

Draft date: 11/10/23

*2023 Fall National Meeting
Orlando, Florida*

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

Saturday, December 2, 2023

11:00 a.m. – 12:00 p.m.

Bonnet Creek—Floridian Ballroom D-F & Corridor II—Level 1

ROLL CALL

James J. Donelon, Chair	Louisiana	Troy Downing	Montana
Glen Mulready, Vice Chair	Oklahoma	Eric Dunning	Nebraska
Mark Fowler	Alabama	Justin Zimmerman	New Jersey
Lori K. Wing-Heier	Alaska	Mike Causey	North Carolina
Peni Itula Sapini Teo	American Samoa	Jon Godfread	North Dakota
Michael Conway	Colorado	Judith L. French	Ohio
Andrew N. Mais	Connecticut	Andrew R. Stolfi	Oregon
Dana Popish Severinghaus	Illinois	Michael Humphreys	Pennsylvania
Doug Ommen	Iowa	Elizabeth Kelleher Dwyer	Rhode Island
Vicki Schmidt	Kansas	Michael Wise	South Carolina
Sharon P. Clark	Kentucky	Carter Lawrence	Tennessee
Timothy N. Schott	Maine	Cassie Brown	Texas
Gary D. Anderson	Massachusetts	Mike Kreidler	Washington
Chlora Lindley-Myers	Missouri	Nathan Houdek	Wisconsin

NAIC Support Staff: Jane Koenigsman

AGENDA

1. Consider Adoption of its Oct. 2 Minutes—*Commissioner James J. Donelon (LA)* Attachment One
2. Consider Adoption of its Working Group and Subgroup Reports
 - A. Receivership Financial Analysis (E) Working Group
—*Donna Wilson (OK)*
 - B. Receiver’s Handbook (E) Subgroup—*Miriam Victorian (FL)* Attachment Two
3. Consider Adoption of Revisions to the *Receiver’s Handbook for Insurance Company Insolvencies*—*Commissioner James J. Donelon (LA)*
Posted separately at: Attachment Three
https://content.naic.org/cmte_e_receivership.htm



4. Hear an Update on International Resolution Activities—*William Arfanis (CT) and Robert Wake (ME)*
5. Hear an Update on the Uniform Data Standards (UDS) Project
—*Laura Lyon Slaymaker (PA)*
6. Hear Feedback on the Receivership Tabletop Exercise
—*Commissioner James J. Donelon (LA)*
7. Discuss Any Other Matters Brought Before the Task Force
—*Commissioner James J. Donelon (LA)*
8. Adjournment

Draft: 10/23/23

Receivership and Insolvency (E) Task Force
Virtual Meeting
October 2, 2023

The Receivership and Insolvency (E) Task Force met Oct. 2, 2023. The following Task Force members participated: James J. Donelon, Chair (LA); Glen Mulready, Vice Chair, represented by Donna Wilson (OK); Lori K. Wing-Heier represented by David Phifer (AK); Mark Fowler represented by Lorenzo Alexander (AL); Andrew N. Mais represented by Jared Kosky (CT); Doug Ommen represented by Kim Cross (IA); Dana Popish Severinghaus represented by Kevin Baldwin (IL); Vicki Schmidt represented by Philip Michael (KS); Sharon P. Clark represented by Russ Coy (KY); Gary D. Anderson represented by Christopher Joyce (MA); Timothy N. Schott represented by Robert Wake (ME); Chlora Lindley-Myers represented by Shelley Forrest (MO); Troy Downing represented by Kari Leonard (MT); Mike Causey represented by Jackie Obusek (NC); Jon Godfread represented by Matt Fischer (ND); Eric Dunning (NE); Justin Zimmerman represented by David Wolf (NJ); Judith L. French represented by Matt Walsh (OH); Michael Humphreys represented by Laura Lyon Slaymaker (PA); Elizabeth Kelleher Dwyer (RI); Michael Wise represented by Tom Baldwin (SC); Carter Lawrence represented by Trey Hancock (TN); Cassie Brown represented by Brian Riewe (TX); Mike Kreidler represented by Charles Malone (WA); and Nathan Houdek represented by Amy Malm (WI). Also participating were: Miriam Victorian (FL); and Doug Stolte (VA).

1. Adopted its Summer National Meeting Minutes

Kevin Baldwin made a motion, seconded by Director Dunning, to adopt the Task Force's Aug. 14 minutes (*see NAIC Proceedings – Summer 2023, Receivership and Insolvency (E) Task Force*). The motion passed unanimously.

2. Adopted its 2024 Proposed Charges

Wilson made a motion, seconded by Slaymaker, to adopt the 2024 proposed charges of the Task Force and its Working Group, which includes disbanding the Receiver's Handbook (E) Subgroup (Attachment One-A). The motion passed unanimously.

