NATIONAL MEETING
SUMMER / CHICAGO
2024 NAIC

Draft date: 8/1/24

2024 Summer National Meeting
Chicago, Illinois

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE
Wednesday, August 14, 2024
11:00 a.m. – 12:00 p.m.
McCormick Place Convention Center - S102 - Level 1

ROLL CALL

Ann Gillespie, Chair	Illinois	Chlora Lindley-Myers	Missouri
Glen Mulready, Vice Chair	Oklahoma	Eric Dunning	Nebraska
Mark Fowler	Alabama	Scott Kipper	Nevada
Lori K. Wing-Heier	Alaska	Justin Zimmerman	New Jersey
Alan McClain	Arkansas	Mike Causey	North Carolina
Michael Conway	Colorado	Jon Godfread	North Dakota
Andrew N. Mais	Connecticut	Judith L. French	Ohio
Karima M. Woods	District of Columbia	Andrew R. Stolfi	Oregon
Michael Yaworsky	Florida	Michael Humphreys	Pennsylvania
Gordon I. Ito	Hawaii	Elizabeth Kelleher Dwyer	Rhode Island
Doug Ommen	Iowa	Michael Wise	South Carolina
Vicki Schmidt	Kansas	Carter Lawrence	Tennessee
Sharon P. Clark	Kentucky	Cassie Brown	Texas
Timothy J. Temple	Louisiana	Scott A. White	Virginia
Robert L. Carey	Maine	Mike Kreidler	Washington
Kevin P. Beagan	Massachusetts	Nathan Houdek	Wisconsin

NAIC Support Staff: Jane Koenigsman

AGENDA

1. Consider Adoption of its Spring National Meeting Minutes —*Kevin Baldwin (IL)* — Attachment One

2. Consider Adoption of its 2025 Proposed Charges—*Kevin Baldwin (IL)* — Attachment Two

3. Consider Adoption of the Report of the Receivership Financial Analysis (E) Working Group—*Donna Wilson (OK)*

4. Consider Adoption of the Report of the Receivership Law (E) Working Group—*Laura Lyon Slaymaker (PA)* — Attachment Three

5. Hear a Report on International Resolution Activities—*Robert Wake (ME)*

6. Hear an Update on Upcoming Events of the International Association of Insurance Receivers (IAIR)—*Jan Moenck (Risk & Regulatory Consulting LLC)*

7. Discuss Any Other Matter Brought Before the Task Force —*Kevin Baldwin (IL)*

8. Adjournment

Draft Pending Adoption

Draft: 3/21/24

Receivership and Insolvency (E) Task Force
Phoenix, Arizona
March 17, 2024

The Receivership and Insolvency (E) Task Force met in Phoenix, AZ, March 17, 2024. The following Task Force members participated: Dana Popish Severinghaus represented by Jacob Stuckey, Chair (IL); Glen Mulready, Vice Chair, represented by Donna Wilson (OK); Lori K. Wing-Heier represented by David Phifer (AK); Mark Fowler represented by Ryan Donaldson (AL); Alan McClain represented by Leo Liu (AR); Michael Conway represented by Rolf Kaumann (CO); Andrew N. Mais represented by Jane Callahan and William Arfanis (CT); Karima M. Woods represented by Nathaniel Brown (DC); Gordon I. Ito represented by Danny Chan (HI); Doug Ommen represented by Kim Cross (IA); Vicki Schmidt represented by Philip Michael (KS); Sharon P. Clark represented by Jeff Gaither (KY); Timothy J. Temple represented by Stewart Guerin (LA); Gary D. Anderson represented by Christopher Joyce (MA); Chlora Lindley-Myers represented by Shelley Forrest (MO); Mike Causey represented by Angela Hatchell (NC); Jon Godfread represented by Colton Schulz (ND); Eric Dunning represented by Lindsay Crawford (NE); Justin Zimmerman represented by John Sirovetz (NJ); Judith L. French represented by Sean Sheridan (OH); Andrew R. Stolfi represented by Kirsten Anderson (OR); Michael Humphreys represented by Laura Lyon Slaymaker and Crystal McDonald (PA); Elizabeth Kelleher Dwyer represented by Patrick Smock (RI); Michael Wise represented by Will Davis (SC); Carter Lawrence represented by Trey Hancock (TN); Cassie Brown represented by Jessica Barta (TX); Scott A. White represented by Dan Bumpus (VA); Mike Kreidler represented by Charles Malone (WA); and Nathan Houdek represented by Mark McNabb (WI).

