

Receiver's Handbook for Insurance Company Insolvencies

CHAPTER 5—CLAIMS

II. ESTABLISHING A CLAIMS PROCEDURE

E. Proof of Claim Forms

Once the list of claimants is developed, the receiver typically sends a proof of claim form to each person identified. The proof of claim form, which is the basic prerequisite to the allowance of a creditor's claim, serves a number of useful purposes. First and foremost, it identifies the claimant and the nature and extent of the claim. The receiver also may use the form to calculate the extent of the insolvency, to identify any obligations the claimant may owe the insurer (e.g., through the identification of any setoffs), to set reserves and to determine the estate's right to collect reinsurance.

Many proof of claim forms have been developed over the years. Claim forms to be used in any particular proceeding should be tailored to the circumstances presented. For example, the receiver should consider whether claims forms must be filed by all claimants. Most state statutes permit the receiver to dispense with the issuance of claim forms in a life receivership. The receivership simply draws a list of creditors from the insurers' books and records. In many settings, filing with a guaranty association may constitute filing with the receiver for purposes of satisfying a bar date, but the receiver may need additional information from the claimant that the guaranty association did not elicit. Guaranty associations and receivers should coordinate the claims filing process. With receivership court approval, receivers may deem open claims, as reflected on the books and records of the insolvent insurer, to be timely filed claims. In such circumstances, proofs of claim need not be filed by insureds or third-party claimants for these open claims.

Before any form is created, the receiver will want to determine the number and types of claim forms that will be needed. The first task is to identify in broad categories the various classes and types of claimants. Then the receiver can determine what information is required for each type of claim. With this information, specific proof of claim forms can be developed for each major type of claimant. Some receivers use only one claim form, but use control numbers (such as an alpha-numeric system) to designate the type of claim presented in the form. This saves the cost of developing separate forms. On the other hand, in surety receiverships, the receiver may wish to use a separate proof of claim form for each type of bond. Either way, the objective is to minimize the amount of exchange proof required between the claimant and the receiver in order to adjust and later adjudicate a claim.

The more specific the information that can be elicited in the initial proof of claim form, the less follow-up will be required. Receivers should be encouraged to request submissions from creditors which the company in receivership has reinsured in accordance with the format of reporting under the reinsurance contracts in question. This should just be complemented by a comprehensive overview and breakdown of the total claimed by such reinsured creditor. The receiver, however, may require the claimant to present supplementary information or evidence, may take testimony under oath, may require production of affidavits or depositions, or may otherwise obtain additional information or evidence (IRMA Section 702 C). The receiver may send prompt determinations regarding the class of creditor, if any, that applies for each proof of claim, leaving the determination of an approved amount open for a later date. The class determinations should be subject to a right of appeal by the claimant. The prompt determination of creditor class permits a faster wind down, and also facilitates more prompt calculations and distributions for creditor claims. It may be unnecessary to determine the amount of receivership claims for a creditor class if receivership assets are unavailable for that creditor class.

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Most statutes require claimants to provide certain basic information. (See IRMA Section 702.) The following information typically is required:

- The nature and particulars (e.g., the who, what, when, where and amount) of the claim asserted;
- The consideration for the claim;
- The identity and amount of any security held on the claim;
- Any payments made or received on the claim;
- A copy of each written instrument upon which the claim is founded or a statement of the reasons a copy of the instrument(s) cannot be provided;
- The amount and a description of the source of any salvage or subrogation collected or which may be collected;
- An affirmation (notarized) that the insurer justly owes the sum sought and that there is no setoff, counterclaim or defense to the claim (IRMA Section 702 A); and,
- The name and address of the claimant and any attorney representing the claimant.

Additionally, IRMA requires that the claimant provide: 1) its Social Security number (SSN) or federal employer identification number; and 2) any right of priority of payment or other specific right asserted by the claimant (IRMA Section 702 A).

