

NATIONAL BANKRUPTCY CONFERENCE
PMB 124, 10332 MAIN STREET
FAIRFAX, VA 22030-2418
TEL: 703-273-4918 FAX: 703-802-0207
info@nbcoaf.org www.nationalbankruptcyconference.org

March 29, 2004

OFFICERS

Chair
J. RONALD TROST
Vice Chair
DOUGLAS G. BAIRD
Secretary
JEFFREY W. MORRIS
Treasurer
R. PATRICK VANCE
Past Chairs
LEONARD M. ROSEN
BERNARD SHAMRO

Hon. Richard H. Baker, Chairman
Subcommittee on Capital Markets Insurance
and Government Sponsored Enterprises
Rayburn House Office Building
Room 2129
Washington, DC 20515

CONFEREES

HERBERT H. ANDERSON
PAUL H. ASORIKY
JOHN A. BABBETT
R. NEAL BATSON
DONALD S. BERNSTEIN
H. BRUCE BERNSTEIN
RICHARD F. BROUKE
STEPHEN H. CASE
LEIF M. CLARK
MICHAEL J. CRAMES
DAVID G. EPSTEIN
LION S. FOMAN
CITAHM J. FORTGANG
MARCIA L. GULOSTEIN
ROBERT A. GREENFIELD
NELL HENNESSY
BARBARA J. HOUWER
MELISSA R. JACOBY
CARL M. JONES
JOHN J. JIROKOH
HERBERT KATZ
KENNETH N. KILG
DAVID A. LANDER
JONATHAN M. LANDERS
JOE LEE
E. BRUCE LEONARD
RICHARD B. LEVIN
KEITH LINDLY
RALPH R. MABBY
MORRIS W. MACEY
BRUCE A. MARZELL
RONKOT D. MARTIN
HARVEY R. MILLER
HERBERT P. MONKEL, JR.
GERALD F. MONTZ
PATRICK A. MURPHY
SALLY SCHULTZ NEELY
HAROLD S. NOVAKOFF
ISAAC M. PACHULSKI
RANDAL C. PICKER
ALAN N. RESNICK
MARY DAVES SCOTT
RAYMOND L. SHAPIRO
MYRON M. SHENFELD
EDWIN E. SMITH
GERALD K. SMITH
LAWRENCE K. SMITH
HENRY J. SOMMER
RICHARD S. TOSER
GEORGE M. TRUBSTER
ELIZABETH WALKER
JAY L. WASTBROOK
ROBERT J. WHITE
BRADY C. WILLIAMSON

Dear Mr. Baker:

I am writing to you in my capacity as the Chairman of the Committee on Insurance Company Insolvencies of the National Bankruptcy Conference (the "Conference") to determine whether, in connection with your current, well-publicized efforts to improve the efficiency and effectiveness of the state-based system for regulating domestic insurance companies, your Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (the "Subcommittee") would be interested in receiving some input from the Conference on the subject of insurance insolvency proceedings.

By way of background, the Conference is a voluntary, non-profit, nonpartisan, self-supporting organization (no outside funding other than that provided by Conference members) consisting of about sixty lawyers, law teachers and bankruptcy judges who have achieved scholarly distinction in the field of bankruptcy law. The mission of the Conference is to study the operation of bankruptcy and related insolvency laws and to consult with Congress from time to time on needed revisions. The organization was formalized in the 1940s from a nucleus of leading bankruptcy scholars gathered informally in the 1930s to assist Congress in the drafting of the Chandler Act of 1938, the first comprehensive revision of the Bankruptcy Act of 1898. The Conference has since continued its interest in bankruptcy law, revitalized its membership from time to time with additional experts, and monitored the operation of bankruptcy law in practice. For over 70 years, the Conference has participated as a consultant to Congress in connection with the crafting of this country's bankruptcy laws. (For more information on the Conference, please view www.nationalbankruptcyconference.org.)

EMERITUS

DAVID COAR
RONALD DEKOVEN
MURRAY DRABOM
DEAN M. GANBY
ROBERT E. GIBBERG
THAD GRUNDY
GEORGE A. HAYN
FRANK R. KENNEDY
CHARLES P. NORMANDIN
JOEL B. ZWIBEL

ADMINISTRATIVE OFFICE
SUZANNE A. BINGHAM
ARMSTRONG & ASSOCIATES
INTERNATIONAL, INC.

Almost 14 years ago (in February of 1990), the House Committee on Energy and Commerce, through the Subcommittee on Oversight and Investigations, issued a Report entitled "Failed Promises - Insurance Company Insolvencies" which concluded, among other things (at pp 57-58):

"The Federal government does not presently regulate the activities and solvency of insurance companies. Congress delegated this function exclusively to the states through the McCarran-Ferguson Act of 1945, but current problems could give rise to reconsidering that delegation. During the course of its inquiry, the Subcommittee has had numerous contacts with state insurance commissions and regulatory officials regarding specific insolvencies and general procedures

The Subcommittee has observed a number of serious weaknesses with solvency regulation in the United States. Some of these appear to be inherent in a system which divides the regulation of insurance companies among the governments of fifty states and the District of Columbia. Others seem to derive from inadequate and misallocated resources, as well as an inability or unwillingness to regulate solvency effectively. Some industry participants believe solvency regulation is simply outmoded and overwhelmed by current demands."

Soon after the issuance of this report, Congressman Dingell co-sponsored legislation (H.R. 1290), titled the "Insurance Solvency Act of 1993" which attempted to deal with a number of the problems associated with the liquidation and rehabilitation of insolvent insurance carriers. While this legislation did not pass, and while little additional legislation on the subject has been introduced in the past decade, Congressman Dingell's bill and the testimony presented at the public hearings thereon nevertheless highlighted a number of issues that continue to plague the effective administration of insolvent carriers, namely:

1. Inconsistent statutory framework for administration of the receivership, allowance of claims, participation in state guaranty funds, etc.;
2. Inability of all parties in interest to participate in the process;
3. Lack of specialized courts;
4. Lack of multi-state jurisdiction for the receivership court;
5. Frequent competition between states resulting from the initiation of ancillary proceedings;
6. Lack of meaningful and consistent judicial precedent; and
7. Lack of meaningful oversight of domiciliary receivers.

Conference members have had first hand experience dealing with the problems enumerated above in cases such as Baldwin United, Executive Life Insurance Co., First Capital Life Insurance Co. and Mutual Benefit Life Insurance Co.

Hon. Richard H. Baker
Page 3

We recognize that any federal involvement in insurance regulation is a controversial matter and that before any change in the existing insolvency system is proposed, certain basic questions need to be explored. They include:

1. Whether the nature of the administration of insolvent insurers is such that the associated problems and inefficiencies can be remedied by application, in some form, of the existing federal bankruptcy system, or whether a separate federal statute is required;
2. Whether it is possible to separate an insolvency system for insurers from other types of regulation of insurers by the states;
3. Whether it is necessary to change the existing state guaranty fund system;
4. Whether there are characteristics of insurance companies which make their receiverships different from that of other corporations.

We appreciate that your plate is quite full at the moment, but if you wish our assistance in formulating suggested solutions to the problems and questions outlined above (including the drafting of proposed legislation), please let us know and we will be happy to help. In particular, we would be prepared to meet with you in person (and to provide you in advance with more extensive materials on the relevant issues) should you, or others on the Subcommittee believe that such a meeting would be worthwhile.

Sincerely,



H. Bruce Bernstein
Chairman, Committee on Insurance
Companies Insolvencies

HBB:mg