Date: 2/20/20

Conference Call

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE
Wednesday, March 4, 2020
2:00 p.m. – 3:00 p.m. (Central)

ROLL CALL

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NAIC Support Staff: Jane Koenigsman

AGENDA

1. Discuss Comments Received on Key Provisions of Receivership and Guaranty Fund Laws — James Kennedy (TX)  
2. Discuss Any Other Matters Brought Before the Task Force — James Kennedy (TX)
3. Adjournment

Attachment One
Attachment One – Comments on Key Provisions
You requested suggestions for a list of key provisions that states should have in its laws to promote effectiveness and consistency in receiverships impacting multiple states. I suggest that states consider adding provisions relating to the following:

1. **Conflicts of Law.** Please see the Insurer Receivership Model Act (MDL-555), Section 102. Conflicts of Law. “This Act, Title [XXX], and the state insurance guaranty association acts constitute this state’s insurer receivership laws, and these laws shall be construed together in a manner that is consistent. In the event of a conflict between the insurer receivership laws and the provisions of any other law, the insurer receivership laws shall prevail.”

2. **Police and Regulatory Exception to Stay.** The Bankruptcy Code includes certain exceptions to the automatic stay, including an exception for a governmental unit to enforce such governmental unit’s police or regulatory power. See 11 U.S.C. §362(b)(4). States should consider including such an exception to receivership statutes relating to injunctions and orders. Section 108 of the MDL-555 relates to Injunctions and Orders. Including an exception to the stay provision would confirm for states that an action by an insurance department, while exercising its regulatory powers against a license of an insurance company in a receivership case pending in a different state, is not stayed by the commencement of a receivership proceeding.

Please let me know if you would like additional information about the foregoing.

Best regards,

Shelley L. Forrest  
Receivership Counsel  
Missouri Department of Commerce and Insurance
Suggestions from Pennsylvania focus on three different areas where we feel there is a lack of effectiveness and consistency in receiverships that impact multiple states. The biggest inconsistency is the recognition of stays and the failure to give full faith and credit when lawsuits are pending in states that are not the domestic state. Obviously in Pennsylvania we view the Warrantech issue and over the cap payments to claimants to be a large issue. Lastly the Model Act 520 did a lot to change inconstancies on the life and health side but we view the varying property and casualty GA limits across the country as an issue and something to possibly be addressed.

If there is anything else you need from me do not hesitate to reach out.

Best,

Crystal McDonald

Crystal D. McDonald, Esquire | Project Director
Insurance Department | Office of Liquidations, Rehabilitations and Special Funds
Article X. Interstate Relations

Article X was drafted to resolve issues that arise in receiverships impacting multiple states. The enactment of these provisions would enhance the efficiency and effectiveness of receiverships.

Section 1001 provides for an ancillary conservation of foreign insurers. The adoption of this section would avoid unnecessary ancillary receiverships. In some cases, ancillary receiverships can increase the costs of administration while providing little or no benefit to policyholders.

Section 1002 deals with domiciliary receivers in other states, and addresses two important issues:

- It ensures that other states’ receivership statutes and court orders are given full faith and credit. This promotes a uniform application of laws and orders in receivership proceedings. It also avoids any criteria for determining whether another state qualifies as a “reciprocal state”, which is inconsistent in existing statutes. In 2017, the NAIC Financial Condition Committee encouraged states to enact laws according full faith and credit to stays and injunctions entered in other states’ receivership proceedings. This recommendation also suggested that states consider adopting the stay provisions of the more recent NAIC models (See IRMA §108).

- It provides for the disposition of deposits held for an insurer placed in receivership, and ensures that they are available to the receivership estate or guaranty associations, as applicable. This can avoid a situation where deposits languish due to statutory ambiguities or inconsistencies.

Section 102. Conflicts of Law

This section provides that the Insurer Receivership Act and state insurance guaranty association acts shall prevail in the event of a conflict with other laws. This is an important principle, as these laws must control over general laws governing insurers.

Section 502. Continuance of Coverage

This section governs the continuation of coverage under policies when a liquidation order is entered. Section 502 D specifies that insurance policies or annuities covered by a life and health insurance guaranty association continue in force after the entry of a liquidation order. This provision is critical in a liquidation of a life or health insurer, as it ensures that such policies are not automatically terminated as a result of a liquidation order. Section 502 B also permits the Liquidator, with court approval, to set the date on which policies not covered by a life and health insurance guaranty association are canceled. This gives the Liquidator flexibility to deal with situations where the default 30-day period might not be appropriate.

