

CALIFORNIA

From: Battle, John [mailto:BattleJ@caclo.org]

Sent: Monday, March 14, 2016 4:46 PM

To: Koenigsman, Jane M.

Cc: Hom, Jack (Jack.Hom@insurance.ca.gov); Wilson, David

Subject: NAIC Model Law (E) Working Group/ Response to Survey

Jane,

California submits the following per action request from the most recent conference call of the working group:

List of Priorities for the Receivership Model Law Working Group – based on survey results discussed on 3/7/16.

1. **Question 6** – Are stays and orders of receiverships in other states give full faith and credit in your state?

Consistency (preferably, uniformity) across all the states could save the estate from incurring legal fees and expenses to enforce stays. This is an irritating issue when it occurs, but California has not encountered widespread occurrences. The general issue seems to be “rogue” Judges.

2. **Question 7** – What conditions, if any, are placed on giving effect to stays and orders of other states? (e.g., are “reciprocal” and “nonreciprocal” states treated differently?)

Consistency (preferably, uniformity) across all the states could save the estate from incurring legal fees and expenses to enforce stays. The reciprocal issue, when raised, has not had a major impact on the decision re whether the stay would be applied.

3. **Question 11** – Does the Commissioner have statutory immunity as Receiver?

An express provision for the Receiver’s immunity in the California Ins. Code would minimize legal expenses in connection with the California Ins. Comm. arguing sovereign immunity.

4. **Question 22** – Is there an automatic stay upon entry of a receivership order?

This is related to #1 above (i.e., question 6). An automatic stay that is uniformly enforceable across all the states would save legal fees.

5. **Question 25** – Are stays imposed in both rehabilitation and liquidation proceedings?

Considering that the conditions that generally lead to rehabilitation are the same that generally lead to liquidation, an automatic stay should generally but discretionarily be applied to rehabilitation as well as universally applied with conservations and liquidations.

Regards,

John Battle

FLORIDA

From: Schwantes, Mary [mailto:Mary.Schwantes@myfloridacfo.com]
Sent: Monday, March 21, 2016 2:41 PM
To: Koenigsman, Jane M.
Cc: Wilkerson, Toma
Subject: RE: RMLWG: Reminder for Top 5 Highest Priority

Jane,

We have reviewed the issues which were the subject of the October 2015 survey of members of the Receivership Model Law (E) Working Group and the recent Working Group conference call. Based primarily on our discussions during the call, we recommend that the following topics be among the “top 5” receivership issues considered by the Working Group in encouraging consistency between the various state receivership laws. Please note that the following are listed in the order in which they appear on the survey and not in order of proposed importance to Florida.

TOPIC 1 – Incorporation of provision substantially similar to the NAIC Guideline for Implementation of State Orderly Liquidation Authority, or any other provision specifying that a determination under Title II of the Dodd Frank Act is a ground for receivership

Related to survey question #3: Does the state law contain a provision substantially similar to the NAIC Guideline for Implementation of State Orderly Liquidation Authority, or any other provision specifying that a determination under Title II of the Dodd Frank Act is a ground for receivership?

This appeared to be both critical to uniformity/consistency among the states and relatively easy to incorporate into existing statutes. Although Florida and other state statutes currently contain general provisions which could be used to initiate receivership action against a company which has been the subject of a federal determination/appointment of receiver, the addition of statutory language specifically referencing the Dodd Frank Act should not be objectionable.

TOPIC 2 –Application of receivership laws to non-regulated entities that are operationally related to insurers

Related to survey question #4: Are non-regulated entities that are operationally related to insurers subject to receivership under insurance laws in your state?

This topic generated a lot of discussion during the conference call. It appears that further consideration is warranted to determine the priority/importance of this issue and a possible resolution that would promote consistency.

TOPIC 3 – Reciprocity issues regarding receivership orders

Related to survey question #5: Is a receivership action by a non-US regulator on an entity in the group recognized or supported in your state?