3. Adopted a U.S. Resolution Template and Referral to the Financial Analysis (E) Working Group

Commissioner Donelon said the Task Force released a draft U.S. Resolution Template for a 30-day public comment period that ended Sept. 14, 2023. Comments and proposed edits were received from Maine (Attachment One-B) and a joint letter from the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) and National Conference of Insurance Guaranty Funds (NCIGF) (Attachment One-C).

Jane Koenigsman (NAIC) said the recommended edits from the commenters were added to the draft. In a few instances where commenters both proposed edits to the same paragraph and the edits appeared substantively the same, NAIC staff chose one set of edits. Koenigsman highlighted a few subsequent editorial changes that were proposed prior to this meeting by NOLHGA and NCIGF (Attachment One-D). Wake recommended that where the draft refers to orders of supervision, the supervision should be characterized as a delinquency action rather than a resolution action. Commissioner Donelon agreed.

Wake made a motion, seconded by Superintendent Dwyer, to amend the draft U.S. Resolution Template with the edits proposed during the meeting. The motion passed unanimously.

Slaymaker made a motion, seconded by Director Dunning, to adopt the U.S. Resolution Template into the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook) and to refer the template to the Financial Analysis (E) Working Group for consideration in the *Troubled Insurance Company Handbook* (regulator only publication) (Attachment One-E). The motion passed unanimously.

4. Adopted the Model #540 Amendments

The Task Force previously exposed amendments to the *Property and Casualty Insurance Guaranty Association Model Act* (#540) for a 30-day comment period that ended Sept. 14. The amendments relate to coverage of policies that are subject to restructuring mechanisms, specifically insurance business transfers (IBTs) and corporate divisions (CDs), as well as revisions related to clarifying coverage for cybersecurity insurance.

Commissioner Donelon said comments were received from Maine, Virginia, Patrick Cantilo (Cantilo & Bennett, LLP), and the NCIGF (Attachment One-F).

Cantilo said the charge to the Receivership Law (E) Working Group was to evaluate whether amendments to Model #540 would be necessary to assure that IBT and CD transactions would not result in the loss of policyholder guaranty association coverage following the completion of the transaction. He said he supports the goal and offers a simple amendment to Model #540 to make that clear, although it could be argued that even without the amendment, Model #540 already did that. He said the Working Group went further and is suggesting reversing the 2009 decision to provide guaranty association coverage for assumed claims transactions, which are transactions in which a licensed member insurer becomes responsible for the losses and policy benefits under a policy originally issued by someone that was not a licensed member insurer. Cantilo said his letter provides the history of the change in 2009. He said there is no need to reverse the 2009 decision to include assumed claims coverage to ensure that guaranty association protection is not lost in an IBT or CD transaction. To achieve this purpose, it would have been simple. The complexity and the debate that has occurred are because the Working Group went beyond the charge and, without fairly stating it, added an additional goal of its work, eliminating or providing for the elimination of the coverage adopted in 2009.

Cantilo said that to assure continued protection for policyholders and IBT and CD transactions, there are four lines he proposed in his comment letter. His comments on the matter that policyholders should retain guaranty association protection following an assumed claim transaction are based on the experience with Reciprocal of America, which was to provide workers' compensation insurance throughout the southeast of the country. It was placed into rehabilitation and then liquidation in 2003. There was opposition to providing guaranty association coverage to worker's compensation benefits where the policy had originally been issued by non-member insurers but was assumed by a member insurer. One case was a mother who had lost her worker's compensation benefits as a result and was forced out of her apartment with her kids and had to live out of her car. He said he was able to persuade our receivership court to reverse that. He said there is no public policy reason to support eliminating the guaranty association coverage for an assumed claims transaction simply to assure that it exists for an IBT and CD transaction.

Victorian asked if adopting Cantilo's proposed amendment would preserve guaranty association coverage for IBT and CD transactions. Cantilo said it would. Kevin Baldwin said with regard to whether either Cantilo's proposed amendment or the Working Group's adopted amendment would preserve guaranty association coverage for IBT and CD transactions, there was a lot of discussion in the Working Group. Kevin Baldwin said Cantillo raised his comments at the Working Group level. The amendments that the Working Group adopted and sent to the Task Force are a consensus product that included the input of many state insurance regulators and interested stakeholders.

Kevin Baldwin said for the Working Group's draft, the Working Group wanted to address the issue of guaranty fund coverage in the definition of a covered claim as opposed to addressing it in the definition of assumed claims transaction. He said the definition of a covered claim is the first place someone would go to see if a policy is covered by the guaranty fund. He said 47 states do not have a definition of assumed claim transaction because states have not adopted the 2009 language. He said there has been a lot of opposition to that language from various stakeholders. He said the Working Group's draft is a consensus approach that received buy-in from interested stakeholders, and it seemed to be the clearest and most concise place to revise the definition.

