

OUR MEETING WILL BEGIN SHORTLY

WELCOME TO THE NCIGF/NAIC CLE: Guaranty Funds and Other Receivership Topics

November 15, 2024

IN-PERSON ATTENDEES

Wi-Fi Network: NAIC2024

Password (case sensitive): Mindthegap2024

VIRTUAL ATTENDEES

- Audio will be muted upon entry.
- To request to speak, use the "Raise Hand" feature. The chair will be alerted.
- Video optional.
- Use the "Chat" feature for questions, comments, or assistance.
- If joining by phone, press *6 to mute/unmute.
- For assistance, contact NAIC support: Webex chat | MeetingTechHelp@naic.org | (866) 874-4905



NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS



CLE Reminders

Please scan the provided QR Code and complete the attestation and evaluation form with codes by the end of this program.

As part of our CLE process improvements, please note ALL JURISDICTIONS require attendance verification (attestation/ codes) and evaluations.

By the end of the program, please submit your completed evaluation, attestation, and CLE codes. An email confirmation will be sent to you upon receipt of your completed form.

Guaranty Fund 101: Statutory Schemes in Life & Health and Property & Casualty

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Overview

- “Guarantee Schemes” Around the World
- Purpose of the State Guaranty Association (GA) System
- Guaranty Association Structure and Governance
- Coverage
- Funding
- Role of a Guaranty Association in a Receivership
- NOLHGA’s/NCIGF’s Role in Insolvency
- Where do we go from here?
- Questions



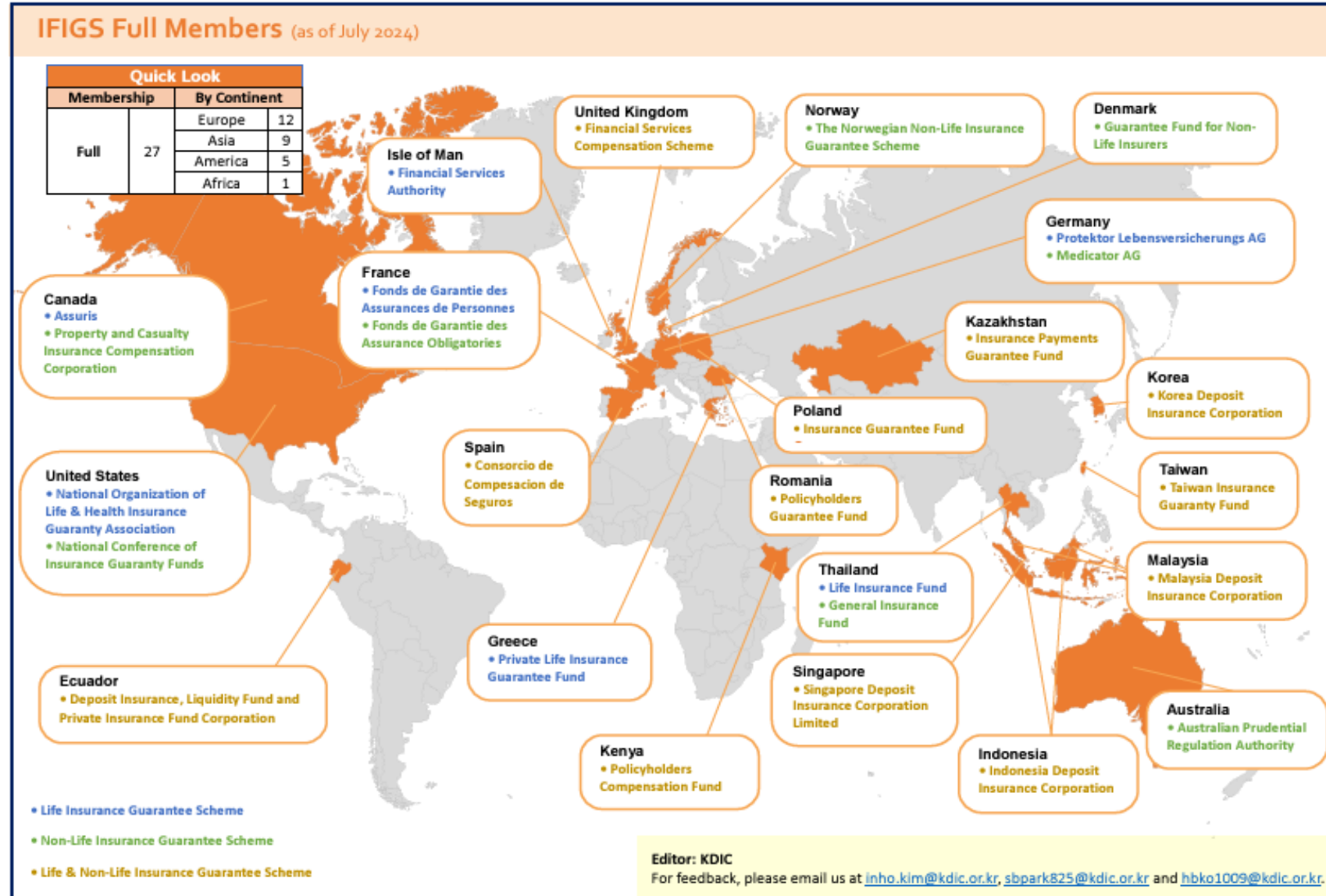
What are the “Guarantee Schemes” Around the World?