Section 801. Priority of Distribution

The priority scheme governing the distribution of assets must comport with the Supreme Court’s decision in United States Department of Treasury v. Fabe.

Guideline for Implementation of State Orderly Liquidation Authority

The NAIC Receiver’s Handbook for Insurance Company Insolvencies addresses the implementation of a receivership in the event of a proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Title II). It includes a guideline for initiating a receivership in connection with a proceeding under Title II. A receivership act should include
authority similar to the guideline to ensure that expeditious action can be taken if there is a proceeding under Title II.
February 7, 2020

James Kennedy, Chair
Receivership and Insolvency (E) Task Force
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108

RE:  List of Key Provisions to Promote Effectiveness and Consistency
    in State Receivership and Guaranty Association Laws

Dear Chairman Kennedy:

The American Council of Life Insurers (“ACLI”)\(^1\) appreciates this opportunity to respond to the Task Force’s request for a list of key provisions that states should adopt in its receivership and guaranty association laws in order to promote effectiveness and consistency, particularly with regard to multi-state receiverships.

The ACLI believes that both the state receivership and guaranty association systems have operated very efficiently and effectively since their inception and that there is a high degree of consistency among the states, particularly with regard to state guaranty association laws.

That being said, there is always room for improvement, which is why we are recommending a list of potential improvements. We are not, however, seeking to “open up” either the receivership or guaranty association models to revisions or additional provisions, though we are suggesting some amendments to the Insurance Holding Company System Regulatory Act which the Task Force is currently looking to revise.

Instead, we are seeking more holistic ways of improving the overall receivership and guaranty association systems and related state laws, including those pertaining to the timing, administration and costs of rehabilitations and liquidations, as well as to the judiciary and the NAIC.

\(^{1}\) The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 percent of industry assets in the United States. Learn more at www.acli.com.
Below is a list of our suggested improvements:

- Encourage all states to adopt the NAIC’s recently-revised *Life and Health Insurance Guaranty Association Model Act*

- Create a NAIC accreditation standard that would require states to adopt, in a “functionally consistent” manner, the *Life and Health Insurance Guaranty Association Model Act*

- Align our receivership and guaranty association laws as they relate to life and health reinsurance

- Promote least-cost resolution at the administrative level and in the early stages of judicial proceedings

- Limit how long a receivership proceeding can be left open (since administration expenses can consume considerable resources)

- Address the timing of orders of liquidations

- Limit judicial discretion regarding a regulator’s petition for rehabilitation or liquidation

- Create a designated receivership court in every state

- Provide standardized judicial education on the receivership process

- Strengthen the NAIC’s Financial Analysis Working Group (FAWG) and Receivership Financial Analysis Working Group (R-FAWG)

- Create a NAIC “SWAT” team of receivership experts

- Continue to address modifications to Section 7 of the *Insurance Holding Company System Regulatory Act* that would assure the continuation of inter-affiliate services where receiverships impact multiple states

- Create crisis management groups for supervisory colleges within Section 7 of the *Insurance Holding Company System Regulatory Act* and/or guidance such as the Receivers’ Handbook

Thanks again for this opportunity to comment. If you have any questions, feel free to contact me at waynemehlman@acli.com or 202-624-2135.

Sincerely,

Wayne Mehlman
Senior Counsel, Insurance Regulation
February 7, 2020

James Kennedy  
Chairman, Receivership and Insolvency Task Force  
National Association of Insurance Commissioners  
1100 Walnut Street  
Kansas City, MO 64106-2197

Subject: Response to Request for Comment on Key Provisions for Insolvency Laws

Dear James:

Thank you for inviting comments on Key Provisions for Insolvency Laws. In response NCIGF offers the following:

The NCIGF is undertaking a multi-year effort to implement various revisions to property and casualty guaranty fund acts. This effort will focus on the following areas:

1) Modernization as needed of state laws. A small minority of states need updates to provisions in their laws such as the base for calculation of member assessments, claim bar dates and other matters. We plan to identify areas where an update may be needed and offer suggestions to fund managers and their boards in this regard.

