receivership Insolvency Database (GRID) could allow receivers to populate certain reinsurance screens to highlight reinsurers not paying recoverables over 90 days.

Ms. Ledezma said the last two issues in the Paragon letters circle back to previously discussed issues of not paying claims. The last issue relates to reinsurers still refusing to pay open balances while requesting commutations, not engaging in that process, and further delaying payment of valid amounts pending the finality of the commutations.

Mr. Mumford ask Mr. Vacca and Mr. Hartz to look at IRMA and see if there are any provisions that can help with these issues. Comment letters not addressed today would be addressed at the Fall National Meeting.

Mr. Vacca said some interested parties and regulators asked him about the survey that compiled the data for this charge. Those parties wanted to know if life insurers were included in that synopsis. Mr. Vacca said the answer is yes, and there were material balances that were over 90 days.

2. Hear Updates on Reporting Requirements under Section 111 of the Medicare Act

Mr. Vacca said he would send Task Force members a summary of an Aug. 18, 2009, town hall conference with Centers for Medicare and Medicaid Services (CMS) that would impact receivers. He said future discussions with CMS regarding this topic are expected. He said CMS verbally has provided a little leniency regarding liquidations in terms of reporting expectations and thresholds. Mr. Mumford said the receivers will be kept informed as information is collected.

Having no further business, the Receivership and Insolvency (E) Task Force adjourned.

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REINSURANCE COLLECTIONS AND COMMUTATIONS IN THE LIQUIDATION ESTATE OF SOUTHERN AMERICAN INSURANCE COMPANY, STATE OF UTAH

The "largest" reinsurer of Southern American Insurance Company in Liquidation ("SAIC") was National Reinsurance Corporation ("NatRe"). NatRe wrote the largest number of reinsurance contracts (treaty only) and assumed the highest value of loss reserves of any other reinsurer.

General Reinsurance Corporation ("GenRe") also assumed reinsurance from SAIC on facultative contracts but at a much smaller scale than NatRe.

NatRe and GenRe were eventually acquired by Berkshire Hathaway and a commutation agreement was complete in May, 2006 between SAIC and GenRe and included the Cologne Reinsurance Company of America and NatRe reinsurance coverage.

NatRe had a history of examining the SAIC claim files and conducted periodic audits up to 2004. NatRe was informed shortly after the Liquidation Order of SAIC in March, 1992 that SAIC was interested in commuting the reinsurance treaties. There were no further discussions until 1999 when case reserves and IBNR were established by SAIC for policy losses.

As claims were determined in the SAIC estate, reinsurance billings were sent to the applicable reinsurers. NatRe was very slow in paying its obligations to SAIC taking six to eight months of past due notices, telephone calls and e-mail contacts before collection of the reinsurance proceeds.

The commutation discussions began in earnest in late 1999. Visits were made to the Stamford, CT office of GenRe and New York City by the Deputy Liquidator and the Reinsurance Coordinator of SAIC, audits of SAIC's claims files were conducted at SAIC's office, numerous phone calls, and e-mails exchanged ~~with~~ resulting in empty promises of a forthcoming commutation agreement until March, 2006 when SAIC discovered our contact at GenRe had retired the previous year. Subsequently, SAIC was provided a new contact at GenRe and in May, 2006 the commutation agreement was executed. SAIC receive a wire transfer of the commutation funds on May 31, 2006 concluding an extremely long seven-year period of negotiations.

Another fairly large reinsurer of SAIC was Gerling Global Reinsurance Corporation of America ("GGRC"). GGRC also acquired another reinsurer of SAIC in 2000, Constitution Reinsurance Corporation.

In 1999, SAIC began to send reinsurers Notices of Claims and billings on determined claims. Immediately GGRC began setting defenses of late and inadequate notice and requested extensive claim information. A claims audit was scheduled and rescheduled several times at SAIC's office. SAIC also proposed a commutation agreement in 2000.