The receiver may decide to use the same claims and policyholder service forms that the insolvent company previously employed, because the information required is fairly uniform, and the use of different forms could be confusing to the service providers and policyholders. Additionally, many estates make proof of claim forms available for easy access via the receiver's office website.

The receiver decides what additional supporting documentation will be required to prove a claim and in what form it should be submitted. (See IRMA Section 702 C.) Different documentation will be needed for different types of claims. For example, death benefit claims require the furnishing of a death certificate. Accident and health claims may require a physician's certification and copies of medical bills. Return premium claims may be established simply by submitting a bordereau of all cancelled policies and return premium amounts attributable thereto, while computer summaries may be required to prove cumbersome or complicated claims. When policyholders claim return premium, the receiver may require additional documentation, such as copies of cancelled checks. Reinsurance claims may require yet another form of documentation. Life insurance claims usually require the policyholder to furnish the original policy. If the original cannot be provided, a copy thereof may suffice. If neither the original nor a copy of the policy can be furnished, a lost policy form should be executed and submitted to the receiver.

The level of detail required in the proof should conform to industry standards and statutory guidelines, as well as make it convenient for the receiver to communicate with the claimant and add the information to its database for claims management. Some estates may not process a claim that does not include all the requested information. One of the most critical needs of general creditors involves financial information on an insolvent ceding company. Providing regular financial statements of the company would be beneficial to interested parties. ~~Keep in mind that there may be other potential recipients or users of this information,~~ such as guaranty associations, reinsurers, and other receivers or regulators. It should be noted, that whenever a reinsurer of the company in receivership has claims against the estate or where a reinsured creditor at the same time is a reinsurer of the estate, receivers should utilize the guidance provided in sub-section F. Coordination and Communication with Reinsurers.

The receiver must determine who may submit a proof of claim on behalf of an entity and what form of verification is required. Because corporations can act only through their designated agents, it is best to

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determine and inform corporate claimants who may sign on their behalf (e.g., officers, directors, managing general agents or attorneys). Generally, a director does not have authority to act for a corporation because directors must act as a body unless otherwise authorized by the company's by-laws. In most instances, the notarized signature of an individual who attests to his authority to do so will suffice. The signature of a trustee should be received when dealing with trust claims, and the trust document should be provided to the receiver to verify the identity of the trustee. If in doubt as to the capacity or authority of an individual who submits a claim on behalf of a corporation, partnership or trust, the receiver may require that the claimant provide a certificate of incumbency, signed by another authorized officer or representative, as to the signer's authority to bind the entity. In the case of a corporation, partnership, trust or individual, the receiver may also require a signature guarantee if in doubt as to the identity of the individual executing the claim. Careful drafting of the attestation will ensure that such authorization has been given to the signatory. Note that the availability of notarizations may depend upon the residence of the claimant. Although most foreign countries maintain their own systems for verification, notaries may be found at most American embassies.

When developing proof of claim forms, it is helpful to have in mind the volume, type and class of claims that creditors may submit. Claimants, including guaranty associations and reinsured creditors, may have hundreds of outstanding claims against the insured. Some claimants may be permitted to file a single omnibus proof of claim for all claims against the receivership estate. IRMA Section 702 D allows a single omnibus claim to be filed by guaranty associations, which may be periodically updated without regard to the bar date, and the guaranty association may be required to submit a reasonable amount of documentation in support of the claim. Also, for reinsured creditors, the receiver will want to decide whether these claims need to be submitted individually or on a bordereaux basis. There are certain advantages to bordereaux submissions, which are dictated by the sheer volume of claims, the requirements of the treaty and the receiver's need to efficiently process reinsurance recoveries. Ceding treaty retrocessionaires may only be able to file claims on bordereaux. There are other claims submission methods that might be used for reinsurance recoveries, depending upon the complexities of the situation. In the final analysis, the preferred submission approach ordinarily is the one which permits an orderly and efficient administration of claims on a computer system, and often closely follows the procedures formerly in effect when the company was in operation.

