# WHO PROTECTS US FROM THE RECEIVER?

**By**

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## I. Introduction

In the discussion of insolvency of insurance companies, the focus is primarily on when or if the regulator should take action to place an insurer in receivership. Before the discussion turns to if and when, however, there needs to be a serious reconsideration of the process once an insurer is placed into receivership. Currently, the receivership process is an inefficient behemoth overseeing billions of dollars in assets with minimal due process protections, accountability or oversight, and is fraught with incentives to prolong rather than close estates. Although there are many changes that could and should be made to the receivership process, there is one change that should be made as the first step to any effort to reform the process – remove the regulators from the receivership business! Without the removal of the regulator from the receivership business, the answer to the title question – Who protects us from the Receiver? – is: "No one!"

## II. To Act or Not to Act is Not the Question

In 1988, a national brokerage organization issued a report prepared for it by a highly regarded insurance consulting firm that urged that financially troubled insurance companies be taken out of the market as soon as possible[1], arguing that the continued operation of troubled companies exacerbates the depth of insolvency. Fifteen years later, in 2003, the successor national brokerage organization issued an updated report by the

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same industry consulting firm concluding that the need for the regulators to take troubled companies out of the marketplace is more urgent today than it was fifteen years ago.[2] In that same period of time – the late 1980s to the present – the industry and some regulators developed new approaches or expanded old ones to extend the life of troubled companies, or to allow for their orderly run-off without formal liquidation or rehabilitation proceedings. Commutation programs, run-off plans or other forms of "self-liquidation", discounting reserves, less-formal supervisory plans and other inventive approaches have been developed in the last two decades and used increasingly by company managers and regulators to hold off formal receivership.

The debate about whether insurance companies should be placed in receivership at the earliest sign of financial trouble, or whether regulators should give companies more leeway in seeking to restore financial viability, is one that may never be fully reconciled. A more urgent issue than how quickly a troubled company should be taken down, however, is what happens to a company once it is placed into receivership.

The receivership system currently in place has been the subject of at least two significant studies in the past few years that conclude that the system:

- lacks essential due process protections,
- lacks transparency,
- lacks accountability,
- lacks supervision or controls,
- lacks incentives for success, but

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- includes incentives to prolong the inefficient management of estates to the detriment of its creditors.

The moment the company is taken over by a receiver, it is no longer under the regulatory oversight of the commissioner, who is now the person running the estate. Instantly, the insolvent entity goes from being a regulated to an unregulated company. Just at the time when a company needs greater supervision and oversight, it becomes an entity with limited supervision by a court, with no regulatory oversight, no significant reporting requirements and no incentive for efficiency or for the operation of a successful business.

The answer to the problems of the current receivership process in the U.S. starts with the removal of the regulators from their role as receiver and restoring them to their role as regulator. This first step will allow the restoration of receivership estates to proper regulatory oversight, enable the imposition of meaningful financial and actuarial reporting requirements on receivership estates, and allow for greater participation by all interested groups – including policyholders, guaranty funds, other creditors, reinsurers, investors and owners – in the receivership process. Only then can a positive response to the question "who protects us from the receiver?" be made.

## III. The Receivership Process

Unlike bankruptcies in other industries, insurance company insolvencies are not handled under the federal Bankruptcy Code, but are governed by state insurance receivership laws. Under the McCarran-Ferguson Act[3], state insurance laws regulating the business of insurance are exempt from preemption by conflicting federal laws that do not relate to the

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business of insurance, unless the federal law specifically provides otherwise. In *United States Department of the Treasury v. Fabe*,[4] the U.S. Supreme Court found that the receivership of insolvent insurance companies was part of the business of insurance and therefore subject to state control.

