REPORT OF THE

FOCUS GROUP ON

INSURER RECEIVERSHIPS

May 1, 1992

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INTRODUCTION

For purposes of this Report, the term "receivership system" is intended to include both the guaranty function and the traditional receiver function. Viewed historically, the receivership system has done an acceptable job of meeting the objectives and dealing with problems which were current when the system developed e.g., insolvencies of a relatively few number of small, local or regional insurers. Many of the recent insolvencies, however, have been national property and casualty companies writing complex commercial business or national life and health companies writing sophisticated life and investment products. This factor plus the higher relative number of insolvencies in recent years have caused some of those who work most closely with the receivership system to question whether the system needs to be redesigned.

Given the factors noted above, the receivership system has received some attention in recent years, but it has been sporadic, piecemeal and disjointed. Most of the focus has been on incremental, reactive change with minimal re-examination of the objectives for such a system and its overall structure. There are several reasons for this.

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The Focus Group had no pre-defined objective or result. It adopted its own Mission Statement and the means of achieving the mission in the form of a business plan (see Exhibit A). In systematic fashion, the Focus Group identified problems within the current system, delineated historical and current environmental factors and public policy objectives, reviewed other receivership systems, examined the fate of other proposals to change the system and evaluated the ability of the current system to meet current needs. Finally, the Focus Group outlined a structure for a new uniform, national receivership system which combines the traditional functions of receivers and guaranty funds.

The reader should consider several factors in reviewing this Report. The Focus Group has performed considerable research and has engaged in extended discussions on the issues addressed in this Report. This research and discussion are <u>not</u> replicated in this Report since it is intended to represent conclusions of the Focus Group.

Secondly, the Focus Group did not intend to provide complete detail of a better receivership system or to draft statutory language. That is better left to a separate effort. Thirdly, a uniform or national approach to a receivership system does not necessarily require a Federal approach.

Finally, this Report does not completely represent the opinions or positions of any single member of the Focus Group or any

organization which they represent. There were many different viewpoints represented in the Focus Group and this caused spirited debate and dissent. This Report represents a majority viewpoint in general and on individual component parts.

Respectfully Submitted

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EXECUTIVE SUMMARY

I. Purpose

The mission of the Focus Group was to analyze the current receivership system for liquidating insurance companies and protecting insurance consumers and to develop an outline for a better system. To do this, a seasoned group of individuals from relevant backgrounds was chosen.

II. Current System and Its Problems

Receiverships vary a great deal from state to state and even vary a good deal within a state. Insurance Departments handle some receiverships, outside contractors handle others and special bureaus may be created to handle some or all receiverships within a state. Attorneys general sometimes play a role in the court proceeding but receiverships are seldom an area of expertise or priority.

Receivership courts are often courts of general jurisdiction having little or no expertise in insurance or receiverships. They sometimes fail to prevent overreaching by the receiver

or delaying tactics by management. These courts are sometimes reluctant to act swiftly when a company is in hazardous financial condition.

Guaranty funds are organized on a state by state basis and, therefore, vary in resources and ability. Variations in state receivership law and state guaranty fund law, and interpretations of this law, make the interaction among receivers and guaranty funds very cumbersome. There is significant duplication of effort and staffing among funds. In addition, there is no system for exchanging electronically the vast amount of data which must move back and forth among receivers and guaranty funds.

Insurers are assessed to pay losses and the operational expenses of the guaranty funds but the mechanism to charge these assessments back to the consumer is flawed. The result is that primary companies have to absorb some of the costs of insolvent competitors. In addition, the information flow to reinsurers is slow and inaccurate which jeopardizes collection of reinsurance recoverables. This also undermines the reinsurers' ability to participate in the defense of claims and to accurately portray their loss reserves.

General problems of the receivership system include:

o Lack of expertise generally

- Lack of resources to do a complete job

- Political influences, agendas and appointees

- Territorialism generating conflict and wasting time and money

- Inconsistent law and procedures preventing economies of scale

- State by state approach creating structural barriers to efficiency

III. Public Policy Objectives

In order to design a better system, the Focus Group needed to identify the appropriate objectives of an updated receivership system. These are:

- Fast and efficient resolution of an insurer in hazardous condition

- Uniform guaranty fund coverages and procedures

- Uniform receivership law and procedures

- Faster and more efficient termination of receiverships
- Faster and more efficient flow of information through the receivership system
- Development and retention of qualified people
- Minimization of political appointees and agenda
- Efficient marshalling and reinvestment of assets
- Elimination of state barriers to multi-state receiverships
- Mechanism for handling unauthorized companies and no asset estates
- Improved reinsurance collections
- Specialized receivership courts
- Improved utilization of guaranty fund assessment mechanism
- Higher public confidence in insurer receivership system

IV. Recommended Structure for a Better System

The Focus Group determined that incremental change to the current system would not be sufficient to correct the current problems and achieve the desired objectives. The Focus Group chose not to take a position on methodology to achieve the necessary change (interstate compact, NAIC accreditation process or Federal legislation) since the debate on methodology is both ongoing and wide-ranging.

The Focus Group concluded that the operations of the property and casualty and life and health guaranty funds should be combined. The guaranty function should be combined with the receiver function to eliminate overlaps in jurisdiction and create economies of scale. This combined function should operate on a national basis with uniform laws, procedures and rules.

The combined receivership function should take the form of a not-for-profit corporation employing non-civil servants who would be selected and compensated in a fashion similar to the private sector. A majority of the board of directors would consist of members i.e. representatives of licensed insurance companies. The board would be responsible to see that receiverships are carried out in an efficient and proper fashion.

The not-for-profit corporation should act as receiver for all insurers doing business in the United States and the administrative costs of its operation would be shared accordingly. The Corporation would guaranty the claims against member companies only in States in which they are licensed. The Focus Group did not detail coverage and limits for the guaranty function but suggests an approach similar to the current system NAIC Model Acts.

The Focus Group concluded that the current system of conserving or rehabilitating companies seldom works and usually dissipates the remaining assets of the insurer. Administrative and judicial "control" mechanisms are substituted. In administrative control, the regulator can take control of a company without prior judicial process if there is an imminent danger of dissipation of assets or destruction of records. Absent such an imminent danger, control may be achieved only through a judicial order. The maximum period for control is 6 months. At the end of that time, the company is either liquidated or turned back over to the regulator with a remedial plan which the regulator executes.

A variety of structural and procedural recommendations are made which will speed the process and avoid expense. These include administrative claim reviews, reformulated grounds for a receivership order, a revamped priority system and transitional procedures.