IGS and PPS Global Landscape

- Around the world, insurance safety net organizations are generally referred to as **“Insurance Guarantee Schemes” (IGSs)** or **“Policyholder Protection Schemes” (PPSs)**
- Approximately 28 OECD countries have a comprehensive or partial PPS
 - The number fluctuates – many countries are considering or developing a PPS
- In the next two years, Europe will be seriously considering minimum harmonization requirements for all EU countries to have a PPS

Many PPSs are IFIGS Members

The International Forum of Insurance Guarantee Schemes (IFIGS) facilitates and promotes international cooperation between PPSs and other stakeholders.

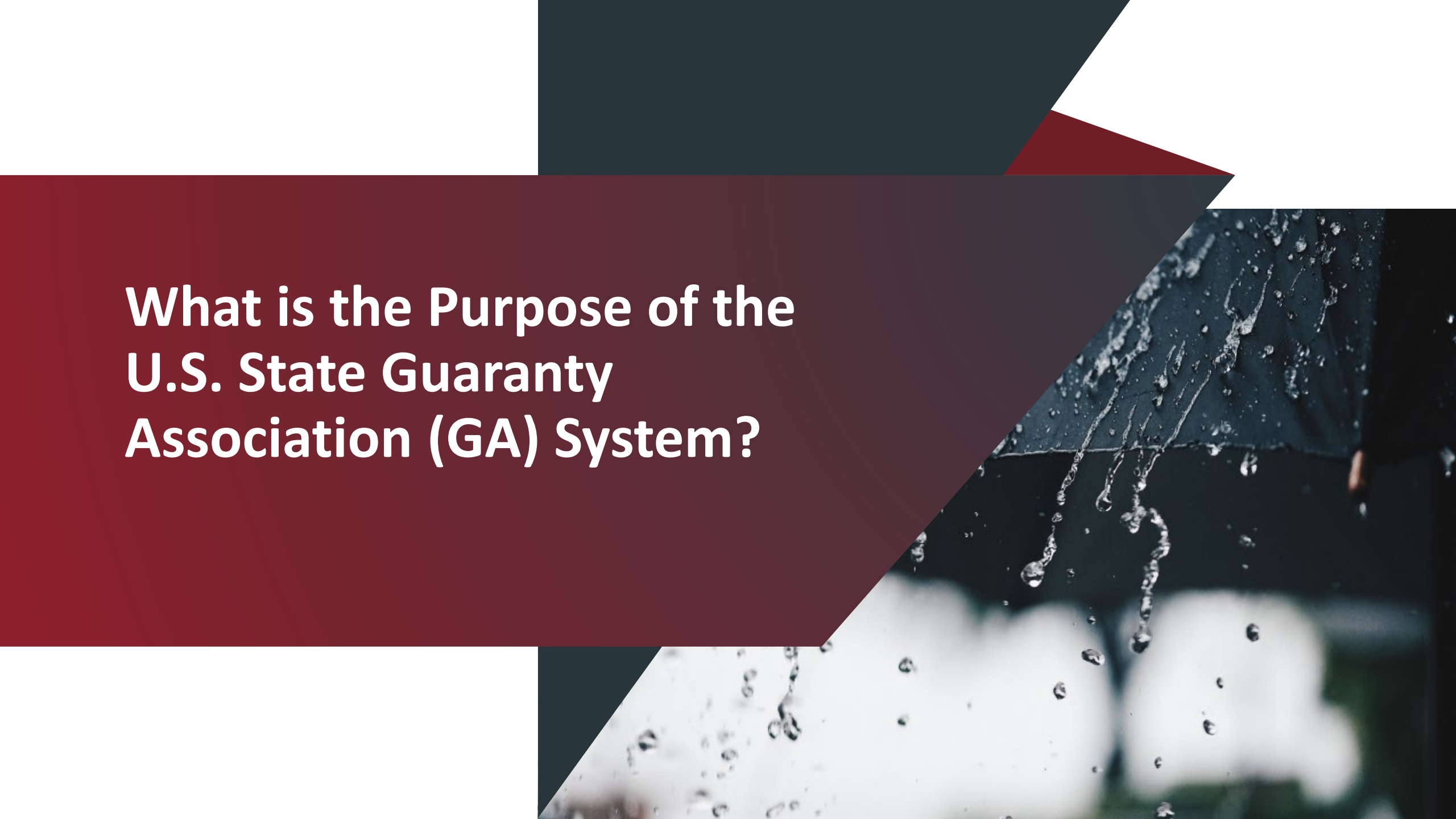


Example Similarities: U.S. v. Other PPSs

Formation & Structure	<ul style="list-style-type: none">• Established by legislation
Functions	<ul style="list-style-type: none">• Established as a “last resort” mechanism to provide protections in the event of an insurer’s failure• Payment of claims• Continue coverage for long term policies
Intervention	<ul style="list-style-type: none">• Most are not triggered until resolution proceedings
Eligible Policyholders	<ul style="list-style-type: none">• Exclude large commercial policyholders or policies or coverage• Exclude reinsurance
Limits	<ul style="list-style-type: none">• Existence of coverage limits
Funding	<ul style="list-style-type: none">• Estate assets• Contributions from member insurers
Cooperation & Coordination	<ul style="list-style-type: none">• Essential among PPSs for cross-border• Essential between PPS and supervisor or resolution authority

Example Differences: U.S. v. Other PPSs

Formation & Structure	<ul style="list-style-type: none"> • Governmental entity (not private) • Combined safety net and regulator/receiver • State system v. national system
Functions	<ul style="list-style-type: none"> • Provide a catastrophic backstop (similar to federal programs like flood, crop, natural catastrophe) • Cash injection to support sale of business • Conduct runoff
Intervention	<ul style="list-style-type: none"> • Role in recovery • Can step in to avert resolution or insolvency in a few jurisdictions
Coverage	<ul style="list-style-type: none"> • Only life or only P&C or only mandatory insurance • Limits and exclusions vary greatly between jurisdictions and products • Do not cover unearned premium
Limits	<ul style="list-style-type: none"> • Structure and levels of limits varies greatly
Cross Border Coverage	<ul style="list-style-type: none"> • “Host” Principle (US) v. “Home” Principle
Funding	<ul style="list-style-type: none"> • Pre-funding is most prevalent • Hybrid pre-funding/post-funding model
Public Promotion	<ul style="list-style-type: none"> • Affirmative outreach and promotion regarding existence and coverage of PPS • Public awareness programs



What is the Purpose of the U.S. State Guaranty Association (GA) System?

U.S. Guaranty Association Purpose

The state-based guaranty association system is created by state statute to provide coverage for its resident policyholders who own covered policies issued by an insurer licensed to transact business in that jurisdiction when the insurer is placed in liquidation.

