

THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN, Insurance Commissioner,
Commonwealth of Pennsylvania

Plaintiff,

v.

LEGION INSURANCE COMPANY

Defendant.

DOCKET NO. 183 M.D. 2002

M. DIANE KOKEN, Insurance Commissioner,
Commonwealth of Pennsylvania

Plaintiff,

v.

VILLANOVA INSURANCE COMPANY

Defendant.

DOCKET NO. 182 M.D. 2002

RECEIVED AND FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
OCT 24 2 59 PM '02

**BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF INSURANCE
COMMISSIONERS IN SUPPORT OF PLAINTIFF'S EMERGENCY
AMENDED PETITIONS FOR LIQUIDATION OF LEGION INSURANCE
COMPANY AND VILLANOVA INSURANCE COMPANY**

I. INTRODUCTION

The National Association of Insurance Commissioners ("NAIC") files its *amicus curiae* brief to request this Court to regard the significance of certain insurance regulatory issues and the critical need to continue claim payments as the Court considers the pending Emergency Amended Petitions for Liquidation of Legion Insurance Company and Villanova Insurance Company by M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania ("Plaintiff" or the "Rehabilitator").

This case presents matters of extreme importance for state insurance regulation. Only an order of liquidation with a finding of insolvency, effective immediately, regarding Legion Insurance Company (in Rehabilitation) and Villanova Insurance Company (in Rehabilitation) (collectively, "Legion") pursuant to Article V of the Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.01 through 221.63 (the "Act"),¹ will prevent the great harm that will result from the Rehabilitator's ceasing the payment of claims under policies on or about Friday, October 25, 2002.

Without an order of liquidation and a finding of insolvency being obtained before October 25, 2002, State Insurance Commissioners across the country will be compelled to take all available steps to protect the policyholders and claimants residing within their jurisdictions.² Many claimants will go unpaid while these steps are being taken. Many States will not be able to take such steps, leading to many claimants going unpaid for an extended period of time.

Claimants going unpaid is contrary to the very existence and purposes of insurance, insurance regulation and the NAIC. All of the steps that the States may have to take to protect policyholders and claimants will increase the complexity and administrative costs of the Legion estate, whether it remains in rehabilitation or moves to liquidation. In addition, the delay and related uncertainty also increase the vulnerability of the estate to many costly disadvantages. Reinsurers and investment markets will take advantage of any known desperation for liquidity and will negotiate to provide far less than might otherwise be obtained for the estate.

Ironically, this ultimately will damage the very same ownership interest that is seeking to delay the liquidation of Legion. It will decrease the likelihood or the amount of any residual

¹ References herein to section numbers cite to the provisions of the Act.

² Some states will be able to institute ancillary proceedings seeking declarations of insolvency, and in some liquidation orders, to trigger guaranty association coverage and avoid the disaster that would be created the allowing claims to go unpaid.

distribution pursuant to § 221.44(i) to that ownership interest. In a case like this of a “liquidity insolvency” under the second definition of “Insolvencies” contained in § 221.3 (inability to pay obligations when they are due), there is by definition some likelihood, but no guaranty, of such a residual distribution to the owners.

The situation here takes the conduct of insurance regulation back more than 65 years to the 1930s before the adoption by the States of the interstate cooperation provisions of the NAIC Model Act,³ the improvements to that Model Act made over the ensuing decades, and the advent of the guaranty associations in the late 1960s. All of these have developed over the decades to ensure the primary purpose of insurance – the payment of claims.

II. INTEREST OF AMICUS CURIAE

The NAIC moves that it be granted leave to file its *amicus curiae* brief in support of plaintiff M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in this matter, should such leave be necessary in light of this Court’s indication at a recent hearing that it would “like to give all persons affected by these proceedings an opportunity to file a written protest or an amicus curiae brief or present a written statement if they so desire.” Tr. of Proceedings, October 4, 2002 at 12.

In support of its motion, the NAIC states that it is a non-profit corporation whose membership consists of the principal insurance regulatory officials (Commissioners) of the 50 States, the District of Columbia, the territories and insular possessions of the United States. Started in 1871, it is the nation’s oldest association of state government officials. The individual state members of the NAIC completely control its actions.

³ More detail on this broad reference to the Insurers Rehabilitation and Liquidation Model Act (the “Model Act”), 3 *Model Laws, Regulations and Guidelines No. 555* (2000) is provided below in regard to the interest of *amicus curiae*.

Only a member may request consideration of the NAIC's filing an *amicus curiae* brief and such requires approval of the Executive Committee of the NAIC, which is made up of at least 15 of the NAIC's 50-plus members. See Bylaws of the National Association of Insurance Commissioners at

http://www.naic.org/consumer_protection/html_files/NAIC_certificate_bylaws.htm

(last visited October 19, 2002). This motion and brief are consistent with the mission and purposes of the NAIC.

The mission of the NAIC as set out in its Certificate of Incorporation is to:

... assist state insurance regulators, individually and collectively, in serving the public interest and achieving the following fundamental insurance regulatory goals in a responsive, efficient and cost-effective manner, consistent with the wishes of its members:

- (a) Protect the public interest, promote competitive markets and facilitate the fair and equitable treatment of insurance consumers;
- (b) Promote, in the public interest, the reliability, solvency, and financial solidity of insurance institutions; and
- (c) Support and improve state regulation of insurance.

at http://www.naic.org/consumer_protection/html_files/NAIC_certificate_bylaws.htm

(last visited October 19, 2002).

The members of the NAIC are uniquely qualified and situated to assist the Court by presenting the regulatory and public policy concerns involved in this case. Individually and collectively, the members of the NAIC have a wealth of experience in the administration of insurance company ("insurer") receiverships. The NAIC's members understand the interests of insurance consumers and others affected by the unfortunate circumstances of insurer insolvency, and work daily to protect those interests in their two different capacities as (a) the chief insurance regulators in each state and (b) as the state officers charged with handling insurer receiverships.

The members established the NAIC Financial Regulations Standards and Accreditation Program in June 1989 to ensure that each state satisfies certain baseline requirements deemed necessary to an effective regulatory system. The role of the insurance commissioner in insurer insolvency proceedings is so critical that it is the subject of one of the 18 standards with regard to the laws and regulations that must be in place for a state to be accredited by the NAIC. The standard provides:

13. Receivership

State law should set forth a receivership scheme for the administration, by **the insurance commissioner**, of insurance companies found to be insolvent as set forth in the NAIC's Insurers Rehabilitation and Liquidation Model Act.

The NAIC Financial Regulation Standards and Accreditation Program (1997) (emphasis added).

This standard reflects the belief of the members of the NAIC that the commissioner of insurance is the most appropriate person to be entrusted with the protection of the public interest in the event of insurer insolvency.

The members of the NAIC are concerned with all areas of the regulation of the business of insurance. In relation to the mission component of promoting reliability – the ultimate delivery of the product of paid claims under policies of insurance – the members of the NAIC are particularly concerned with the administration of insurer receiverships for rehabilitation or for liquidation.

Each of the members of the NAIC is charged by statute with the duty of representing their state in presiding over the rehabilitation of financially troubled insurers and the liquidation of insolvent insurers. There are successive steps in the usual process of an insurer going from troubled company to rehabilitation, and usually, then to liquidation, and the rights and liabilities

of the insurer and parties interested in it are fundamentally changed at each step. *See generally Ch. 1 – Takeover and Administration & Ch. 9 – Legal Considerations*, NAIC Handbook for Insurance Company Insolvencies (1999) (the “Receivers Handbook”).