Most state laws, including New York, provide that when an insurance company is placed in receivership the Commissioner of Insurance of the domiciliary state is appointed receiver. In many states, this "receivership" takes one of several forms, supervision, conservation, rehabilitation or liquidation. In New York, however, Article 74 of the Insurance Law provides only for rehabilitation or liquidation. These two options correspond roughly to reorganizations under Chapter XI or dissolutions under Chapter VII of the federal Bankruptcy Code.[5]

Whether a liquidation or rehabilitation proceeding, the business of the receiver is the business of insurance: assets must be marshaled and invested, policies must be administered, claims must be analyzed and either approved or contested, case and IBNR reserves must be established, reinsurance must be collected or maintained, brokers and agent relationships must be managed, and disputes must be resolved.

All of these activities are also functions of solvent licensed insurance companies. The difference is that for solvent companies these activities are controlled by people whose primary job it is to do so, subject to regulatory and statutory oversight. In the case of receivership, the business functions are controlled by someone whose primary job is to regulate insurance companies, and the regulatory role is lost or, worse, is conflicted with the management role.

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In recognition of the fact that the insurance commissioner does not have the time or expertise to manage the day-to-day operations of an insurance company subject to a receivership, the statutory scheme in most states permits the commissioner to appoint a special deputy to serve as the "on-site" receiver to administer and manage the day-to-day operations. Some states, such as Texas, are developing a competitive group of professional receivers who are accountable to the commissioner and to the receivership court. At the other end of the spectrum is New York, which has an entire bureau, the Liquidation Bureau, responsible for the handling of insurers in rehabilitation or liquidation.

**A. The New York Process**

Although the New York Liquidation Bureau's letterhead includes the New York State Seal, and its masthead proclaims it as the "Liquidation Bureau of the New York Insurance Department", the Liquidation Bureau has taken the position that it is not part of the Insurance Department or any other state agency. The employees of the Liquidation Bureau are employees of the Superintendent of Insurance in his individual capacity as rehabilitator or liquidator. Except for certain "Deputy Superintendents" who have a dual role of working for the Superintendent in both of his capacities – regulator and rehabilitator/liquidator – the employees of the Liquidation Bureau are not employees of the state and are not paid from state funds. They are paid from the assets of the estates they administer.

The Liquidation Bureau's non-public agency persona has been supported by one New York court. In a case where an insured sought information on an estate in liquidation,[6] the Court accepted the Liquidation

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Bureau's argument that it is not a state agency and, therefore, not subject to the Freedom of Information Act.

Without access to information directly from the Bureau charged with the day to day management of estates in New York, one could logically believe that the financial and other statements filed with the Insurance Department as regulator would be available. Unfortunately, once an insurer is placed into liquidation or rehabilitation in New York, the Superintendent has not been compelled to file the same financial statements or actuarial certifications as are required by solvent companies subject to his regulatory jurisdiction. The only "statutory" statements that the Liquidation Bureau believes that it is obligated to prepare are the summary statements on each estate prepared under Section 7405 (g) of the Insurance Law which reads as follows:

> (g) No later than one hundred twenty days after the end of the calendar or fiscal year of a domestic insurance corporation subject to rehabilitation or liquidation, upon whichever standard the corporation conducts its financial affairs, the rehabilitator or liquidator shall submit to the department an annual report of the preceding calendar or fiscal year's activity of such corporation. Such report, which shall pertain only to such corporation's activities and those of the rehabilitator or liquidator as they relate to such corporation, shall include <u>a financial review of the assets and liabilities of the corporation</u>, the claims accrued or paid in that period, and <u>a summary</u> of all other corporate activity and a narrative of the actions of the rehabilitator or liquidator respecting such corporation. This report shall be separate and apart from other reports issued by the liquidation bureau of the department in the normal course of its business. [Emphasis added]

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The reports filed under this section are minimal summaries that bear little if any resemblance to statutory statements, and do not include any actuarial reviews let alone certifications.[7] Although in some instances the Liquidation Bureau has filed statements prepared on statutory forms, these statements are not deemed mandatory by the Bureau, are often incomplete or do not follow statutory accounting principles, and lack any regulatory scrutiny or actuarial support.