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During 2001 through 2003, GGRC underwent significant management changes and was very slow in paying SAIC's reinsurance billings. Between 2003 and mid-2005, intense negotiations were pursued. In early December, 2005 a commutation agreement was executed between Global Reinsurance Corporation – US Branch and SAIC. Receipt of commutation funds were received by wire transfer to SAIC on December 21, 2005.

Although all reinsurers were skeptical of paying their obligations to an insurance company in liquidation, there were numerous differences and excuses from reinsurers. Many reinsurers had merged with other companies, changed names, relocated, been placed under State supervision, etc. Some reinsurers have TPAs handle their assumed claims and others are pool participants handled by a pool manager. Each of these items result in further delays in collecting the reinsurance justly owing to an insurance company in liquidation.

The only outstanding reinsurance due to SAIC was $58,000 owed by Aetna Insurance Company whose claims are handled by Resolute Management, Mid-Atlantic Division. Aetna Insurance Company was a participant under the Excess Casualty Reinsurance Association pool. The $58,000 had been outstanding since November, 2007. The funds were received today so there is no outstanding reinsurance balances due to SAIC from active reinsurers.

Since reinsurance is usually the largest asset of an insurance liquidation estate, it is very important to keep in contact with reinsurers and keep good control of the reinsurance data. Once SAIC developed a reinsurance coverage and billing system (seven years into the liquidation proceedings before completion) most other assets had been liquidated. It took another seven years to collect and/or commute most of the reinsurance. As a result of the collections and commutations, SAIC has been able to make distributions to policy loss claimants of 90% of their allowed and Court-approved claims.

If you need additional names and/or details on reinsurance collections/commutations, please let me know.

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PARAGON
an Aon Benfield company

July 28, 2009

Mr. David Vacca
NAIC Staff

Response from Paragon Strategic Solutions Inc, an interested party.

Identifying and recommending possible solutions to address timing and collection concerns with reinsurance recoverables held by insurers in receivership.

Paragon Strategic Solutions Inc. has provided services to administer reinsurance for liquidated insurance companies since our founding in 1994. We have been hired by state departments of insurance as well as designated providers of liquidation services to insurance departments. We have worked with lines of business covered by all 50 guarantee associations and surplus lines with no association coverage. We are experienced with foreign and domestic reinsurance markets that are both solvent and insolvent themselves. Against this background we identify the following issues and propose some possible solutions for discussion.

In order for a reinsurance recovery to take place the reinsurer needs to receive a bill that includes the supporting documentation that the reinsurance contract calls for. In order to generate an accurate and adequately supported bill the following are needed:

- Reinsurance contracts
- Premium data
- Historic loss data
- Previously settled balances

The first billing after liquidation is the one that takes the longest to generate because what has been previously billed and settled is many times unclear. Insurance companies sometimes do not send bills that document the inception to date loss and premium positions. Incremental billings are sent that reflect the increase in paid loss and LAE since the last quarterly or monthly billing. Insurance company records may not clearly reflect what has actually been settled.

State insurance department personnel or designated providers of liquidation services are charged with a wide range of functions in a liquidation centering first on securing assets and notifying policy holders. In the first hour and days of liquidation, reinsurance is not a top priority. On-site personnel may not have the necessary understanding of reinsurance to know what to secure or how to obtain needed information from remaining company staff.

Our position is that employees charged with supervision after insolvency need to be more knowledgeable about reinsurance and need to act quickly to secure the necessary documents and records. If a liquidator realizes that there is a lack of knowledge or the necessary staffing level to secure reinsurance data and documents or administer reinsurance, more prompt action may be required to augment the staff by bringing in reinsurance professionals who can determine what has been collected and what needs to be billed. A long delay in resuming reinsurance recoverable billings diminishes cash flow and unsettles the reinsurance markets.

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Historically the first billing after liquidation is scrutinized more any other billing the reinsurer has received. In most cases the markets have not received a bill for months or years. The markets may take this opportunity to request proof that they received all the reinsurance premium due them before they pay additional losses. They may request loss documentation that is mandated by the reinsurance agreement that they had not received previously from the insurance company now in liquidation.

