
IN THE
Supreme Court of Pennsylvania
MIDDLE DISTRICT

Docket No. 3 MAP 2008

**JOEL S. ARIO, INSURANCE COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA,**
Appellant,

v.

**RELIANCE INSURANCE COMPANY IN RE: PROOF OF CLAIM
NO. 1010161-FARM BUREAU INSURANCE CO.,**
Appellee.

*On Appeal from the Orders of the Commonwealth Court of Pennsylvania
dated December 14, 2007 and December 31, 2007 at 269 MD 2001*

**BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS IN SUPPORT OF APPELLANT**

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I. INTRODUCTION

The National Association of Insurance Commissioners (the “NAIC”) files its *amicus curiae* brief to assist this Court with resolving the nationally significant insurance regulatory issue of whether, under Section 544 of Pennsylvania’s Insurance Department Act, *as amended*, 40 P.S. § 221.44, subrogation claims filed by subrogated insurers should be afforded the same priority status as claims filed by policyholders and third party claimants. This brief provides a broad historical and jurisdictional perspective on this issue.

On December 14, 2007, the Commonwealth Court of Pennsylvania issued an Order (the “December 14 Order”) directing Appellant Joel S. Ario, Insurance Commissioner of the Commonwealth of Pennsylvania and the Statutory Liquidator of Reliance Insurance Company (the “Pennsylvania Liquidator”), to assign a certain monetary claim filed by subrogated insurer, Farm Bureau Insurance Company (“Farm Bureau”), the same priority as the claims of policyholders and third-party claimants. The Pennsylvania Liquidator appealed the December 14 Order to this Court after the Commonwealth Court denied his Motion for Reconsideration.

The NAIC submits this *amicus curiae* brief in support of the Pennsylvania Liquidator’s position on appeal. If the Order of the Commonwealth Court is not reversed, it will not only disrupt the Reliance liquidation, it may also harm the ability of policyholders and third-party claimants to recover in other liquidations.

II. INTEREST OF AMICUS CURIAE

A. Identity of Amicus Curiae

The NAIC is a non-profit corporation whose membership consists of the principal insurance regulatory officials of the 50 States, the District of Columbia, and the territories and insular possessions of the United States. Founded in 1871, it is the nation's oldest association of state government officials. The NAIC represents the coordinated and considered views of the state government officials who regulate the insurance industry and enforce the insurance laws of the country.

The purpose of the NAIC is to provide its members with a national forum enabling them to work cooperatively on regulatory matters that transcend the boundaries of their respective jurisdictions. Collectively, the state insurance commissioners work to develop model legislation, rules, regulations, white papers and actuarial guidelines that promote and establish uniform regulatory policy. Their overriding objectives are to protect consumers and to assist in maintaining the financial stability of the insurance industry.

The NAIC performs numerous crucial services on behalf of state governments including developing and publishing model laws, regulations, bulletins, financial and accounting standards, white papers, consumer guides, handbooks, periodicals and the *Proceedings of the NAIC*. Hundreds of state laws assign duties to the NAIC and incorporate NAIC Standards, Models and other publications. In addition, the NAIC manages and coordinates the accreditation review of insurance departments and maintains regulatory and financial databases of insurance company financial data.

B. Interest of Amicus Curiae

The interest of the NAIC in this matter arises out of each member's interest to promote the objectives of solvent insurance institutions in the member's capacity as the chief insurance regulator in each state and as the officer charged with handling insurer receiverships for the state. Individually and collectively, the NAIC members and the state agencies over which they preside have a wealth of experience in the regulation of insolvency. The NAIC members understand the interests of insurance consumers and others affected by the emergencies arising from insurer insolvency, and work daily to protect those interests. The NAIC members are uniquely qualified and situated to assist this Court by presenting the regulatory and public policy concerns involved in this case.