This is an additional area in which relatively minor changes to the reciprocity provisions of the various state statutes and the addition of specific references to receivership actions by non-US regulators could result in increased consistency between the states.

TOPIC 4 – Qualified Financial Contracts

Related to survey question #20: Does the receivership law address early termination rights in qualified financial contracts (QFCs)?

This issue generated more interest by other states during the conference call. Although Florida does not have receivership experience concerning this issue, we believe it may still be one that should be further addressed by the Working Group based on the NAIC conversations and other communications.

TOPIC 5 – Automatic/Limited Stays

Related to survey questions #21 – #27:

- 21. Is there an automatic stay upon filing of a receivership?*
- 22. Is there an automatic stay upon entry of a receivership order?*
- 23. Does the stay apply to actions against the insurer?*
- 24. Does the stay apply to Actions against insureds?*
- 25. Are stays imposed in both rehabilitation and liquidation proceedings?*
- 26. Are stays imposed only in liquidation proceedings?*
- 27. Is there a limitation on the duration of the stay?*

This also appeared to be an area of significant interest during the recent conference call. Because Florida's statute provides for an automatic, permanent (i.e., **unlimited**) stay of proceedings against the insurer, it is in fact stronger than many of the options suggested. We agree that an automatic stay should be available to all receivers in all states. If this is an area that requires consistency, Florida would recommend that an automatic stay be proposed that sets minimum elements/requirements but allows a state to enact stronger requirements and still have it honored among all reciprocal states.

Please let me know if you have any questions concerning the above.

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ILLINOIS

From: Baldwin, Kevin [mailto:KBaldwin@osdchi.com]
Sent: Monday, March 21, 2016 3:02 PM
To: Koenigsman, Jane M.
Subject: RE: RMLWG: Reminder for Top 5 Highest Priority

Jane,

IL suggests the following sections of IRMA as top five picks for uniformity:

IRMA Sections 108, 711, 1001, 1002

In addition to these Sections, there may also be other Sections that IL would agree are critical for uniformity.

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MASSACHUSETTS

From: Joyce, Christopher M (DOI) [mailto:christopher.m.joyce@state.ma.us]
Sent: Monday, March 21, 2016 1:40 PM
To: Koenigsman, Jane M.
Subject: RE: RMLWG: Reminder for Top 5 Highest Priority

Jane,

The following are Massachusetts' top five picks for topics from the survey where further action may be warranted.

- 1) #6 - Are stays and orders of receiverships in other states given full faith and credit in your state?
- 2) #24 - Does the stay apply to Actions against insureds?
- 3) #13 - Can the Receiver depart from the priority scheme in a rehabilitation proceeding?
- 4) #5 - Is a receivership action by a non-US regulator on an entity in the group recognized or supported in your state?
- 5) #3 - Does the state law contain a provision substantially similar to the NAIC Guideline for Implementation of State Orderly Liquidation Authority, or any other provision specifying that a determination under Title II of the Dodd Frank Act is a ground for receivership.

If you have any questions please let me know.

Regards,

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MICHIGAN

From: Gerber, Jim (DIFS) [mailto:gerberj@michigan.gov]
Sent: Tuesday, March 08, 2016 8:45 AM
To: Koenigsman, Jane M.
Subject: Receivership Model Law E Working Group

Jane,

Per Chairperson Kennedy's request here is Michigan's top 5 issues:

Survey numbers 6 and 7 Full Faith/Credit
Survey numbers 21-27 Stays
Survey number 20-Qualified Financial Contracts
Survey number 4-Non-Regulated Entities
Survey number 3-NAIC Guidelines for Implementation of State Orderly Liquidation Authority/Dodd
Frank Title II

Please let me know if you have any questions.

Thank you.