Slymaker said the version before the Task Force gives two avenues for state insurance departments when requesting legislative changes. One approach is to pass both Section 5G(2) and the optional language in Section 5G(3), if possible. If it is not possible to pass both, states still pass the language that will address the IBT and CD coverage issues in 5G(2).

Wake said one issue that is not addressed by the base version of the Cantilo amendment is the situation where the domiciliary state transfers the policies to an insurer that is not licensed in this state at the time of the transfer. There are many scenarios in which this could happen. He said Cantilo acknowledged this and included some optional language in some of the versions he submitted, but the base version of his amendments requires an insolvent insurer. An insolvent insurer is defined to be a member insurer at the time the policy is transferred, which might not happen for a variety of reasons. He said claimants should not be punished for what happened when the policy was involuntarily transferred by the domiciliary regulator. He said guaranty fund coverage should be preserved.

Cantilo said his changes are all in the definition of covered claims. He said Wake is correct that he offered alternatives for an event that he finds unlikely—that regulators want to approve IBT or CD transactions of a non-member unlicensed insurer. Even if that were the case, only three or four lines of amendments are needed in the covered claims definition, which he has proposed to the Working Group, to accomplish the same result instead of the 278-line complicated Working Group proposal.

Wake said most of the 278 lines are deletions of language that some would characterize as complicated. He said the best answer is to not let the policy get transferred to a non-member insurer. He said this state has no choice over that unless it is the domiciliary state. Wake said that is why other language is needed to make sure the coverage is preserved, unless states want to be compelled to license what the domiciliary state might approve that might be contrary to this state's judgment.

Cantilo said he agreed with Wake's comments, but Cantilo is suggesting that can be done without deleting the 2009 assumed claims language.

Barbara Cox (Barbara Cox LLP) said she believes only three states have adopted the 2009 language on assumed claims transactions. She said with Cantilo's proposed amendment, there could be a situation where there is one set of rules for IBT and CD and a different set of rules for older, assumed claims transactions because the definition of novation and related requirements are still included in the draft. She said the charge that originated in the Restructuring Mechanisms (E) Working Group called for coverage neutrality, meaning that coverage should not be changed, and that is footnoted in one of NCIGF's comment letters. Cox stated that the way she read Cantilo's proposal is that none of these four options would provide for cover neutrality. She said she believes all of them call for a transaction that originated from a non-member of a guaranty fund transfer to a member would retain that coverage, so that is not the charge of the Restructuring Mechanisms (E) Working Group. She said this discussion has taken a year, and she said she thinks everyone has been heard. She said the proposal before the

Task Force is a simple solution that affords coverage for a broad range of transactions. She said NCIGF supports Section 5G(2), which is coverage neutrality member-to-member and member-to-non-member. NCIGF does not support 5G(3), which is non-member-to-member transactions, However, she said she respects the state insurance regulator's wish to make that available to state policymakers.

Cox stressed the urgency of the situation as there are 12 states that have adopted either IBT or CD provisions, and now they are using them. These laws do affect workers' compensation and other personal lines. The way the laws are read that exist in most states, there would not be guaranty fund coverage. If there are a lot of those transactions, that would mean a number of injured workers would not get the assistance they need, along with other homeowners, etc. She said NCIGF urges the NAIC to bring this process to a conclusion as expeditiously as possible.

Stolte said Virginia had a receivership to 2003, Reciprocal of America, where Virginia had to litigate this issue. Virginia supported the 2009 assumed claims amendment for the benefit of policyholders. Virginia believes that the Working Group exceeded its charge and is trying to make this optional. Virginia believes this would put the state at a distinct disadvantage. He said Virginia is opposed to making it optional.

Greg E. Mitchell (Global Regulatory Risk & Compliance PLLC) said he is speaking in his individual capacity. He said he was involved with the Reciprocal of America receivership, representing a number of claimants that had claims that had been assumed by Reciprocal of America. He said that public policy decision-making should be carefully considered as part of the amendments. He said in a situation where a regulated entity has had reserves and assets transferred through an approved transaction that would have constituted a novation and then have an insolvency with no guaranty fund coverage, the use of those assets should be carefully weighed and considered.

Commissioner Donelon said an exhaustive amount of time, energy, and effort has been put into this endeavor over the past year. He said he would like to refer the Model #540 amendments to the Financial Condition (E) Committee as soon as possible with the goal in mind of accomplishing a resolution to the disagreements. He said he is moved by the comments from Virginia relative to its experience with Reciprocal of America.