The NAIC provides services to its members through, among other things, the promulgation of model laws and regulations. These model laws and regulations serve as standards to be used by the members of the NAIC in developing insurance laws and regulations for their individual states, and in carrying out their regulatory and receivership duties. Consistent with its mission, the NAIC helps its members and the insurance departments that they lead in explaining these model laws and regulations to legislatures, courts, other divisions of the executive branch, industry, consumers and the general public.

The NAIC promulgated the Model Act.⁴ In its several versions since 1936, the Model Act has served as a guide for NAIC members in discharging their duties as rehabilitators and liquidators of insurers. In 1936, the NAIC adopted an early version of the Uniform Insurance Liquidation Act, 13 U.L.A. 321-53 (1986) (“UILA”), as its Model Act. *See* 1 Proc. of the Nat’l Ass’n of Ins. Comm’rs 29-33 (1936).

The Model Act, and the NAIC’s program of tracking its implementation by states, together serve to promote consistency in the approach to the rehabilitation and liquidation of insurers. This also holds for the treatment of the policyholders, claimants and other creditors of and debtors to insolvent insurers. The NAIC tracks the action states take regarding its various model acts. Since 1936, virtually every state has at some point adopted the then-current version of the Model Act. This can be seen in Appendix “A” hereto, a reproduction of the table published by the NAIC of the state adoption of the Model Act, which shows in the

⁴ References herein to the Model Act should not be confused with references to the model acts in the briefs of *amici* NCIGF and NOLHGA, both of which use the term to refer to the model legislation of their respective organizations.

“MODEL/SIMILAR LEGIS.” column that Pennsylvania is among 33 states that have the post-1969 version of the Model Act. These 33 states have substantially adopted a version of the Model Act after the NAIC adopted the Wisconsin Insurers Rehabilitation and Liquidation Act, Wis. Stat. § 645 (1968), as the NAIC Model Act instead of the UILA. *See* 1 Proc. of the Nat’l Ass’n Ins. Comm’rs 168, 241 & 271 (1969). States in the “RELATED LEGIS./REGS.” column generally have statutes based on the UILA.

As every state has some version of the Model Act, the outcome in this case may have some effect on the dozens of ongoing insurer receivership proceedings in those states. Courts dealing with insurer receivership proceedings frequently review the Model Act and how the states have adopted it. *See, e.g., Todd v. DSN Dealer Serv. Network*, 861 F. Supp. 1531 (D. Kan. 1994); *Hager v. Anderson-Hutchinson Ins. Agency*, No. 86-841-E, 1989 U.S. Dist. LEXIS 13614 (S.D. Iowa July 19, 1989); *Oxendine v. Comm’r of Ins.* 494 S.E.2d 545 (Ga. App. 1997); *Four Star Ins. Agency, Inc. v. Hawaiian Elec. Indus., Inc.* 974 P.2d 1017 (Haw. 1999); *State ex rel. Angoff v. Wells*, S.W.2d 411 (W.D. Mo. 1999); *In re Liquidation of Sussex Mut. Ins. Co.*, 694 A.2d 312 (N.J. Super. Ct. App. Div. 1997); *State ex rel. Sizemore v. United Physicians Ins. Risk Retention Group*, 56 S.W.3d 557 (Tenn. Ct. App. 2001); *Covington v. Ohio Gen. Ins. Co.*, No. 01AP-213, 2001 Ohio App. LEXIS 3929 (Ohio Ct. App. Sept. 6, 2001).

The members of the NAIC have a common interest with plaintiff in this case in the orderly, efficient and timely resolution of these insurer receiverships. The liquidation of an insurer domiciled in one state usually affects the citizens of other states. It is common for most of the unpaid losses due to policyholders and claimants in any insurer liquidation to be in ancillary states, meaning states other than the insurer’s domicile. *See generally* NAIC Report on Receiverships (1998). Further, Appendix “B” hereto, produced from the NAIC database of

financial information, shows that the last reported unpaid losses of Legion, in the “Direct Losses Unpaid” column, were over 95% outside of Pennsylvania.

Other States	2,058,096,917	95.5%
Pennsylvania	97,734,627	4.5%
Total	2,155,831,544	

The NAIC asks that this Court allow the filing of its *amicus curiae* brief based on the effects this proceeding may have on policyholders and claimants in ancillary states and, most importantly, the effects it may have on claimants in those states, some of whom depend on workers’ compensation benefits for their very survival.

III. OTHER FILINGS

The NAIC adopts and incorporates, except as may be noted herein and as may be subject to further research because of the emergency time constraints in this matter, (1) the Emergency Amended Petitions for Liquidation and related documents filed by plaintiff on or about October 18, 2002, and (2) the Emergency *Amicus* Brief of the National Conference of Insurance Guaranty Funds (“NCIGF”) and Guaranty Funds Regarding the Imminent Disruption of Claims Payments and related documents filed at about the same time.

IV. THE PAYMENT OF CLAIMS

The focus of these proceedings at this point needs to be on the payment of claims. The Rehabilitator and the NCIGF have set out the reasons why the Legion estate must be moved into liquidation, focusing on the need to continue making payments to claimants. The NAIC would add that the reasons why the insurance claimants should be the primary concern in the proceedings at this point are reflected in the statement of the purposes of Article V of the Act in § 221.1(c), which provides in relevant part that, “[t]he purpose of this article is the protection of the interest of insureds, creditors and the public generally, with minimum interference with the

normal prerogatives of the owners and managers of insurers....” 40 P.S. § 221.1(c). The Supreme Court of Hawaii reviewed this same language in its version of the Model Act (the same as adopted by Pennsylvania) in conjunction with the provision that “the court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition” (as in § 221.18(a)), and found that the ownership interest simply did not have standing to oppose a petition to liquidate an insurer. *See Metcalf v. Investors Life Ins.*, 910 P.2d 110 (Haw. 1996).

That the interests of the owners and managers are of less priority than the interests of insureds is also reflected in the priority of claims distribution provisions set out in § 221.44, where the claims of insureds and those claiming under their policies of insurance are in the second priority, while those of the owners are in the last and ninth priority. *Compare* 40 P.S. § 221.44(b) *with* 40 P.S. § 221.44(i). Consent of the stockholders to liquidation is not necessary where the assets of an insurance company are insufficient to satisfy creditors. *Couch on Insurance 3d*, § 5:36 at 5-64 (1995).

The first definition of insolvency in § 221.3 (inability to pay obligations when they are due) in this context takes precedence over the second definition (insufficient assets to meet liabilities and required capital). The second definition, which gives deference to the “normal prerogatives of the owners,” is a moot point in a case such as this one where the first definition, by the evidence presented by the Rehabilitator, is so clearly met. The dire immediate effects of claims going unpaid in this context are well set out by the NCIGF. It did not, however, cover the long-term effects and basic rationale for the importance of the first definition of insolvency for insurers – insurance is based on trust. It is based on the confidence that payments on claims will

be made in the regular course. A breach of that trust and a shaking of that confidence may affect the entire industry.

In a case such as this, the normal prerogative of the owners and management to apply their judgment as to the sufficiency of the assets to meet the liabilities and required capital of the insurer and contest the judgment of the Rehabilitator in that regard, as provided in § 221.18(a) of the Act, is subordinated to the consideration of whether the insurer is in danger of meeting the first definition of insolvency in § 221.3. Usually, if the board of directors of an insurer believes that there is something to contest in regard to sufficient assets, the second definition of insolvency in § 221.3, they do not all (or all but one) resign, but instead prepare to show how the insurer has sufficient assets. But once an insurer nears a state of insufficient liquidity (inability to pay obligations when they are due), there is much less to argue about. The focus then is primarily on whether the insurer can continue to pay its obligations – and that is focused on the payment of claims.