These reports are filed collectively by the Liquidation Bureau in one volume as the "Annual Report of the Liquidation Bureau to the New York Superintendent of Insurance". According to the Report filed for 2003,[8] as of year-end 2003 the Liquidation Bureau had thirty one (31) open insurance company estates under its supervision, with assets of approximately $3.6 billion. Interestingly, more than half of these assets are in the two entities under orders of rehabilitation rather than liquidation.

### B. Liquidation v. Rehabilitation

The terms "rehabilitation" and "liquidation" are not defined in the NAIC Insurer Rehabilitation and Liquidation Model Act, or in most state statutes including Article 74 of the New York Insurance Law. However, Section 7403 (a) of the New York Insurance Law provides that:

> An order to rehabilitate a domestic insurer shall direct the superintendent and his successors in office, as rehabilitator, forthwith to take possession of the property of such insurer <u>and to conduct the business thereof</u>, and to take such steps toward the removal of the causes and conditions which have made such proceeding necessary as the court shall direct. [Emphasis added]

And Section 7405 (a) provides that:

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> An order to liquidate a domestic insurer shall direct the superintendent and his successors in office, as liquidator, forthwith to take possession of the property of such insurer and <u>to liquidate the business</u> of the same and deal with such property and business of such insurer in their own names as superintendents or in the insurer's name as the court may direct, and to give notice to all creditors to present their claims. [Emphasis added]

The difference between the two choices is clear: a liquidator is charged with terminating the business of an insolvent insurer, marshalling its assets, identifying claims and eventually distributing its assets to claimants on a fair and equitable basis. On the other hand, a rehabilitator is charged with managing the business of the insurer and attempting to remove the causes of the need for the rehabilitation. If successfully rehabilitated, control should be restored to the company.

Therefore, whereas the business of the receiver -- whether a liquidation, rehabilitation or supervision -- is the business of insurance, in the case of rehabilitation, the business function of the receiver is paramount to any other function. Presumably a company is placed in rehabilitation because the regulator and the court believe there is a possibility of restoring the company to the marketplace as a viable entity. Yet in the past twenty five years, successful rehabilitations – restoring a company to its owners' control – are few and far between.

This record leads to several possible conclusions: (1) that insurance companies are actually in far worse shape than the regulators determined at the time of the rehabilitation order; (2) that receivers do not have the business skills or incentives to successfully rehabilitate companies; or (3) that rehabilitation is not considered a serious option (it is noted, for instance,

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that it is simply the New York Liquidation Bureau and not the New York Rehabilitation and Liquidation Bureau).

### C. The Role of the Guaranty Funds

One can only guess at the total assets under the control of receivers nationwide, and how much of that total represents liquidations, rehabilitations or other receiverships. The Task Force on Insurer Insolvency of the Tort and Insurance Practice Section of the American Bar Association, in its Final Report on the Receivership of Insolvent Insurance Companies, states that "[S]even states accounted for 73 percent of the property/casualty insolvencies in the year 2000",[9] and New York was not one of the seven. Given the size of companies like Executive Life in California, Home Insurance Company in New Hampshire, and Reliance Insurance Company in Pennsylvania, one can only guess at the total assets, but to paraphrase Carl Sagan, there are $billions and $billions – all of which are unregulated!

The available statistics on insurance insolvencies are more focused on the "cost" of insolvencies through the guaranty funds. According to the published statistics of the National Conference of Insurance Guaranty Funds (NCIGF),[10] property/casualty guaranty fund payments have exceeded $14.3 billion since inception through 2002, whereas recoveries from estates have totaled $4.8 billion, for a net cost to the insurance industry through assessments of $9.5 billion.

This focus simply on the payout by security funds as representative of the cost of insolvencies to the industry is too narrow, however. When insurers are placed in receivership, they generally have substantial assets – often anchored by reinsurance – and an active book of business. Unless the

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regulator has completely failed in responding to the financial problems of the insolvent company on a timely basis, there should be substantial assets in the estate at the time of the receivership action. Therefore, over time there should be a substantial recovery by the security funds of the payments made by them. This is not the case, however.