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Texas Department of Insurance
Recommendations to Receivership Model Law Working Group

1. Most states do not have a provision specifying that a determination under Title II of the Dodd Frank Act is a ground for receivership, such as the *NAIC Guideline for Implementation of State Orderly Liquidation Authority*.
 - A state receivership law should ensure that a Commissioner can expeditiously obtain a receivership order in the event of a determination under Title II.
 - A provision substantially similar to the NAIC Guideline is particularly important in a state of domicile of an insurer affiliated with a group that may be subject to Title II.
2. In a receivership of an insurer licensed in multiple states, the Receiver must be able to enforce stays in other states. Many receivership laws have reciprocity provisions, giving full faith and credit to stays in states with substantially similar laws. However, these provisions are not universal, and there is a lack of uniformity with respect to stays in receivership proceedings. This can result in inconsistent enforcement of stays across state lines.
 - The NAIC should encourage states to adopt stay provisions consistent with an NAIC model (e.g., IRMA §108).
 - The NAIC should encourage states to adopt reciprocity provisions to ensure that stays are recognized in other states.
3. Less than half of all states have a provision substantially similar to IRMA §711. Only two states have a law similar to the *NAIC Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts*.
 - The NAIC should encourage states to adopt IRMA §711.
 - The NAIC should determine whether the NAIC Guideline should be promoted in states that have adopted IRMA §711, or are considering its adoption.
4. States have varying requirements for persons who act on behalf of the Receiver. While there are professional designations for persons involved in receiverships, there is no universally accepted credentialing process, such as the certification process for insurance examiners. Establishing requirements for receivership professionals would benefit regulators, especially those that have sporadic experience with receiverships.
 - The NAIC should make recommendations regarding the qualifications for receivership professionals.
 - Based on these recommendations, the NAIC should study the feasibility of creating a credentialing process for receivership professionals.
5. When an insurer is placed in receivership, a Commissioner must be appointed as Receiver. The Commissioner should have immunity when fulfilling his or her duties as Receiver. However, some states do not have statutory immunity provisions. In contrast, most insurance guaranty acts have immunity provisions consistent with the NAIC model acts.
 - State laws should provide immunity to the Commissioner when serving as Receiver.

WASHINGTON

From: Hartz, Doug (OIC)
Sent: Wednesday, March 23, 2016 8:12 AM
To: Koenigsman, Jane M.
Cc: Odiorne, Jim; Kennedy, James; Pastuch, Ron
Subject: RE: RMLWG: Reminder for Top 5 Highest Priority

1. Provisions showing this is a seamless national state-based system focused on ensuring that benefits (especially claim payments) are delivered, as those who paid for them expect, starting with those related to if a determination under Title II of the Dodd Frank Act is a ground for receivership.
2. The next set of provisions showing that this is a seamless national state-based system focused on benefit delivery may be those dealing with large deductible issues. There needs to be harmony between the guaranty systems and the troubled insurer or estate handling systems.
3. The next set of provisions showing that this is a seamless national state-based system focused on benefit delivery may be those dealing with reciprocity (including stays) between jurisdictions (including non-US regulator actions on an entity in a group crossing international borders).
4. The next set of provisions may be those related to Qualified Financial Contracts. There needs to be harmony between the fluid commercial bankruptcy systems in the US (and internationally) and the national state-based troubled insurer or estate handling systems.
5. The next set of provisions may be those related to the priority of claims for benefits under insurance policies. These are uniquely related to showing this is a seamless national state-based system that can allow for (difference that will not lead to systemic problems) regional and sovereignty based differences.

I tried to focus on issues that a supervising court would not be able to deal with. Thus, issues dealing with qualifications of and immunity for those working on these matters did not make this short list, but ensuring that a supervising court can deal with these matters comes next.

From: Wayne Mehlman [mailto:WayneMehlman@acli.com]
Sent: Monday, March 21, 2016 3:20 PM
To: Koenigsman, Jane M.
Subject: RE: RMLWG: Reminder for Top 5 Highest Priority

Jane:

While I wrote to you and James Kennedy separately about the NAIC's *Guideline on 24-Hour Stay Provision* last week, the ACLI would like to resubmit those comments in response to the Receivership Model Law Working Group's request for interested parties to submit their top five survey topics in order to develop recommendations to achieve greater consistency among the states.

