



**NATIONAL MEETING  
SUMMER 2022**

Date: 7/21/22

*2022 Summer National Meeting  
Portland, Oregon*

**RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE**

Thursday, August 11, 2022

11:00 a.m. – 12:00 p.m.

Oregon Convention Center—Portland Ballroom 256-257—Level 2

**ROLL CALL**

James J. Donelon, Chair	Louisiana	Gary D. Anderson	Massachusetts
Cassie Brown, Vice Chair	Texas	Chlora Lindley-Myers	Missouri
Mark Fowler	Alabama	Troy Downing	Montana
Lori K. Wing-Heier	Alaska	Edward M. Deleon Guerrero	N. Mariana Islands
Peni Itula Sapini Teo	American Samoa	Eric Dunning	Nebraska
Michael Conway	Colorado	Marlene Caride	New Jersey
Andrew N. Mais	Connecticut	Mike Causey	North Carolina
Trinidad Navarro	Delaware	Judith L. French	Ohio
David Altmaier	Florida	Glen Mulready	Oklahoma
Colin M. Hayashida	Hawaii	Michael Humphreys	Pennsylvania
Dana Popish Severinghaus	Illinois	Alexander S. Adams Vega	Puerto Rico
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	Jon Pike	Utah
		Mike Kreidler	Washington

NAIC Support Staff: Jane Koenigsman

**AGENDA**

1. Consider Adoption of its June 2 Minutes Attachment One  
—*Commissioner James J. Donelon (LA)*
2. Consider Adoption of the Report of the Receiver’s Handbook (E) Subgroup Attachment Two  
—*Kevin Baldwin (IL)*
3. Consider Adoption of the Report of the Receivership Law (E) Working Attachment Three  
Group—*Kevin Baldwin (IL)*
4. Consider Adoption of the Report of the Receivership Financial Analysis (E)  
Working Group—*Donna Wilson (OK) and Jacob Stuckey (IL)*

5. Consider Adoption of its 2023 Proposed Charges  
—*Commissioner James J. Donelon (LA)*

Attachment Four

6. Hear an Update on International Resolution Activities—*Robert Wake (ME)*

7. Discuss Any Other Matters Brought Before the Task Force  
—*Commissioner James J. Donelon (LA)*

8. Adjournment

Draft: 6/15/22

Receivership and Insolvency (E) Task Force  
Virtual Meeting  
June 2, 2022

The Receivership and Insolvency (E) Task Force met June 2, 2022. The following Task Force members participated: James J. Donelon, Chair (LA); Cassie Brown, Vice Chair, represented by Brian Riewe (TX); Lori K. Wing-Heier represented by Jeffery Bethel (AK); Jim L. Ridling represented by William Rodgers (AL); Michael Conway represented by Rolf Kaumann (CO); Andrew N. Mais represented by Jared Kosky (CT); Colin M. Hayashida represented by Martha Im (HI); Doug Ommen represented by Kim Cross (IA); Dana Popish Severinghaus represented by Kevin Baldwin (IL); Vicki Schmidt represented by Tish Becker (KS); Sharon P. Clark represented by Jeff Gaither (KY); Gary D. Anderson represented by Christopher Joyce (MA); Timothy N. Schott represented by Robert Wake (ME); Chlora Lindley-Myers represented by Shelley Forrest and John Rehagen (MO); Edward M. Deleon Guerrero represented by Charlette C. Borja (MP); Mike Causey represented by Jackie Obusek (NC); Eric Dunning represented by Lindsay Crawford (NE); Glen Mulready represented by Donna Wilson (OK); Michael Humphreys represented by Crystal McDonald (PA); Elizabeth Kelleher Dwyer represented by Matt Gendron (RI); Carter Lawrence represented by Hui Wattanaskolpant (TN); Jon Pike represented by Reed Stringham (UT); and Mike Kreidler represented by Charles Malone (WA).