The recoveries from estates recorded by the NCIGF from inception through 2002 are approximately one-third of the payments by the guaranty funds. For most states this represents payments and recoveries over at least a twenty-five year period. It is submitted that a one-third recovery over a twenty-five year period is not a terribly successful rate of return, particularly where the Guaranty Funds generally have priority of claims and in many states the benefit of "early access" to the assets of estates.

Attached is the NCIGF schedule of "Inception-to-Date Financial History by Guaranty Associations" showing the Guaranty Fund payments and recoveries by state. A column has been added to the NCIGF schedule to show the percentage of recoveries to payments by state, and at the end of the schedule there is an addition to the schedule to show the effect of removing the New York numbers from the total. The reason for showing the effect of removing New York from the schedule should be obvious from the recovery numbers. Whereas the recovery from estates for all guaranty funds through 2002 is 33.49%, the recovery for the New York Property/Casualty Insurance Security Fund only 12.8%!

New York is the only state with a pre-assessment structure, and prior to 2003 its statistics were not included in the NCIGF statistics. Over the significant period covered by the statistics, however, the difference in

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assessment structure is not an explanation of or excuse for the abysmally poor recovery rate by New York. Another quirk in the New York statutory scheme, however, may provide a partial explanation.

In every state but New York, the guaranty funds are separate entities with their own boards, managements and employees. In New York the Property/Casualty Insurance Security Fund is not a separate entity but is simply a checking account available to the Superintendent of Insurance as Liquidator or as Rehabilitator. [11] (Curiously the life insurance guaranty fund in New York is set up as a separate entity in line with other state's guaranty funds[12]). There is no separate board, no separate management and no representation by the insurance industry that could have an influence on the efforts to pursue greater recovery on behalf of the fund.

The low percentage of recoveries from estates is a significant cost to the industry, and this loss can be attributed in large part to the receivership system itself.

### D. The Criticisms of the Process

As stated, the principal problem is that when the regulator of a US insurance company petitions the court to place the company into receivership – whether conservation, rehabilitation or liquidation – it is the regulator who is appointed the receiver. The moment the company is taken over by the receiver it is no longer under the regulatory oversight of the commissioner: the regulator is now the person responsible for running the business of the estate.

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Just at the time when an insurer needs greater regulatory supervision and oversight, it becomes an entity with minimal supervision – usually by a court with limited time or expertise. The insolvent estate instantly has no regulatory oversight, no significant reporting requirements and no incentive for efficiency or for the operation of a successful business. Furthermore, the entity is now being run by the person responsible for placing it in receivership.

In May 2000, the Task Force on Insurer Insolvency of the Tort and Insurance Practice Section of the American Bar Association, whose members are experts in all aspects of the receivership process, issued its Final Report on the Receivership of Insolvent Insurance Companies.[13] In its Report the Task Force reviewed the current state insurance receivership system and identified three significant problems: (a) the selection of qualified receivers; (b) the accountability for and an oversight over their performance; and (c) the lack of incentives in statutory authority and procedures to bring estates to closure. The Report, at page 5, summarizes these three issues as follows:

> Under most state laws, the insurance commissioner, who is the statutory receiver of an insolvent insurer, appoints a special deputy receiver to administer the estate. While some individual deputy receivers have been well qualified to do the job, the Task Force believes that the current appointment process generally does not provide adequate assurances that qualified persons will be administering insurance receiverships.
>
> There is also inadequate oversight over receivers in many states. Insurance departments have limited resources for such functions. State receivership courts routinely approve the actions of receivers because there is no adverse party before the court to challenge a receiver's activities. Because

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> there are few insurer insolvencies, judges may be assigned an insurer insolvency only once in their careers. Receivership courts do not generally gain the insolvency expertise needed to effectively oversee an insolvent insurer's estate.
>
> Appointed deputy receivers often have little incentive to bring an estate to prompt closure as, by doing so, they would render themselves unemployed. Even where some receivers want to bring estates to closure, they sometimes lack the statutory authority and procedures. The current state insurance receivership system has a virtual built in incentive to prolong the administration and early closure of estates.