V. THE OTHER STATES RELY ON THE REHABILITATOR AND THIS COURT

As pointed out above, the other states affected by this receivership have more than 95% of the exposure in terms of unpaid claims. These states must be able to rely on the Rehabilitator and this Court to ensure that payments to these claimants continue. This is reflected in the “Amicus Request” South Carolina made to the NAIC in relation to this matter. *See* letter dated October 16, 2002 from Gwendolyn L. Fuller, South Carolina Department of Insurance, to the NAIC, attached as Appendix “C” hereto.

The Model Act system for dealing with insolvent insurers has been developed over decades to allow the states to rely on each other to deal with insolvent insurers in a manner that will protect policyholders and other creditors in every state. This is the interstate cooperation

referenced in § 221.1(c)(v) of the Act and reflected in the § 221.3 definitions for “ancillary state,” “domiciliary state,” “general assets,” “preferred claim,” “reciprocal state,” “secured claim” and “special deposit claim”⁵ and in §§ 221.52 through 221.62. This system of relying on the domestic state avoids the complications and expense that would result from each state having to act independently to protect those in its jurisdiction.

Reading all of these sections together shows that while ancillary receiverships and special deposits are addressed (as reflected in Appendix “D” hereto, most states adopted the section dealing with special deposit claims), there is nothing directly dealing with the situation where an insurer becomes insolvent by the first definition (inability to pay obligations when they are due) and is not subsequently placed into liquidation.

This creates a great deal of difficulty for other states if it appears that the insolvent insurer will not be placed into liquidation in the near future. The ancillary state commissioners admitted the insurer to do business in their states relying on the domiciliary state’s solvency regulation of the insurer and its ability to act to ensure the payment of claims. If the domiciliary state is not able to act, then the ancillary states may be left with a duty to ensure the payment of claims but without the power to do so. The difficulties raised are reflected in the Verified Petition for Appointment of Temporary and Permanent Ancillary Receiver recently filed by the Massachusetts Commissioner of Insurance in the appropriate court in that state, a copy of which is attached as Appendix “E” hereto.

The main difficulty is that the statutes simply do not directly provide for an ancillary court to enter a liquidation order with a finding of insolvency of an insurer domiciled in another

⁵ The NAIC does not want to distract the Court’s focus from the critical issues regarding the payment of claims, but there will be a need to address the effects of the Court’s September 25, 2002 Order regarding states that have not returned special deposits. It is hoped that, at some later point, the Court will consider whether that Order, especially

state. With this, guaranty association payments in that state could arguably be triggered. However, these statutes have been developed from the 1930s to the present day to prevent multiple states from proceeding to liquidate the same insurer, which used to happen with much complexity and cost.

While the statutes may aim to force the ancillary states to rely on the domiciliary, where the primary goal of ensuring the payment of claims is threatened, these states are going to be compelled to argue for ways to protect the policyholders and claimants residing within their jurisdictions. Such actions will weaken the interstate cooperation that the statutes are designed to promote and will likely result in even greater complexity and costs than would have been incurred had no attempt at increasing interstate cooperation ever been attempted.

VI. THE REHABILITATOR SHOULD NOT HAVE TO WAIT FOR DISASTER

In regard to insurers not domiciled in their states, the individual states do not have the resources to handle the solvency surveillance, troubled company issues and receivership administration. Thus, they must rely on each other to do this. When an insurer becomes troubled, the domiciliary insurance commissioner is given broad discretion to deal with problems and does not have to wait for disaster to occur or become imminent to act to place the troubled insurer into rehabilitation or liquidation.

While the appointment of a receiver is usually premised on the insurer's insolvency, this is not always the case; these actions are justifiable when there is the likelihood of insolvency.

Couch on Insurance 3d, § 5:5 at 5-9 (1995).

Moreover, there is no requirement that the respondent must wait until disaster strikes or until an insurance company is insolvent before he is empowered to act

if its effects survive the entry of a liquidation order, is consistent with the interstate cooperation sections of the Act (set out above) and especially in regard to § 221.61.

to protect the policyholders and the public.... The management of an insurance company must operate in such a manner, and so conduct its business, as to reduce to a minimum the risk of loss to the policyholders. And, it is the duty of [the commissioner] to see that companies so operate and to see that they operate within the framework of the policy, purpose, and requirements of the insurance code. Where the management of an insurance company conducts its business and investment policies in such a manner as to project more than a slight risk of loss to the policyholders, its creditors and/or the public, [the commissioner] is authorized to take appropriate steps to eliminate that risk of loss. This is the meaning of the word "hazardous" as used in the insurance code.

Kueckelhan v. Federal Old Line Ins., 418 P.2d 443, 461 (Wash. 1966). The commissioners in ancillary states cannot know all of the details regarding Legion, and have to rely on the expertise and judgment of the domiciliary commissioner in regard to Pennsylvania's receivership administration. They rely on it not to wait for disaster. Early detection of hazardous conditions and not waiting until there is a disaster for policyholders and claimants are the aims of increased solvency surveillance and financial regulation. See *The NAIC Financial Regulation Standards and Accreditation Program* (1997). From the situation relayed by the Emergency Amended Petitions for Liquidation, it is clear that the Rehabilitator is properly exercising her discretion in seeking liquidation and that the Court should order that liquidation promptly.

VII. THE COURT DOES NOT HAVE TO WAIT FOR DISASTER

The scheduling set by this Court and its requests for additional evidence have now been overtaken by events. This Court can change course and avoid the disaster that will result if the estates run out of cash and fail to continue claim payments before an order of liquidation is entered. This Court can do so by immediately entering an order of liquidation with a finding of insolvency based on its ability to rely on the Rehabilitator, which is supported in Pennsylvania law.

This Court has concluded that this great deference in favor of the Insurance Commissioner and the resulting narrow scope of review for the courts are in recognition of the expertise of the administrative agency or individual officer

assigned the task of regulating a given industry.

Foster v. Mutual Fire, Marine and Inland Ins. Co., 614 A.2d 1086, 1093 (Pa. 1992), *cert. denied*, 506 U.S. 1080 and 506 U.S. 1087 (1993). In a Tennessee case similar to this one in many respects (Tennessee has adopted the same post-1969 Model Act as Pennsylvania), but opposite in that the court was seeking to liquidate an insurer that the commissioner believed must remain in rehabilitation, the Tennessee court's discussion bears quoting at length.

There appears from the pattern of the statutes dealing with insurer insolvencies an underlying theme of resolution of questions for the benefit of policyholders by rehabilitation if possible. This is not merely a resolution of private rights, but also a matter of the public interest because of the character of insurance. In carrying out his or her responsibility, the Commissioner acts not only as a trustee but also as a servant of the state in the exercise of its police power. In some instances, individual policyholders must suffer some detriment if this is necessary to carry out the purpose of the statutory scheme. The limitation upon the Commissioner's authority is that its exercise be reasonably related to the public interest in rehabilitating the insurer, and not be arbitrary or improperly discriminatory. *In re Executive Life Ins. Co.*, 32 Cal. App. 4th 344, 38 Cal. Rptr. 2d 453 at 471-472 (Cal. App. 1995) (emphasis added).