1. Adopted its Feb. 29, 2024, and 2023 Fall National Meeting Minutes

Stuckey said the Task Force conducted an e-vote that concluded on Feb. 29, 2024. During the Feb. 29 e-vote, the Task Force adopted a recommendation to the Financial Regulation Standards and Accreditation (F) Committee regarding Part A Accreditation Standards for the 2023 amendments to the *Property and Casualty Insurance Guaranty Association Model Act* (#540).

Phifer made a motion, seconded by Anderson, to adopt the Task Force's Feb. 29, 2024 (Attachment One); and 2023 Fall National Meeting (*see NAIC Proceedings – Fall 2023, Receivership and Insolvency (E) Task Force*) minutes. The motion passed unanimously.

2. Adopted the Report of the Receivership Financial Analysis (E) Working Group

Wilson said the Receivership Financial Analysis (E) Working Group met March 17 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, to discuss companies in receivership and related topics.

Cross made a motion, seconded by Crawford, to adopt the report of the Receivership Financial Analysis (E) Working Group. The motion passed unanimously.

3. Hear a Report on International Resolution Activities

Arfanis said in 2023 the International Association of Insurance Supervisors (IAIS) Resolution Working Group was tasked with clarifying certain Insurance Core Principles (ICPs), including ICP 12 related to resolution planning based on the 2022 targeted jurisdictional assessment for the holistic framework. Two options from the Resolution Working Group were recently presented to the IAIS Policy Development Committee (PDC). The first option is a

less prescriptive consideration with general expectations for a jurisdiction to prepare for resolution and a standard regarding the determination process of the scope for the more detailed requirements for resolution plans. The second option is more prescriptive including a scope for clarifying the resolution plan process and two standards for the requirements of a resolution plan applicable to this scope. It also includes an assumption that preparation planning for resolution should lead to a resolution plan. The PDC has formed a small group of volunteers to develop compromise language within the first option forming the basis for any further drafting and changes. The first option is preferred by those on the US team.

The final version will be presented to the PDC and the IAIS Executive Committee for a brief approval process. A 90-day public consultation will be launched at the end of March.

4. Discussed Receivership Laws Critical to Multi-Jurisdiction Receiverships

Stuckey said in November 2021 the Task Force adopted a memorandum that was sent to states to encourage each state to review their laws and adopt changes, if necessary, to have more consistency across states in the areas identified in the memo. Stuckey reminded states of why it is important to consider legislative amendments if the state does not have these provisions in law. He described each section of the memorandum as follows.

Stuckey said the *Insurer Receivership Modal Act* (Model #555) section 102 identifies provides that the state's receivership act and guaranty fund act shall be taken together. This section is important to avoid legal delays in administering a receivership.

Stuckey said Model #555 section 502 addresses continuation of coverage exclusions for life and health business. The Task Force did a study in 2019 that showed wide variances between states that had 502, or that had an older version, or that had no provision at all. Slaymaker said Pennsylvania's law related to over-the-cap claims dates from 1977. Pennsylvania is not able to pay over-the-cap claims and is attempting to fix this problem legislatively. It is uncertain if Pennsylvania will be able to do that. She said the court has directed Pennsylvania to fix this issue legislatively by holding that there is no statutory authority for this well-intentioned proposal.

Stuckey said Model #555 section 801 protects policyholders and therefore, is important to protect policyholders consistently in every jurisdiction.