Property and casualty guaranty associations

1970 – First NAIC Property & Casualty Insurance

Guaranty Association Model Act

Today – GAs in all state, DC, Guam, & Puerto Rico



National Conference of
Insurance Guaranty Funds

Life & health guaranty associations

1941 – New York Guaranty Fund created

1971 – First NAIC Life & Health Insurance Guaranty

Association Model Act

By early 1990's – 52 GAs (all states, DC & Puerto Rico)



National Organization of Life & Health
Insurance Guaranty Associations

Guaranty Association Purpose: Consumer Protection



This guaranty association “safety net” supports the insurance promise by assuring the viability, commitments and reputation of the property and casualty insurance industry.

In this way, the system adds substantial value to both the insurance industry and its customers.

Before guaranty associations:

- No policy continuation (L&H)
- Consumers treated as creditors of the company (P&C)
- Lack of consumer protection “safety net” identified for insurance company failures

The background features a close-up photograph of water droplets on a dark, reflective surface, possibly a car windshield or a similar material. The droplets are in various stages of formation and movement, creating a sense of dynamic energy. Overlaid on this image are several geometric shapes: a large dark blue triangle in the top right, a smaller red triangle below it, and a large dark red trapezoidal shape on the left side that serves as a backdrop for the text.

How are Guaranty Associations Structured & Governed?

Structure of Guaranty Associations

Created by state legislation that is overseen by the state's insurance regulator.

- State based statutory language:
 - Life & Health Guaranty Associations
 - Property & Casualty Guaranty Associations
 - **NAIC Model Acts** provide a guide to promote consistency and uniformity across state borders where it's beneficial to all.
- Non-governmental, **not-for-profit entities** established by specific state legislation
 - 501(c)(6) and IRS § 115 organizations
 - However, in four states (AZ, AR, NY and PA), at least some elements of the guaranty mechanism are operated as part of state government. (P&C)
 - Exempt from federal and most state taxes

Governance of Guaranty Associations

- **Board of Directors:**

- Nearly all state GAs have boards of directors
- Comprised of:
 - Directors from member companies licensed to transact business in that jurisdiction and write business in the lines the GA covers
 - Some guaranty associations also have public members when mandated by statute

- **Executive Director or Administrator:**

- Manages the day-to-day operations of the business and has professional expertise
- Some manage both Life & Health and Property & Casualty Guaranty Associations

- **GA Members:**

- Insurers licensed in a state are required to be members of that state guaranty association



What is the Nature of the Insurance Promise?

Life, Health, and Annuity GA Coverage

Coverage:

Who?