Other states have recognized that the decision to attempt rehabilitation is within the sound discretion of the Commissioner and should not be rejected by the courts unless the Commissioner has abused that discretion. *Foster v. Mutual Fire, Marine and Inland Ins. Co.*, 531 Pa. 598, 614 A.2d 1086 (Pa. 1992); *Kueckelhan v. Federal Old Line Insurance Company*, 74 Wn.2d 304, 444 P.2d 667 (Wash. 1968) (only if the Commissioner is manifestly abusing the authority and discretion vested in her or is embarking upon a capricious, untenable or unlawful course).

State of Tennessee, Ex Rel. Anne B. Pope v. Xantus Healthplan, No. M2000-00120-COA-R10-CV, 2000 Tenn. App. LEXIS 319, at *33-34 (Tenn. App. May 17, 2000). While rehabilitation is favored if possible, it is often, as in this case, impossible. If it is allowable for the policyholders to suffer some detriment if needed for the purposes of the statutory scheme, then it is logically allowable that the owners may need to suffer the detriment of a necessary liquidation. This Court may rely on the discretion of the

Rehabilitator here and “indulge the presumption that public officials will discharge their duties in good faith and in accordance with the law”, *id.* at *47, and grant the Emergency Amended Petitions for Liquidation.

VIII. CONCLUSION

For all of the foregoing reasons, the NAIC respectfully requests that this Court grant the Emergency Amended Petitions for Liquidation, immediately enter Orders of Liquidation in the form attached thereto, and grant such other relief as this Court deems necessary and appropriate. Should the Court or the Rehabilitator require further information, the NAIC would be pleased to provide it.

Respectfully submitted,



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APPENDIX A

APPENDIX A

Model Regulation Service—November 2001

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 (UILA) 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 (1971/1975) #
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 (1959/1997) #
California		CAL. INS. CODE §§ 1010 to 1043 (1935/2000); § 1063.6 (1999); §§ 1064.1 to 1064.12 (1988) #
Colorado	COLO. REV. STAT. §§ 10-3-501 to 10-3-559 (1992/2001).	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 ANN. §§ 35-2801 to 35-2857 (1993/2000) [2]	
Florida		FLA. STAT. §§ 631.001 to 631.399 (1982/1995) #
Georgia	GA. CODE §§ 33-37-1 to 33-37-50 (1991/1997) [1]	
Guam		GUAM GOVT CODE §§ 43225 to 43238 (1981) #
Hawaii	HAWAII REV. STAT. §§ 431:15-101 to 431:15-411 (1988/1996).	
Idaho	IDAHO CODE §§ 41-3301 to 41-3360 (1981/1999).	
Illinois		215 ILL. COMP. STAT. 5/187 to 5/221.13 (1937/2001) #
Indiana	IND. CODE §§ 27-9-1-1 to 27-9-4-10 (1979/1996).	
Iowa	IOWA CODE §§ 507C.1 to 507C.59 (1984/1997).	
Kansas	KAN. STAT. ANN. §§ 40-3605 to 40-3658 (1991).	

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Kentucky	KY. REV. STAT. §§ 304.33-010 to 304.33-600 (1970/1996).	
Louisiana		LA. REV. STAT. ANN. §§ 22:731 to 22:764 (1958/2001) #
Maine	ME. REV. STAT. ANN. tit. 24-A § 4351 to 4407 (1970/1993) (Much of model).	
Maryland		MD. ANN. CODE Ins. §§ 9-201 to 9-232 (1933/2001) #
Massachusetts		MASS. GEN. LAWS. ANN. ch. 175 §§ 180A to 180L (1939/2000) #
Michigan	MICH. COMP. LAWS §§ 500.8101 to 500.8159 (1990/1996).	
Minnesota	MINN. STAT. §§ 60B.01 to 60B.61 (1969/1999).	
Mississippi	MISS. CODE ANN. §§ 83-24-1 to 83-24-117 (1991/2000).	MISS. CODE ANN. §§ 83-23-1 to 83-23-9 (1942).
Missouri	MO. REV. STAT. §§ 375.1150 to 375.1246 (1991/2001).	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 (1989/1995).	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 (1969/1998).	
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 (1991/1997).	
Ohio	OHIO REV. CODE ANN. §§ 3903.01 to 3903.99 (1982/1995).	
Oklahoma		OKLA. STAT. tit. 36 §§ 1801 to 1812 (1975/2000)(Supervision and Conservatorship); §§ 1901 to 1937 (1957/2001) [1] (Rehabilitation and Liquidation) #
Oregon		OR. REV. STAT. §§ 734.010 to 734.440 (1967/1995) [1]
Pennsylvania	PA. UNCONS. STAT §§ 40-11-101 to 40-11-511 (1979/1996).	

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Puerto Rico		P.R. LAWS ANN. tit. 26 §§ 4001 to 4024 (1978) #
Rhode Island	R.I. GEN. LAWS §§ 27-14.3-1 to 27-14.3-65 (1993/2001) [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 (1989/2001).	
Tennessee	TENN. CODE ANN. §§ 56-9-101 to 56-9-510 (1991/1999).	
Texas		TEX. INS. CODE art. 21.28 (1951/1995); art. 21.28-A (1967/1993); art. 21.28-B (1967).
Utah	UTAH CODE ANN. §§ 31A-27-101 to 31A-27-411 (1986/1999) [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 (1947/2001) (Parts of model) [1]	WASH. REV. CODE §§ 48.99.010 to 48.99.080 (1947) #
West Virginia		W. VA CODE §§ 33-10-1 to 33-10-39 (1957/1996) #
Wisconsin	WIS. STAT. §§ 645.01 to 645.90 (1967/1989).	
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.