Wake said he submitted a comment but would like to discuss the layers of potential claims. First is what is covered by the existing laws in 47 states. Everybody wants to cover those. Second is IBTs and CDs, which the charge to the Working Group is to cover. When there is a disagreement between this state and the domiciliary state over whether that company qualifies for licensure or maybe even the resulting company does not seek licensure in this state, the result is that there might be a non-member transferee despite the state insurance regulator's best efforts.

Wake said the third layer on which he and the majority of the Working Group agree is that there are a number of scenarios in the 2009 amendments, like traditional assumption reinsurance, that should be covered. The Working Group version does that, and this is what has created the complaints that the amendments are supposedly outside of scope. There are also some other gaps that neither the 2009 amendments, the Cantilo proposal, nor the existing law cover. Common law novation is one.

Wake said all of these four together is what the base version of the Working Group's amendments with Section 5G(2) will cover. Because with the amendment uses a broad rule it automatically includes common law novation and assumption reinsurance without stating those specifically. He said he does not believe there is any good public policy reason to say the charge was too narrow, and to exclude these people and then come back with another amendment to fix that.

Wake said the Working Group understands that there are some states that think that there is a need for coverage in certain situations where a non-member transfers claims to a member insurer in a situation where it is not clear whether the member insurer issued a replacement policy. This issue is what the Task Force is arguing over, what state legislatures have disagreed about, and why the 2009 amendments are a hard sell in the legislature. Wake said the base version of the Working Group's model amendments does not cover this, but the optional Section 5G(3) does. If a state adopts optional Section 5G(3), it will cover everything that the 2009 amendments cover, plus everything else state insurance regulators want to cover. If they do not want to adopt Section 5G(3), then they will at least cover everything that is in the existing laws in the other 47 states, and every transfer from a member insurer that previously had guaranty fund coverage is preserved.

Commissioner Donelon asked which three states have adopted the 2009 assumed claims transaction language. Cox said Nevada, Oklahoma, and Rhode Island have adopted the 2009 amendments for assumed claims transactions. Stolte said Virginia probably adopted the 2009 amendments early rather than waiting for their adoption. Cantilo said in a lot of states, no change was necessary in order for that coverage to continue, which is perhaps why there were no changes made. Wake said he agrees that because the situation is that coverage is wanted, there are situations where the new insurer actually issued a replacement policy, and that is what the receivership court in Virginia found after litigation.

Superintendent Dwyer made a motion, seconded by Wake, to adopt the amendments to Model #540 (Attachment One-G). The motion passed unanimously.

5. Heard an Update on a Receivership Tabletop Exercise

Koenigsman said she distributed an announcement to state insurance regulators for the receivership tabletop exercise that NOLHGA and NCIGF will be presenting on Nov. 29 at the Fall National Meeting. Learning objections include opportunities for early planning, information, and operational needs for planning for receivership, unique issues that might arise in receivership, and understanding the timing and decision points in receivership. The session is intended for state insurance regulators and guaranty fund representatives. The session will not be listed in the Fall National Meeting agenda. Therefore, Fall National Meeting registration is not required. However, for planning purposes, those intending to attend should send an RSVP to NAIC staff by Nov. 3.

Having no further business, the Receivership and Insolvency (E) Task Force adjourned.

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Virtual Meeting

RECEIVER'S HANDBOOK (E) SUBGROUP

November 8, 2023

Summary Report

The Receiver's Handbook (E) Subgroup met Nov. 9, 2023. During this meeting, the Subgroup:

1. Adopted its Oct. 5 and Aug. 18 minutes, which included the following actions:
 - A. Exposed revisions to chapters 6 and 8 of *the Receiver's Handbook for Insurance Company Insolvency* (Receiver's Handbook) for a 30-day comment period ending Sept. 18.
 - B. Exposed revisions to chapters 9, 10, and 11, and appendices of the Receiver's Handbook for a 30-day comment period ending Nov. 6.
 - C. Adopted chapter 7 of the Receiver's Handbook.
2. Discussed edits to the exposed chapters and adopted revisions to chapters 6, 8, 9, 10, and 11, and appendices of the Receiver's Handbook.

RECEIVER'S HANDBOOK FOR INSURANCE COMPANY INSOLVENCIES

Revisions to the following chapters and exhibits of the Handbook were adopted by the Receiver's Handbook (E) Subgroup on:

- July 19, 2022, Chapters 1, and 2
- December 21, 2022, Chapters 3, 4, and 5
- August 18, 2023, Chapter 7
- November 9, 2023, Chapters 6, 8, 9, 10, 11, and exhibits

Due to the size of the Handbook, the revised chapters are posted separately to the Receivership and Insolvency (E) Task Force webpage at https://content.naic.org/cmte_e_receivership.htm