- Resident policy owners; and
- Nonresidents under certain circumstances (i.e., orphan coverage)

Coverage Limits:

- \$500,000 in life insurance death benefits but not more than \$300,000 in net cash surrender and net cash withdrawal values for life insurance
- \$500,000 in major health insurance benefits (including net cash surrender and net cash withdrawal values); \$300,000 for long-term care and disability income insurance benefits; \$100,000 in other health insurance benefits
- \$250,000 in the present value of annuity benefits (including net cash surrender and net cash withdrawal values)

Exclusions:

- Portion of contract not guaranteed by insurer
- Interest in excess of benchmark
- Self-funded programs
- Policies issued by an unlicensed insurer or fraternal benefit society
- Obligations based on marketing material or other non-contract material
- Medicare Parts C & D
- Complete list of exclusions found in each GA's enabling statute
- *See The Nation's Safety Net Brochure (www.nolhga.com – Facts & Figures Tab)

Property and Casualty GA Coverage

Coverage:

Who?

- Claimant is a resident (usually Work Comp)
- Insured is a resident (most other covered lines)
- Permanent location of property (1st party property)

Coverage Limits:

- Mostly \$300,000 with a handful of \$500,000
 - NY and CA are different
 - No limit on Workers Comp
- Policy limits
- Net Worth exclusions/recovery
- Other insurance exhaustion

Exclusions:

Complete list of exclusions found in each GA's enabling statute

Common exclusions

- Captives, Title, Fidelity, Surety, Warranty, Service, Mortgage, Financial Guaranty, Risk Retention Groups
- Fines and attorney fees
- Policies terminate 30 days (usually) after the liquidation order
- Bar date (timely filed claims)

Property and Casualty GA Coverage (Cont.)

Summary of P & C Protections:

The Normal

- Workers Comp, Homeowners, Auto, Liability

The Less than Normal

- Environmental, asbestos, large deductible PEO, Abuse, Cyber liability

The Overlooked (until it's not)

- Unearned Premium

Coverage Obligations:

- Direct Payment of Claims
- Payment of Cost of Defense in Litigated Claims

Key phrase

“Be deemed the insurer to the extent of its obligation on the covered claim”



How are Guaranty Associations Funded?

Guaranty Association Funding

Funding Source	Life & Health	Property & Casualty
Insolvent Company's Remaining Estate Assets in the form of: Early access distributions Final asset distribution	Yes	Yes
Premiums	Yes	No
Reinsurance	Yes	Yes
Investment Income	Yes	Yes
Statutory Deposits	Yes	Yes
Assessments of Member Insurers (Class A and Class B) Post-insolvency funded (usually) Premium Tax Offset Limitations	Yes	Yes

A state court finds an insurance company insolvent and orders it liquidated.

Policyholder claims files are transferred to the guaranty funds for servicing.

Covered claims are paid from a pool of money drawn from three sources made available at the time of the insolvency: a) the insolvent insurance company's remaining assets, b) cash already on deposit with state regulators and c) assessments on insurers licensed to write business in a state.

PAYMENTS ARE MADE PROMPTLY.



What is the Role of a Guaranty Association in a Receivership?

Types of Receivership

- **Rehabilitation**

- Court process designed to evaluate the possibility of financially rehabilitating a company under financial duress.
- The goal is to implement a supervised process that seeks to prevent the company from being liquidated.

- ✓ **Guaranty Association is not yet triggered but planning often begins.**

- GAs work with the Rehabilitator to assist (where appropriate) with the rehabilitative process and, as necessary, to prepare for liquidation and the orderly transition of policies and coverage obligations to the GAs.

- **Liquidation**

- Court process designed to administer the orderly transition of the company's covered obligations to the GAs for administration and to address uncovered claims pursuant to the laws of the company's domiciliary state in the event rehabilitation is not possible.

- ✓ **Guaranty Associations require an order of liquidation with a finding of insolvency for triggering.**

Liquidation Order- Guaranty Associations are activated

- ✓ An Order of Liquidation with a finding of insolvency is entered triggering Guaranty Associations.



Coordination and **communication** is critical – between the regulator(s), the GAs, the relevant court, and consumers.



Shared goals and mutual objectives include a near seamless **safety net** for consumers, **reduced cost** of insolvencies, and **strengthening** state regulation.

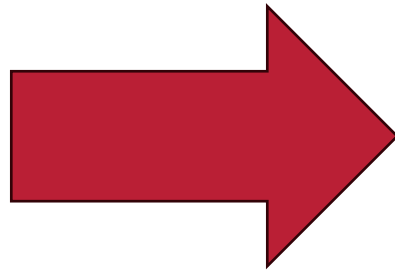
Guaranty Association: Evolution in Receivership

Historical Role

No involvement until liquidation order is entered (or imminent)

State-by-state mechanisms to fund pending and unpaid claims

Domestic guaranty association covers all policyholder (life & health only)



Recent Changes

Pre-liquidation planning – early involvement

Enhanced data collection

Resident only coverage (life & health)



What are NOLHGA's/NCIGF's and Their Roles in an Insolvency?