Stuckey said the issues of reciprocity, and full faith and credit on stays and injunctions come up often and create legal delays and additional costs in the administration of a receivership. The memo outlines different options depending on what provisions a state may or may not already have in law. Options include either adopting sections of Model #555, provisions from the predecessor to Model #555 which is the *Insurer Rehabilitation and Liquidation Model Act,* or the *Guideline for Definition of Reciprocal States in Receivership Laws* (GDL #1985) that was adopted in 2021.

Stuckey said 2021 amendments to the *Insurance Holding Company System Regulatory Act* (Model #440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (Model #450) address continuation of essential services from affiliated agreements and records/data. This is another area that more often causes legal delays and added costs to a receivership. To date, sixteen states have adopted the amendments and three states have pending litigation.

Stuckey said, *Guideline for Administration of Large Deductible Policies in Receivership* (GDL #1980), adopted in 2021, makes significant improvements over the Model and other versions of that legislation, so states are encouraged to adopt the Guideline language.

Stuckey said, 2017 amendments to the *Life and Health Insurance Guaranty Association Model Act* (Model #520) address long-term care insurance and included coverage of HMOs as members. To date, forty-one states have adopted the Model 520 amendments, and three states have pending legislation, reflecting good progress. The remaining states are encouraged to consider these amendments as part of your review of your receivership laws.

Stuckey said Model #540 amendments adopted at the 2023 Fall National Meeting address restructuring mechanisms and cybersecurity insurance. State insurance regulators are encouraged to consider these changes in the state's next legislative session.

Stuckey said state insurance regulators have been discussing the need for more consistency in states' receivership laws since the current version of Model #555 was adopted nearly 20 years ago. The 2021 memorandum limited the topics that were most important to a reasonable number. Stuckey encouraged more state insurance regulators to look at their laws and consider the topics in the memorandum so that state insurance regulators do not lose momentum in achieving more consistency in these key multi-jurisdictional areas.

5. Discussed Updating the Global Information Receivership Database (GRID)

Jane Koenigsman (NAIC) said the Global Receivership Information Database (GRID(is a voluntary database. There is no official requirement for states to provide information to it, however, NAIC staff strives to make sure that basic information about a receivership is updated annually, which includes the company name, a link to the receivership order, and contact information. She said staff relies on state insurance regulators to notify staff when new public orders have been issued . She said there are currently 337 open receiverships in GRID. While the basic information is mostly complete, specific details such as states impacted, lines of business, claims and other administrative data and financial statement data is less complete. She reminded state insurance regulators to proactively contact staff when there are new orders, or when estates are closed. If state insurance departments need to assign someone to have the ability to access GRID to make updates, please contact staff to have the roles assigned.

Wilson encouraged each state insurance department to review the information in GRID on open receiverships and make any needed updates, at a minimum to ensure contact information is correct and that proper orders have been loaded to GRID.

6. Discussed States' Adoption of Federal Home Loan Bank (FHLB) Legislation Regarding Exemptions to Stays in Receivership

Stuckey said in 2013, this Task Force and its Working Group reviewed an issue of the Federal Home Loan Bank (FHLB) requesting that states adopt legislation that would exempt the FLHB from stays and injunctions in receivership. The regulators' conclusion at that time was to neither support nor oppose such legislation, recognizing that access to FHLB funding can be beneficial for insurers. Since 2013, roughly half the states have adopted similar legislation, with a few differences in how states incorporated it into their laws. The FHLB periodically resumes its outreach to propose such legislation in the remaining states. Since it has been over 10 years and there has been turnover at states, current state insurance department staff may not know the history and need more context. Stuckey asked states that do not already have this exemption in their law, if it would be helpful to direct the Receivership Law (E) Working Group to consider what additional information might be beneficial for the remaining states, for example holding an educational session or gathering information on how states adopted exemptions into their laws, so that any state that may be approached by the FHLB in the near term has more information about how other states have handled these legislative requests. Cross asked if the intent was to reconsider the neutral position. Koenigsman said the intent of the request to the Receivership Law (E) Working Group is not to reopen the issue but rather to consider what information and resources would assist

states since both NAIC staff and the Chair have received questions from states when they were approached by the FHLB.