Review of the reinsurance contracts and historical billings and settlements by experienced reinsurance accountants may uncover conflicting contract interpretation between the reinsurance markets, intermediaries, and insurance company. These issues take time and perseverance to resolve. Reinsurers faced with millions in unpaid recoverable balances due a liquidated estate sometimes take a hard legal stance against payment. There are certainly times with a reinsurer has a valid dispute. Although never assured of quick or complete collection success, reinsurance professionals experienced in handling these disputes can advance the issues faster and more credibly than those with less industry knowledge or experience.

Issue	Possible Solution
1. Knowledge level and focus of state insurance department liquidation personnel or designated liquidation service providers may not be at the necessary level in the specialized area of reinsurance billing and collection to immediately capture what is needed to understand and re-start billing of reinsurance recoverables. The focus at the onset of a company takeover has not traditionally been on reinsurance, but rather on securing tangible company assets and notifying policyholders.	Increase staffing levels of areas responsible for the administration of insolvent insurance companies to include individuals with greater knowledge of all aspects of reinsurance administration. Treat reinsurance as a valued asset during the first days of takeover, just like cash, investments, buildings, and IT hardware. Select service providers with specialized reinsurance knowledge if that is the state's method of handling insolvencies. There is a need to understand data in company systems as it relates to reinsurance, thus the need for personnel with knowledge that spans these two areas; IT and reinsurance.
2. Getting data transferred to the guarantee associations is slow and delays reinsurance collections.	Increase the number of employees with IT and data knowledge working with liquidated estates.
3. Lack of data and records, such as signed reinsurance agreements, inception to date premium and loss data, and previously settled balances slows the resumption of reinsurance billings.	During state examinations of insurance companies, include testing of key records associated with reinsurance. Are treaties signed? Does billing documentation conform to standards defined in the reinsurance contract? Can the company supply records that support an inception to date position for a treaty for both premium paid to the reinsurer and indemnity and paid LAE recovered from reinsurance?

Issue	Possible Solution
4. Disputed contract interpretation. If the sum to be recovered is large and the parties are unable to agree, arbitration is usually the next course of action. Reinsurers sometimes offer a very small percent of the billed recoverable, an amount that the liquidator may be induced to accept, when faced with possible arbitration.	Continue regulatory efforts for uniformity of contract language, the use of plain English in reinsurance agreements, and the inclusion of sample calculations to demonstrate how layers of reinsurance are intended to fit together, the treatment of LAE, role of catastrophe funds, etc. Devise a simpler, less costly method of dispute resolution to try, as the first attempt, to solve disputes. Arbitration can and should always remain an option.
5. Slow pay of undisputed balances	Obtain greater regulatory support to collect undisputed balances. Some, but not all, states have statutes that can be used to demand valid payments from reluctant reinsurers. These statutes carry penalties for non-compliance.
6. Slow or unresponsive intermediaries. Intermediaries with no active business with an insurance company sometimes do not fulfill their contractual obligations to service business. Because of business consolidations old records may reside on legacy systems that are not converted after companies merge. Liquidators are sometimes unable to obtain needed information or service. The industry has grown to accept this lack of performance as unavoidable. The lack of service is even more apparent when consolidations have happened in the UK or Europe.	Devise a way to share information about unresponsive intermediaries or reinsurers across states and liquidated estates through a committee or centralized board. This board could be sponsored by the NAIC. All affected insolvencies could take their settlement issues with a particular intermediary or reinsurer to the board. The purpose would be to make the industry as a whole aware of unresponsive parties and see the total amount of unsettled reinsurance recoverables being held by a particular market or intermediary. Individually an estate is unable to collect a balance of $25,000, but if 20 estates band together the issue becomes more visible. An entity with quasi regulatory authority would be more likely to have success in advancing collections.
7. Markets that simply will not pay valid claims because they know there is no action the liquidator can take to force payment.	See response to No. 6

Issue	Possible Solution
8. While a reinsurer and a liquidated estate are in commutation discussions, the reinsurer sometimes refuses to make settlement on open paid loss balances, citing the desire to make one single commutation settlement. There is usually considerable delay in finalizing the commutation.	Refer the unsettled reinsurance recoverable balance to the proposed board (No. 6) or take legal action, if permitted (No. 5).