The Focus Group acknowledges that its outline for a new system does not answer all questions or address all problems of the receivership system. For instance, statutory language to implement Focus Group suggestions would constitute a significant additional task which should be left to a later effort.

SECTION ONE

DESCRIPTION OF THE CURRENT SYSTEM AND ITS OPERATIONAL ISSUES

a. Description of the Receivership Process

The current system of insurance regulation is a function performed by each state, typically assigned to the individual (hereinafter "commissioner") who administers the state's Insurance Department.

The insurance commissioner, in his or her regulatory capacity, is charged with the responsibility of examination and detection of solvency issues. When the commissioner's staff discovers that a company is troubled, several options are available. State laws provide for various types of administrative action, which may include orders to cease and desist the further transaction of certain underwriting and marketing activities or mandatory orders relating to investments, assets, lending, borrowing and reinsurance. Administrative review of these orders is provided by state administrative codes.

In the event that the commissioner determines that more formal action is necessary, various remedies available from state-to-state may be implemented, including administrative supervision or conservation. While the former usually requires no court involvement, the latter is often an ex parte court proceeding, sometimes sequestered from public view. The result generally is the possession and control of the insurer's books, records, premises and

assets by the commissioner, acting as regulator or receiver.

Both administrative supervision and conservation are used generally as a means of preserving the status quo while the regulator assesses the extent of the company's problems and attempts to resolve those problems without more intrusive receivership action. Although administrative supervision or conservation are most often a precursor to a more formal receivership, there are a limited number of situations where an insurer's problems have been resolved and the insurer has been allowed to resume normal business operations.

If the commissioner determines that the insurer's problems are not susceptible to resolution, more formal proceedings may be initiated in the form of rehabilitation or liquidation. In most states, the commissioner must request that the state's attorney general file a complaint for receivership. Often times, the regulator/receiver or his or her staff provides not only the necessary information but the documents to initiate this action. In some states, the entry of the receivership order terminates the involvement of the attorney general because the receiver acts in a private capacity, while other state statutes provide for the attorney general's continued involvement.

States vary with respect to the size and organization of receivership staff. In many states, the receivership functions are performed by a division or bureau within the Department of

Insurance. In some states, separate organizations have been created to handle receivership activities. In other states, the regulator appoints individual receivers to handle each insolvent insurer. These differences govern whether the receivership personnel are state employees, the source of funding for their salaries, the applicability of state laws governing state agencies and the role of the attorney general in insolvency proceedings.

Once a court order is entered and the receiver is appointed, a number of activities must be accomplished within a very brief period of time. The receiver must notify state guaranty funds in which the insurer was licensed (in some cases this may have been done prior to the receivership order). A team of takeover personnel must be organized to carry out the physical seizure of the company's books records and premises and secure the company's assets and other important documents. This effort may include multiple locations in multiple states.

Taking control of the company's books and records is often a difficult task. The insurers' management and personnel may be hostile or uncooperative. Knowledgeable employees may have been terminated or may have found other employment. Data processing equipment and information may be difficult to locate and secure. Often, computer passwords and codes must be changed, hardware access limitations imposed and back-up files created and transferred to an off-site location. Outstanding claim files must be identified as well as pending litigation. Identification and control over

potentially hundreds of outside counsel and cases must be obtained as quickly as possible.

The receiver must immediately serve banks and other financial institutions with a copy of the receivership order to freeze accounts, cancel accounts handled by third parties, change signature authority and change safety deposit access privileges. Financial documents such as letters of credit and check stock must be identified, located and secured.

The receiver usually changes locks to the company's premises, alarm codes and postal boxes. The receiver may cancel and collect corporate credit cards and keys to company vehicles, secure other personal property of the insurer and identify key employees for retention or termination.

The receiver must review the insurer's records to determine if outside parties such as managing general agents, intermediaries, brokers or third party administrators have authority to bind the insurer to contracts or to payment of claims. These individuals are contacted and authority is usually revoked. Outstanding funds are returned to the receiver.

The receiver has a duty to notify creditors as required by statute or court order, as soon as possible. Identification of potential creditors can be a time-consuming task. Other parties with whom the

company conducted business, as well as other insurance departments nationwide, must be notified so that appropriate action can be taken.

These crucial activities must be carried out under very extreme time deadlines and by a staff virtually unfamiliar with the insurer and its operations. Consequently, it is extremely important to identify and retain key personnel of the insurer and implement a very methodical course of action to achieve these various goals. Moreover, the receiver must identify the problems of the company and develop a remedial action plan which may include rehabilitation or liquidation.

Once the receiver has identified necessary claim and litigation information, documents must be compiled and transmitted as soon as possible to the state guaranty funds, if appropriate. State laws have established guaranty fund mechanisms for the protection of policyholders and claimants in the event of an insurance company's insolvency. These funds are generally divided into two groups: property and casualty guaranty funds ("p&c funds") and life and health guaranty funds ("life funds"). A few states have established separate guaranty funds for health maintenance organizations or workers compensation. One state has a guaranty fund for surplus lines business.

Each jurisdiction, including Washington, D.C., the Virgin Islands and Puerto Rico, has enacted laws providing for the

establishment of a post-insolvency assessment p&c fund. (While New York has a p&c fund, it is a pre-insolvency assessment fund.) Each jurisdiction, with the exception of Washington, D.C., and the Virgin Islands has enacted a life fund. These laws are generally based on NAIC Model Acts, but there have been significant variations among the states.

Transmission of data between receivers and guaranty funds is often delayed due to a lack of experienced receivership staff and the condition or location of the insurer's records. Often, the insurer's records are in very poor condition or non-existent. The receiver's staff may have to reconstruct claim files, reinsurance files and other pertinent records, and review months or years of backlogged correspondence. In addition to the substantial task of converting the insurer's data processing systems to the receiver's system, the task of inputting information relating to these reconstructed records and backlogged correspondence can be formidable.

Guaranty funds undertake the continued defense of insureds and payment of claim obligations within the parameters set forth by state law. These statutes govern the types of claims that are covered by that state's guaranty fund, the maximum limits applied to each claim and other requirements and restrictions. Guaranty funds are responsible to continue coverage for life and health business in accordance with contract terms and applicable statutory provisions.

Funding for state guaranty funds is accomplished by assessments upon the industry. Methods for recoupment of those costs vary among states but include tax offsets, policyholder surcharge or incorporation of the costs into future rates. Assessments sometimes cannot be fully recouped with the result that the industry must absorb some of the costs of insurer insolvencies.