The NAIC also has an interest in the interpretation of its model laws and regulations. The order of distribution of claims from an insolvent insurer's estate under Section 544 of the Act of May 17, 1921, P.L. 789, commonly known as the Insurance Department Act, *as amended*, 40 P.S. § 221.44 (the "Pennsylvania Priority Statute"), is based upon the NAIC's model laws addressing insurance company insolvencies. *Koken v. Reliance Ins. Co.*, 893 A.2d 70, 84 (Pa. 2006). Over 70 years ago, the NAIC promulgated its first Model Law on Rehabilitation and Liquidation, which contained a provision about the priority-of-distribution of claims in the liquidation of an insolvent insurer.¹ While various iterations of this model law have been developed over the years (collectively, the "NAIC Insolvency Models"), the primary purpose of the law has remained the same: to protect the interests of policyholders and ensure that those most affected by the insolvency of an insurer are protected. The NAIC has a significant interest in the outcome of this matter to ensure that consumers of insurance are adequately protected in the event of an insurer's insolvency.

¹ See 1 *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 33 (1936).

The NAIC endorses the brief of the Pennsylvania Liquidator and seeks to aid this Court by offering the legal position and public policy perspectives of the NAIC and its member states.

III. STATEMENTS OF JURISDICTION, SCOPE AND OTHER STATEMENTS

The NAIC adopts and incorporates herein by reference the Statement of Jurisdiction, Statement of Scope of Review and Standard of Review, Text of the Order in Question, Statement of the Questions Involved, and Statement of the Case from the Brief of Appellant, the Pennsylvania Liquidator.

IV. SUMMARY OF ARGUMENT

The purpose of the Pennsylvania Priority Statute, which is based upon the NAIC Insolvency Models, is to protect the interests of policyholders and third-party claimants and to grant priority status to those claimants less likely to be able to absorb a loss when an insurer becomes insolvent. Consistent with this intent and purpose, subrogated insurers should not be entitled to the same priority as “loss claims” under subsection (b) of Pennsylvania’s Priority Statute but, instead, should be granted a lower priority under subsection (g) of the Statute (sometimes referred to as “other benefits”). *See* 40 P.S. §§ 221.44(b),(g). The questions to be addressed on this appeal raise issues that are of general and national concern to the membership of the NAIC:

1. The history of the NAIC Insolvency Models indicate that the laws are intended to protect policyholders, not subrogated insurers. The holding of the Commonwealth Court that subrogated insurers should be given the same priority as subsection (b) “loss claims” dilutes the class and is contrary to the intent and purpose of the NAIC Insolvency Models.

2. All states have enacted some version of the NAIC Insolvency Models to protect the interests of policyholders in the event of an insurer’s liquidation. Consistent with these laws,

this Court should find that claims of subrogated insurers are not entitled to priority treatment as “loss claims.”

3. There is no merit to the argument of *Amicus Curiae* Northland Insurance Company (“Northland”) that the Pennsylvania Legislature intended to include subrogation claims as “loss claims.” The Pennsylvania Priority Statute was based upon an earlier NAIC Insolvency Model which did not specifically address subrogation claims.

V. ARGUMENT

Since its formation in 1871, when the Committee on Winding Up Insolvent Companies was formed, the NAIC has addressed issues regarding the treatment of insolvent or troubled insurers. 1 *Proc. of the Nat’l Ass’n of Ins. Comm’rs* 18 (1871). At first, insurance company delinquency proceedings were handled by state courts under their traditional equity powers. States then began moving away from judicial receiverships, and individual state laws were developed setting forth specific grounds for receivership and conferring on the insurance commissioner broad discretionary powers to rehabilitate or liquidate troubled insurance companies. James W. Schacht & Lynne Prescott Hepler, *Insolvencies In-Depth Series (Part 1): Failing at Failures*, Risk & Insurance, Jan. 1, 2007, at 23.

In 1936, the NAIC adopted the first of the NAIC Insolvency Models, the Uniform Rehabilitation, Reorganization, or Liquidation Act (the “1936 Model”). 1 *Proc. of the Nat’l Ass’n of Ins. Comm’rs* 33 (1936). The 1936 Model first created a uniform procedure so that all creditors, including policyholders and claimants residing in reciprocal states, were on an equal footing with those in the domiciliary state. *Id.* at 31-33. The NAIC Insolvency Models have evolved over time from a general statement of intent to protect unsecured creditors to a specific scheme to be followed in the liquidation or rehabilitation of an insolvent insurer. With every

revision, the NAIC Insolvency Models have become more specific and detailed² in an effort to promote greater nationwide consistency and certainty in the course of a liquidation or rehabilitation. Major revisions to the NAIC Insolvency Models, specifically with regard to priority of distribution, were made in 1969, 1978, 1994 and 2005.³ All states have adopted some version of the NAIC Insolvency Models regarding insurer receiverships.