APPENDIX B

Modified 2001 SCHEDULE T - 110 For 24422 - Legion Ins Co

LINE	State	Direct Premiums Written	Direct Premiums Earned	Direct Losses Paid	Direct Losses Incurred	Direct Losses Unpaid	% SD Over Loss	Special Deposits (Par Value)	% SD Over Loss
1	Alabama AL	17,778,083	17,381,482	10,156,555	3,554,914	35,943,795	1.7%		
2	Alaska AK	1,423,085	1,547,901	374,278	1,387,678	3,331,775	0.2%		
3	Arizona AZ	15,824,123	15,889,302	7,392,887	6,105,438	19,475,038	0.9%	10,808,768	55.5%
4	Arkansas AR	5,728,120	4,646,931	2,990,903	545,355	12,510,532	0.6%	125,000	1.0%
5	California CA	260,933,993	281,459,690	229,624,170	268,036,790	387,043,433	18.0%	87,689,305	22.7%
6	Colorado CO	16,661,234	16,671,965	9,930,205	18,820,941	32,541,811	1.5%		
7	Connecticut CT	28,123,571	23,827,587	7,053,921	20,292,999	30,227,387	1.4%		
8	Delaware DE	1,375,317	1,331,650	1,562,650	1,246,357	3,134,137	0.1%	110,000	3.5%
9	Dist. Columbia DC	2,080,187	1,964,875	833,188	957,889	5,064,631	0.2%		
10	Florida FL	54,361,913	55,455,293	40,837,764	52,072,692	105,352,662	4.9%	145,000	0.1%
11	Georgia GA	65,268,393	63,477,657	37,949,774	33,394,273	114,853,764	5.3%	245,000	0.2%
12	Hawaii HI	1,791,088	1,839,985	680,837	(397,698)	2,841,500	0.1%		
13	Idaho ID	958,297	1,004,784	1,106,364	(435,913)	3,700,140	0.2%	597,000	16.1%
14	Illinois IL	39,202,006	43,082,029	27,415,990	59,632,418	95,501,474	4.4%		
15	Indiana IN	12,997,188	13,427,401	3,138,258	343,516	20,190,437	0.9%		
16	Iowa IA	10,900,618	11,039,108	1,732,388	5,569,390	15,252,507	0.7%		
17	Kansas KS	12,835,924	13,070,382	6,180,969	2,374,050	27,792,644	1.3%	25,000	0.1%
18	Kentucky KY	9,667,158	9,669,554	6,466,955	6,114,209	17,204,061	0.8%		
19	Louisiana LA	12,857,304	13,294,852	10,808,070	2,446,233	20,970,373	1.0%	100,000	0.5%
20	Maine ME	5,963,635	4,929,604	779,359	3,235,462	5,986,032	0.3%		
21	Maryland MD	8,751,507	8,503,174	4,008,431	3,491,050	14,330,504	0.7%		
22	Mass. MA	67,327,210	62,558,088	22,341,683	54,783,211	94,226,908	4.4%	58,005,958	61.6%
23	Michigan MI	19,418,814	20,662,471	17,788,005	16,233,253	45,027,359	2.1%		
24	Minnesota MN	5,716,904	6,381,120	3,389,999	5,766,254	15,646,806	0.7%		
25	Mississippi MS	36,123,147	31,122,299	14,038,809	11,765,231	42,862,647	2.0%		
26	Missouri MO	14,700,055	15,493,086	7,097,165	11,206,389	25,491,986	1.2%		
27	Montana MT	2,312,992	2,994,555	2,111,052	(250,360)	7,176,831	0.3%		
28	Nebraska NE	2,705,660	2,301,112	178,697	(818,301)	3,144,500	0.1%		
29	Nevada NV	4,930,282	5,046,563	2,525,114	2,355,767	9,393,656	0.4%		
30	New Hamps. NH	9,384,649	7,756,405	979,850	6,557,360	9,590,158	0.4%	2,275,000	23.7%
31	New Jersey NJ	63,310,525	63,572,930	45,943,753	63,292,657	133,463,820	6.2%		
32	New Mexico NM	2,720,430	2,376,296	1,842,644	2,493,021	5,882,741	0.3%	330,000	5.6%
33	New York NY	101,083,543	98,165,007	48,898,780	41,152,361	222,544,188	10.3%		
34	North Carolina NC	27,871,944	26,405,343	15,245,523	19,017,884	34,477,811	1.6%	14,302,494	41.5%
35	North Dakota ND	988,680	1,059,844	99,594	(660,331)	1,076,521	0.0%		
36	Ohio OH	9,313,219	9,836,168	4,097,200	(440,447)	8,469,459	0.4%		
37	Oklahoma OK	15,887,458	13,709,183	8,014,520	16,377,164	21,107,252	1.0%		
38	Oregon OR	4,180,009	4,450,709	1,826,868	2,860,746	11,114,780	0.5%	9,560,403	86.0%
39	Pennsylvania PA	33,840,976	32,982,178	31,627,693	19,936,877	97,734,627	4.5%		
40	Rhode Island RI	6,947,756	6,332,511	1,759,134	6,655,976	11,260,038	0.5%		
41	South Carolina SC	17,804,125	18,721,301	23,093,057	28,436,856	35,687,123	1.7%	270,000	0.8%
42	South Dakota SD	1,416,571	1,388,493	794,758	3,068,701	4,831,758	0.2%		
43	Tennessee TN	40,485,414	41,014,523	27,873,362	30,205,129	51,824,904	2.4%		
44	Texas TX	60,764,495	61,544,190	43,358,834	161,093,482	211,447,241	9.8%		
45	Utah UT	1,559,640	1,577,522	1,783,896	786,787	4,911,168	0.2%		
46	Vermont VT	11,583,777	9,682,022	(612,175)	(2,165,251)	5,494,418	0.3%		
47	Virginia VA	12,102,562	12,422,051	13,053,146	21,870,271	34,926,863	1.6%	500,000	1.4%
48	Washington WA	7,513,607	7,563,411	1,098,418	1,457,144	8,532,093	0.4%		
49	West Virginia WV	3,633,024	3,733,627	1,748,865	(296,710)	4,062,001	0.2%		
50	Wisconsin WI	10,720,417	10,727,447	4,530,416	9,330,600	18,007,251	0.8%		
51	Wyoming WY	739,331	728,977	506,108	604,979	632,363	0.0%		
52	Am. Samoa AS	-	-	-	-	-	0.0%		
53	Guam GU	-	-	-	-	-	0.0%		
54	Puerto Rico PR	59,546	69,319	-	140,738	224,202	0.0%		
55	U.S. Virgin IIs. VI	-	-	-	-	-	0.0%		
56	Canada CN	-	-	-	-	-	0.0%		
57	Other alien OT	623	623	(1,014,430)	1,295,001	2,309,432	0.1%		
58	Totals (Avg. %)	1,182,630,128	1,185,894,580	757,044,252	1,022,900,482	2,155,831,544		185,088,928	20.0%

APPENDIX C



South Carolina
Department of Insurance

300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223

Mailing Address:

P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

October 16, 2002

COPY

JIM HODGES
Governor

ERNST N. CSISZAR
Director of Insurance

CONFIDENTIAL REGULATORY INFORMATION

The Honorable Therese M. Vaughn
President
National Association of Insurance Commissioners
c/o Iowa Department of Insurance
330 Maple Street
Des Moines, IA 50319-0065

RE: Request to file an Amicus Brief in Support of the Pennsylvania Department's Petition to Liquidate Villanova and Legion Insurance Companies

Dear Commissioner Vaughn:

Several states from the Southeastern Zone as well as New Jersey and Illinois met via conference call on October 10, 2002 to discuss regulatory options in light of Judge Leavitt's order regarding the Pennsylvania Department of Insurance's petition to have Villanova Insurance Company and Legion Insurance Company ("Legion") declared insolvent and placed in liquidation. What follows is a summary of this matter as it has been related to us by the Pennsylvania Department of Insurance and a synopsis of the impact this action will have on the claimants nationally.

Background

On August 29, 2002, the Pennsylvania Department of Insurance filed a petition to have Legion and Villanova Insurance Companies (collectively "Legion") declared insolvent and placed in liquidation. Other states were notified of this on September 27. The Pennsylvania Department took this action so that policyholders, claimants and creditors would be provided with the protections and safety nets afforded in a liquidation proceeding and by guaranty fund coverage. However, Legion's Bermuda-based corporate parent ("MRM") objected to the liquidation petition. Due to those objections the court issued orders scheduling a conference, revoking Commissioner Koken's authority to make continued payment of claims after October 24 in states holding statutory deposits for the benefit of policyholders, and setting a hearing date of October 31 on the liquidation petition.

On October 4, 2002, Judge M. Hannah Leavitt of the Commonwealth Court granted MRM's motion to intervene. MRM was explicitly authorized to "object to the

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termination of the rehabilitation." Judge Leavitt then proceeded to review the Petition in detail, and stated that she would require the Rehabilitator, at the hearing, to provide specific evidence of each and every averment in the Petition, including evidence of insolvency, and the efforts to rehabilitate Legion and to collect reinsurance. She also indicated that she did not believe that the finding of insolvency requested by the Rehabilitator was necessary to trigger workers compensation guaranty fund coverage. Despite Judge Leavitt's belief, South Carolina law requires a formal finding of insolvency to trigger guaranty fund coverage.