Furthermore, in November 2002, the Center for Risk Management and Insurance Research at Georgia State University issued a treatise on Managing the Cost of Property-Casualty Insurer Insolvencies in the U.S.[14] This treatise concludes at page 1:

> Our examination reveals several aspects of the U.S. insurer receivership system that contribute to higher insolvency costs. Fundamentally, there are incentive conflicts between regulators, receivers and other stakeholders that the system fails to control. Receivers have incentives to prolong receiverships and inflate costs (to increase their compensation) as these costs are passed on to parties that have little ability to influence the receivers' performance. <u>There is little transparency and accountability, and regulators and the courts do not exercise adequate oversight of receivers and receiverships</u>. [Emphasis added].

These basic criticisms of the Receivership process – lack of transparency, lack of accountability and lack of adequate oversight – are a looming black cloud over any significant debate on the issue of whether or

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not troubled insurance companies should be taken out of the market more quickly by regulators.

### E. The Receiver's Conflict

The disciples of swifter and more draconian responses to solvency concerns believe that bolstering weak companies only increases the scope of the problem, and that pulling the plug is the best way to limit the ultimate loss. On the other side are those who believe that greater cooperation and flexibility by regulators can make better use of imaginative schemes to successfully restore troubled companies to financial viability.

While the proponents of each position can probably point to numerous anecdotal examples in support of their position, the statutes of most states already include extremely broad powers to take action against an insurance company in its jurisdiction. The most common ground for placing an insurer into receivership is a "finding" of insolvency, an often subjective and elusive concept. However, insolvency is not the only subjective ground for commencing a receivership proceeding against an insurer. Two grounds of particular note found in the NAIC Model Liquidation Act,[15] adopted by most states, are that:

- The further transaction of business would be hazardous (financially or otherwise) to policyholders, creditors, or the public based on the insurer's condition; or
- The Commissioner believes that, upon good cause shown it is not in the best interests of policyholders, creditors or the public to allow the insurer to continue conducting business.

Thus the commissioner of insurance as regulator has extensive authority to act against an insurance company – authority that is more often

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than not based on subjective rather than objective criteria. This authority also brings with it great urgency on the part of the commissioner as receiver to ensure that the action taken as regulator was justified and proper. Obviously, the ability to demonstrate the propriety of the receivership action is enhanced by direct and exclusive access to the records of the company in receivership, as is the ability to manipulate those records to support the action.

Placing the regulator-now-receiver in this position needlessly raises concerns for the fairness of the receivership process, and places a heavy burden on even the most conscientious commissioner.[16]

## IV. Recommendations

The Torts and Insurance practice Insolvency Task Force made a number of good, well considered recommendations in its Final Report. Among these recommendations was the following:

> Transfer the role of the insurance commissioner in appointing and overseeing the special deputy receiver once a final order of liquidation has been issued, to a three-person panel, consisting of representatives of the commissioner, the guaranty funds and the receivership court. This panel would select and oversee the receiver, subject to the jurisdiction of the receivership court.[17]

Although this may appear to be a radical change along the lines suggested in this treatise – take the regulator out of the receivership business – it really does not change the current reality in most states, and would likely leave the regulator very much in control of and running the receivership process. In most states today the regulators would certainly say that they work closely with the guaranty funds and the courts in administering the

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estates of insolvent insurers. Therefore, the regulators would conclude that the change proposed by the Task Force is unnecessary and disruptive.

To the contrary, the Task Force recommendation does not go far enough. The regulators need to be removed completely from the receivership business except in a continuing role as regulator. Anything short of removal will leave the same conflicts and disincentives in the process that could become subject to further waste and abuse.