A. As Demonstrated by the History of the NAIC Insolvency Models, the NAIC Has Always Afforded the Interests of Policyholders and Third-Party Claimants Priority.

The NAIC supports the argument of the Pennsylvania Liquidator that the Commonwealth Court erred when it found that a subrogation claim (*i.e.*, an action by an insurance company to recover the amount of a policy claim it paid to a covered insured where the loss was caused by a third-party) was entitled to priority under subsection (b) as a “loss claim.” The third-party claimant in the current case, Ms. Sheila Follen-Davis, received benefits (payment in full) from her own policy of insurance with Farm Bureau, which now stands in her place under a claim for subrogation. Section 544(b) of the Pennsylvania Priority Statute provides:

- (b) All claims under policies for losses wherever incurred, including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, shall have the next priority. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or

² The 1936 Model was two pages long. The current version of the NAIC Insolvency Model is 98 pages. See Insurer Receivership Model Act, 3 *NAIC Model Laws, Regulations and Guidelines*, 555-1 to 555-98 (2007).

³ The NAIC Insolvency Models have been amended numerous additional times, but those revisions are not relevant to this discussion.

recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities.

40 P.S. § 221.44(b). Farm Bureau's subrogation claim clearly falls under the lower priority of Section 544(g) regarding "other benefits," which covers "[c]laims or portions of claims, payment of which is provided by other benefits or advantages recovered by the claimant." 40 P.S. § 221.44(g)(3).

The liquidation priority classifications set forth in the Pennsylvania Priority Statute reflect the Legislature's intent to favor policyholders and those third-party claimants who have suffered unpaid covered losses over all other parties in the order of distribution of assets. Perhaps the best way to explain the NAIC's and Pennsylvania Liquidator's position on the priority of subrogation claims, and to clarify Northland's argument regarding Pennsylvania's adoption of the NAIC's Insolvency Model, is to examine the history of the NAIC Insolvency Models.

The intent of the original 1936 Model was to provide greater relief and priority to the claims of policyholders, other unsecured creditors, and those who were most adversely affected by insolvency. 1 *Proc. of Nat'l Ass'n of Ins. Comm'rs* 31 (1936). In 1969, the NAIC adopted Wisconsin's Rehabilitation and Liquidation Act, WIS. STAT. §§ 645 *et. seq.* (1967), as the NAIC Insolvency Model (the "1969 Model").⁴ See 1 *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 168, 241 and 271 (1969). The Wisconsin statute and its Comments were adopted in full by the NAIC,

⁴ The NAIC adopted the Wisconsin statute in its entirety and used the statute as its Model Law between December 1968 and December 1977. 1 *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 168, 241 and 271 (1969). Since the NAIC adopted the Wisconsin statute in its entirety as the 1969 Model, and because the Wisconsin statute was not reproduced in the NAIC *Proceedings*, all citations herein to the 1969 Model refer to the relevant sections of the Wisconsin statute.

providing great insight into the rationale for provisions of the 1969 Model. The Pennsylvania Priority Statute, as amended in 1977, was based upon the 1969 Model.⁵

Section 645.01(4) of the 1969 Model provides that the purpose of the rehabilitation and liquidation statute was the “protection of the interests of insureds, creditors, and the public generally . . . through the (d) equitable apportionment of any unavoidable loss.”⁶ WIS. STAT. § 645.01(4) (1967). The Comments to the priority sections provide that “[p]aragraph (d) states a pervasive goal of this chapter. The priority system has been structured to make the insurance institution do its job better and to apportion loss equitably.” WIS. STAT. § 645.68 cmts. (1967). Section 645.68 of the 1969 Model deals with the order of distribution of claims. The introductory Comment to the order of distribution section provides, in relevant part, as follows:

When an insurer must be liquidated, the outcome is often tragic. While many of the losers will merely be inconvenienced, others may suffer losses or delays in receiving payment that will subject them at least to a hardship and may even deprive them of the necessities of life. It becomes apparent that claims that are socially more important need to be paid ahead of those that are less important. . . .