The Rehabilitator made clear the need for urgency with respect to taking action on the Petition. However, the adversarial hearing is presently scheduled to begin on October 31. Judge Leavitt indicated that she expected to issue a decision by the end of November. However, both parties could appeal a final order by Judge Leavitt to the Pennsylvania Supreme Court delaying a formal declaration of insolvency for quite some time. Meanwhile, thousands of claimants may not receive benefits while this matter is pending.

The Request for an Amicus Brief

Regulators specifically asked what could be done by the other states to assist the Pennsylvania Department of Insurance through this process. It was the consensus of the group that we recommend to the Executive Committee of the National Association of Insurance Commissioners ("NAIC") that the NAIC file an amicus brief with the court in support of the Pennsylvania Department's petition for a declaration of insolvency and liquidation. This action would trigger coverage by the guaranty association and prevent some potential disruption in benefit payments. Accordingly, this letter is written to request such authorization from the Executive Committee. This brief should also request that the court lift the prohibition of the payment of claims in states holding special or other deposits where those states' law prohibit the return of the deposit except under specific conditions.

The Rationale

This is an issue of tremendous urgency and importance to claimants and state insurance regulators. Effective October 25, 2002, the Court's October 4 Order will prohibit Commissioner Koken, as Domiciliary Rehabilitator for Legion and Villanova from paying claims in states that have not released those companies' deposits to her. Effective October 25, some claimants will not receive their benefit payments.

There are a number of states that are precluded by law from returning the deposit to the domiciliary receiver or liquidator. In fact, South Carolina law gives South Carolina policyholders a security interest in the statutory deposits this Department holds on behalf of insurance companies transacting business in this state. North Carolina has a similar statutory provision. Section 38-9-150 of the South Carolina Code prohibits this Department from returning a deposit unless the depositing insurer first files with this Department an affidavit declaring:

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- (a) That the insurer has no contracts of insurance in force and no unsatisfied claims outstanding within this State, or
- (b) That reinsurance of all outstanding contracts and acceptance of all unsatisfied claims within this State have been provided by an insurer or insurers authorized to transact the same kinds of business in this State, filing with the affidavit a certified copy of the reinsurance agreement.

Because neither Legion nor Villanova can file such an affidavit, this Department is prohibited by South Carolina law from returning the deposits of those companies to the Domiciliary Rehabilitator. Likewise, other states are unable to return the deposits.

Paragraph 6 of the Court's most recent order allows the Domiciliary Rehabilitator to seek authorization from the Court to continue making claims payments in states that have not released their deposits where good cause can be shown. South Carolina, as well as a few other states like Virginia, North Carolina, have filed a hardship exemption request with the Rehabilitator and/or the court. It is now our understanding that the court will return and not consider the requests filed directly with it. The Pennsylvania Department will have to file a hardship exemption request on behalf of all states. It is unlikely that petition will be heard prior to the October 24 deadline.

By way of illustration, the South Carolina deposits amount to \$560,132. This is a very small portion of the outstanding deposits for these companies. Meanwhile, according to Legion and Villanova's 2001 Annual Statements, the two companies had unpaid losses in South Carolina of \$37,018,527 (\$35,687,123 for Legion and \$1,331,404 for Villanova). The gross disparity of these numbers speaks for itself. The following table further illustrates the potential impact in some of our sister states as of December 31, 2001.

State	Legion Deposit	Villanova Deposit	Total Deposit	Legion's Unpaid Losses	Villanova's Unpaid Losses	Total Unpaid Losses
Arizona	10,800,000	285,000	11,085,000	19,475,038	832,336	20,307,374
North Carolina	14,300,000	80,000	14,380,000	34,477,811	24,755,967	59,233,778
Oregon	9,600,000	1,080,000	10,680,000	11,114,780	1,439,352	12,554,132
South Carolina	270,000	235,000	505,000	35,687,123	1,331,404	37,018,527
Virginia	500,000	225,000	725,000	34,926,863	454,089	35,380,952
Louisiana	100,000	20,000	120,000	20,970,373	560,585	21,530,958

Additionally, the deposits are much lower in some states because their laws either do not require a deposit or require a minimum deposit if other conditions are met.

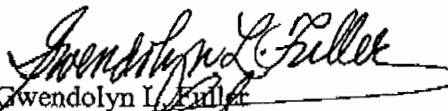
The information received on the call indicates that there is not much liquidity in these two companies. It is only a matter of time before the cash is totally exhausted. If the Domiciliary Rehabilitator is prohibited from making claim payments, this will significantly harm policyholders and claimants. They will not have any claims paid for several months. By statute, most property and casualty guaranty associations will not be

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activated until a court of competent jurisdiction formally declares Legion and Villanova insolvent. As such, the Pennsylvania Court's amendments to the Rehabilitation Order essentially penalizes policyholders and claimants, and undermines the basis for state regulation of insolvent insurers. It is imperative that we take the appropriate action to protect our states' policyholders and claimants. An amicus brief may impress upon the court the urgency of this situation, national significance of this matter, and its potential harm to claimants. I am confident that that was an unintended consequence of this decision. Moreover, the Domiciliary Rehabilitator has determined that the companies cannot be rehabilitated, are insolvent and must be placed in liquidation for the protection of claimants and policyholders. That finding should be given the utmost deference.

Therefore, I am submitting this request on behalf of Director Ernst N. Csiszar and all states and claimants who may be impacted by this ruling. Please do not hesitate to contact me if you have any additional questions or concerns regarding this matter.

Sincerely,


Gwendolyn L. Bullock
Deputy Director & General Counsel

Members of the NAIC Executive Committee
Andy Beal, Esquire

APPENDIX D

State (Prefix of Statutory Cite)	SD Claimants Deferred to General Creditor Class	State (Prefix of Statutory Cite)	SD Claimants Deferred to General Creditor Class
AL 27-32-	20: 71	NE 44-	4858(2): 89
AK 21.78.	180(c): 90	NV 696B	
AZ 20-	629.D: 01	NH 402-C:	60.II: 69
AR 23-68-	119: 59	NJ 17B:32-	87.b: 92
CA 1064.	7: 88	NJ 17:30-C-	21.c: 75
CO 10-3-	557: 92	NM 59A-41-	22.c: 84
CT 38a-	960(b): 79	NY	7413(c): 84
DE 18-	5918(c): 53 00	NC 58-30-	300(b): 89 95
DC 31-	1356(b): 93	ND 26.1-06.1-	57.2: 91
FL 631.	191(1): 59 97	OH 3903.	58(B): 82
GA 33-37-	57(b): 59 97	OK 36	1919.C: 57
GU		OR 734.	300: 67
HI 431:15-		PA 40-221.	61(b): 21
IA 507C.	58: 84	PR T..26	
ID 41-	3358(2): 81	RI 27-14.3-	62: 93
IL 215/5	221.6: 37 41	SC 38-27-	
IN 27-	9-4-9(b): 79	SD 58-29B-	159: 89
KS 40-	3656(b): 91	TN 56-9-	409(b): 91
KY 304.33-	590(2): 70	TX	
LA 22:	761.C: 58 93	UT 31A-27-	
ME 24-A		VA 38.2-	
MD 9-		VT 8	7099(b): 91
MA 175.	180J: 39	VI T.22	1266(b): 68 84
MI 500.	8158(2): 56 94	WA 48.99.	060(3): 47 93
MN 60B.	60(2): 69 94	WI 645.	89(2): 67 79
MO 375.	974: 76 & 1245: 91	WV 33-10- & 33-24-	19(c): 57 & 26(b): 90
MS 83-24-	115(2): 91	WY 36-28-	117(c): 67 83
MT 33-2-	1387(2): 79		

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO.