In some states, if applicable, claims must be submitted on the Liquidator's proof of claim form unless the Liquidator grants an exception. Therefore, one approach to the claims filing process for reinsurers would be to allow for claims to be submitted in any format acceptable to the receiver; if the receiver (or the court) agrees, a claim would not have to be submitted on a proof of claim form. For example, some states do not require that the federal government submit its claims on proof of claim forms. Similarly, some states allow reinsurance the option to file contingent and undetermined claims where the value of the claim is unknown at the time it is submitted to initially indicate a contingent claim value of \$1.00 when filing their claim and submit supplemental information at some future designated date. This allows the reinsurer to update their claims until a final bar date has been set near an estates closure date. In some states, both reinsurers and guaranty associations have utilized this practice to the benefit of all parties involved.

To the extent omnibus proof of claims by reinsurers/intermediaries are allowed under your state's law, another consideration to expedite the filing of certain types of claims would be to allow reinsurers/intermediaries to file "place holder" claims, like those of guaranty associations, whereby the reinsurers/intermediaries timely file claims but are permitted to supplement their claims as additional information becomes available later in the receivership process. When appropriate, deem filing practices would be allowed for certain claims in receiverships. Generally, such orders are only sought in situations

involving claims for which adequate claims documentation/proof exists within the records of the insolvent insurer.

F. Coordination and Communication with Reinsurers

Coordination and communication between receivers, reinsurers and other interested parties can be challenging. This can be influenced by what language is in a state's receivership laws and whether they are based upon provisions of the NAIC's *Insurers Rehabilitation and Liquidation Model Act* Section 40 or the current *Insurer Receivership Model Act* (555) Sections 701 (Filing of Claims) and 702 (Proof of Claim) or otherwise known as IRMA.

Coordination and communication involves gaining an understanding of the reinsurance programs and establishing communication protocols. This can be accomplished by compiling records and retaining knowledge of the individual institutions and considering the following:

- Identify all current and prior intermediary and reinsurer relationships, and locate: agreements with reinsurers and intermediaries, cut-through endorsements, letters of credit, and placement files.
- Document company staff's knowledge of reinsurance operations, and obtain contact information for reinsurers and intermediaries.
- Review the reporting and accounting requirements for reinsurance contracts. Determine the company's procedures for tracking and reporting balances on assumed or ceded reinsurance.
- Review and reinsurance placed with affiliated parties to determine if appropriate reporting and risk transfer has taken place.
- Identify any ongoing disputes between the company and reinsurers, and obtain all communication related to disputes.

Once a receivership order has been entered, whether it is for rehabilitation or liquidation, one of the first actions taken is to mail notices of the receivership to the company's agents, policyholders/members, reinsurers, and other parties related to the receivership. These notices should contain information regarding the claims processing filing process and references to the receiver's office website. The website should be kept updated with receivership information relevant to interested parties. The receivership website should not only provide information for consumers, but also provide an overview of the current status of the receivership including past and upcoming deadlines as well as provide access to court orders relevant to the receivership. To simplify the administration of the website, such information can be provided in the format of a simple table as some receivers' websites already do. Similar receivership notices are also provided to insurance departments of other states where the company is licensed.

Where staffing, resources and availability permits, reinsurance specialists on staff can serve as the primary liaison with a reinsurer or intermediary for most matters relating to reinsurance during the life of the receivership. Establish contact personnel, and institute a communication process to provide notice of claims and claims status on a regular basis.

The receiver or state liquidation office should compile a list of all reinsurance participants to include all assumed, ceded, and retrocessional participants so they are apprised of all matters arising in the receivership. The list would be compiled from information contained within current year and prior two years' company annual statement information.