In an effort to minimize the harm done by liquidation, and especially to lessen it for those persons least able to bear it, much thought and consultation went into the structuring of the priority system.

WIS. STAT. § 645.68 cmts.

The 1969 Model places “loss claims” under subsection (3) priority as follows:

⁵ As discussed *infra*, the 1977 Pennsylvania statute and the 1969 Model have substantially similar language in their priority-of-distribution provisions. See also *Koken v. Reliance Ins. Co.*, 893 A.2d at 84 (explaining that the Wisconsin Act - adopted as the 1969 Model - was the “blueprint for the Pennsylvania statute”).

⁶ Pennsylvania’s Priority Statute contains the same language, providing that “[t]he purpose of this article is the protection of the interests of insureds, creditors and the public generally. . . .through . . . (iv) equitable apportionment of any unavoidable loss.” 40 P.S. § 221.1 (2008) .

Loss Claims. All claims under policies for losses incurred including third party claims, and all claims against the insurer for bodily injury or for injury to or destruction of tangible property which are not under policies. . . That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class. . . .

WIS. STAT. § 645.68(3). The only higher priorities are administrative costs and wages owed to the insurer's employees. The Comment to subsection 3 explains that "[t]his class contains the claims central to the social role of insurance." WIS. STAT. § 645.68(3) cmt. The Comment further discusses that large "loss claims" are given a higher priority because these are the claims where the most hardship will result if full payment is not made reasonably promptly. *Id.* The priority of claims within the 1969 Model is substantially similar to the Pennsylvania Priority Statute.

The 1969 Model provides a lower priority for "[c]laims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant." WIS. STAT. § 645.68(8) (1967). Similarly, the Pennsylvania Priority Statute provides a lower priority for these claims than loss claims. *See* 40 P.S. § 221.44(g)(3) (providing that "claims or portions of claims, payment of which is provided by other benefits or advantages recovered by the claimant"). Miscellaneous subordinated claims are "left last because of their minimal societal importance." WIS. STAT. § 645.68 cmts.

According to the Comments to the 1969 Model, the priority-of-distribution section was "designed to establish a complete system of priorities among unsecured creditors, based on the relative social and economic importance of claims likely to be asserted against an insurer." WIS. STAT. § 645.68 cmts. Moreover, as discussed by the Commonwealth Court:

If, after all, insurance is to perform its function of risk assumption and distribution of loss, then those statutes that govern it must first

protect the insuring public, particularly in situations where the insurer becomes incapable of covering the risks it contracted to assume. Rehabilitation and liquidation are of vital importance to the consumer, who relies in the first place on the industry itself and then on its regulators for protection.

Grode v. Mut. Fire, Marine & Inland Ins. Co., 572 A.2d 798, 807 (Pa. Commw. Ct. 1991).

Placing the claims of subrogated insurers in the same class as policyholders and other third-party claimants will dilute the class, causing fewer funds to be available to policyholders and third-party claimants. As the Pennsylvania Priority Statute is based on the 1969 Model, and since Pennsylvania courts have found that the purpose of rehabilitation and liquidation is to protect consumers, and not insurers, the claims of subrogated insurers should not be treated as priority (b) "loss claims" under the Pennsylvania statute. Assignment of priority (g) to a subrogated insurer properly reflects the 1969 Model's statutory purpose to favor policyholders and third-party claimants with unpaid losses. Neither status can be asserted by Farm Bureau.

In 1978, the NAIC further revised the priority provisions of the NAIC Insolvency Models, and adopted the Insurers Supervision, Rehabilitation and Liquidation Model Act (the "1978 Model"). 1 *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 242-75 (1978). The 1978 Model provides, in relevant, part as follows:

Section 42. Priority of Distribution.

- C. Class 3. All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies. . . That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by claimant, shall not be included in this class. . .

3 *NAIC Model Laws, Regulations and Guidelines*, No. 555 § 42(C) (1978).