National Conference of Insurance Guaranty Funds (NCIGF)

- First coordinating organization established in 1968 to coordinate payment of outstanding claims in insolvencies
 - Present NCIGF began in 1989
- Facilitates “Coordinating Committee” activities
 - Committees of GA “stakeholders” paying covered claims
 - Transfer of Claims data to GAs
 - Avoid duplication efforts
 - Promotes consistency
 - Gives voice to all affected GAs
 - Single point of contact
 - Instrumental in pre-liquidation planning
- Public Policy Management
 - “Trusted Expert” on P&C guaranty fund issues
- Shared Solutions to Common Problems

National Organization of Life & Health Insurance Guaranty Associations (NOLHGA)

- Formed in 1983 to provide a coordinated multi-GA response to multi-state insolvencies
- Coordination of systemic process
- Promotion of the values and interests of the system through education and state, national, and international relationship building and resource cultivation
- “Trusted expert” on life, health, and annuity insolvency matters
- Insolvency task force system
 - Representatives of significantly impacted GAs
 - Single point of contact for receiver
 - Cost savings through consultant sharing
 - Conformity in evaluation/solution development on issues in an insolvency

NOLHGA & NCIGF

- IMPORTANT – The sovereignty of individual state guaranty associations remains intact under both the NOLHGA and NCIGF systems. They are both invaluable support and coordination systems in multi-state insolvencies, but each state guaranty association is responsible for all decision-making regarding the statutory protections they provide to the insurance consumers residing in their states.



Where Do We Go Now?

The Road Ahead – Life & Health

- Changes to the L&H GA Model Act
 - Inclusion of HMOs as members
 - Clarification of interest rate limitation application
 - New assessment allocation for LTC obligations

Model Act revised in 2019 by NAIC

(1 year, 1 month & 1 day after charge)

The Road Ahead – Property & Casualty

NCIGF Strategic Plan:

1. Pre-liquidation Planning

- IT Examination Guidelines
 - Provides guidance on best practices for IT review, transferring data, and UDS compliance.
- Holding Company Act Changes
 - Provides the Commissioner authority to provide and oversee data stored at third-party administrators (TPAs).
- Address confidentiality early through the NAIC-endorsed Memorandum of Understanding (MOU).
- New NAIC model laws can be enacted.
 - Restructuring and Cyber Security coverage can be statutorily addressed.

2. Expand Knowledge Base to Prepare & Communicate

3. Produce Shared Solutions to Common Problems



National Organization of Life & Health
Insurance Guaranty Associations

Questions?



National Conference of
Insurance Guaranty Funds

Break



NATIONAL MEETING
FALL / DENVER

Panel Discussion: Hot Topics in Pre- Liquidation, Rehabilitation, and Receiverships