Phifer made a motion, seconded by Slaymaker, to direct the Receivership Law (E) Working Group to consider the topic and what additional information might be beneficial for states. The motion passed unanimously.

7. Heard a Presentation from the National Conference of Insurance Guaranty Funds (NCIGF) on the Activities Related to Pre-Liquidation Enhancements

Roger Schmelzer (National Conference of Insurance Guaranty Funds—NCIGF) presented on the NCIGF's activities related to pre-liquidation enhancements (Attachment Two). He said the Task Force has enacted what NCIGF refers to as the "pre-liquidation framework," which is summarized in slide nine of the attachment and includes model amendments, the memorandum of understanding, and examination procedures. NCIGF members are committed to this pre-liquidation framework. Schmelzer said slide six demonstrates what guaranty funds can do with the data if given at least a 75-day runway to start paying claims. There is a period of time that needs to be built into the timeline for preparing to handle an insolvency. He said it comes down to where the data is, the condition of the data, the ability to transmit data and having the data in the Uniform Data Standards (UDS) format. Data should be available to use ideally on day one of the insolvency.

Schmelzer said the value proposition of early guaranty fund involvement is focused on the analysis of the data—i.e., when claims can be paid. Even if a company does not go into liquidation, the data analysis is important for state insurance regulators to look at how to repair data in a company the state insurance regulator is already looking at.

Schmelzer said they presented receivership tabletop sessions at the 2023 Fall National Meeting and the February Commissioners' Conference. He said this was a beginning and more education needs to take place.

Schmelzer said slide eleven of the attachment outlines what the NCIGF has put into action. He said a number of items require legislative action and recommends guaranty funds are available to speak as subject matter experts to legislative committees. Schmelzer said the NCIGF Coordination Committee brings coordination to multi-state insolvencies, such as working through policyholder issues. The NCIGF has invested a great deal in specialized data management services. The NCIGF's public policy engagement will be supportive and helpful as the need arises. Regarding engagement and education, the NCIGF will work with its members to promote a partnership with state insurance regulators. He said a couple guaranty funds are working on tabletop exercises with their state insurance departments. He said NCIGF is presenting at International Association of Insurance Receivers (IAIR) meetings, the Society of Financial Examiners (SOFE) and NAIC Zone Meetings. Education and engagement are the number one priority for the NCIGF board of directors and its members. He said Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act) includes the insurance resolution system. He said he believes that control over a resolution under the Dodd Frank Act is in working through the issues he has presented today.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/E CMTE/RITF/2024 Spring NM/RITF_Minutes_031724.docx

Draft: 7/16/24 Attachment Two

Adopted by the Executive (EX) Committee and Plenary, ___ __, 2024
Adopted by the Financial Condition (E) Committee, ___ __, 2024
Adopted by the Receivership and Insolvency (E) Task Force, ___ __, 2024

2025 Proposed Charges
RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

The mission of the Receivership and Insolvency (E) Task Force is to be administrative and substantive on issues concerning insurer insolvencies and insolvency guarantees. Such duties include, without limitation: 1) monitoring the effectiveness and performance of the state administration of receiverships and the state guaranty fund system; 2) coordinating cooperation and communication among state insurance regulators, receivers, and guaranty funds; 3) monitoring ongoing receiverships and reporting on such receiverships to NAIC members; 4) developing and providing educational and training programs in the area of insurer insolvencies and insolvency guarantees to state insurance regulators, professionals, and consumers; 5) developing and monitoring relevant model laws, guidelines, and products; and 6) providing resources for state insurance regulators and professionals to promote efficient operations of receiverships and guaranty funds.