The 1978 Model, similar to its 1969 predecessor, intended to grant higher priority to: (1) the claims of policyholders and third-party claimants which have no other means of recovery; (2) the claims for which the greatest economic hardship would occur; and (3) the claims of greater social and economic importance, not claims of subrogated insurers. In fact, the 1994 version of the NAIC Model Law, Insurers Rehabilitation and Liquidation Model Act (the "1994 Model") makes that abundantly clear. See 4 *Proc. of the Nat'l Ass'n of Ins. Comm'rs* 596-634 (1994). The 1994 Model contains much of the same language as the 1978 Model and further provides that subrogated insurers are not included under Class 3 "loss claims" priority. The 1994 Model provides:

Section 46. Priority of Distribution

C. Class 3. All claims under policies including claims of the federal or any state or local government for losses incurred, ("loss claims") including third party claims. . . That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class. . .

Notwithstanding the foregoing, the following claims shall be excluded from Class 3 priority:

....

(3) Obligations to insurers, insurance pools, or underwriting associations and their claims for contribution, indemnity or subrogation, equitable or otherwise....

3 *NAIC Model Laws, Regulations and Guidelines*, No. 555 § 46(C)(3) (1994) (emphasis added).

The change in the 1994 Model does not change the intent or purpose of the previous versions of the model with respect to subrogation claims, but merely makes clear what was intended all along: that claims of subrogated insurers are not included in the same priority as those of third-party claimants and policyholders.

In 2005, the NAIC again revised the priority-of-distribution provisions of the Model Law. The NAIC Financial Condition (E) Committee considered proposed changes to the Model and again considered whether subrogation claims should be specifically excluded from Class 3 “loss claims” priority. The Committee decided not to delete subsection C(3) from the Model because including “obligations to other insurers in Class 3 would cause a dilution in the general policyholder class, which would be inconsistent with the interests of policyholders.” 4 *Proc. of the Nat’l Ass’n of Ins. Comm’rs* 975, 984 (2005); see also *supra* 3 *NAIC Model Laws, Regulations and Guidelines*, No. 555 § 46(C)(3) (1994) (specifically excluding subrogation claims from Class 3 “loss claims” priority). As indicated by the Committee, the purpose of the NAIC’s priority-of-distribution provision has always been to protect the interests of policyholders and third-party claimants, not subrogated insurers.

The current Model, the NAIC Insurer Receivership Model Act, was adopted in 2005 (the “2005 Model”). 4 *Proc. of the Nat’l Ass’n of Ins. Comm’rs* 32, 48-122 (2005). The 2005 Model provides in relevant part:

C. Class 3. All claims under policies of insurance, including third party claims. . .

Notwithstanding any other provision of this Act, the following claims shall be excluded from Class 3 priority and paid as claims in Class 7. . .

(3) Obligations to insurers, insurance pools or underwriting associations and their claims for contribution, indemnity or subrogation. . .

3 *NAIC Model Laws, Regulations and Guidelines*, No. 555 § 801(C) (2005).

Class 7 claims under the 2005 Model include “claims of other unsecured creditors. . . including claims under reinsurance contracts, claims of guaranty associations for assessments not paid by the insurer. . . .” 3 *NAIC Model Laws, Regulations and Guidelines*, No. 555 § 801(G)

(2005). This 2005 version of the NAIC Insolvency Models, consistent with earlier models, demonstrates that claims of subrogated insurers are not intended to be included under the Class 3 “loss claims” priority.

B. All States Have Enacted Versions of the NAIC Insolvency Models.

All states have enacted insolvency statutes based upon some version of the NAIC Insolvency Models or similar legislation. Exhibit “A” hereto is a table published by the NAIC regarding the adoption of the NAIC Insolvency Models, which shows Pennsylvania as among the states that have enacted a version of the NAIC Insolvency Models. Twelve states or territories, Georgia, Idaho, Indiana, Kansas, Michigan, Mississippi, Missouri, Nebraska, New Jersey, Ohio, Tennessee and the Virgin Islands, have the same priority-of-distribution language as Pennsylvania. *See* Exhibit “A” hereto. Connecticut, Hawaii and Rhode Island also enacted insolvency statutes containing language similar to Pennsylvania’s statute, but have specifically excluded subrogation claims from the same priority as policyholders and third-party claimants. *See id.*