2) Statutory changes to accommodate transactions under Insurance Business Transfer and corporate division statutes. We have advised the Restructuring Mechanisms Working Group that we have concerns that under current state guaranty fund laws certain claimants involved in these transactions may not be covered in the event of the insolvency of a new entity. NCIGF recently adopted a policy stating that coverage should remain in place for those claimants who would have had guaranty fund coverage before the transaction. Conversely, the policy states that guaranty fund coverage should not be created for such claims that would not have been covered claims before the transaction. We are in the process of developing statutory language to achieve this result and will suggest to local managers that the changes be implemented as needed and assist them in tailoring our template language to their local statutes.

3) Specific statutory changes if needed to permit guaranty funds to assess for administrative costs that are not tied to the volume of insolvency activity. As you are aware the guaranty funds are often called upon to “ramp up” very quickly to address new liquidations. To achieve this “always ready” status it is important that a minimal cadre of experienced staff be available to handle short-notice influx of claims and that physical guaranty fund facilities be maintained. Some
states may need specific statutory changes to address this need and we will be
assisting our members in this regard.

4) Statutory changes as needed to prevent “orphan claims” scenarios. In a minority of
states non-standard language, usually related to residency requirements, is on the
books. This could create a claim denial of a claim the system is intended to cover.
We plan to work with those states, again a minority, in which such problem could
arise.

With regard to liquidation acts, as you know, the NCIGF for some time has promoted
specific liquidation act language to address large deductibles. The NAIC’s IRMA model
has such a provision and recently the large deductible working group has exposed an
alternative approach as a “guideline” for states to consider. This alternative approach calls
for the asset to be remitted in full to the guaranty funds and not be treated as a general
asset of the estate. The NCIGF supports the alternative approach proposed by the Large
Deductible Working Group with some technical tweaks that will be offered in our
comments. The Large Deductible Working Group has concluded, and we agree, that large
deductible business, in an insurance liquidation, is best managed when there is a statute in
place.

Thank you for considering our comments. We would be happy to answer any questions the
RITF may have.

Very truly yours,

Barbara F. Cox
Attorney at Law
Barbara F. Cox, LLC
February 7, 2020

James Kennedy, Chair
Receivership and Insolvency Task Force
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Jane M. Koenigsman, Life/Health Financial Analysis Manager
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197


Dear Mr. Kennedy and Ms. Koenigsman:

We understand that the NAIC’s Receivership and Insolvency Task Force is requesting comments from Interested Regulators and Interested Parties concerning efforts to encourage state adoption of provisions in receivership and guaranty association laws that promote effectiveness and consistency in multi-state insurer insolvencies, in furtherance of recommendations made related to the NAIC’s Macro Prudential Initiative. We understand further that the Task Force intends to develop a list of “key” receivership and guaranty fund provisions to recommend for adoption in the states. We appreciate the opportunity to have input in this process.

The Life and Health Insurance Guaranty Association system has already achieved a high degree of statutory consistency with the NAIC’s Life and Health Insurance Guaranty Association Model Act (“Model Act”). To date, there are 46 states that are substantially consistent with the key provisions of the Model Act, as it existed prior to the recently adopted 2017 amendments.¹

As you know, the process for amending the Model Act in 2017 was very thorough and resulted in extensive changes to reflect the Guaranty System’s most recent insolvency experience dealing with long term care insurance. Since the NAIC’s adoption of the 2017 amendments, there has been a successful effort to seek enactment of those amendments across the country. To date, 27

¹ The key provisions deal with coverage limits, triggering, the definitions of insolvent and impaired insurer, non-resident coverage, coverage of citizens living abroad, payee coverage for structured settlement annuities, non-guaranteed products, interest rate adjustments, equity indexed products, Medicare Part C and D products and reinsurance.
states have substantially adopted the 2017 amendments, and there are continuing efforts to update the guaranty association laws in the balance of the states, including bills introduced or soon to be introduced for 2020 legislative sessions.

Given that the Model Act was recently updated in 2017, and given that there already is a high level of conformity between state law and the Model Act, we believe that the focus of current efforts should be on supporting the adoption of the 2017 amendments in the remaining states rather than reopening discussions about the Model Act. We would be concerned that such discussions, in particular if they resulted in additional changes to the Model Act, could distract and disrupt efforts to adopt the 2017 amendments in the remaining states.

Again, we thank you for this opportunity to comment, and we would be happy to answer any questions that you may have concerning our comments.

Sincerely,

Peter G. Gallanis
President

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2 Of these 27 states, one state, Utah, has adopted a 75/25 split between life and health insurers for purposes of allocating the costs of long-term care assessments.