Once the insurer's records have been organized and/or reconstructed, and sufficient information has been transmitted to the appropriate guaranty funds, the funds undertake the defense of insureds and the evaluation and payment of claims. The insurer may have written business that results in claims not covered by the guaranty funds or claims that are in excess of guaranty fund limits, requiring the receiver's staff to evaluate the claim for future payment from the assets of the estate.

Reserves are set by the guaranty funds; however, funds vary with respect to methods of reserving. While some funds reserve the entire value of the claim, others reserve only up to the fund's limit. The amount reserved is forwarded to the receiver and, if only reserved to the fund's limit instead of the true value of the claim, an understatement of the insurer's liabilities can result in inadequate reporting to reinsurers, thereby jeopardizing potential reinsurance recoveries.

Early access laws have been enacted in most states to encourage receivers to forward available assets to guaranty funds in order to

reduce assessments upon the industry and thus reduce the cost to the public. Receivers have been generally wary of early access mechanisms and tend to take a conservative approach in evaluating the availability of estate funds for this purpose. Among other reasons, receivers fear that if funds are released for early access and are needed later by the receivers to satisfy administrative expense requirements, they will have difficulty obtaining the return of those funds from the guaranty funds. On the other hand, guaranty funds sometimes expect receivers to liquidate assets prematurely to avoid industry assessment while reducing potential investment income to the estate.

Once the guaranty funds submit payment to the policyholders based on covered claims, claim payment information is transmitted to the receiver. Although there have been efforts to develop standardized forms of reporting by receivers and guaranty funds, few standardized forms are in use. Some funds submit information which is insufficient or untimely for the receiver's purpose of reporting losses to reinsurers and collecting reinsurance recoveries.

This information, along with the information from the receiver's internal claims department is collated and forwarded to reinsurers in the form of billings. Reconstruction of the reinsurance records can be complex and time-consuming. It is often difficult to determine which claims were previously reported and billed and which claims have already been paid by reinsurers. Reinsurers have

difficulty in obtaining sufficient information concerning claims for which they have been or may be billed. In addition to the marshalling of reinsurance recoverables, the receiver must pursue agents balances, premium receivables and other funds owed to the estate.

Among the various duties of the receiver is the obligation to identify potential claims on behalf of the estate and to marshal assets for the benefit of all creditors. These claims may be from many different sources, including: suits against directors and officers; voidable preferences or fraudulent transfers; overdue balances from reinsurers, agents or brokers; funds held and wrongfully set off by reinsurance intermediaries; claims against general creditors, subrogation or salvage from primary insurers, errors and omissions against reinsurance intermediaries or brokers, and similar claims against the insurer's accountants and auditors. The research and review of records and transactions involved in identifying any of these potential causes of action is very time-consuming and costly. It requires sophistication and knowledge on the part of internal accounting, auditing, claims, reinsurance and legal personnel. Pursuit of this litigation is even more costly and may cause the estate to remain open for years.

In the event that there are enough estate funds to pay all policyholders in full, the receiver must undertake the task of

identifying and evaluating general creditor claims. The receiver may undertake this task in any event if the insolvent insurer had assumed reinsurance in an effort to collect retrocessional recoveries and further enhance the assets of the estate. State laws vary or are silent with respect to the manner in which ceding insurers' claims are evaluated in a reinsurer's estate. Reconstruction and/or reconciliation of these reinsurance accounts can be an extremely complex, time-consuming and expensive undertaking.

Once claims are evaluated and approved by the receiver, court approval of those claims must usually be obtained prior to any interim or final distribution of any funds. Creditors may object to the valuation of their claims or the valuation of other claims in the estate. Litigation often results and may delay distribution of any estate funds for significant periods of time.

After obtaining court approval for the final distribution of assets, the receiver may petition the court to close the estate. Funds are usually set aside for future anticipated expenses such as storage and destruction of records. State laws vary with respect to the length of time that documents must be stored, and various types of records are affected by retention laws imposed upon a particular profession or business in that state. The court order often provides for the applicable retention period(s) and provides for release of the receiver.

At the close of the estate or after the destruction of records, the receiver may submit a final accounting and escheat any remaining assets to the state or otherwise provide for disposition of such funds.

In some circumstances, the estate may be re-opened due to receipt of additional assets. This may result in additional distributions to creditors.

b. Background and Operational Issues Of The Current System

In the mid 1800's states began to establish systematic insurance regulatory statutes. In 1868, the U.S. Supreme Court, in **Paul v. Virginia**, 75 U.S. (8 Wall.) 168 (1868) upheld a state statute regulating insurance and found that the transaction of insurance was not interstate commerce. Although that case was overturned by the United States Supreme Court in 1944, Congress opted to leave insurance regulation with the states when it enacted the McCarran-Ferguson Act in 1945. 15 U.S.C. §§1011-1015 (1982).

Liquidations in the 1800's were conducted as equity court receiverships i.e., were conducted by the court rather than by a regulator. In the early 1900's states began to enact the first systematic insurance insolvency laws, transforming equity receiverships into executive or administrative receiverships, placing control in insurance regulatory personnel with oversight from equity courts.

In the 1930's, a number of states enacted more comprehensive receivership statutes. In 1939, the Conference of Commissioners on Uniform State Laws promulgated The Uniform Insurers Liquidation Act. This was the first attempt at creating uniformity among the States with respect to domiciliary and ancillary receivership procedure.

In 1969, the NAIC adopted the Wisconsin receivership act which was superceded in 1978 by a very similar NAIC Model Act. While this Model has been amended a number of times since then, states have been slow to enact the Model or its amendments.

Some commentators have suggested that the U.S. has previously experienced three waves of insolvency, each of which has been met with a regulatory response. (For a general discussion, see Stewart Economics, Inc., **Insurance Insolvency Guarantees**, prepared for the Northbrook Conference on Public Policy Issues in Insurance, October 1990.) Following the most recent of those waves, Congress held hearings in the 1960's to study the perceived shortcomings of insurance regulation. At least partially as a result of this scrutiny, the NAIC, in the early 1970s, adopted the first Model Guaranty Fund Laws and in intervening years, nearly every jurisdiction has adopted some form of these laws.

The guaranty fund system currently in effect was primarily a response to the insolvencies of substandard auto writers in the

1960's which has been characterized as the third wave of insolvencies. Most of those companies were undercapitalized and engaged in poor underwriting practices. Additionally, the companies were usually small and local.

A receivership system that has evolved slowly and changed little throughout the 20th Century, is ill-equipped to handle the changes in the nature and size of the companies now becoming insolvent. The individuals responsible for the administration of these insolvencies have tried very hard to make the system work in today's environment, with favorable results. Nonetheless, better results were prevented by the fact that their hands are often tied by outdated laws, territorialism, lack of resources and a fragmented structure that was not designed to cope with current problems.