JULIANNE M. BOWLER, in her capacity as
COMMISSIONER OF INSURANCE
OF THE COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

LEGION INSURANCE COMPANY and
VILLANOVA INSURANCE COMPANY,

Defendants.

**VERIFIED PETITION FOR APPOINTMENT OF
TEMPORARY AND PERMANENT ANCILLARY RECEIVER**

1. The Commissioner of Insurance brings this proceeding pursuant to G.L. c. 175, § 180E, seeking her appointment, initially, as temporary ancillary receiver and, after notice and hearing, as permanent ancillary receiver of Legion Insurance Company and Villanova Insurance Company, two affiliated foreign insurance companies domiciled in the Commonwealth of Pennsylvania, for the purposes of conserving their assets in the Commonwealth of Massachusetts and, particularly, protecting workers compensation claimants in the Commonwealth. Both insurers are presently the subject of delinquency proceedings in Pennsylvania. The Commissioner requests that she be appointed as temporary ancillary receiver so she may immediately begin to address the risk that Massachusetts workers compensation claims may not continue to be paid, as described

below. The Commissioner also requests that the Court issue an order of notice and schedule a hearing to consider appointing the Commissioner as permanent ancillary receiver.

Jurisdiction

2. The Supreme Judicial Court has exclusive and original jurisdiction of this proceeding pursuant to G.L. c. 175, §§ 180B and 180E.

Parties

3. The plaintiff is Julianne M. Bowler, the duly appointed Commissioner of Insurance of the Commonwealth of Massachusetts (“Commissioner”). The Commissioner is charged with the administration and enforcement of the insurance laws of the Commonwealth pursuant to G.L. c. 175, § 3A.

4. The defendant Legion Insurance Company (“Legion”) is a foreign insurance company authorized to conduct business in the Commonwealth of Massachusetts. Legion is domiciled in the Commonwealth of Pennsylvania, a reciprocal state as defined in G.L. c. 175, § 180A.

5. The defendant Villanova Insurance Company (“Villanova”) is a foreign insurance company authorized to conduct business in the Commonwealth of Massachusetts. Villanova is also domiciled in the Commonwealth of Pennsylvania. Legion and Villanova are affiliates and part of the same holding company group.

Statement of Facts

6. Legion and Villanova have written various lines of insurance, including workers compensation insurance, in Massachusetts. In particular, Legion and Villanova

have written workers compensation insurance and other types of insurance for over 200 municipalities in Massachusetts.

7. As a condition of becoming licensed in the Commonwealth, the Massachusetts Division of Insurance required Legion and Villanova to make special deposits with the Treasurer of the Commonwealth to secure the payment of Massachusetts workers compensation claims. On information and belief, the securities deposited by Legion had a market value, as of August 31, 2002, of approximately \$61.7 million; the securities deposited by Villanova had a market value, as of August 31, 2002, of approximately \$1.6 million.

8. In March, 2002, M. Diane Koken, the Commissioner of Insurance of the Commonwealth of Pennsylvania (the "Pennsylvania Commissioner"), filed petitions for rehabilitation of Legion and Villanova with the Commonwealth Court of Pennsylvania ("Commonwealth Court"). On March 28, 2002, the Commonwealth Court entered orders (the "March 28 Orders") granting the Pennsylvania Commissioner's petitions, appointing the Pennsylvania Commissioner as rehabilitator (the "Rehabilitator") of Legion and Villanova, and placing Legion and Villanova into rehabilitation proceedings effective April 1, 2002. Copies of the March 28 Orders are attached as Exhibits A and B.

9. On or about August 29, 2002, the Rehabilitator filed petitions for liquidation of Legion and Villanova with the Commonwealth Court. The petitions allege that Legion and Villanova do not have sufficient liquid assets to pay their respective obligations when due and that the companies are statutorily insolvent. The petitions have been opposed by Legion's corporate parent. On information and belief, a hearing on the

petitions has been scheduled to begin on October 31, 2002, and the Commonwealth Court has indicated that it expects to issue a decision by the end of November, 2002.

10. On September 25, 2002, the Commonwealth Court entered orders (the "September 25 Orders") that amended the March 28 Orders by revoking the Rehabilitator's authority to continue to pay claims under policies of workers compensation or policies providing accident and health benefits or certain hardship claims "in those states where statutory deposits for the benefit of such claimants are not made available to the Rehabilitator for the payment of said claims." The revocation is to take place as soon as the Rehabilitator can implement the systems for terminating claim payments but no later than thirty days after entry of the September 25 Orders. Copies of the September 25 Orders are attached as Exhibits C and D.

11. On information and belief, there are pending workers compensation claims involving municipal employees in the Commonwealth that are in payment status under insurance policies written by Legion and Villanova.

12. The Commonwealth Court's September 25 Orders jeopardize the continued payment of these claims since Massachusetts has "statutory deposits." Although the appointment of the Pennsylvania Commissioner as liquidator of Legion and Villanova may resolve this situation by triggering the Massachusetts Insurers Insolvency Fund, any such appointment would occur at the earliest at the hearing scheduled for October 31, 2002, and a decision is only expected by the end of November, 2002. Under the terms of the September 25 Orders, the Rehabilitator is to stop paying claims no later than October 25, 2002, and payment may stop earlier. There is thus a gap between the time payment is to stop pursuant to the September 25 Orders and the appointment of a

liquidator. Transfer of claim files and administration of claims to guaranty funds will also take time and may result in disruption of payments.

13. Appointment of the Commissioner as ancillary receiver of Legion and Villanova would provide the Commissioner with authority to address the risk created by the September 25 Orders that Massachusetts workers compensation claims may not continue to be paid by, for example, seeking to provide for funding of the workers compensation claims from the Massachusetts special deposits pursuant to G.L. c. 175, §§ 180E, 185, all subject to further order of the Court.

14. Appointment of an ancillary receiver in the Commonwealth is appropriate to facilitate the orderly resolution of these issues and to protect Massachusetts workers compensation claimants. An ancillary receivership is consistent with the statutory scheme for regulation of troubled insurance companies, which contemplates that there may be both a domiciliary receiver for an insurance company as well as ancillary receivers to conserve the assets of the insurer in other states, including special deposits in those states. See G.L. c. 175, §§ 180B, 180C, 180E, 180J; Commissioner of Insurance v. Equity General Ins. Co., 346 Mass. 233 (1963).

Statement of Claim

15. The appointment of the Pennsylvania Commissioner as Rehabilitator of Legion and Villanova is a statutorily enumerated cause for appointment of the Commissioner as ancillary receiver of Legion and Villanova to conserve its assets within the Commonwealth pursuant to G.L. c. 175, § 180E. As specified in that statute, each “such foreign insurer has been placed in the hands of a receiver” and “possession of such insurer has been taken by the person having supervision of such insurer in its domiciliary

state.” The appointment of the Commissioner as ancillary receiver enhances her ability to facilitate the continued payment of Massachusetts workers compensation claims. This is particularly appropriate in light of the September 25 Orders.