Ongoing Support of NAIC Programs, Products, or Services

1. The **Receivership and Insolvency (E) Task Force** will:
   A. Monitor and promote efficient operations of insurance receiverships and guaranty associations.
   B. Monitor and promote state adoption of insurance receivership and guaranty association model acts and regulations, and monitor other legislation related to insurance receiverships and guaranty associations.
   C. Provide input and comments to the International Association of Insurance Supervisors (IAIS), the Financial Stability Board (FSB), and~~or~~ other related groups on issues regarding international resolution authority.
   D. Monitor, review, and provide input on federal rulemaking and studies related to insurance receiverships.
   E. Provide an ongoing review of the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook), other related NAIC publications, and the Global Receivership Information Database (GRID), and make any necessary updates.
   F. Monitor the work of other NAIC committees, task forces, and working groups to identify and address any issues that affect receivership law and/or regulatory guidance.
   G. Perform additional work as directed by the Financial Condition (E) Committee and/or received through referrals by other groups.

2. The **Receivership Financial Analysis (E) Working Group** will:
   A. Monitor receiverships involving nationally significant insurers/groups to support, encourage, promote, and coordinate multistate efforts in addressing problems.
   B. Interact with the Financial Analysis (E) Working Group, domiciliary regulators, and lead states to assist and advise ~~as to what might be~~on the most appropriate regulatory strategies, methods, and/or action(s) regarding potential or pending receiverships.

3. The **Receivership Law (E) Working Group** will:
   A. Review and provide recommendations on any issues identified that may affect states' receivership and guaranty association laws (e.g., any issues that arise as a result of market conditions, insurer insolvencies, federal rulemaking and studies, international resolution initiatives, or the work performed by or referred from other NAIC committees, task forces, and/or working groups).
   B. Discuss significant cases that may affect the administration of receiverships.

NAIC Support Staff: Jane Koenigsman
SharePoint/NAIC Support Staff Hub/Member Meetings/E CMTE/RITF/2024 Summer NM/2025 Proposed Charges.docx

Draft: 8/1/24

Receivership Law (E) Working Group
Virtual Meeting
July 24, 2024

The Receivership Law (E) Working Group of the Receivership and Insolvency (E) Task Force met July 24, 2024. The following Working Group members participated: Kevin Baldwin, Co-Chair (IL); Laura Lyon Slaymaker, Co-Chair (PA); Joe Holloway and Jack Hom (CA); Jane Callanan (CT); Yamile Benitez-Torviso (FL); Kim Cross (IA); Tom Travis (LA); Christopher Joyce (MA); Robert Wake (ME); Tom Mitchell (MI); Shelley Forrest (MO); David Ashton (TX); and Charles Malone (WA).

1. Heard an Overview and Update on States' Adoption of Receivership Law Provisions for FHLB Exemption to Stays and Injunctions

Baldwin said that at the Spring National Meeting, the Receivership and Insolvency (E) Task Force asked the Working Group to re-educate and develop helpful aids to assist states that may be approached to adopt this FHLB exemption to stays and injunctions.

Baldwin said that in the fall of 2012, the Federal Home Loan Bank (FHLB), at the request of its regulator, the Federal Housing Finance Agency (FHFA), sent a request to the Receivership and Insolvency (E) Task Force with a legislative proposal with draft language to the *Insurance Receivership Model Act* (#555) or equivalent state statues, to include pledges, security, and collateral relating to an FHLB security agreement within the exemptions to stays and injunctions in Section 108 regarding avoidable preferences and liens in Section 604. The proposal would result in FHLB collateral for loans made to insurers being treated similarly to loans made to member banks under federal bankruptcy laws.

Baldwin said that in 2013, the NAIC's Federal Home Loan Bank Legislation (E) Subgroup and Receivership and Insolvency (E) Task Force concluded a study of the proposal and issued a report in which they concluded that state insurance regulators do not support or oppose the FHLB's legislative proposal. State insurance regulators recognized that access to FHLB funding can be beneficial for insurers seeking liquidity options. The report offered several recommendations to the state insurance regulators, including: 1) the need for states to assess their own laws; 2) suggesting alternative language to address communication by an FHLB of the process and timing for the release of excess collateral, payment of fees, and available options for the insurer to renew or restructure; and 3) the need for regulatory oversight and pre-receivership planning of an insurer's use of FHLB agreements.