Lack Of Expertise

States vary with respect to the size and organization of receivership staffs. In many states, the receivership functions are performed by a portion of the Insurance Department while other states create separate organizations to handle these activities. In light of the limitations on state employee salaries and incentives, it is often difficult to attract qualified personnel and even more difficult to retain them when there are opportunities in the industry that are much more attractive. Many of the disciplines

necessary for staffing these positions are similar or identical to the positions available in the insurance industry, which offers better career opportunities and job security.

Other states do not have a sufficient number of insolvencies to support full-time receivership staff and many states have difficulty staffing large insolvencies. In both instances, individual receivers may be appointed to administer the activities of one individual estate. This practice sometimes results in inefficiencies and inconsistencies. Single-estate receivers may spend substantial time and estate funds "reinventing the wheel." The narrow focus of some single-estate receivers may result in that state taking inconsistent policy positions among its various receivership estates or taking public policy positions which do not reflect sound regulatory policy.

Some guaranty funds are affected by a similar inability to attract and retain qualified personnel. The temporary nature of the individual's job in some states may further exacerbate this problem.

There are often insufficient resources and time to provide adequate training (other than on the job) to develop qualified receivership or guaranty fund personnel. Additionally, due to the nature of their work and the large sums of money involved, receivers and their employees are often concerned about personal liability for their actions. As a result of these and other factors, some states

have placed an over-reliance on outside legal counsel and consultants, further exacerbating the inability to develop necessary talent and substantially increasing costs.

Regardless of the reason for it, a lack of staff expertise may result in poor advance preparation for the receivership, defective takeover procedures and an inability to identify and transmit necessary information in a timely manner. Turnover in personnel and communication problems within the receivership system slow information movement among the various component parts of the system. These problems may result in a delay of payment to claimants and an inability to effectively marshal assets in the estate.

Receiverships are supervised by local state courts who sometimes lack expertise, or the time to develop expertise, necessary for addressing the problems of a multi-state or multi-national financial organization. These courts often lack an understanding of the urgency associated with insurance insolvency matters. Some courts are reluctant to make difficult decisions with respect to the dissolution of a corporate entity and are sometimes unwilling to accept judicial responsibility for actions statutorily required of them. Those courts who lack expertise are, at times, ineffective as a deterrent to over-reaching by the receiver or to obstructionist tactics by the insolvent insurer's management.

While some state receivership staffs consist of experienced, knowledgeable and dedicated individuals, the multi-state nature of today's insolvencies and the inconsistent level of expertise nationwide, often impede these individuals in the effective performance of their duties and responsibilities.

Lack of Resources

Some receivers and their staffs are state employees and are, therefore, dependent upon state legislative funding. Other receivership staffs are funded through the assets of the insolvent insurer's estate. In either situation, resources are often inadequate.

By the time receivership proceedings are implemented, the insolvent insurer's estate sometimes lacks sufficient assets to allow the receiver to perform the necessary administrative functions relating to claims. Additionally, potential assets and causes of action may be abandoned or never pursued because the estate lacks sufficient funds to pay for investigation or litigation.

States frequently experience problems with unauthorized alien insurers conducting the business of insurance without a license or other authorization in any state or U.S. territory. Despite regulatory efforts to prevent or prohibit the violation of the state's insurance laws, receivership is sometimes the only available

means of stopping these entities and protecting policyholders and claimants. However, unauthorized alien insurers often transfer their funds to off-shore bank accounts. Even the most efficient and confidential seizure of these insurers usually results in the recovery of little to no assets. In some cases, the recovered assets are insufficient to reimburse the regulator or receiver for the expenses of the initial seizure activity. The result in some states is the inability to effectively stop the unauthorized business of insurance by these entities and the continued violation of the state's insurance laws.

Political Influences

Regulators are sometimes reluctant to trigger receiverships because they may perceive receivership to be a failure of the regulatory process. Local political considerations may affect the regulator, the attorney general and the courts. For a variety of reasons, these or other individuals may be reluctant to put local residents out of work. The influence of the insolvent insurer's management upon these or other local officials can result in undue pressure, jeopardizing the interests of the insurer's creditors.

Conflicts exist between the various parties over jurisdiction and authority. In some areas, local courts struggle with receivers over retention and compensation of outside legal counsel and consultants. In other states, the attorney general may attempt to control these often lucrative appointments.

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individual state's policyholders. These deposits tie up assets of the insurer unnecessarily and may prevent a domiciliary receiver from using alternative runoff procedures which may benefit the estate's creditors as a whole. Additionally, statutory and special deposits are sometimes used by an ancillary receiver to fund its ongoing receivership operation, though there may be no justification for the creation of the particular ancillary proceeding.

Disputes arise between multi-estate receivers and single-estate receivers. The former sometimes view the latter as having a limited perspective on the liquidation process, not fully considering the ramifications that their policies may have upon the administration of other types of insurance entities.

In some states, there are conflicts between the regulator/receiver and state attorneys general over jurisdiction and authority. Attorneys general sometimes have minimal knowledge of insurance, reinsurance or receivership law. They may lack sufficient interest or resources to pursue civil remedies and criminal prosecutions. Territorial attitudes may result in a refusal to act quickly, resulting in dissipation of limited estate assets.

Disputes arise between receivers and guaranty funds. Reserving practices may vary which, in some instances, distort the accuracy of outstanding losses. Lack of coordination may jeopardize potential reinsurance recoveries. Conflicts arise over rights to subrogation, salvage and reinsurance recoveries Disputes continue to take place

over the continued servicing of policies, extent of guaranty fund coverage and classification of guaranty fund claims in the priority of asset distribution.

While early access laws were developed to encourage the early flow of estate assets to guaranty funds, some receivers do not grant early access although sufficient funds exist or fail to utilize this mechanism in a timely or adequate manner to avoid assessments upon the industry and increased costs to the public. In at least one state, a domiciliary liquidator has provided early access to its domiciliary guaranty fund with no assets disbursed to other guaranty funds.

Regulators sometimes lack coordination and fail to cooperate in taking unified action with respect to troubled companies prior to liquidation. Non-domiciliary states sometimes use statutes and procedures in a way that undercuts the rehabilitation efforts of a domiciliary regulator. A few states have statutes providing for commercially-domiciled insurers, allowing the state regulator to place an entity in receivership as if it were domiciled in that state, which may impede the regulatory efforts of the domiciliary state. The territorial behavior engaged in by some regulators may result from differing agendas -- political, social or economic.