Once a company is placed into receivership, written notification of the receivership should be sent to the company's reinsurers/intermediaries. The reinsurance specialist will generally function as the primary receivership contact for the reinsurers/intermediaries and serves to coordinate all issues relating to reinsurance, including claims and collection activities, throughout the life of the receivership. In working with the reinsurers/intermediaries, the reinsurance specialist would be able to identify and correct any

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practices that are determined to be inadequate. The reinsurance specialist will analyze and evaluate the company's reinsurance program and applicable provisions in the reinsurance contracts with assistance from the receiver's legal team as needed. The reinsurance specialist will provide the claims section with a list of reinsurers/intermediaries to issue proof of claim forms, assist in the evaluation of any reinsurance related claims, and coordinate and communicate all matters with the claims and legal units as necessary. The reinsurance specialist may also assist in resolving reinsurance-related claims prior to filing the claims recommendations with the court. The reinsurance specialist should also coordinate with any receivers of related proceedings as quickly as possible to determine common areas of concern or potential conflict.

In the reinsurance specialist's coordination and communication with the estate's reinsurers, they should ascertain the reinsurer's net position as soon as the winding down of the estate permits. Where applicable, the receiver should be encouraged to opt for the fewest number of requirements possible based on that state's receivership laws in order to facilitate communication with reinsurers and to hasten the process of reconciling claims. The reinsurance specialist should request open balance reports from the reinsurer and intermediaries; in order to conduct reconciliation and determine if any differences exist.

Only to the extent that there are any differences or disputed data information, the reinsurance specialist would require the reinsurer to substantiate its position by submitting supplemental information. This may occur at any point of time in the receivership, and the receiver should be encouraged to reconcile any discrepancies as soon as they are identified. The reconciliation should be a process conducted immediately following the development and agreement of the insureds' claims culminating in a net figure due to or from each reinsurer of the estate. It is important to monitor the reinsurers' financial status on a periodic basis and perform accounting reconciliations with the intermediaries to ascertain that information has been correctly and timely reported to the reinsurers.

In this regard, it is crucial to keep reinsurers updated of the development of the insureds' claims as is required by the respective reinsurance contracts. This development will determine whether a reinsurer is a net debtor, i.e. an asset, of the estate or a net creditor who shares in dividends in its class of creditors.

This development would most likely occur after deadlines for filing claims have passed. In this case, if applicable under a state's receivership laws, receivers should petition the court to allow reinsurers to not initially formally file a claim but rather deem the claims filed but only in the case where reinsurer is considered an asset of the estate based on the financial records of the company in receivership. If inapplicable and the state's receivership laws prohibit deemed filings, reinsurers should be allowed to file contingent claims (for example, "placeholder claims" at a nominal value of USD 1.00 only) that are amended and proven when the development of the receivership so permits. For further discussion on the assets of the estate, refer to Chapter 1 – Takeover & Administration, Section E. Assets, Sub-section Reinsurance of the *Receiver's Handbook for Insurance Company Insolvencies*.

It is important to note that the development of the insureds' claims may not only result in claims against the estates' reinsurers. Whenever an insured's claim is allowed at a smaller amount than has already been paid, this will result in refunds that have to be credited to the respective reinsurers. Additionally, there might be reinstatement premiums due to reinsurers, if an insured's claim is allowed.

Consequently, in many cases, the claims of reinsurers are dependent on the development of the insureds' claims. Thus, receivers should be encouraged to treat claims of reinsurers as one factor amongst others adding to the net amount of the asset such reinsurers represent. In some cases, however, the overall result will be a net claim against the estate, but at the point of time such claim is certain, it may be allowed and will share in the distributions declared for the respective class of creditors.

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If any issues or difficulties are encountered regarding the Proof of Claim form, it is suggested that the reinsurer contact the Receiver's office directly with any concerns, describe the issue in reasonable detail and in writing, and provide as much information in the response with as many items on the Proof of Claim form as possible. If the Receiver is made aware of an issue or problem in a timely manner, this may enhance the likelihood of a resolution that agrees with the supervising court.