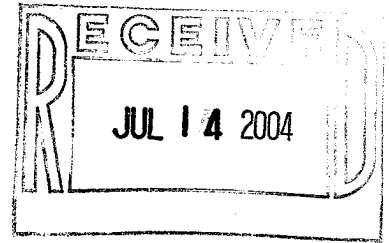




NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

July 6, 2004



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Grand Cayman, Cayman Islands

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Ms. MaryLou Gallegos  
Cayman Islands Monetary Authority  
80E Shedden Road / P.O. Box 10052 APO  
Cayman Islands

Dear Messrs. Bullmore & Whicker and Ms. Gallegos:

On behalf of the state insurance regulators who participated in the National Warranty Insurance Group ("NWIG") meeting on March 17, 2004, I want to express our appreciation for your participation and interest in helping us resolve the issues discussed at the meeting. You asked us at that meeting to speak with one voice, and expressed a sincere desire to support the state insurance regulators in approaching this a unique situation. We agree with you.

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From that meeting it is fair to say that all parties agree that it is critically important to provide protection for the interests of the service contract holders. These are, regardless of their legal status in regard to NWIG under any law, the ultimate parties of interest in this matter as it is their claims that are not being paid, and their coverage that has been impaired by the insolvency of NWIG.

**WORLD  
WIDE WEB**

[www.naic.org](http://www.naic.org)

While we acknowledge and are encouraged by recent recovery actions filed by the JOLs in relation to actuaries and accountants that abetted NWIG's insolvency, we nonetheless believe that insufficient progress has been made towards establishing a procedure to resolve or otherwise adjudicate the claims of the million or so service contract holders who reside in the United States. The sooner we can establish some form of claims procedure for contract holders through the Bankruptcy Court or otherwise, the better for all concerned.

As I am sure you can appreciate, the frustration of contract-holders unpaid claims is often directed to state insurance regulators even though NWIG has never been under their jurisdiction. Given the total preemption of state authority over NWIG under the federal Risk Retention Act of Act of 1986, U.S. state insurance regulators have found it difficult to effectively respond to NWIG's collapse and resulting liquidation. Establishing a claims process for contract holders will go along way towards resolving individual complaints.

In this regard, something must be done to ameliorate the inconvenience of the Cayman Islands forum. Neither individual contract holders nor state insurance regulators in the U.S. have the resources or requisite experience to effectively advance their interests. State insurance regulators are totally unfamiliar with Cayman proceedings and while they are not regularly involved in federal bankruptcy proceedings in the U.S., such forums are far more familiar and accessible.

We truly appreciate the commitment of the JOLs expressed at our meeting on March 17th, to achieve openness and transparency of the Cayman Island proceedings. However, state insurance regulators recent experiences with the JOLs have not been positive. For example, it appears that no response has been made to a request by the Iowa Department of Insurance on January 26, 2004, for the identity of the NWIG membership, the opportunity to examine NWIG's books and records and to be notified of ongoing developments. Up until the evening before our New York meeting, we had not received quarterly status reports that detail the income and expenses of administering the liquidation. Better coordination between the U.S. bankruptcy proceeding and the Cayman proceeding, including regular periodic reporting, would be positive.

Moreover, we remain very concerned about the costs of continuing the proceedings in the Cayman Islands. From the March 8, 2004 report of the JOLs at <http://www.nwig.com>, the costs incurred by the liquidation estate appear to be averaging over \$20,000 per day. We are concerned that costs of administration will consume any assets now available to pay claimants even before a claims procedure can be implemented.