In 1939, the Conference of Commissioners on Uniform State Laws promulgated the Uniform Insurers Liquidation Act. This Act was an

attempt to coordinate procedures and laws among domiciliary and ancillary receivers. Although it has been adopted by nearly every state and has served a useful role for several decades, the frequency and extent of multi-state insolvencies today and the sophistication of the attendant issues have surpassed the usefulness of the Act and its applicability to current issues.

Inconsistent Laws And Procedures

There are over 50 jurisdictions involved in the current system. Some or all of these jurisdictions have varying laws and procedures governing receiverships, p&c funds, life funds, health maintenance organizations, workers' compensation funds and surplus lines. Many of these laws were adopted when liquidations were focused on regional personal lines companies. They were not designed to address large, multi-state or multi-national insurers, writing commercial casualty business, issuing sophisticated investment products, assuming reinsurance and handling long-term coverage.

Even when state laws are similar or identical, the interpretation of those laws among receivership staff and the courts can vary significantly. This results in inconsistent application of the laws to various creditors, litigation between receivers and guaranty funds and among receivers themselves.

Structural Barriers And Inefficiencies

Some barriers and inefficiencies are inherent in a multi-state

system. The number of parties involved in the liquidation process and its highly fractionalized structure create substantial delays, unnecessary costs and duplicative efforts between receivers and guaranty funds. While some progress has been accomplished on flow of data, it remains inefficient due to a lack of acceptance of common data elements and reporting format and differences in the capabilities and technology of the various state entities. Insufficient coordination among guaranty funds, receivers and regulators makes it difficult, or impossible, to respond in a cohesive and timely manner to innovative solutions and remedial action.

The identification, location and collection of records from branch offices, managing general agents and third party administrators is difficult and time-consuming, and often results in jurisdictional disputes. Courts fail to recognize and abide by the orders of sister-state courts, resulting in waste of estate assets, inconsistent decisions and inefficient liquidations.

Various organizations have been created to enhance communication and coordination among the states. The National Conference of Insurance Guaranty Funds ("NCIGF") and the National Organization of Life and Health Guaranty Associations ("NOLHGA") are among those organizations that have done a commendable job but whose efforts are frustrated by the limitations and inconsistencies inherent in the current system.

The NAIC has attempted to standardize state statutes by the adoption of model laws. This effort has been met with limited success because states have been slow or reluctant to adopt the model laws with respect to receiverships and guaranty funds. Additionally, the NAIC has established working groups to address various issues but this effort has been hampered by the annual turnover of committee membership and chairpersons, as well as the general difficulty of obtaining a consensus on issues among the 50 state jurisdictions.

SECTION TWO

PUBLIC POLICY OBJECTIVES

FOR A

RECEIVERSHIP SYSTEM

The success of a receivership system must be measured by its ability to meet its objectives. It is essential that the structure of the system must be designed to achieve these objectives.

The Focus Group identified the apparent objectives of the current system as a prelude for establishing current public policy objectives. The Focus Group chose the following as objectives for an improved receivership system recognizing, nonetheless, that not all objectives are completely achievable.

Fast and Efficient Resolution of Insurer in Hazardous Condition

When an insurer is found to be in hazardous condition, regulators should be able to identify the causes, develop alternatives and implement them within a short period of time. They should be able to determine quickly whether remedial action is feasible and if not, to place the company in receivership quickly before it can do more damage to the marketplace.

Uniform Guaranty Fund Coverages and Procedures

There needs to be a guaranty fund law which would create uniform coverages and procedures nationally and avoid the potential for forum shopping and the structural inefficiencies of the current system. This will simplify claim handling, allow economies of scale and provide more consistent and timely benefit to consumers.

Uniform Receivership Laws and Procedures

A uniform, national law would avoid the substantial variations in current law and would promote efficiency, build expertise, avoid political infighting and reduce costs.

Complete Receiverships More Quickly

Some receiverships take 10 or more years with administrative expenses and legal fees eating away at assets which would otherwise be distributed to creditors. While there are some instances which support such long term receiverships, in most cases there is no legitimate rationale for an estate to be pending that length of time. A better system would be one that was able to avoid unnecessary delay, pay creditors more quickly and runoff the business more effectively.

Fast and Efficient Flow of Information Through Receivership System

There are significant impediments to the ability of a receiver to obtain necessary and accurate information from the estate, distribute it to the guaranty funds, receive information back from the guaranty funds and then transmit necessary information to reinsurers. A better system would be one that allows better extraction, better accuracy and more efficient sharing of information.

Develop and Retain Qualified People

A fragmented approach to the liquidation process (single estate receivers, substantial variation in state laws) makes it difficult to develop qualified people and to retain those who are qualified. Receivers need to be able to train people in a broad range of liquidation related skills and to provide the career path and benefits necessary to retain the most qualified.

Minimize Political Appointees and Agendas

Political appointees and agendas can delay needed action and reduce the efficiency of the receivership process. A better system would reduce the influence of politics in the receivership process.

Efficient Marshalling and Reinvestment of Assets

A better system would allow application of better investment expertise and economies of scale to make the most of the remaining assets of the estate.

Elimination of State Barriers to Multi-State Receiverships

A better system would eliminate these barriers resulting from inconsistent state laws and territorialism which preclude the efficient administration of multi-state receiverships.

Mechanism for Handling Unauthorized Companies and No Asset Estates

A receiver who does not have an independent funding source for administrative expenses has little ability to deal with unauthorized companies with minimal assets or records in the state or with domestic companies which have insufficient assets to pay for the administrative costs of the liquidation. A better system would give the receiver broader jurisdiction and more flexibility in funding the costs of the receivership.

Improved Reinsurance Collections

Receivers sometimes lack the data, systems and expertise to be effective in collecting reinsurance recoverables. The jurisdiction of the receivership court is limited outside the domiciliary state making collections by the receiver from foreign and alien reinsurers difficult and expensive. A better system would allow broader jurisdiction, economies of scale and an opportunity to develop and apply expertise.

Specialized Liquidation Courts

A better system would have specialized receivership courts with expertise in financially impaired insurance companies so as to better oversee the administration of a receivership.

Improved Utilization of Guaranty Fund Assessment Mechanism

A better system would facilitate borrowing among accounts (p&c and life funds on an interstate basis) to better use existing gross capacity and to deploy more effectively funds to areas of need.

Higher Public Confidence in Insurer Receivership System

The recent number and complexity of receiverships have caused some to question whether the current system is adequate to protect the insurance buying public. A better system would encourage public confidence that this process is being handled in a fair and effective manner.