1. Adopted its Spring National Meeting Minutes

Ms. Wilson made a motion, seconded by Mr. Kaumann, to adopt the Task Force's April 6 minutes (*see NAIC Proceedings – Spring 2022, Receivership and Insolvency (E) Task Force*). The motion passed unanimously.

2. Adopted a Request for NAIC Model Law Development to Amend Model #540

Commissioner Donelon said the Restructuring Mechanisms (E) Working Group was charged to look at state laws regarding insurance business transfers (IBTs) and corporate divisions (CDs). The Working Group is in the process of developing a white paper on the topic. One area the Working Group identified where model laws may need to be amended is regarding how policyholders retain guaranty fund coverage after such transactions. The Working Group received input from the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) and the National Conference of Insurance Guaranty Funds (NCIGF). The NCIGF suggested that possible technical gaps may exist in states that have adopted the *Property and Casualty Insurance Guaranty Association Model Act (#540)* within certain definitions.

Commissioner Donelon said the Restructuring Mechanisms (E) Working Group referred a draft Request for NAIC Model Law Development to amend Model #540, which was discussed at the Task Force's April 6 meeting and exposed for a 30-day public comment ending May 6. Comments were received from Maine, Missouri, and the NOLHGA. The comment letters do not indicate any objection to the Request for NAIC Model Law Development. The primary question outlined in the comments is whether there is a need to also consider amendments to the *Life and Health Insurance Guaranty Association Model Act (#520)*.

Mr. Wake summarized Maine's comment letter (Attachment One-A). He said the Task Force should look at Model #520 and determine if changes are in order. He said Model #520 has an orphan clause that provides coverage by the domiciliary guaranty fund. He said the NOLHGA suggested not relying heavily on the domiciliary guaranty fund and instead focusing on the goal of the same guaranty fund providing coverage that would have provided coverage before the transfer.

Ms. Forrest summarized Missouri's comment letter (Attachment One-B). She said Missouri commented on the review of Model #520 similar to Mr. Wake's comments. She said Missouri's second comment is on the timing of making model amendments regarding the timing of the Restructuring Mechanisms (E) Working Group's work on its white paper. She said she recognizes the urgency since some of these transactions are already occurring. The concern is that if the Task Force adopts amendments to Model #540 now, then issues, such as the licensing for successor entities, are addressed by the Working Group; those issues may change the direction of the necessary amendments to Model #540. Therefore, it might be premature to open Model #540 if the Working Group has unresolved issues.

Mr. Rehagen asked if there is a need to open Model #540 if the issue is licensing. If the entity is licensed, it would be a member of the guaranty fund.

Barbara F. Cox (NCIGF) said the NCIGF studied this issue over a year with legal experts and an NCIGF subcommittee. She said most current laws are written such that they call for the product to be issued by the now insolvent insurer. This creates a technical difficulty that needs to be fixed in Model #540 to ensure policyholder protection. This is especially true since these new CD and IBT laws extend to personal lines and workers' compensation claimants. There was no objection at the Restructuring Mechanisms (E) Working Group to opening Model #540. Ms. Cox said to address Ms. Forrest's concern, the Task Force can work to amend Model #540 in tandem with the work of the Restructuring Mechanisms (E) Working Group so states can begin updating their laws.

Peter Gallanis (NOLHGA) summarized the NOLHGA's comment letter (Attachment One-C). He said the NOLHGA does not take a position on endorsing or opposing IBT or CD transactions. The NOLHGA believes there has been good regulatory discussion that they follow and participate in. Mr. Gallanis said the NOLHGA has no concerns about the current proposal to amend Model #540. He said the NOLHGA's comment letter addresses whether Model #520 should consider IBT and CD transactions. This is fundamentally different for life and health. Property/casualty (P/C) guaranty association coverage is retrospective; i.e., coverage of claims that occurred prior to insolvency. By contrast, life and health guaranty associations' coverage expenditures has been for prospective coverage on contracts; i.e., the continuation of coverage under life and annuity contracts and non-cancellable health insurance, like long-term care (LTC) or disability. A view of industry and state insurance regulators reflected in Model #520 is that a high level of regulatory oversight of companies is important for contracts that are consumer-oriented and cannot be easily, or even at all, replaced in the marketplace 10 or more years after issuance. A cardinal principle built into Model #520 is the member company requirement. For a state's guaranty association to provide coverage, the insolvent company is obliged to have been a member company in that guaranty association's state. Oversight of the company is not only provided by the domiciliary state but also licensed states. Mr. Gallanis said a fundamental principle in reviewing IBT and CD transactions is that policyholders and other stakeholders are not left worse off. Continued significant regulatory oversight of companies that have emerged from restructuring mechanisms is why the NOLHGA has moved forward with the existing member company requirement.