The ACLI took a neutral position on the NAIC's *Guideline on 24-Hour Stay Provision* as it relates to netting agreements and qualified financial contracts when it was released in 2013.

Since then however, the OCC, Federal Reserve Board and the FDIC have issued Interim Final and Proposed Rules on the Definition of Qualifying Master Netting Agreements in December 2014 and January 2015 that, among other things, does not recognize state-based stays. Such non-recognition of state-based stays would make the netting agreements that are entered into by insurers and their counterparties ineligible to meet the definition of an "eligible master netting agreement" in those states that have adopted a 24-hour stay, which in turn would result in higher collateral requirements and credit charges for insurers.

In order to avoid these negative consequences on our member insurers, we have no choice but to now oppose the adoption of a 24-hour stay provision in the states. For example, Wisconsin enacted netting legislation late last year that contained a 24-hour stay provision, and we now support a bill that would remove that provision. Similarly, legislation was recently introduced in Connecticut that contains a 24-hour stay provision, and we support an amended version that would remove that provision.

Given the above-mentioned concerns that we now have with state adoption of a 24-hour stay provision, we would urge NAIC staff and the Receivership Model Law Working Group and Receivership and Insolvency Task Force to consider either (1) repealing the Guideline or (2) amending it to say that states should only consider adopting a 24-hour stay provision if and when the Federal definition of "eligible master netting agreement" is amended to allow for the recognition of state-based stays.

Regards,

Wayne

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**JOINT SUBMISSION OF NOLHGA AND NCIGF REGARDING
THE NAIC MODEL LAW WORKING GROUP'S SURVEY
OF STATES' RECEIVERSHIP LAWS**

March 21, 2016

Thank you again for the opportunity to give more input to the Working Group's deliberations on establishing top priorities in light of the FSAP Technical Note, and the Model Law Working Group's state survey. The National Organization of Life & Health Insurance Guaranty Associations and the National Conference of Insurance Guaranty Funds stated our priorities in our comment submitted for the Working Group's March 7 call. Those priorities remain. In response to the Working Group's request for additional comment to help narrow further the list of top priorities, we add the following:

Focused Set of Priorities

We agree with the Working Group's overall approach to responding to the FSAP. The goal should be to determine a short, focused set of priorities that are directly responsive to the goals of the Key Attributes. As we understand this Working Group's project, to make the priority list the item not only needs to be a good idea for which there is broad support among stakeholders, but also needs to be an item of material concern in the Key Attributes and the FSAP Technical Note. We reiterate our suggestion that the way to prioritize further is by referring to the Key Attributes' overall goal of preparedness for the resolution of a Global Systemically Important Insurer. That philosophy was behind our original list.

Leveraging Alignment on Dodd-Frank Implementation

There has been unanimous support for the NAIC's Dodd-Frank guideline. This Working Group can use this opportunity to communicate that priority to commissioners and other stakeholders, without issuing any additional legislative guidelines or model.

Operationalizing Pre-planning and Early Consultation

NOLHGA and NCIGF also emphasized its role in pre-planning exercises and in early planning for an actual insolvency. That role for the guaranty system is encouraged by the Key Attributes and was emphasized by the NAIC in its recent FSB consultation comment. There has been no opposition expressed.

What we emphasize again, however, is how critical this role is to Dodd-Frank preparedness. In the NAIC's own Receiver's Handbook chapter on State Implementation of Dodd-Frank Receivership the NAIC emphasized organized, systematic pre-planning, which would include NOLHGA and NCIGF. As the NAIC continues to implement not only the statutory piece of

Dodd-Frank implementation but also the preparedness element, these procedures become even more critical.

We therefore suggest that the Working Group, the NAIC, and individual regulators advance the preplanning role of the guaranty system, both by continuing to advocate for that view before international standard setting bodies and policy makers, and by working to implement that role for the guaranty system on crisis management groups and other opportunities for guaranty system input to preplanning.

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