In addition, the NAIC has a Financial Regulation Standards and Accreditation Program that accredits states for their compliance with NAIC Financial Regulation Standards, which were developed to promote solvency regulation of insurers by the states. *Available at* http://www.naic.org/documents/committees_f_FRSA_pamphlet.pdf (last visited Sept. 25, 2008). As part of the accreditation process, the NAIC reviews a state’s laws and regulations to ensure that the state can and does regulate the solvency of its multi-domestic insurance industry. *NAIC Administrative Policies Manual of the Financial Regulation Standards and Accreditation Program* 9 (Jan. 2008). In particular, the Standards require that state law should establish a receivership scheme for treatment of insurance companies found to be insolvent as set forth in

the NAIC's Insurers Rehabilitation and Liquidation Model Act. *NAIC Administrative Policies Manual of the Financial Regulation Standards and Accreditation Program* 11 (Jan. 2008) As of June, 2008, 50 jurisdictions, including Pennsylvania, were accredited by the NAIC. See http://www.naic.org/documents/committees_f_FRSA_pamphlet.pdf (last visited Sept. 25, 2008).

The Court's decision in this case could affect the interpretation of the NAIC Insolvency Models and other state insolvency statutes. Since all states have adopted some version of the NAIC Insolvency Models, and since decisions of courts with similar or identical versions of the Models can be persuasive authority in other jurisdictions, the outcome of this matter can affect receivership proceedings in other states.

Because there is little case law dealing directly with this issue, authority must remain with the statutes. Similarly, since there appears to be no case law which provides specific guidance on the issue of whether subrogation claims are "loss claims," the NAIC Insolvency Models provide the best insight into this issue. The NAIC urges this Court to rule consistent with intent of the NAIC Insolvency Models and other state statutes, and hold that claims of subrogated insurers should not be included in priority (b) under the Pennsylvania Priority Statute.

C. The Pennsylvania Legislature Did Not Purposely Fail to Include a Provision Regarding Subrogated Insurers in the Rehabilitation and Liquidation Statutes.

The Pennsylvania Legislature's revision of the Pennsylvania Priority Statute in 1977 was not evidence of the Legislature's intent to place subrogated insurers in priority (b) "loss claims." Pennsylvania did not reject the subrogation exclusion contained in the NAIC's 2005 Model, as Northland argues (*see* Br. of *Amicus* Northland at 8-9), because the 2005 Model did not exist in 1977. At the time Pennsylvania revised its statute in 1977, the NAIC had adopted the 1969 Model. As set forth above, the 1969 Model and the priority-of-distribution statute adopted by

Pennsylvania in 1977 are substantially similar.⁷ Northland mistakenly refers to the 2005 NAIC Model in its brief instead of the 1969 Model. Not until 1994 did the NAIC adopt a Model with a priority-of-distribution provision that specifically references and excludes subrogation from Class 3 “loss claims” priority. The Pennsylvania Legislature could not and did not reject a NAIC Model which did not exist in 1977.

The fact that the Pennsylvania Priority Statute did not expressly carve out subrogation claims is not evidence of a deliberate or intentional attempt by the Legislature to include subrogation claims as priority (b) “loss claims.” Northland refers to the wrong NAIC model in its brief comparing the language of the 2005 Model⁸ with the Pennsylvania Priority Statute. The 2005 Model cannot be referred to as the basis of legislative intent for the Pennsylvania Priority Statute enacted approximately 28 years earlier. As a result, Northland’s argument that the Pennsylvania Legislature intended to include subrogated insurers in priority (b) is without merit.

VI. CONCLUSION

The NAIC urges this Court to find, consistent with the NAIC Insolvency Models, that the claims of subrogated insurers are not priority (b) “loss claims.” Subrogated insurers should not be placed in the same priority as policyholders and third-party claimants, who are less likely to be able to absorb a loss in the liquidation of an insolvent insurer. The Commonwealth Court’s holding that subrogated insurers are entitled to the same protection as policyholders and third-party claimants is inconsistent with the NAIC Insolvency Models. The NAIC Insolvency

⁷ See also *Koken v. Reliance Ins. Co.*, 893 A.2d at 84 (discussing that the Wisconsin Act - adopted as the 1969 Model - was the “blueprint for the Pennsylvania statute”).

⁸ The Northland brief compares side-by-side the 2005 Model, Section 801(c) with the Pennsylvania Priority Statute, 40 P.S. § 221.44. In 2005, the NAIC made significant revisions to the Model Law including renumbering the sections. Prior to 2005, the priority-of-distribution provisions in the NAIC Model Law were contained in sections 42, 46 or 47.