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2010 CHARGES

As of: 9/06/09

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

The mission of the Receivership and Insolvency (E) Task Force shall be administrative and substantive as they relate to issues concerning insurer insolvencies and insolvency guarantees. Such duties include, without limitation, monitoring the effectiveness and performance of state administration of receiverships and the state guaranty fund system; coordinating cooperation and communication among regulators, receivers and guaranty funds; monitoring ongoing receiverships and reporting on such receiverships to NAIC members; developing and providing educational and training programs in the area of insurer insolvencies and insolvency guarantees to regulators, professionals and consumers; developing and monitoring relevant model laws, guidelines and products; and providing resources for regulators and professionals to promote efficient operations of receiverships and guaranty funds.

Ongoing Support of NAIC Programs, Products, or Services:

1. Monitor the adoption activity related to the recent revisions of the Insurers Receivership Model Act, Property and Casualty Insurance Guaranty Association Model Act, and Life and Health Insurance Guaranty Association Model Act, provide assistance with the Models as requested, monitor the frequency of situations where policies exceed the guaranty fund coverage limits and perform additional work as directed by parent committee and/or received through referral by other parties—*Essential*

2. Promote receivership best practices through (i) technical assistance with NAIC training programs, accreditation standards, and the judicial training project; (ii) updates to the NAIC Receiver's *Handbook for Insurance Company Insolvencies* and the Uniform Data Standards, when needed; (iii) maintenance and enhancement of existing receivership and technology applications, including GRID and ClaimNet; (d) coordination with stakeholders—*Essential*

Sponsors for 2010 Charges
(Except as noted, I support all charges)

Susan E. Voss	**Joseph Torti, III**	**Mike Geeslin**
Iowa	**Rhode Island**	**Texas**

Staff Support: David Vacca

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After considering the issues and tactics of the reinsurers, there are several possible solutions available to address the problems. Some of the solutions fall outside the regulatory realm, some take advantage of existing regulatory schemes, and some require modification of current regulatory practices.

Proper staffing and aggressive collection procedures with management oversight is an absolute requirement for collections in a receivership environment. Defined response timeframes and dedicated follow through are very important. Nevertheless, some reinsurers choose to delay payment until threatened with legal action. As far as possible, it is best to try to work with reinsurers to address their needs while making an effort to not allow them to unreasonably delay payments. If this attempt at compromise ceases to work then a more forceful approach is sometimes necessary. In such cases, arbitration or litigation is deemed necessary and has been found to be successful, for the most part. Receivers should not delay initiating the legal process when the delay or positions expressed are unreasonable. Unfortunately, it is an expensive, extensive and time consuming process.

On the regulatory front, receivers may need to be more aggressive in appealing to the domiciliary state regulators to consider requesting an official inquiry and response from reinsurers on the issue, terminating the reinsurer's right to conduct business or to consider placing the reinsurer under supervision, depending on the circumstances. In turn, the domiciliary state regulators will need to be open to consider this type of action. Receivers should also be more aggressive in seeking review and rescission of any accredited rating for that reinsurer, and such regulator needs to be willing to seriously consider such action.

Perhaps the single most effective regulatory change would be amending Fair Claim Settlement Practices Regulations to include reinsurance claims. Nearly every practice used by reinsurers to delay payment would be a clear violation of such acts if committed by a primary company in dealing with its insureds or claimants.

In a related manner, Commercial Deceptive Trade Practice laws should be amended as needed to allow for private action of cedants against reinsurers. States such as Massachusetts that already allow this legal recourse, give cedants a powerful tool to combat reinsurer misconduct.

While we believe receivers already have the authority, the regulatory scheme could be enhanced by explicitly allowing receivers the power (if not the obligation) to refund overpayments of reinsurance as a Class A expense. This would clearly alleviate reinsurer's offset and overpayment concerns.