A more productive plan should include:

- An automatic hearing on the basis for the requested receivership action (i.e. liquidation or rehabilitation). In other words, the regulator should be required to present prima facie support for its action, and if the basis is the insolvency of the insurer, the regulator should be required to present proof of insolvency, including actuarial testimony on reserve issues.
- An evidentiary hearing on the basis of the receivership action should be required even if management consents to the petition or if no one responds in opposition.
- This requirement for a showing of proof is not to make it harder for regulators to take action against troubled insurers, but to ensure that there is transparency and accountability in the process from the onset.
- There should be the opportunity for direct involvement in the receivership process by all legitimately interested parties in the process as in a bankruptcy proceeding, including input from policyholders, guaranty funds, other creditors, reinsurers,

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investors and shareholders, and in the case of supervision or rehabilitation, the company's management.

- The role of the commissioner of insurance as regulator of the insolvent company should not end with the receivership order, but should continue. The commissioner can be of far more value to the court and the receiver in the commissioner's principal and usual role as regulator, rather than attempting to make the commissioner the manager of an insurance business.
- There should not be the fear of providing financial incentives to professional receivers for successful receiverships. On the other hand, there should be regulatory consequences to receivers that do not comply with their statutory, regulatory or fiduciary responsibilities.
- The concept of rehabilitation should be restored in practice rather than just as purgatory before liquidation.

## V. Conclusion

The receivership system needs to be substantially reformed before the debate over when companies should be placed into the system can have any significant meaning or resolution, and the reform of the current system must start with taking the regulators out of the receivership business and returning them to their core regulatory responsibility.

The current system does a statistically poor job of recovering and distributing assets in a liquidation proceeding, and impedes any real possibility for the true rehabilitation of a borderline insolvent company. Placing a regulator in charge of winding-up a company, or operating a

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company that has the potential for restoration to the marketplace, is unfair to the company, its policyholders, the rest of the industry that must make up the losses through the guaranty funds. It is unfair to the commissioner as well, who now must act as a business manager rather than as a regulator.

Billions of dollars are wasted through an inadequately supervised receivership process, which lacks transparency, accountability and incentives to succeed. The insurance industry is the big loser from this failed process, yet the industry is remarkably sanguine about the tremendous waste inherent in the process. This waste falls squarely on the shoulders of the industry, and ultimately its customers. It is time for the industry to demand that there be accountability in the process.

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## Schedule A

National Conference of Insurance Guaranty Funds
Inception-to-Date Financial History by Guaranty Association
(Inception through 2002)

| Guaranty Association | Guaranty Fund Payments | Recoveries | Net Expenses | Percentage of Recovery |
|---|---|---|---|---|
| **Alabama** | 98,516,272 | 42,860,589 | 55,655,683 | 43.51% |
| **Alaska** | 27,908,189 | 18,211,005 | 9,697,184 | 65.25% |
| **Arizona** | 124,046,464 | 43,517,130 | 80,529,335 | 35.08% |
| **Arkansas** | 37,541,563 | 10,679,675 | 26,861,888 | 28.45% |
| **California** | 3,103,838,821 | 1,426,290,693 | 1,677,548,128 | 45.95% |
| **Colorado** | 81,865,770 | 25,430,858 | 56,434,912 | 31.06% |
| **Connecticut** | 145,713,913 | 68,621,466 | 77,092,447 | 47.09% |
| **Delaware** | 42,591,897 | 20,213,789 | 22,378,108 | 47.46% |
| **D.C.** | 13,213,789 | 2,660,827 | 10,538,175 | 20.16% |
| **Florida** | 1,530,910,497 | 502,604,995 | 1,028,305,502 | 32.83% |
| **Florida WC** | 338,076,779 | 155,758,084 | 182,318,695 | 46.07% |
| **Georgia** | 144,905,958 | 46,610,648 | 98,295,310 | 32.17% |
| **Hawaii** | 259,375,237 | 11,278,936 | 248,096,301 | 4.35% |
| **Idaho** | 18,260,954 | 13,024,925 | 5,236,029 | 71.33% |
| **Illinois** | 414,841,819 | 141,166,770 | 273,675,047 | 34.03% |
| **Indiana** | 35,591,748 | 15,280,445 | 20,311,303 | 42.93% |
| **Iowa** | 63,518,951 | 42,845,182 | 20,673,769 | 67.45% |
| **Kansas** | 55,550,204 | 22,909,100 | 32,641,104 | 41.24% |
| **Kentucky** | 85,924,645 | 32,778,991 | 53,145,654 | 38.15% |
| **Louisiana** | 791,647,765 | 142,568,440 | 649,079,325 | 18.01% |
| **Maine** | 116,915,031 | 53,304,014 | 63,611,017 | 45.59% |