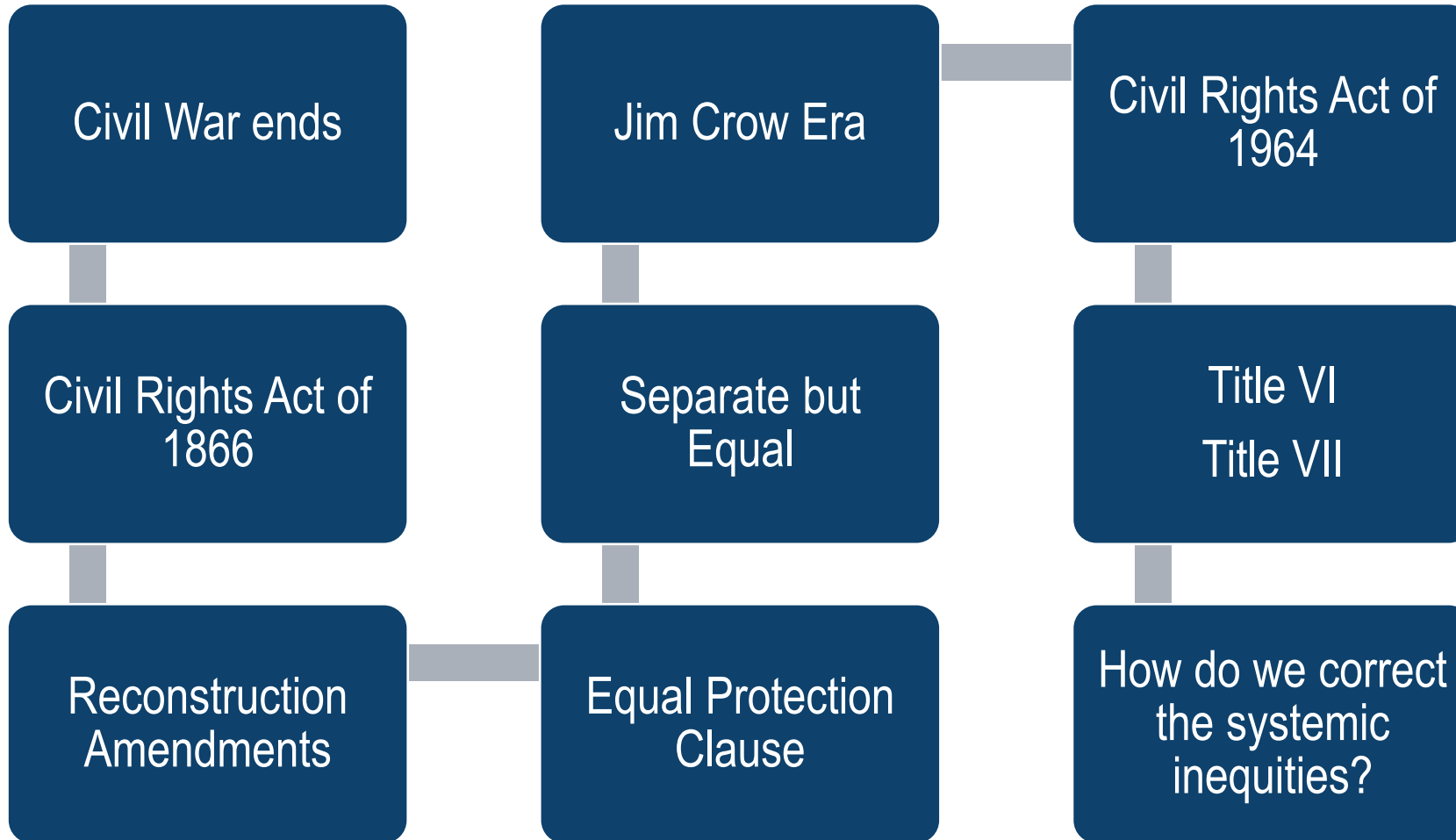
Moderator: Elizabeth Kelleher Dwyer (RI)

**Panelists: Tamara Kopp (Missouri
Insurance Guaranty Associations), Jamin
Dawes (Ellingson & Associates), & Jacob
Stuckey (Illinois Office of the Special
Deputy Receiver)**

November 15, 2024



Post-Affirmative Action DEI



What is Affirmative Action?

HARVARD COLLEGE
Institution of Higher Learning

EDMOND & LEE SAFRA
Center for Ethics

HARVARD
Faculty of Arts and Sciences

CIVIL DISAGREEMENT SERIES

Academic Freedom, DEI, &
the Future of Higher Education

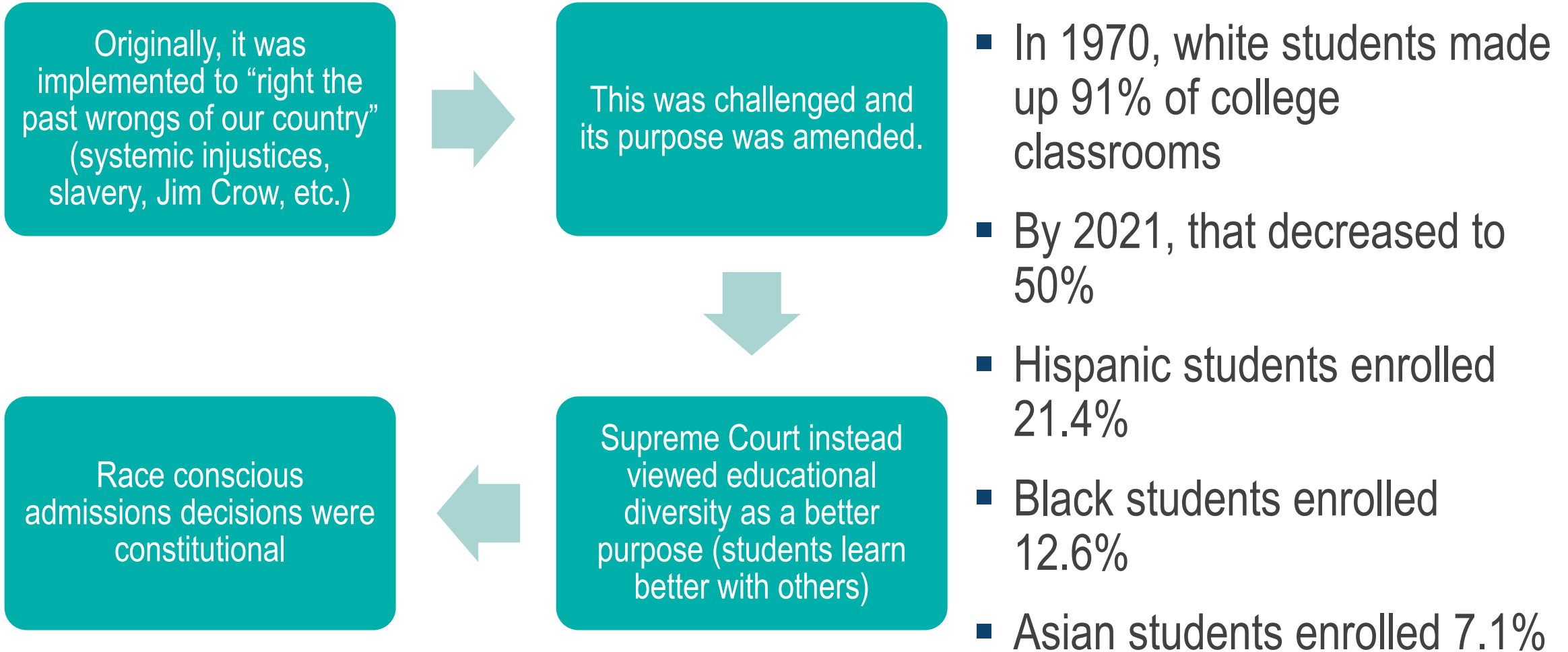
with Jeannie Suk Gersen, Stacy Hawkins,
Anna Khalid, and Ilya Shapiro