Models and the Pennsylvania Priority Statute were designed to protect the interests of policyholders and third-party claimants in the event of an insurer's insolvency. The insolvency statutes were not intended to and should not give equal protection to subrogated insurers but, rather, should give priority to policyholders and third-party claimants which relied on the now insolvent insurer.

For all of the foregoing reasons, the NAIC respectfully requests that this Court reverse the Commonwealth Court's Order directing the Pennsylvania Liquidator to assign priority (b) status to the claim of Farm Bureau against Reliance Insurance Company.

Respectfully submitted,



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Dated: September 29, 2008

EXHIBIT "A"

**INSURERS REHABILITATION
AND LIQUIDATION MODEL ACT**

The date in parentheses is the effective date of the legislation or regulation, with latest amendments. Related legislation marked with a # is based on or contains provisions of the Uniform Insurers Liquidation Act from the National Conference of Commissioners on Uniform State Laws. This uniform law is similar to Article III of the NAIC model. Also see KEY at end of list.

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Alabama		ALA. CODE §§ 27-32-1 to 7-32-41 (1971/2003) #
Alaska	ALASKA STAT. §§ 21.78.010 to 1.78.330 (1966/1990).	
Arizona		ARIZ. REV. STAT. ANN. §§ 20-611 to 20-650 (1954/1997) #
Arkansas		ARK. CODE ANN. §§ 23-68-101 to 23-68-132 (1959/2005) #
California		CAL. INS. CODE §§ 1010 to 1043 (1935/2005) (Amendments eff. 1/1/06); § 1063.6 (1999); §§ 1064.1 to 1064.12 (1988) #
Colorado	COLO. REV. STAT. §§ 10-3-501 to 10-3-559 (1992/2003).	COLO. REV. STAT. §§ 10-3-401 to 10-3-512 (1963) #
Connecticut	CONN. GEN. STAT. §§ 38a-903 to 38a-961 (1979/1998) [1]	
Delaware		DEL. CODE ANN. tit. 18 §§ 5901 to 5944 (1953/1995) #
District of Columbia	D.C. CODE §§ 31-1301 to 31-1357 (1993/2004) [2]	
Florida		FLA. STAT. §§ 631.001 to 631.399 (1982/2004) #
Georgia	GA. CODE ANN. §§ 33-37-1 to 33-37-50 (1991/1997) [1]	
Guam		GUAM GOV'T CODE §§ 43225 to 43238 (1981) #

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NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Hawaii	HAWAII REV. STAT. §§ 431:15-101 to 431:15-411 (1988/2005).	
Idaho	IDAHO CODE §§ 41-3301 to 41-3360 (1981/1999).	
Illinois		215 ILL. COMP. STAT. 5/187 to 5/221.13 (1937/2005) #
Indiana	IND. CODE §§ 27-9-1-1 to 27-9-4-10 (1979/2003).	
Iowa	IOWA CODE §§ 507C.1 to 507C.59 (1984/2005).	
Kansas	KAN. STAT. ANN. §§ 40-3605 to 40- 3658 (1991/2005).	
Kentucky	KY. REV. STAT. §§ 304.33-010 to 304.33-600 (1970/2004).	
Louisiana		LA. REV. STAT. ANN. §§ 22:731 to 22:764 (1958/2001) #
Maine	ME. REV. STAT. ANN. tit. 24-A § 4351 to 4407 (1970/2003) (Much of model).	
Maryland		MD. ANN. CODE INS. §§ 9-201 to 9-232 (1933/2005) #
Massachusetts		MASS. GEN. LAWS. ANN. ch. 175 §§ 180A to 180L (1939/2000) #
Michigan	MICH. COMP. LAWS §§ 500.8101 to 500.8159 (1990/2002).	
Minnesota	MINN. STAT. §§ 60B.01 to 60B.61 (1969/2005) (Amendments eff. 7/1/05).	
Mississippi	MISS. CODE ANN. §§ 83-24-1 to 83-24- 117 (1991/2000).	MISS. CODE. ANN. §§ 83-23-1 to 83-23-9 (1942).