SECTION THREE

RECOMMENDED STRUCTURE FOR A RECEIVERSHIP SYSTEM

Overview

The Focus Group concluded that the best means of attaining the majority of the objectives identified in Section Two is a uniform, national receivership system. This would involve combined receivership and guaranty functions with a uniform, national receivership law and centralized administration and procedures. The system would be funded through the industry by an assessment mechanism. A structure is outlined below.

Modify Existing System vs. New System

The Focus Group considered the best means of attaining a structure necessary to achieve identified objectives. While incremental change to the current system has had a beneficial effect, the magnitude of the problems with the current system makes incremental change impractical. The changes recommended below are so substantial that they: (a) cannot be attained through incremental change; and (b) constitute a new system.

Means of Attaining Recommendations

The Focus Group identified three means of attaining the structure outlined below: (a) NAIC accreditation process; (b) interstate compact; and (c) Federal legislation. The Focus Group is aware that the relative merits of these methodologies are being debated in a number of contexts and the Focus Group prefers to let that debate run its course. The Focus Group recommends objectives and a structure for a liquidation system but will leave the methodology issue for a separate inquiry.

Combined Fund/Receiver Functions

There would be a uniform, national receivership system which would combine the functions currently played by receivers and guaranty funds. There would be uniform procedures and centralized administration but functions would be performed out of regional offices. This would shorten lines of communication, lessen confusion and reduce conflict among relevant parties.

Staff would be multi-functional with respect to receivership and guaranty functions. For instance, the same people would adjust claims regardless of whether or not they are covered by a guaranty. Subject to line and cap limitations, discussed below, claims against members would be covered by a guaranty in states in which the members are licensed.

Those claims which are not covered by a guaranty would be paid from the estate in accordance with a priority system. This would eliminate duplication of effort, accelerate information and money flow and better service claimants.

The receiver function of the receivership system would liquidate, when necessary, all insurers and HMO's operating in the United States or the United States operations of aliens, regardless of whether or not they are members for purposes of contributions to the guaranty function. However, the guaranty function would apply only to the business written by members in jurisdictions in which they are licensed.

The liquidation system would be run by a not-for-profit corporation ("Corporation") organized by "members" which would be companies licensed to write insurance in at least one jurisdiction in the United States. There would be a national Board of Directors which would have the power to establish regional offices and advisory committees. The Board would consist of 3 elected representatives of licensed property and casualty members, 3 elected representatives of licensed life and health members, 1 elected representative of licensed reinsurer members, 3 appointed regulatory officials and the National Administrator who would be the Chief Executive Officer of the Corporation.

The Board would have the ability to establish committees and standards, procedures and internal controls appropriate to the sound functioning of the Corporation. The Board should have an Audit Committee consisting of Board members and other member representatives with the purpose of promoting technological innovation, procedural efficiencies and internal oversight. In addition, the Corporation should be subject to oversight/audit by an independent third party and/or regulatory officials and periodic reports would be made to receivership courts on individual receiverships.

The employees of the Corporation would not be civil servants. They would be selected based on industry relevant skills and be compensated in competitive fashion.

The Focus Group recommends that the Corporation not engage in regulatory activity such as examinations for solvency or initiating action against potentially impaired companies. This will avoid potential conflicts of interest with respect to the implementation of regulatory decisions in relation to insurance companies.

The Focus Group discussed at length a concern that the Corporation would develop into an inefficient and overbearing bureaucracy. This concern needs to be addressed when a means is selected to implement the recommended receivership system.

Combined Property and Casualty and Life and Health Fund

Some administrative efficiencies and economies of scale can be achieved by combining the operations of the property and casualty and life and health portions of the fund within the Corporation while maintaining separate assessment systems. A number of existing state guaranty funds are operated on this basis and no significant problems have resulted from such a combination.

Coverage for Guaranty Function of Receivership System

The Focus Group believes that a workable receivership system cannot guaranty every claim of every party in unlimited amount. Any other approach would provide a disincentive to regulators to put impaired companies into receivership and a disincentive to consumers to deal with financially solid institutions. Instead, guaranties should be available for the protection of consumers who lack the sophistication or bargaining power to protect themselves. This implies limitations of the lines of business covered, the limits available and eligible claimants.

The Focus Group decided not to try to detail lines covered, limits, exclusions and those who should benefit from guaranties. Experience at the state level has indicated that these determinations involve difficult public policy issues which merit a separate inquiry. Nonetheless, the Focus Group

offers certain features which it believes should be reflected in a national system:

- The NAIC Model Guaranty Association Acts should be the starting point for a national act.
- Only companies licensed in the United States should be covered by the guaranty function of the receivership system.
- Guaranties should apply only to claims against member companies in jurisdictions in which they are licensed.
- Captives, risk retention groups and similar self insurance vehicles and HMO's should not be covered by the guaranty function.

Receivership Function

The Corporation would act as receiver for all insurers and HMO's doing business in the United States, regardless of whether they are covered by the guaranty function. The Corporation would act as the receiver for the U.S. assets and operations of alien companies, authorized or unauthorized.

Funding the Corporation

The administrative cost of the receivership system would be paid by member companies. The administrative assessment would be an

annual fixed fee with additional fees based on net direct written premium (admitted or non admitted) in the United States.

The primary purpose of assessing companies for administrative costs is to assure funding for the liquidation of a "no asset estate" and to end infighting between the receiver and the guaranty fund over assets necessary to fund their operations,i.e., reinsurance recoverables, subrogation, salvage and early access. To balance this additional burden on the industry, companies would have a top priority to recover administrative assessments from the estates.

Assessments for cost of claims and allocated loss expense would follow the current pattern, i.e., by net direct written premium by line broken out by state. Member companies should be able to spread the cost of these assessments to the public. Current methods of doing so include premium tax offsets, policyholder surcharges and building assessments into rates. The Focus Group does not take a position on which methodology is more appropriate as long as the method selected spreads the costs of assessments fairly and effectively.

The Focus Group believes that the current system of multiple funds and accounts can be maintained if there is an ability to borrow among the funds and accounts so as to make better use of existing gross capacity.

Subrogation, salvage and reinsurance recoverables should be credited to the estate. Because the industry shares as a first priority creditor for administrative assessments, the industry will ultimately get credit for these recoveries.

Rehabilitations

The Focus Group concluded that rehabilitations are seldom successful and then only when the impaired company retained economic viability. It is unfair to the industry and the public to maintain a company on life support while assets dwindle. Extended rehabilitations deny the public the benefit of guaranty fund benefits and waste assets. They can be used as a decision avoidance mechanism. For alternative procedures, see **Types of Receiverships**, below.