Moderated by Christopher Robichaud

March 21, 2024 | 4:30-6:00PM | Smith Center Commons & Livestream

<https://www.youtube.com/watch?v=GGSFhpbPc-Q>

What is Affirmative Action?



SFFA v. Harvard and UNC

- SFFA is an interest group representing students alleging they were disadvantaged during admissions
- Argument: affirmative action is discriminatory and subjects some to negative treatment
- Holding: violative of the Equal Protection Clause and Title VI
- Race advantaged some while disadvantaging others
- Cannot use race as a stereotype to say that all people of one race are alike and need some "bump"
- Colleges can use essay for individuals to discuss racism and their racial background/experiences
- Limited in scope/applicability; does not reach Title VII



The Aftermath of the Court's Ruling

AAER v. Morrison & Foerster; Perkins Coie

- Law firms hosted diversity fellowships specifically for students/applicants of color
- Purpose of the programs was to help people who were historically underrepresented in firms
- Alleged that the fellowships violated the Civil Rights Act
- Law firms revised the language and AAER dropped the lawsuits

MORRISON
FOERSTER
PERKINS COIE

AAER v. Fearless Fund

- Venture capital fund awards grants to black women owned businesses
- Alleged that the grant program violates the Civil Rights Act which bars racial bias in contracting
- Appealed to the Eleventh Circuit
- Parties reached a settlement and the grant program has been eliminated



Moses v. Comcast



- Comcast RISE is a small business grant program that helps minority-owned businesses
- Alleged that the program violates Civil Rights Act and discriminates against them (not race neutral)
- Comcast abandoned the RISE program
- Parties entered a confidential settlement agreement

AAER v. Southwest Airlines

- ¡Lánzate! Program gifts free plane tickets to Hispanic college students at least 200 miles from home
- Alleged that the programs that exclude applicants because of their race are “unfair, unpopular and illegal”
- Lawsuit bases its claims on Civil Rights Act of 1866 and 1964
- Awaiting decision from Northern District of Texas



NCPRR v. Starbucks



- Starbucks set hiring goals for employees of color and tied executive pay to diversity goals
- Nonprofit (which owns SBUX shares) alleges that these policies violate federal and state civil rights laws
- Court tossed the lawsuit telling the shareholders if they don't like the "wokeness" at SBUX, then invest elsewhere

Statements from Officials

- Letters from Attorneys General to Fortune 500 companies
- Letters from Sen. Cotton to law firms
- EEOC Chairwoman issues advice to employers



Takeaways

- Courts are split on these cases
- You do not (necessarily) need to be an employee to bring suit
- Section 1981 of Civil Rights Act is most widely implicated here
- All industries are affected
- No companies have been subpoenaed by Congress/Senate
- No companies have had to testify before Congress/Senate
- New developments in this area each week

Corporations React

- By mid-2023, DEI related job posted declined 44% from prior year
 - From 2020-2021 these jobs expanded by over 30%
- Tech giants like Google and Meta cut DEI positions and budgets



Corporations React



<https://www.youtube.com/watch?v=B-cqaSqtuH8>

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Risk Assessment

When Does DEI Become Risky?

When a preference is conferred to a legally protected class



Job, Promotion, Raise, Bonus,
Assignment, Training, Development



Race, Color, Religion, National
Origin, Sex, Sexual Orientation

**EDUCATION | CULTURAL CELEBRATIONS | AFFINITY GROUPS
DIVERSITY COMMITTEE | DATA COLLECTION | INTENTIONALITY
PRONOUNS | GENDER-NEUTRAL RESTROOMS**



**RETREATS | CONFERENCES | SCHOLARSHIPS | SPONSORSHIPS
DONATIONS | RECRUITING INITIATIVES | INTERNSHIPS
PROFESSIONAL DEVELOPMENT | SUPPLIER DIVERSITY**



**DIVERSITY MENTORING | QUOTAS | DIVERSITY RECRUITERS
TIE-BREAKER DECISION-MAKING | COMPENSATION FOR HITTING
DIVERSITY TARGETS**

What's Our Guidepost?

