

Via E-Mail

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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:

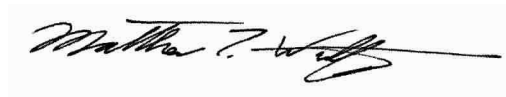
- Claim estimation is based on actuarial estimates that by their very nature are speculative “guesses” as to the value of claims. Once the receiver obtains such estimates for his claim estimation, there is no recourse once it is determined that the estimates fail to reflect reality;

- 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,

A handwritten signature in black ink, appearing to read "Matthew T. Wulf", is written over a light gray rectangular background.

Matthew T. Wulf
Vice President and Assistant General Counsel