Finally, increasing or enhancing collateral requirements would virtually end payment delays. It is important to note that delay tactics are also successfully deployed by accredited reinsurers who do not post collateral or markets such as Lloyds, whose trust fund can only be accessed after obtaining a non-appealable final judgment, which is a lengthy and expensive process. The effectiveness of this potential solution is obvious and proven in the real world: reinsurers that are required to provide collateral to the cedant have the best payment records because collateral is immediately available to draw upon when disputes reach the appropriate stage. When collateral is available, inordinate delays are minimized and usually only realistic, supportable objection positions are taken by reinsurers.

Respectfully Submitted,

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Receivership and Insolvency Task Force
Timing and Collection Concerns with Reinsurance Recoverables
June 2009

The NAIC has requested input regarding "timing and collection concerns with reinsurance recoverables held by insurers in receivership". This narrative identifies key concerns and offers suggestions where regulatory support may be helpful. In so doing, we provide examples of the conduct, issues and problems encountered by receivers that lead to severe delays in the collection of reinsurance recoverables.

Simply stated, reinsurance collections are a difficult and lengthy process in receivership. Issues and delays attributable to reinsurer conduct arise on a daily basis. In almost all cases, time frames for responses and payments from reinsurers lengthen considerably for companies in liquidation. While there are some reinsurers who deal with receivers in a professional, responsive manner; the majority do not fall into this category. Clearly, this creates a great deal of frustration for receivership staff and hinders efforts to achieve timely collections.

Unfortunately, reinsurers tend to regard insolvent cedants with a degree of concern or even suspicion, particularly when they participate on treaties that have incurred less than ideal results. Reinsurers, similar to all insurance companies, constantly seek to achieve as much certainty as possible and this becomes extremely difficult in the case of large insolvent cedants who wrote multiple lines of business over many years. These factors clearly influence the general approach reinsurers take and the way they review claims.

It seems that some reinsurers have business models which effectively call for them to serially question the claim presentation over extended time periods in order to delay payment wherever possible. Regardless of whether it's their official business model or not, many reinsurers require much more documentation (significantly more than prior to liquidation and often more than is contractually required) and then respond with many questions in a series of inquiries, before even stating their payment position on the billings. Reinsurers often repeat requests for the same information on the premise that they have not received it, which is another tactic used to delay payment. In addition, suddenly reinsurers will question coverage for the first time after having a file with documentation for many years. They will require a legal opinion from the cedant on most claim files, claiming they have retrocession problems which prohibit them from paying. In the London market, reinsurers increasingly do not want claim files presented to them in person, but rather ask the cedant or intermediary to leave the file for review in their own time. In some cases their own time is a very long time, and we have to continually follow up until they eventually respond. Following market reinsurers no longer follow the claim evaluation process and determination of the lead underwriter but must review and evaluate the claims independently, again in their own time.

Frequently, the reinsurer's financial accounting area has the right of review before claim payments are released to an insolvent cedant. Inherently this leads to a delay in payment. In addition, the payment requests sometimes get 'lost' in the process. This often necessitates someone acting as a 'go between' with the reinsurer's claims area (who have the loss as 'paid' in their part of the system and cannot understand why we are still following up for payment) and the reinsurer's financial area (who have not yet released the approved payment). This is a time consuming and frustrating process as both units of the reinsurer assert that 'their hands are tied.'

A cedant's insolvent status itself is often a reason given for non payment or slow payment. Notwithstanding that every major reinsurer has been dealing with various insolvent cedants for decades, they will assert a general lack of understanding of the insurance company receivership process or the process as it relates to a particular state, as a basis of delaying payment. Nevertheless, they manage to articulate specific concerns over offset rights, arbitration rights (i.e. being forced to litigate in NY and Ohio), claim handling continuity and acceleration issues that show a comprehensive knowledge of the process. Some reinsurers believe that the standard insolvency clause contained in every reinsurance agreement doesn't apply to them or certainly can't mean that they would have to pay more than the receiver actually pays for a claim. These reinsurers actually state that they do not have to pay insolvent cedants because such cedants are not paying claims. These issues are typically addressed through lengthy and painstaking education processes and subsequent re-education processes whenever reinsurer personnel changes. Still, on occasion receivers must expend the costs of litigation or arbitration to enforce its rights under a basic insolvency clause.

