

Protecting Consumers: New Opportunities for Cooperation

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Regulators are Doing a Good Job: P&C Insolvencies 2000-2021



The Short Runway Insolvency is an Outdated Biz Model for the Protection of Insurance Consumers

The few companies that fail are more complex than ever:

Multi-state, multi-line carriers

High volume of electronic claims files

Claims operations delegated to TPAs/Multiple IT systems

**Limited specialized insolvency data management expertise
due to fewer insolvencies**

The Need

Consistent and timely transfer of usable claims data via UDS to guaranty funds and receivers at the time of insolvency

Achieved through enhanced PRE-LIQUIDATION coordination (Regulators/Receivers/Guaranty Funds)

- ✓ **Smooth, seamless (as possible), transitions are important for the reputation of the U.S. state regulatory system**
- ✓ **Delay and appearance of chaos undermines stakeholder confidence**

Public Policy & Technology Solutions Exist

Level Setting: UDS

- ✓ Specialized NAIC Communications Protocol developed for GFs and Receivers to read and process claims
- ✓ Not an industry standard, but regulator approved; data must be converted for receivers and guaranty funds to meet their statutory obligations to consumers—this can be tricky.
- ✓ NCIGF has developed and maintains Data Mapper and SUDS, the support software for UDS

**UDS-Back to the Receiver: Monthly,
Quarterly and Annual Reporting from GFs**

Urgency

- ✓ Ongoing periodic benefits for workers compensation claimants
- ✓ In auto claims, essential transportation for work or medical needs
- ✓ Smooth, seamless as possible, transitions are important for the reputation of the US state regulatory system
- ✓ Delay and appearance of chaos is never good

Impediments

- ✓ Files controlled by third parties using various data systems
- ✓ Third parties may not treat transition with the same urgency as receivers and Gas
- ✓ As liquidation is imminent, TPA may be laying off people due to loss of business
- ✓ High volume of data – imaged files – takes time to transition
- ✓ Antiquated Data systems

The Technology Solution



NCIGF MEMBERS HAVE INVESTED HEAVILY IN THESE COMPETENCIES AND ESTABLISHED A SUBSIDIARY (GSI) TO ASSIST RECEIVERS WITH THE EXTRACTION AND CONVERSION OF CLAIMS DATA TO UDS



NCIGF AND GSI CAN STEP IN AT THE EARLY, CHAOTIC, BUT CRUCIALLY IMPORTANT PARTS OF AN INSOLVENCY. WE MAKE SURE DATA GETS WHERE IT NEEDS TO GO, THEN STEP AWAY ONCE THE TRANSITION BECOMES MORE ORDERLY



ESSENTIAL TO MAKING THIS WORK FOR ALL PARTIES IS DELIVERY OF THESE SERVICES THROUGH A LEGALLY SEPARATE SUBSIDIARY TO MITIGATE CLAIMS-PAYING RESPONSIBILITIES TO NCIGF AND ITS MEMBER GUARANTY FUNDS

The Public Policy Solution

A Confidential Exchange of Fundamental Information

- Regulators, Receivers & GFs
- Well Before the Liquidation Order is Signed

Advantages

- ✓ Regulators can gain valuable insight into data transition readiness and complex product lines
- ✓ GFs involved can more fully prepare to pay claimants
- ✓ Receivers will have usable data sooner in order to track reinsurance recoveries and process POCs.

Confidential Information to Be Shared

- ✓ Triggered when regulators see an insurer headed toward insolvency
- ✓ Access to the troubled insurer policy information and claims records in advance of a liquidation.
- ✓ Advance information about troubled insurer TPA relationships. (large quantities of data in unknown formats and questionable condition/on unknown computer systems/security controls) Ownership of and gaining access to this data is crucial.

This information is typically deemed confidential and protected from disclosure under the state Holding Company and Examination Acts.