There are a few areas, however, in which Corporation involvement might help to save a troubled but viable company. One is the sale of a book of business, particularly life business. Given build up in value and higher costs of new coverage, life insureds are reluctant to go elsewhere resulting in a cohesiveness in the book of business that can survive a sale. In this situation, the Corporation can play a role similar to the FDIC. It can facilitate a sale of a viable book of business to generate additional surplus. The Focus Group believes that the Corporation should be able to contribute to the transfer of a poor book of business if the Company is in receivership and if

the cost of doing so is more cost effective than cancelling and running off the book of business in question. This process is facilitated by the combined receiver/guaranty functions of the Corporation.

Role of the Liquidation Court

The Focus Group concluded that it was necessary to reduce the detail submitted to the court and to elevate the level and expertise of the court in order to improve and expedite the receivership process. This can be achieved through a number of procedural changes (see **Liquidation Procedures**, below) and by having Federal District Courts act as the receivership courts.

The Focus Group further recommends that one District Court in each of the receivership system's regions be designated to handle all insurer receiverships in order to promote the expertise of the court and reduce expenses.

Role of the Regulator

Solvency monitoring should remain the role of the insurance regulator. Likewise, the regulator should be the entity that applies to the court to put a company in receivership. The regulator should have flexible remedial tools including an ability to take control of a company temporarily (see **Types of**

Receivership, below). The Corporation should function as the implements of regulatory decisions.

The Focus Group recognizes the potential benefits of a "troubled companies" unit of the Corporation which can assist regulators in evaluating a company in difficulty, developing solutions and understanding the procedure and ramifications of putting a company into receivership.

Types of Receiverships

The Focus Group concluded that the types of receivership (conservation, supervision, rehabilitation and liquidation) are cumbersome and subject to misuse. Procedural delays can allow dissipation of the assets that need to be preserved for creditors. Interminable rehabilitations likewise dissipate assets and prevent guaranty funds from paying claims.

The Focus Group believes that what is needed is a faster, more flexible process that remedies the problem quickly or liquidates the company while there are still assets to distribute.

The Focus Group has devised a "Control" procedure to substitute for conservation, supervision and rehabilitation and as a prelude to liquidation. Control can be initiated either administratively or judicially.

(a) Administrative Control

The regulator can authorize the Corporation to administratively (without court order) seize the insurer's assets and books if certain statutorily defined causes are present and:

- The action is necessary to prevent dissipation of assets; or

- The action is necessary to prevent removal or destruction of books, records or other vital documents.

The seizure by the Corporation is based on an Administrative Order issued by the Commissioner, certifying that sufficient grounds exist and specifying: (i) whether claims are to be paid; and (ii) what other activity by the Corporation may be undertaken within statutory parameters.

Administrative control should last for a maximum of 60 days. After that period, the insurer should be released, placed in liquidation or a judicial order of control should be entered.

(b) Judicial Control

This is also initiated by the regulator and shall be for the same grounds as Administrative Control absent the requirement of imminent dissipation of assets or destruction of records.

(c) Procedures for Control - Administrative or Judicial

Control is confidential/sequestered for 30 days During this time, management of the insurer has the opportunity to ask the court to vacate or modify any judicial order or to end Administrative Control.

The confidential/sequestered nature of the action or order ceases automatically 30 days after its entry or execution. If any party objects to lifting the confidential/sequestered status, the court shall hold a hearing on point.

Whether control is obtained administratively or by judicial order, once the company has been under control status for a total of 6 months, the Corporation must either:

- Release the company back to the regulator;
- Place the company in liquidation; or
- Adopt a long term runoff plan which could avoid triggering the guaranty fund.

Grounds for a Receivership Order

The Focus Group noted that the current NAIC Model Act and some state statutes have a broad variety of grounds for conservation, supervision, rehabilitation and liquidation. While most of these grounds are appropriate for the initiation of control status, some are inappropriate for liquidation. For instance, failure to remove an officer objectionable to the regulator does not make a company an appropriate target for liquidation but may warrant control status.

Among the grounds appropriate for liquidation are:

- The insurer's liabilities are greater than its assets.

- The insurer is unable to pay claims and other obligations as they become due.

- The insurer has failed to maintain the minimum capital and surplus required by statute.

Other grounds may not be sufficient to trigger immediate liquidation but the insurer's failure to correct these deficiencies in control status is sufficient to warrant liquidation:

- o The manner in which the insurer transacts business is hazardous to its policyholders, creditors or the public.

- o Inadequacy or concealment of records.

Liquidation Procedures

The Focus Group believes that foreign and ancillary receiverships and special deposits should be eliminated as barriers to efficient receiverships and a source of unnecessary expenses. Administrative expenses of the receivership are funded through the industry, thus obviating the need for statutory deposits. Ancillary receiverships have no purpose in a uniform, national system.

There should be an administrative procedure for those claimants who contest the Corporation's evaluation of their claim. This procedure would be used for all claims objections, regardless of whether the claim is covered by the guaranty function. If the claimant continues to disagree with the result of the administrative procedure, there would be 30 days to appeal to the receivership court. Once the claimant exhausts or fails to use these remedies, the valuation becomes final and constitutes "payment" for purposes of triggering reinsurance. While the liability of the receiver to pay guaranty fund covered claims is

often determined by independent litigation, both the issue of liability and the amount of the claim is determined by the receiver with respect to claims not covered by the guaranty fund.

Compromise of debts and commutations would be pursuant to procedures adopted by the Corporation and be subject to review by the Audit Committee of the board of the Corporation. No court approval of individual settlements would be necessary. The activities of the Corporation with respect to individual liquidations would be reported periodically to the receivership court. In addition, the policies and procedures of the Corporation would be subject to review by its Board and independent third parties and/or appropriate regulators.

Given the mixed membership of the board of the Corporation, creditors' committees should not be necessary. Nonetheless, the enabling statute should empower the receiver to appoint such a committee with the stipulation that the expenses of the committee would not be paid by the Corporation or the estate. Upon entry of the receivership order, there should be an automatic but time bound stay of lawsuits against the estate, receiver and insureds. In addition, the statute should prohibit suits by claimants and insureds against the reinsurers of the company in receivership except where a cut through or similar device runs to the benefit of the party making the claim.

The Focus Group determined that the Corporation should follow the current NAIC Model Acts on termination of business of a company in liquidation, which provide:

- Property and casualty policies to be terminated in 30 days or by terms of the policy, whichever is earlier.

- Life policies to be continued by the guaranty function of the Corporation under certain terms and conditions.

- Accident and health policies to be terminated in accordance with their terms except for guaranteed renewables and non-cancellable policies which are covered by the guaranty function of the Corporation under certain terms and conditions.