Frequently, offset issues or the offset process itself, is cited as a reason for non payment. This is because reinsurers are more concerned with minimizing their overall net position and are looking more closely for potential offsets. Reinsurers

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fear that if they pay and then discover they had a valid offset, then a receiver would not reimburse them for their overpayment. Consequently, reinsurers often agree to balances subject to offset but when asked to support their offset position, they either cannot be bothered or try to avoid doing so. Most often, the reinsurer's assertion of potential offsets is not supported by proper documentation (certainly not close to the same level of documentation which they request of the claims ceded to them). Also with regards to offset, mutuality remains a major sticking point for a number of markets that want the benefit of impermissible Group to Group offsets. That being said, an agreement on mutuality will not necessarily unlock claims issues, which will still be considered on their merits. We have noticed that these problems arise, in particular, in the London and Foreign Markets. Initially too, there were some misunderstandings in these markets about the liquidation process itself and that in the US, individual States have jurisdiction over the process.

Also, the level of service an insolvent cedant receives from both reinsurers and intermediaries is poor. Upon a cedant becoming insolvent, reinsurers and brokers change the status of the account to "inactive" and the insolvent company then receives very low priority attention. The account is often handled by an underskilled and understaffed run-off unit, and it takes some time until this unit becomes familiar with accounts, claims, etc. Some major intermediaries do not continue to forward accounts, billings or reserve notices to reinsurers as contractually required or do so only after several months delay. Poor servicing by intermediaries often leads to serious information shortfalls from the reinsurers' perspective, which increases the delays and possibility of disputes. Then the responsibility to bring the reinsurers' records up to date becomes a major task which the receiver must address. This is why receivers often consider cutting out the intermediary completely, where possible, and dealing directly with the reinsurers or contracting with a third party to provide broker replacement services. Until reinsurers feel confident in the numbers and the supporting claims data, payments will not be forthcoming.

The related service issue on the reinsurer side is attributable to frequent changes in the contact person at a reinsurer, resulting in the new file handler having to become familiar with the file, which can take considerable time. Continuity has been lost because individuals who knew and worked with the cedant in the past have either moved on or now have other preoccupations. The market is also subject to a greater level of scrutiny from investors and other stakeholders than it was in the past. This often makes for a less flexible approach, meaning that accommodations or compromises are less easy to reach.

Moreover, reinsurers (like everyone now) have limited resources. As a result, attempts to get claims adjusters to focus on insolvent cedants, given their remaining workload, can be difficult. This is particularly true when it comes to those claims with a relatively small value. The reality is that the smaller the value, the more difficult it is to focus attention. Fundamentally, the biggest single challenge is maintaining reinsurers' attention and interest. Many markets prevaricate and delay, not always in a planned mode, but due to other business pressures.

Some reinsurers have themselves become financially impaired and payments have slowed down considerably. Due to their own financial difficulties, such reinsurers can only pay on a particular schedule (i.e. reinsurer pays quarterly after putting submitted claims through a 6 – 9 month vetting cycle), if at all. Such companies have minimal incentive to pay claims. Additionally, older reinsurers in run-off or liquidation can be difficult to track down, particularly those from the 1970's and 1980's where much reinsurance was placed through pools and underwriting agencies.

Commutation discussions are often used as a delay tactic in the payment of balances owed to insolvent cedants, even if the discussions are in the very early stages or non-existent. Many reinsurers state that they are not paying receivables because they claim they are commuting, when in fact they are not.