Baldwin said the key benefit of FHLB membership is the ability to provide liquidity funding options to insurance company members without the added collateral that the FHLB may have required if the exemptions are not in place. Many state insurance regulators did not want to jeopardize access to that liquidity option or make it more difficult or costly for insurers. The concern expressed by state insurance regulators and receivers was the generally high collateral requirements required under FHLB membership agreements and whether a receiver would have adequate time upon entering a receivership order without a stay to assess the agreements, the collateral requirements, and asset quality before the FHLB takes action under the agreement. However, some states expressed that in terms of priority of claims, the FHLB would already be considered a secured creditor up to the amount of its collateral, so the agreement would be treated similarly to other secured creditor agreements, but for the temporary stay. Baldwin said that since 29 states have adopted an exemption so far, the benefits of FHLB lending appear to outweigh the concerns in a majority of states.

Baldwin said there may be a few differences in how states have incorporated the exemption into the law. Some states have included the FHLB exemption in the section authorizing stays. In Illinois, where stays are issued under the receivership court's general statutory and adjunctive powers, the FHLB exemption was instead placed in the avoidable preference statute.

Baldwin said Rhode Island and Utah are the most recent to adopt exemptions this year. Legislation was also introduced in Connecticut earlier this year.

Baldwin highlighted two resources for state insurance regulators. First is a list of states' legislative actions that will be posted to the Receivership and Insolvency (E) Task Force's web page (Attachment x-A). The list is aimed at assisting any state insurance regulators that the FHLB may approach to have more information about which other states have incorporated these legislative requests into state law. The details of the legislative provisions in each state's law will be posted to StateNet for state insurance regulators or can be requested from NAIC staff. Baldwin asked that any state insurance department with pending legislation or that recently enacted this provision and is not on the list please notify NAIC staff so that the list can be updated.

2. Heard a Presentation on the Outcome of Recent Litigation Regarding Penn Treaty

Slaymaker said that at the Receivership and Insolvency (E) Task Force's meeting during the Spring National Meeting, state insurance regulators were reminded why it is important to consider legislative amendments to address provisions in the law that had previously been identified as important during the Task Force's macroprudential assessment. The topic of continuation of coverage and exclusions for life and health business was one of those provisions. The Task Force did a study in 2019 that showed wide variances between states that had adopted Section 502 of Model #555, those with an older version of Section 502, and those with no provision. There was recent litigation in Pennsylvania related to the continuation of coverage and over-the-cap claims with the Penn Treaty Network America Insurance Company (Penn Treaty) receivership. It is important for all states to understand the outcome of this case and how it relates to provisions in each state's laws or the need for such a provision.

Michael Broadbent (Cozen O'Connor) discussed the provisions of Model #555 that address the three key issues identified by the Penn Treaty litigation (Attachment x-B). Penn Treaty was the second largest long-term care (LTC) insurer that entered rehabilitation in 2009 and liquidation in 2017. During that liquidation phase, the liquidators sought to set aside a portion of the assets to pay for over-the-limit or over-the-cap benefits (i.e., benefits that the policyholders would have been entitled to), absent the liquidation on claims that exceeded the guaranty association limits. Pennsylvania law does not have the related Model #555 provisions. The Pennsylvania law had a few specific provisions that the court analyzed in relation to three important issues. First was the provision that the rights and liabilities of the parties should be fixed at the time of the liquidation or at such time as the court orders. Second, and perhaps most important, was the provision for the termination of coverage no later than 30 days following the liquidation order, absent certain specific circumstances. Third was the principle that subclasses of policyholder claims cannot be created in the priority scheme. This means that the benefits within each policy cannot be split, such that some benefits are paid within one class, and other benefits are in another class. There needs to be a single class of policyholder claims.