- ✓ In some states regulators may have the authority to disclose to GFs under current law

Data Elements of a Pre-Liquidation Readiness Strategy

1. Demonstration and documentation that a troubled carrier's data is segregated from third party data and can be extracted completely and quickly (within 24 hours)
2. Understanding all troubled carrier's systems (including legacy) and the UDS framework
3. Skill and resources to extract large data sets of sensitive information and transmit them securely

**GFs and Receivers need enough data, quickly enough to make “UDS”:
Claim files, file notes, payments/transactions, and images**

With meaningful preplanning, we can help make the export even easier

On the Horizon: Cyber Liability Coverage

- ✓ Policies providing CL coverage use broad and non-standard language requiring the insurer to cover certain losses and provide ancillary services in case of a cyber incident
- ✓ GFs & Receivers will need additional time to coordinate with regulators to review and analyze the CL policies of a member insurer heading toward imminent insolvency to determine and fulfill statutory obligations

This is one example of a complex product line that needs attention BEFORE insolvency!

Developments Moving the Needle

2021 Holding Company Act Changes Already Adopted by the NAIC As a Result of a Referral from RITF!

- ✓ More controls on affiliated companies holding claims data and other essential information.
- ✓ IT Examination Working Group has adopted additional steps for the examination structure to address new holding company law requirements.

**Combined with new requirements for TPA UDS competency
@ appropriate RBC level, these are critical readiness tactics
already in place**

We Have Proposed A Next Step



NAIC model law amendments or guidance to facilitate pre-receivership cooperation and coordination

- ✓ Further revisions to state holding company laws and regulations, exam laws and guaranty fund acts in some states. Others could do this with a memorandum of understanding (MOU) providing for and preserving confidentiality.
- ✓ Information sharing would improve cooperation and coordination
- ✓ Addresses our mutual interest of protecting insurance consumers
- ✓ NCIGF has amendments and a draft MOU ready for consideration

Traction: 2022 Proposals in IL & CA based on the NCIGF amendments

How it Would Work

Once a Regulator makes a finding of insolvency and subsequent liquidation in the next 3-12 months, we recommend the following:

- Step 1:** Regulator schedules initial meeting with GF manager (no documents necessary)
- Step 2:** First meeting covered by statute being proposed or an MOU (If delinquency proceeding is highly likely then detailed confidentiality agreement is required to move forward)
- Step 3:** GFs begin review of claim data, policy information and other documents to prepare for an orderly transfer
- Step 4:** Regulator and GF manager develops plan for transition to liquidation (other GFs may be involved)
- Step 5:** GFs can advise Regulator on condition and location of data which may be useful to Regulator in deciding when to sign liquidation order

Much of this could be done during a rehabilitation period if there is sufficient time and access

Protecting Communications, Part I



- ✓ Guaranty Funds have a huge incentive to maintain confidentiality.
- ✓ Guaranty Funds understand the sensitivity of this information and the need to keep it confidential
- ✓ Guaranty Funds have a proven track record with confidential agreements with Receivers that are standard for every rehabilitation/liquidation
- ✓ NOLHGA and the life funds have been collaborating closely at the troubled company level for several years.
 - ✓ The role of the property casualty funds (and NCIGF) may differ, but this precedent matters and demonstrates feasibility.

Protecting Communications, Part II

- ✓ MOU extends the confidentiality required by the statute to any guaranty fund receiving the information
- ✓ MOU could be an alternative approach where states have this authority under current law
- ✓ Our model MOU can be tailored to address any specific confidentiality concerns
- ✓ Confidential information will NOT be shared with state Board members until such time there is a public court proceeding

Our Proposal is Consistent With the Public Policy Evolution of P&C Guaranty Funds and NCIGF



2008 Financial Crisis: DFA Title II is still in effect and requires state readiness for companies of any size (not only SIFIs)

Regulators Depend Upon NCIGF's Coordination of the State Guaranty Fund Response to Multi-State Insolvencies

- **Title II Receivership coordination plans adopted by state regulators stress coordination with NCIGF both before and in response to a crisis (Receivers Handbook pp. 629-630).**
- **NCIGF and coordination between NAIC and NCIGF is cited 44 times in Receiver's Handbook with numerous references to NCIGF website**
- **NCIGF and NOLHGA are invited to participate in the confidential Receivership Financial Analysis Working Group (RFAWG) at the NAIC**

Thank You For Your Time!

This Conversation is Underway

- ✓ Constructive & collaborative
- ✓ Readiness in general, data transfer specifically
- ✓ Goal: A near seamless safety net for consumers
- ✓ Strengthen state insurance regulation

We Are on the Same Team!

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