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| Guaranty Association | Guaranty Fund Payments | Recoveries | Net Expenses | Percentage of Recovery |
|---|---|---|---|---|
| **Maryland** | 136,899,371 | 56,329,044 | 80,570,327 | 41.15% |
| **Massachusetts** | 297,829,098 | 89,884,440 | 207,944,659 | 30.18% |
| **Michigan** | 232,631,189 | 109,957,382 | 122,673,807 | 47.27% |
| **Minnesota** | 309,935,820 | 20,043,398 | 289,892,422 | 6.47% |
| **Mississippi** | 59,605,605 | 19,846,839 | 39,758,766 | 33.30% |
| **Missouri** | 124,959,680 | 18,697,477 | 106,262,203 | 14.96% |
| **Montana** | 50,066,315 | 29,137,520 | 20,928,795 | 58.20% |
| **Nebraska** | 33,275,864 | 11,576,153 | 21,699,711 | 34.79% |
| **Nevada** | 47,628,490 | 22,391,819 | 25,236,671 | 47.01% |
| **New Hampshire** | 46,986,852 | 13,670,154 | 33,316,698 | 29.09% |
| **New Jersey** | 450,789,779 | 174,450,329 | 276,339,450 | 38.70% |
| **New Jersey WC** | 24,389,072 | 370,605 | 24,018,467 | 1.52% |
| **New Mexico** | 39,215,973 | 15,114,472 | 24,101,501 | 38.54% |
| **New York** | 1,875,112,803 | 239,965,731 | 1,642,969,873 | 12.80% |
| **North Carolina** | 93,863,938 | 98,786,885 | (4,922,947) | 105.24% |
| **North Dakota** | 5,254,027 | 3,684,870 | 1,569,157 | 70.13% |
| **Ohio** | 313,289,796 | 145,079,454 | 168,210,342 | 46.31% |
| **Oklahoma** | 131,814,884 | 47,064,784 | 84,750,100 | 35.71% |
| **Oregon** | 71,769,721 | 44,175,200 | 27,594,521 | 61.55% |
| **Pennsylvania** | 625,855,477 | 180,552,582 | 445,302,895 | 28.85% |
| **Pennsylvania WC** | 110,382,132 | 10,160,143 | 100,221,989 | 9.20% |
| **Puerto Rico** | 226,489,920 | 89,017,461 | 137,472,459 | 39.30% |
| **Rhode Island** | 112,781,717 | 47,334,822 | 65,446,895 | 41.97% |
| **South Carolina** | 84,421,712 | 50,097,097 | 34,324,615 | 59.34% |
| **South Dakota** | 17,408,738 | 5,992,679 | 11,416,059 | 34.42% |
| **Tennessee** | 57,841,429 | 17,041,995 | 40,799,434 | 29.46% |