16. In light of the immediate threat to the continued payment of Massachusetts workers compensation claims and thus to the interests of policyholders and claimants and the public, the Commissioner requests that she be appointed temporary ancillary receiver ex parte so she may seek to address the situation at once. The Commissioner as temporary ancillary receiver would propose to report to the Court with recommendations within ten days of her appointment. The Commissioner requests that the Court schedule a hearing on appointing the Commissioner as permanent ancillary receiver for a date after the report and issue an order of notice to the defendants. The Court may then consider both the permanent appointment and the recommendations at that time.

WHEREFORE, the Commissioner respectfully requests that this honorable Court:

1. Issue an order:
 - a. appointing the Commissioner as Temporary Ancillary Receiver of Legion Insurance Company and Villanova Insurance Company for the purpose of conserving their assets within the Commonwealth pursuant to G.L. c. 175, § 180E;
 - b. appointing Victor Fanikos, as he is Counsel for the Division of Insurance, as Deputy Ancillary Receiver of Legion Insurance Company and Villanova Insurance Company pursuant to G.L. c. 175, § 179, to conserve their assets inside the Commonwealth and to exercise such powers as are delegated by the Temporary Ancillary Receiver;

c. directing the Commissioner, as Temporary Ancillary Receiver, to forthwith take possession of the property of Legion Insurance Company and Villanova Insurance Company in the Commonwealth, including the special deposits held by the Treasurer of the Commonwealth, and conserve the same, subject to the order of the Court;

d. authorizing the Commissioner, as Temporary Ancillary Receiver, to obtain information concerning the administration and payment of Massachusetts workers compensation claims and other claims from the Rehabilitator and, subject to approval by the Court, to seek to provide for the continued payment of Massachusetts workers compensation claims, including negotiation of any appropriate arrangements for funding of Massachusetts workers compensation claims from the special deposits;

e. directing the Commissioner, as Temporary Ancillary Receiver, to report to the Court concerning her recommendations within ten days of her appointment; and

e. authorizing the Commissioner, as Temporary Ancillary Receiver, to employ or continue to employ such special counsel, including counsel in other jurisdictions, and consultants as she deems necessary and to fix and pay or continue to fix and pay the compensation of such special counsel and consultants and all other necessary expenses of taking possession of the property of the defendants in the Commonwealth and of conducting this proceeding out of the funds or assets of the defendants as appropriate.

2. Issue a order of notice to the defendants for a hearing on the Commissioner's petition for appointment as permanent ancillary receiver of Legion and Villanova.

3. After notice and hearing, enter an order appointing the Commissioner as permanent ancillary receiver of Legion Insurance Company and Villanova Insurance Company for the purpose of conserving their assets within the Commonwealth pursuant to G.L. c. 175, § 180E.

4. Grant such other and further relief as the Court deems appropriate.

By her attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL

J. David Leslie, BBO #294820
Eric A. Smith, BBO #546244
Special Assistant Attorneys General
Rackemann, Sawyer & Brewster
One Financial Center
Boston, Massachusetts 02111
(617) 542-2300

Date: October ____, 2002

VERIFICATION

I, Julianne M. Bowler, state that I am the duly qualified Commissioner of Insurance of the Commonwealth of Massachusetts, and that I have read the allegations set forth in the Verified Petition for Appointment of Temporary and Permanent Ancillary Receiver, and that they are true to the best of my knowledge, information, and belief.

Julianne M. Bowler
Commissioner of Insurance

Date: October ____, 2002

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO.

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JULIANNE M. BOWLER, in her capacity as)
COMMISSIONER OF INSURANCE)
OF THE COMMONWEALTH OF MASSACHUSETTS,)
)
Plaintiff,)
)
v.)
)
LEGION INSURANCE COMPANY and)
VILLANOVA INSURANCE COMPANY,)
)
Defendants.)
<hr/>	

ORDER OF NOTICE

NOTICE IS HEREBY GIVEN that a hearing on the petition of the Massachusetts Commissioner of Insurance for appointment as permanent ancillary receiver of Legion Insurance Company and Villanova Insurance Company has been scheduled for October __, 2002 at _____ in the Supreme Judicial Court Courtroom, 13th Floor, New Court House, Pemberton Square, Boston, Massachusetts 02108.

By the Court (_____, J.)

Maura S. Doyle, Clerk

Entered: October __, 2002

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO.

JULIANNE M. BOWLER, in her capacity as
COMMISSIONER OF INSURANCE
OF THE COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

LEGION INSURANCE COMPANY and
VILLANOVA INSURANCE COMPANY,

Defendants.

ORDER APPOINTING TEMPORARY ANCILLARY RECEIVER

This matter came before the Court upon a verified petition pursuant to G.L. c. 175, § 180E, for appointment of an ancillary receiver. Upon consideration thereof, it is ORDERED, ADJUDGED and DECREED, UNTIL FURTHER ORDER OF THIS COURT, that:

1. Julianne M. Bowler, as she is the Commissioner of Insurance of the Commonwealth of Massachusetts, and her successors in office (the “Commissioner”), is hereby appointed as the Temporary Ancillary Receiver of Legion Insurance Company and Villanova Insurance Company for the purpose of conserving their assets within the Commonwealth pursuant to G.L. c. 175, § 180E.

2. Victor Fanikos, as he is Counsel for the Division of Insurance, is hereby appointed as Deputy Ancillary Receiver of Legion Insurance Company and Villanova

Insurance Company pursuant to G.L. c. 175, § 179, to conserve their assets inside the Commonwealth and to exercise such powers as are delegated by the Temporary Ancillary Receiver.

3. The Commissioner, as Temporary Ancillary Receiver, is directed to forthwith take possession of the property of Legion Insurance Company and Villanova Insurance Company in the Commonwealth, including the special deposits held by the Treasurer of the Commonwealth, and conserve the same, subject to the order of the Court.

4. The Commissioner, as Temporary Ancillary Receiver, is authorized to obtain information concerning the administration and payment of Massachusetts workers compensation claims and other claims from the Rehabilitator of Legion and Villanova and, subject to approval by the Court, to seek to provide for the continued payment of Massachusetts workers compensation claims, including negotiation of any appropriate arrangements for funding of Massachusetts workers compensation claims from the Massachusetts special deposits.

5. The Commissioner, as Temporary Ancillary Receiver, is directed to report to the Court with recommendations for further action within ten days of this Order.

6. The Commissioner, as Temporary Ancillary Receiver, is authorized to employ or continue to employ such special counsel, including counsel in other jurisdictions, and consultants as she deems necessary and to fix and pay or continue to fix and pay the compensation of such special counsel and consultants and all other necessary expenses of taking possession of the property of the defendants in the Commonwealth

and of conducting this proceeding out of the funds or assets of the defendants as appropriate.

7. The Commissioner, as Temporary Ancillary Receiver, is directed to forthwith provide copies of the attached order of notice, the petition and this order to the defendants through the Rehabilitator.

8. The Commissioner, as Temporary Ancillary Receiver, is authorized to take such other action as she deems appropriate to effectuate the purposes of this Order.

9. The Court retains jurisdiction to issue such further orders as appropriate.

By the Court (_____, J.)

Maura S. Doyle, Clerk

Entered: October ____, 2002

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Brief of *Amicus Curiae* National Association of Insurance Commissioners in Support of Plaintiff's Emergency Amended Petitions for Liquidation of Legion Insurance Company and Villanova Insurance Company upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.

R.A.P. 121:

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Dated: October 24, 2002