Neutral

- Open to all
- Causes not cohorts

Optional

- Cannot be forced into a program
- Essay

Non-Discriminatory

- Does not exclude
- Systems-based solutions

What is the first thing we should do?

NOTHING!
**You must consult with
counsel before any analysis.**



Diversity is now a fundamental American value, housed in our varied and multicultural community that only continues to grow.



-Justice Sonia Sotomayor

D&I Retreat

2024 D&I Retreat Application Voices of Inclusion: Building a Tapestry of Belonging

Please complete the below application to determine eligibility to attend Buchanan's 2024 Diversity & Inclusion (D&I) Retreat by **11pm ET on Monday, June 24**. We are excited to offer retreat attendees robust diversity and inclusion and leadership programming as well as the opportunity to fellowship with one another. **Additional details about the retreat programming are below.**

The retreat will take place from Wednesday, September 25th to Friday, September 27th at Union League Liberty Hill, Lafayette Hill, Pennsylvania. Applicants must commit to attending the full retreat and are encouraged to stay on the property for the duration.



Diversity-Focused Conferences

Minority Corporate Counsel Association gala (10/15)



Lloyd Freeman

To

Cc Alana R. Anselmi; Shawwna Williams

Bcc Andria R. Adigwe; Caitlin Cardene; David L. Gordon; Alexis A. Graziano; Eric D. Heicklen; Philip R. Hirschfeld; Christopher L. Jackson; +10 others

Reply Reply All Forward

Mon 8/12/2024 8:39 PM

Hello,

You are receiving this email because of your membership in an affinity group and commitment to the firm's D&I. Buchanan is a member of the Minority Corporate Counsel Association. The group's annual gala is October 15th at the Metropolitan Museum of Art in NYC from 6:30-10:30pm. Kindly let me know if you'd like to attend. D&I will reimburse you for travel, parking, etc. if you attend. However, I'm only sending this to our NJ/NYC attorneys so that we do not need to cover hotel expenses.

Details can be found here: <https://mcca.com/events/mcca-diversity-gala/gala-2024/>. Note: Joe Centeno is on the board and will be at this event as well.

Thanks so much,

Lloyd Freeman

Chief Diversity & Inclusion Officer

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Philadelphia, PA 19102-2555
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lloyd.freeman@bipc.com

Buchanan



Lloyd Freeman

To **AD - Affinity - PRIDE**

You forwarded this message on 5/14/2024 9:15 AM.

Reply Reply All Forward

Sun 5/5/2024 3:35 PM


PRIDE Members,

We have a limited number of registrations available for the upcoming **Lavender Law Conference** being held August 7-9, 2024 in Washington DC. If you are interested in attending, please complete the below form. The selection committee will review all applications and notify those who are chosen to attend. The form must be completed by May 17th at 5pm EST in order to be considered. Also note that attendance at this conference is subject to approval by your Section leadership.

[Application for Lavender Law Attendance](#)

Thanks!

Affinity Group Membership/Marketing



**Buchanan
D&I**

DIVERSITY & INCLUSION: AFFINITY GROUPS

Affinity Groups

At Buchanan, we have seven Affinity Groups that are member-led and open to employees of all identities. The groups share three common goals: to build community and awareness, to provide resources for career and professional development, and to create opportunities to socialize with colleagues across offices/sections.

For its members, these groups offer opportunities for mentoring, networking and development on the personal and professional levels. The groups are charged with suggesting ideas for programming and producing inclusive and relevant content for resources, firmwide events and membership-only programs. The groups also host social events and recommend specialty bar associations and other diversity-focused organizations for the firm to support – further enhancing our recruitment networks and presence in our communities.

The Affinity Groups work directly with firm leadership and are overseen by our Chief Diversity & Inclusion Officer, Lloyd Freeman and led by our Diversity & Inclusion Manager, Shawwna Williams.

Intentionality Plan - Recruiting

Re: Intentionality Plan

Monthly, the D&I team shall meet with the Recruiting team to discuss the status of our new hires as well as the overall recruiting strategy. The goal of the monthly meeting is to ensure that the firm is intentional in its efforts to increase the diversity of our candidate pool, and subsequently, our new hires. There are six main areas of focus for the intentionality plan.

Culture Report



Buchanan

2023 CULTURE REPORT

Stay in touch!

Scan the QR code to sign up for our D&I mailing list.

Buchanan



Buchanan

Thank you!



Lloyd Freeman

Phone: 215 665 5306

Email: lloyd.freeman@bipc.com



Open Camera, Use Link for
CLE Attendance Verification



Thank you for attending
today's program!