Clearly, the time has come to accelerate this process so that in the near term some measure of relief can be afforded to the service contract holders. Towards this end we offer the following questions, observations and suggestions for your consideration:

- Affected state insurance commissioners must be afforded an opportunity to directly participate in the process on behalf of the service contract holders. If Cayman law permits, we propose the formation of a formal official Contract Holder Committee whose membership would consist primarily of State Regulators and/or Class Action Counsel. The Committee should be authorized to retain Cayman Barristers who would be paid out of the NWIG estate.<sup>1</sup>

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<sup>1</sup> Under applicable U.S. Bankruptcy Law (11U.S.C. 1102(a)(2)), the court may order the appointment of additional committees who in turn may retain counsel paid by the Bankruptcy estate. For example, recently in the Enron Bankruptcy Case pending in the S.D. N.Y., the Texas Attorney General was instrumental in having a committee of former employees constituted who

- Any payments from NWIG's liquidation to any of the five or six providers (e.g. Warranty Gold, The Delta Group) should be paid either to: (1) the registry of a U.S. Bankruptcy Court, as in the case of Warranty Gold, or (2) an appointed Trustee under a trust agreement that would provide for terms of payment to each of that provider's members. For example, in the Warranty Gold Bankruptcy, the pending proposed plan of reorganization calls for the appointment of a Plan Trustee who will in turn make distributions to contract holders in a negotiated priority scheme insuring that policyholders (here contract holders) are paid first.
- The JOLs should request the Grand Court of The Caymans to authorize the filing of Class Proofs of Claim by authorized representatives of such classes, which we would envision being either State's Attorneys General or Class Counsel for presently Certified Class Actions under Rule 23 of the U.S. *Federal Rules of Civil Procedure*. We believe it is imperative that Class Proofs of Claim be accepted, again to give policyholders their well-deserved place at the table.
- The U.S. Bankruptcy Court in Nebraska should be called upon under the pending section 304 proceeding (11 U.S.C. Section 304(b)(3)) that allows the Bankruptcy Court to "order other appropriate relief." Congress has recognized the Bankruptcy Court's need for considerable flexibility in confronting the multitude of complex and unforeseen problems that are associated with International Bankruptcy cases. HR Rep. No. 595 U.S. Code Cong. & Admin. News 1978 at 5996. As one court has described this specific provision of the Bankruptcy Code, the court "is free to broadly mold appropriate relief in near blank check fashion." *Matter of Culmer* 25 B.R. 621, 624 (Bankr. S.D. N.Y. 1982).
- The identity of and the consideration paid by the service contract holders should be quickly determined. Who possesses or maintains these records, NWIG, the service contract providers, or a combination thereof?
- The legal status of the service contract holders should be expeditiously determined. This can only be done through a careful analysis and review of the basic contract documents entered into between NWIG and the service contract obligors. Some states, such as Texas and Nebraska, mandate first dollar coverage, and therefore the failure of the service contract provider to timely pay a covered claim places the consumer in privity of contract with NWIG under applicable state law. Will Cayman law give full faith and credit to the laws of the several states with respect to those consumers who are now in privity with NWIG, and if so, should this class of consumers be given a priority?
- The claims status of the contract holder should be reviewed and considered. For example, should the fact that a contract holder has incurred covered, but unpaid

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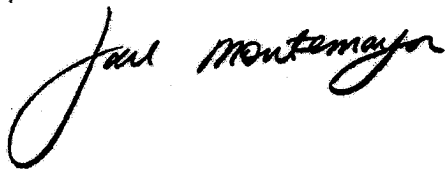
in turn retained counsel paid for by Enron which gave these employees a much needed voice in the proceedings.

repair expense be recognized and accorded a priority in any distribution scheme. Should ease of administration (pro rata refund of premium) outweigh claims of actuarial fairness? If so, what entity or entities should acknowledge and adjudicate claims?

- Assignment of Causes of Action. This may be done by (1) repatriating the matter back to the U.S. Bankruptcy Court in Nebraska or (2) establishing a State Regulator Committee in the Cayman proceedings.

Again, thank you for giving us the opportunity to meet with you and discuss this very important matter. We look forward to pursuing our continuing joint efforts to resolve these issues as quickly as possible.

Sincerely,



Jose Montemayor, Chairman  
Property & Casualty (C) Committee

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