Reinsurers often make repeated requests to audit, taking the position that they will not pay until they do so. Then it requires several months to schedule the audit. After they finally complete the audit, it takes several more months for the reinsurer to "review its findings". When reinsurers ultimately advise the cedant of their position, it becomes clear that the audits are being used by the reinsurers to inflate perceived or minor discrepancies, which provide reinsurers with a contrived basis for delay, forced compromise, commutation settlement or for trying to avoid liability altogether. Thus the result of many audits is arbitration, which further delays collection and adds substantial expense.

The net result of all of these tactics to a receivership is greater costs of collection and administrative expenses, additional costs of litigation and arbitration, and lost investment income. Ultimately, this causes delays in making distributions to claimants and to guaranty associations through early access and extends the timeframe for closing the estate.

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REINSURANCE ASSOCIATION OF AMERICA

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Via E-Mail

June 10, 2009

David Vacca
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Subject: Receivership and Insolvency Task Force Call for Comment – Reinsurance Recoverables in Receivership

Dear David:

The Reinsurance Association of America (RAA) submits the following response to the Receivership and Insolvency (E) Task Force's (RITF) call for comment regarding timing and collection concerns with reinsurance recoverables held by insurers in receivership. It is the RAA's understanding that a new subgroup has been formed to address this issue and that there will be multiple opportunities to participate in the dialogue and comment on the work of the subgroup. The RAA is prepared to actively participate in the subgroup and contribute additional research and data as necessary to assist in both more clearly identifying reinsurance collection issues in receivership and developing any administrative processes, best practices or regulatory requirements that satisfy any concerns identified during this process and which recognize the realities of the reinsurance marketplace.

The RAA would like to take this initial comment opportunity to stress two important points: (1) the Receivership and Insolvency Task Force should use caution in attempting to develop any "solutions" before a thorough examination of the data clearly identifies the extent and nature of any reinsurance collection issues; (2) Any solution contemplated by the RITF must not allow acceleration of reinsurance recoveries based on estimates of incurred but not reported liabilities (IBNR).

In the RITF's March 16 memo to the Financial Condition (E) Committee, summary statistics on reinsurance recoverables held by insurers in receivership were presented indicating over 85% of reinsurance recoverables in receivership were over 90 days past due. The summary statistics were based on the responses of 37 states. No further information or analysis related to the data has been distributed since March 16th. While the summary statistics may have sufficed to provide support for the E Committee's charge to the RITF, they do not provide adequate

information to analyze the nature and scope of the reinsurance recoverables in receivership issue. While we understand that specific insurer or reinsurer information will not be shared with interested parties, the RAA requests that more detailed information from the survey be distributed, such as the amount of recoverables for each receivership estate and the breakdown of reasons for recoverables over 90 days past due presented for each receivership estate. With the receipt of such information, the RAA would be willing to survey its members to help collect more data to assist in fleshing out the nature and scope of the issue. The RAA also requests that the survey questions be distributed to interested parties so that we may better understand the response data.

A more thorough understanding and analysis of the data must precede any discussion of possible "solutions." By way of background, a similar exercise was undertaken by the NAIC a number of years ago and was quickly abandoned when, after an abbreviated hearing, it became apparent that the past due numbers for reinsurance recoverables presented at the time were not nearly what they seemed. Once a more detailed analysis of the data began, many of the questions raised by the initial data were easily answered. The RAA requests that a similar opportunity to address the data itself be afforded prior to any discussions of "solutions." The RAA stands ready to assist with such an analysis.

When any possible "solutions" are discussed, it is imperative that they not allow receivers to compel the payment of reinsurance recoverables based on estimates of IBNR. Claim estimation is a highly controversial issue that the entire insurance industry and regulators have studied and debated over the past several decades. Claims estimation is an attempt to estimate both the liability and value of events which are unknown and may never even be reported to the insolvent insurer as a claim. These unknown liabilities are actuarial estimates that insurers and reinsurers use for accounting purposes in order to ensure that sufficient funds will be available to pay for any claims which, in the future, may be reported, adjudicated and paid. A fundamental aspect of such estimates is the fact that they may be adjusted over the course of time to reflect many factors, including subsequent claim experience and the fluid and changing legal climate in which the insurance industry operates in the U.S. To suggest that reinsurers pay millions of dollars on the basis of actuarial estimates is akin to requiring an insurer to pay on the basis of an attorney's representation that he will have future clients who have suffered losses even though he cannot identify the loss, the amount of the loss or even the identity of his client. To any other industry, it is akin to suggesting that a corporate executive pay vendors today on the basis of amounts that the corporation budgeted for services – even though such services have not yet been rendered and may never be rendered.