Broadbent said the Supreme Court of Pennsylvania found that there was no statutory authority or any standard that would guide the proposed plan to pay the over-the-limit benefits using estate assets. The Court was clear that Pennsylvania law terminated coverage at liquidation and did not expressly authorize the use of the estate assets to pay for these benefits. This reflected the idea that if there was neither a clear direction that this was permissible nor a framework for the liquidator to bring the proposal and have it analyzed by the court, then the

liquidator could not pursue a plan to distribute these assets in any circumstance. As part of that decision, the Commonwealth Court of Pennsylvania specifically drew a contrast to Model #555 and highlighted that Pennsylvania had not adopted the provisions. The Court viewed not having adopted those provisions as a reflection that Pennsylvania did not provide the authority for the liquidator to make a plan to pay the over-the-limit benefits.

Broadbent explained these three key issues as they relate to Model #555 provisions. He said under Section 501 of Model #555, rights and liabilities are fixed at the time of liquidation unless the court fixes them otherwise, pursuant to another section of the law or pursuant to its order.

Broadbent said the most significant changes come in Section 502, which addresses the cancellation or continuation of coverage issues critical in the Penn Treaty litigation. One of the concerns of the Court with Penn Treaty was that no later than 30 days after the liquidation order, there was no insurance coverage available for LTC policyholders beyond the benefits provided to them by the guaranty associations. Section 502 addresses that issue directly, and it splits it into: 1) the automatic continuation of coverage, whereby it automatically continues for those obligations that will be satisfied by the guaranty associations; and 2) the permissive continuation of coverage, whereby it permits the liquidator to seek the Court's approval to continue the coverage for that portion of the policy that the guaranty association does not cover. Subsection 502(B) removes life, disability income, LTC, health insurance, and annuities from the automatic application of the 30-day cancellation rule and then provides that those policies can be continued for a longer or shorter period. The date of the cancellation of coverage could be set at the liquidator's request, where the court approves.

Broadbent said the third problem the Court identified in the liquidator's plan was creating subclasses by breaking up the policy benefits. Section 801 addresses that concern directly by placing the claims that fall within the continued coverage period after 30 days of the liquidation order within the same priority class as the other policyholder-level claims, thereby solving the concern that the Court raised in addressing the liquidator's proposal.

Broadbent said all three highlighted issues are addressed in Sections 501, 502, and 801. At a minimum, the provisions provide a framework for analyzing these three questions. By making the continuation of the coverage past 30 days, or the portion not covered by a guaranty association, permissive, the liquidator has to bring a proposal and seek the Court's approval. These provisions of Model #555 provide for the possibility of an over-the-limit benefit and how it should be handled. This is an advantage over the existing approach in most states, which have either part or none of these Model #555 sections. Whether a state insurance regulator believes it is equitable or inequitable to provide for over-the-limit benefits, it is better to have the statutory authorization to propose such benefit payments. The Model #555 provisions give clarity and consistency that benefit all involved parties and would limit some litigation expenses that might arise to the extent of disagreement on whether it is permissible in a particular state or advisable in that estate.

Broadbent said Model #555 provisions fit into finding a framework for the questions presented in the Penn Treaty liquidation and, in his view, are a good argument for state insurance departments to adopt these provisions to provide a structure for future estates.

Baldwin said adopting Subsection 502(B) would be extremely helpful. He asked if Section 801 is necessary or if it would just be helpful because if a state has Subsection 502(B), these claims are still by policyholders and, as a matter of presumption, would be at the same priority level. Claims for continuation of coverage should be at the same priority level as claims incurred prior to fixing rights and liabilities.

Broadbent said it is perhaps unnecessary to have Section 801, but it is helpful. If a state does not have Section 801, he does not know what arguments could be made by someone who wanted to oppose setting aside assets

to pay the benefits of continued coverage. In the absence of Section 801 or something similar, the argument could be made that Section 502 achieves the outcome, but he feels it is helpful to have that expressly provided for in the statute. More available evidence of what the statute intends limits the questions that a court may face to the extent of disagreement.

Baldwin said this presentation was a good start for state insurance regulators to think about this issue within states' laws.

Having no further business, the Receivership Law (E) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/2024 NAIC Meetings/Summer National Meeting/E Committee/RITF/072424_RLWG minutes.docx