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| Guaranty Association | Guaranty Fund Payments | Recoveries | Net Expenses | Percentage of Recovery |
|---|---|---|---|---|
| **Texas** | 882,051,601 | 247,737,906 | 634,313,695 | 28.09% |
| **Utah** | 12,268,786 | 4,960,540 | 7,308,246 | 40.43% |
| **Vermont** | 16,690,491 | 6,238,058 | 10,452,433 | 37.37% |
| **Virginia** | 80,016,458 | 21,230,465 | 58,785,993 | 26.53% |
| **Washington** | 77,994,653 | 49,662,345 | 28,332,308 | 63.67% |
| **West Virginia** | 59,919,035 | 22,494,696 | 37,424,339 | 37.54% |
| **Wisconsin** | 87,590,635 | 46,487,835 | 41,102,800 | 53.07% |
| **Wyoming** | 6,427,851 | 3,150,308 | 3,277,543 | 49.01% |
| **Grand total** | 14,334,200,391 | 4,801,002,050 | 9,541,021,142 | 33.49% |
| **Less: NY** | 1,875,112,803 | 239,965,731 | 1,642,969,873 | 12.80% |
| **Total w/o NY** | 12,459,087,588 | 4,561,036,319 | 7,898,051,269 | 36.61% |

NOTE: The Column "Percentage of Recovery" and the "Total w/o NY" material were added to the NCIGF Chart bythe author. The only other change to the NCIGF Chart was the addition of "(Through 2002)" in the caption.

Prepared as of October 2004

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## Endnotes:

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[1] "Managing Insurer Insolvency", by Stewart Economics, Inc., November, 1988, copyright 1988 by The National Association of Insurance Brokers.

[2] "Managing Insurer Insolvency 2003: Updating the 1988 Report", prepared for the Foundation for Agency Management Excellence by Stewart Economics, Inc., copyright 2003 by the Council of Insurance Agents and Brokers.

[3] 15 U.S.C. §§1011-1015

[4] 508 U.S. 491 (1993)

[5] For a full discussion and understanding of the receivership process, see the following:

"Insurance Insolvencies – Planning Ahead", Peter H. Bickford, prepared for The American Conference Institute Conference on Reinsurance Claims and Recovery, New York, NY, May 2002;

"Receivership of Insolvent Insurance Companies", Final Report of the Tort and Insurance Practice Section Task Force on Insurance Insolvency, May, 2000, as updated January 2003; and

"Managing the Cost of Property-Casualty Insurer Insolvencies in the U.S.", Martin F. Grace. Robert W. Klein and Richard D. Phillips, Center for Risk Management and Insurance Research, Georgia State University, November 2002.

[6] *Consolidated Edison Company of New York, Inc. v. The Insurance Department of the State of New York*, 532 NY Supp.2d, 140 Misc.2d 969 (Sup.Ct., NY County, 1988).

[7] "Annual Report of the Liquidation Bureau to the Superintendent of Insurance of the State of New York on Year 2003 Activities of Insurance Corporations Subject to Rehabilitation or Liquidation," Issued April 30, 2003.

[8] 2003 Annual Report of the Liquidation Bureau, *supra*, note 7.

[9] "Receivership of Insolvent Insurance Companies", *supra*, note 5, at page 6.

[10] Reproduced from the National Conference of Insurance Guaranty Funds website at www.ncigf.org.

[11] See New York Insurance Law Article 76, Property/Casualty Security Funds, §7601 through §7614.

[12] See New York Insurance Law Article 77, the Life Insurance Company Guaranty Corporation of New York Act.

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[13] "Receivership of Insolvent Insurance Companies", *supra*, note 5.

[14] "Managing the Cost of Property-Casualty Insurer Insolvencies in the U.S.", *supra*, note 2.

[15] The National Association of Insurance Commissioners Insurer Rehabilitation and Liquidation Model Act, reprinted in III NAIC Model Laws, Regulations and Guidelines at 551-1, et seq. (July 2002).

[16] For a discussion of the lack of due process in the Insurer Rehabilitation and Liquidation Model Act, see "A Quiet Tyrant: The Insurers Rehabilitation and Liquidation Model Act" by Peter H. Bickford, Mealey's Litigation Reports – Insurance Insolvency, November 1, 1995.

[17] "Receivership of Insolvent Insurance Companies", *supra*, note 5, at page 9.

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