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NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Missouri	MO. REV. STAT. §§ 375.1150 to 375.1246 (1991/2002).	MO. REV. STAT. §§ 375.535 to 375.780 (1939/1996); §§ 375.950 to 375.990 (1976/1986) #
Montana	MONT. CODE ANN. §§ 33-2-1301 to 33-2-1388 (1979/2001) [1]	
Nebraska	NEB. REV. STAT. §§ 44-4801 to 44-4861 (1989/2005).	NEB. REV. STAT. §§ 44-120 to 44-133 (1913/1989).
Nevada	NEV. REV. STAT. §§ 696B.010 to 696B.570 (1971/1979) #	
New Hampshire	N.H. REV. STAT. ANN. §§ 402-C:1 to 402-C:61 (1969/2005).	
New Jersey	N.J. STAT. ANN. §§ 17B:32-31 to 17B:32-91 (1992) (Life Insurers).	N.J. STAT. ANN. §§ 17:30C-1 to 17:30C-31 (1975) (P/C Insurers) #
New Mexico		N.M. STAT. ANN. §§ 59A-41-1 to 59A-41-57 (1985/1993) #
New York		N.Y. INS. LAW §§ 7401 to 7435 (1984/1999) #
North Carolina	N.C. GEN. STAT. §§ 58-30-1 to 58-30-305 (1989/2001) [1]	
North Dakota	N.D. CENT. CODE §§ 26.1-06.1-01 to 26.1-06.1-59 (1991/2005).	
Northern Marianas	NO ACTION TO DATE	
Ohio	OHIO REV. CODE ANN. §§ 3903.01 to 3903.99 (1982/2005) [2]	<i>See also</i> OHIO REV. CODE ANN. §§ 3901.045 (2002); 3901.36 (1971/2002) [2]
Oklahoma		OKLA. STAT. tit. 36 §§ 1801 to 1812 (1975/2002)(Supervision and Conservatorship); §§ 1901 to 1937 (1957/2003) [1] (Rehabilitation and Liquidation) #

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NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Oregon		OR. REV. STAT. §§ 734.010 to 734.440 (1967/2003) [1]
Pennsylvania	PA. UNCONS. STAT. §§ 40-11-101 to 40-11-511 (1979/1996).	
Puerto Rico	P.R. LAWS ANN. tit. 26 §§ 4001 to 4055 (1991).	
Rhode Island	R.I. GEN. LAWS §§ 27-14.3-1 to 27- 14.3-65 (1993/2003) [1]	R.I. GEN. LAWS §§ 27-14.4-1 to 27-14.4-23 (1994/1999) #
South Carolina	S.C. CODE ANN. §§ 38-27-10 to 38-27- 1000 (1988/2000).	
South Dakota	S.D. CODIFIED LAWS §§ 58-29B-1 to 58-29B-161 (1989/2005).	
Tennessee	TENN. CODE ANN. §§ 56-9-101 to 56-9- 510 (1991/1999).	
Texas	TEX. CODE ANN. INS. Sec. 21A.001 to 21A.402 (2005) (Uses NAIC model under development).	
Utah	UTAH CODE ANN. §§ 31A-27-101 to 31A-27-411 (1986/2004) [1]	
Vermont	VT. STAT. ANN. TIT. 8 §§ 7031 to 7100 (1991).	
Virgin Islands		V.I. CODE ANN. tit. 22 §§ 1253 to 1285 (1968/1985) #
Virginia		VA. CODE §§ 38.2-1500 to 38.2-1521 (1986).
Washington	WASH. REV. CODE ANN. §§ 48.31.030 to 48.31.360 (1947/2003) (Parts of model) [1]	WASH. REV. CODE §§ 48.99.010 to 48.99.080 (1947) #
West Virginia		W. VA CODE §§ 33-10-1 to 33-10-41 (1957/2005) (Some of model) #

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NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Wisconsin	Wis. STAT. §§ 645.01 to 645.90 (1967/2003)	
Wyoming		WYO. STAT. §§ 26-28-101 to 26-28-131 (1967/1983) #

KEY:

- [1] Contains Section 9 adopted in 1992 to indemnify receivers.
- [2] Includes confidentiality provisions adopted by the NAIC in Jan. 2000 or similar language.