Every time a receiver or department has proposed claim estimation, the reinsurance industry and various associations representing the primary insurance industry have ardently opposed it in courts and legislatures. The industry finds claim estimation highly offensive for many reasons, including the following:

- Claim estimation is based on actuarial estimates that by their very nature are speculative "guesses" as to the value of claims. Once the receiver obtains such estimates for his claim estimation, there is no recourse once it is determined that the estimates fail to reflect reality;

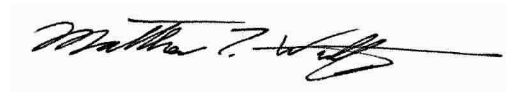
- There is no way to assign a who, what, where, when, why, and how to an estimated claim; thus, instead of holding IBNR money for future, as yet unidentified and injured victims, the money will be paid to those who have known claims today and those sophisticated enough to actuarially predict future losses;

- Claim estimation results in an irrational, "social re-distribution" scheme which guarantees that the wrong people will get the wrong amount of money from the wrong party.

Many state receivership laws (as well as NAIC's IRMA) currently contain some type of prohibition on the nonconsensual estimation and acceleration of reinsurance recoveries based on IBNR. Without such a prohibition, reinsurers could be required to pay for losses that may never develop. The RAA implores the RITF in these discussions to continue the trend of not allowing the compelled payment of reinsurance recoverables based on estimates of IBNR.

Thank you for the opportunity to comment and the ability to address our concerns in an open forum. We look forward to continued work with the NAIC on this matter.

Best regards,



Matthew T. Wulf
Vice President and Assistant General Counsel

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July 22, 2009

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RE: Reinsurance Recoverables

Dear Mr. Vacca:

The American Council of Life Insurers (ACLI) would like to comment on the Receivership & Insolvency (E) Task Force's recently-adopted charge to identify and recommend possible solutions to address concerns with the timing and collection of reinsurance recoverables held by insurers in receivership. The ACLI is the primary trade association of the life insurance industry, representing 340 member companies that account for 93 percent of the industry's total assets in the United States.

It is our understanding that this charge, as well as the Task Force's request for examples of the types of routine issues or delays that can arise in the collection of reinsurance recoverables, relate to concerns involving insolvencies of property and casualty insurance companies, rather than those involving life insurance companies.

In fact, the letters that you received from various state receivership offices appear to relate to P&C insolvencies, and not life insolvencies. The International Association of Insurance Receivers (IAIR) in its June 10, 2009 letter does refer to life reinsurance, but only on the need for clarity with regard to its handling (e.g., transferability, obligations of assuming carriers, application of recapture provisions), not on concerns relating to the timing or collection of recoverables. Section 612 of Insurer Receivership Model Act (IRMA) clarifies the handling of life reinsurance in an insolvency, which is why we believe that it should be considered a "critical" and "non-controversial" provision for purposes of advancement in the states.

If you concur that the Task Force's charge relates only to recoverables involving P&C insolvencies, we respectfully request that you state this for the record. Otherwise, we ask that you provide us with examples of problems and/or concerns relating to recoverables involving life insolvencies.

Thank you for the opportunity to comment on this important matter. If you have any questions, please contact me at (202) 624-2135 or waynemehlman@acli.com.

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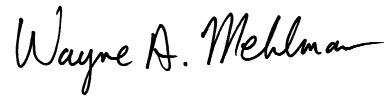
Sincerely,



Wayne A. Mehlman
Counsel, Insurance Regulation

cc: Members of the Receivership & Insolvency (E) Task Force

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