Continued books of business should be transferred to solvent carriers. The receiver should not be allowed to offer tail coverage on claims made business since this is better left to the marketplace to absorb.

The Corporation (in its receiver function) should succeed to all rights of action on the part of the estate against parents, affiliates, directors, officers and others. The Corporation stands in the shoes of the companies it liquidates for purposes of contractual rights and obligations, but retains the right to disaffirm (cancel) appropriate contracts.

Setoff of mutual debits and credits among one or more contracts would be allowed with several exceptions:

- The claim occurred after the cancellation or termination of the policy or agreement;
- The claim was purchased to be used as a setoff;
- The claim is against an affiliate of the insolvent;
- The insolvent owes the debt to an affiliate of the party claiming the setoff;
- The setoff is asserted against an assessment against members or a subscription to capital stock;
- The setoff is asserted in a circular set of cessions.

Given substantial timing differences involved in when debits and credits become due and owing in a reinsurance relationship, a device is necessary to smooth out these differences and to treat the parties fairly. This could consist of a trust fund to protect the rights of the receiver with respect to setoff against current balances. It could also take the form of an exception to the priority rules which would assure that overpayments would later be repaid without regard to priority rules.

Priority of unsecured claims against the estate would be as follows:

Class 1. (a) Administrative expenses of the receivership paid by the Corporation;

(b) Unpaid wages of non-officer and director employees for up to 2 months before the initiation of the receivership; and

(c) Unallocated claims handling expenses of the Corporation;

Class 2. Claims on policies and allocated claims handling expenses of the Corporation including such claims and expenses guaranteed by the Corporation;

Class 3. (a) Unearned premiums;

(b) General creditor claims;

Class 4. Claims for punitive damages, pre and post judgment interest and bad faith or errors and omissions claims against the insolvent insurer.

Class 5. State, Federal and local taxes;

Class 6. Late filed claims;

Class 7. Surplus notes;

Class 8. Shareholders.

The evaluation of immature, unliquidated and contingent claims would be on the same basis as such claims are evaluated in bankruptcy proceedings i.e. claims susceptible to estimation would be evaluated as if there was no contingency. Net present value techniques would be applied.

Immunity

The Corporation, its Board of Directors, members and employees should be provided with immunity and indemnification with respect to their activities on behalf of the Corporation.

Transitional Issues

The Focus Group recommends that the Corporation handle all receiverships which occur after a certain date. The date should be based upon the time needed to create the corporation and make it operational.

While it may be beneficial to transfer some existing estates to the Corporation, in many instances this would be too costly and disruptive. The Focus Group recommends that the Corporation be given the authority to contract with existing state receivers to take over estates where both parties determine that this is feasible.

SECTION FOUR

CONCLUSION

Viewed historically, the current receivership system has been effective in running off the business of insolvent companies and guarantying payment of certain types of claims up to certain amounts. Changing environmental factors and public expectations, however, suggest that new standards and needs are evolving which are difficult for the current system to meet given the structural inefficiencies inherent in a system fractionalized by state and within states.

The current system arose when most insolvencies were regional personal lines insurers. Many current insolvencies are national commercial property and casualty companies or national life insurers offering sophisticated life or investment products. There is a great deal of difference between the comparative environment in terms of complexity, cost, expertise and time necessary to perform appropriate functions.

Regardless of legislative initiatives from Washington and elsewhere, a group very familiar with the current system has taken a fresh look at the situation i.e., if a receivership system were being designed today to meet current and future needs, what would it do and how would it be structured to accomplish those ends? This was the effort of the Focus Group.

Based on the problems of the current system, and current public policy objectives, the Focus Group concluded that the better approach is a uniform, national system that combines the receivership and guaranty functions. These functions would be provided by a private organization which is funded through the industry and which has appropriate regulatory oversight. The Focus Group has provided a suggested outline to solving a number of the more difficult problems of such a system but leaves additional detail and statutory language to a later effort.

INSOLVENCY FOCUS GROUP

MISSION STATEMENT

We will review and evaluate the current insurance company insolvency system and develop an outline for an alternative system, if appropriate.

CRITICAL SUCCESS FACTORS

We must be able to:

- o Identify strengths and weakness of the current structure;
- o Analyze historical public policy concerns and project them into the future;
- o Provide timely, proactive and practical commentary;
- o Recommend appropriate structures to meet evolving public policy needs and/or a changing environment;
- o Anticipate the concerns and reactions of interested parties.

GAPS

GAP ONE

We need to identify the strengths and weakness of the current system and describe the characteristics of an ideal system.

Objective 1: Identify strengths and weakness of current system.

Action Step 1: General overview of current system.

Action Step 2: Review available resources on strengths and weakness.

Action Step 3: Explore our own experience and those of others in the Focus Group.

Action Step 4: Compile a list of strengths and weakness.

Action Step 5: Evaluate resources of current system to meet current and foreseeable needs.

Objective 2: Identify characteristics of an ideal system.

Action Step 1: Explore you own experience and that of others on the Focus Group.

Action Step 2: Compile a list of characteristics of an ideal system.

GAP TWO

We need to know how public policy and environmental factors under which the existing system evolved differ from the current environment and public policy.

Objective 1: Determine the public policy objectives and environmental factors which were present as the existing evolved.

Action Step 1: Research and compile available resources.

Action Step 2: Produce chronology of significant events.

Action Step 3: Produce environmental factors and public policy objectives present as the existing system evolved.

Action Step 4: Identify prior attempts to change system and why they failed.

Action Step 5: Share information with team Focus Group.

Objective 2: Determine current environmental factors and public policy objectives.

Action Step 1: Research and compile available resources.

Action Step 2: Explore our own experience and that of others on the Focus Group.

Action Step 3: Compile a list of current environmental factors and public policy objectives.

Objective 3: Determine if the existing system is sufficiently responsive to current environmental factors, and public policy objectives.

Action Step 1: Review previously compiled resources GAPs One and Two).

Action Step 2: Explore your own experience and that of the Focus Group.

Action Step 3: Develop a list of areas in which the current system is responsive or not responsive.

GAP THREE

If necessary, we need to modify existing system or design a new system based on current environmental factors, public policy objectives and the characteristics of an ideal system.

Objective 1: Evaluate ability of current system to achieve the factors and objectives listed in Gap 2 Object 2.

Action Step 1: Evaluate ability to achieve reasonable public policy objectives and to address environmental factors.

Objective 2: Modify existing system or design a new system.

Action Step 1: Review other liquidations systems.

Action Step 2: Propose modifications.

Action Step 3: Propose new design.

Action Step 4: Recommend modification or new design.

Action Step 5: Consider whether to obtain outside evaluation/consultation.