

To: Receivership & Insolvency (E) Task Force

Date: 6/3/09

RE: Reinsurance Collections (Insurers in Receivership)

Here are some collection issues that the CLO routinely encounters that can give rise to our inability to recover reinsurance in a timely fashion for the estates under management together with some solutions.

- Reinsurance brokers may be out of business or may have merged into a surviving broker. Brokers usually have little financial incentive to actively service a “run off” account having been paid their brokerage many years ago. Better for them they feel to focus on active business.

Possible solution: Replace the broker for a fee.

- Reinsurers profess that they want to commute and will want to roll open balances into the commutation thereby delaying payment.

Possible solution: Demand payment as a prerequisite to entering into commutation negotiations.

- Reinsurers assert an offset against balances alleged to be due to the reinsurer, both current and prospective.

Possible solution: Verify offset claims and challenge if non-existent or if overstated.

- Reinsurers may state that they want a claims audit as a prerequisite to making payment.

Possible solution: Tell reinsurers that they can audit but must pay first. Audits are not a prerequisite to payment.

- Foreign reinsurers may ignore demands for payment anticipating that the costs of collection will outweigh the amounts owing and that the liquidator will have little appetite to pursue collections in a foreign jurisdiction.

Possible solution: Appoint a reinsurance collector operating in the reinsurer’s country of domicile to pursue collection for a fee.

- Reinsurer refuses to pay asserting a defense of fraud, misrepresentation, or claims mishandling.

Possible Solution: Evaluate the reinsurer’s stated defenses. If they are meritorious negotiate a settlement giving recognition to the defenses. If without merit consider arbitration.

- Reinsurer asserts financial impairment.

Possible Solution: Procure a copy of the reinsurer's most recent financial statements and evaluate its financial condition. If financial statements are supportive of the impairment claim, negotiate a settlement on a discounted basis. If not, demand arbitration.

- Reinsurer states that it does not have sufficient documentation or never received notice of the claim in the first instance.

Possible Solution: Provide the requested documents and demand immediate settlement.

- Reinsurer asserts a late notice defense of a specific claim.

Possible Solution: Always challenge a late notice assertion. The reinsurer will have to prove that it was prejudiced by late notice or late billing. This is usually difficult to accomplish.

I hope that this is helpful. Any questions please call.

Best regards,

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