Mr. Wake made a motion, seconded by Mr. Stringham, to adopt the Request for NAIC Model Law Development with the edits proposed by Maine (Attachment One-D). The motion passed unanimously.

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

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Draft: 7/22/2022

Receiver's Handbook (E) Subgroup  
Virtual Meeting  
July 19, 2022

The Receiver's Handbook (E) Subgroup of the Receivership and Insolvency (E) Task Force met July 19, 2022. The following Subgroup members participated: Kevin Baldwin, Chair (IL); Miriam Victorian, Vice Chair (FL); Joe Holloway (CA); James Gerber (MI); Leatrice Geckler (NM); Donna Wilson and Jamin Dawes (OK); Laura Lyon Slaymaker and Crystal McDonald (PA); and Brian Riewe (TX).

1. Adopted its Nov. 19, 2021, Minutes.

The Subgroup met Nov. 19, 2021, and took the following action: 1) adopted its June 14, 2021, minutes; 2) and exposed Chapter 1 and Chapter 2 of the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook).

Ms. Slaymaker made a motion, seconded by Mr. Holloway, to adopt the Subgroup's Nov. 19, 2021, minutes (Attachment Two-A). The motion passed unanimously.

2. Adopted Revised Chapter 1 and Chapter 2 of the Receiver's Handbook

Mr. Baldwin thanked the volunteers who had participated in the drafting groups for the chapters of the Receiver's Handbook. Sherry Flippo (NAIC) summarized the changes to Chapters 1 and Chapter 2 based on the exposure period.

Ms. Victorian made a motion, seconded by Ms. Slaymaker, to adopt Chapter 1 and Chapter 2 of the Receiver's Handbook with the revisions from the exposure period (Attachment Two-B, Attachment Two-C, and Attachment Two-D). The motion passed unanimously.

3. Exposed Revised Chapter 3, Chapter 4, and Chapter 5 of the Receiver's Handbook

Chapter 3, Chapter 4, and Chapter 5 had extensive revisions and were presented in the meeting materials as a clean copy. To view the original Receiver's Handbook, the current Receiver's Handbook version is posted on the Subgroup's website under the documents tab.

Ms. Victorian made a motion, seconded by Ms. Geckler, to expose Chapter 3, Chapter 4, and Chapter 5 of the Receiver's Handbook (Attachment Two-E) for a 30-day public comment period ending Aug. 19. The motion passed unanimously.

Having no further business, the Receiver's Handbook (E) Subgroup adjourned.

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Draft: 7/19/22

Receivership Law (E) Working Group  
Virtual Meeting  
July 18, 2022

The Receivership Law (E) Working Group of the Receivership and Insolvency (E) Task Force met July 18, 2022. The following Working Group members participated: Kevin Baldwin, Co-Chair (IL); Laura Lyon Slaymaker, Co-Chair (PA); Joe Holloway and Jack Hom (CA); Jared Kosky (CT); Miriam Victorian (FL); Tom Travis (LA); Robert Wake (ME); Thomas Mitchell (MI); Shelley Forrest (MO); Lindsay Crawford (NE); and Brian Riewe (TX).

1. Adopted its June 10 and May 12 Minutes

The Working Group met June 10 and May 12. During these meetings, the Working Group took the following action: 1) discussed a draft memorandum of understanding (MoU) between state insurance departments, receivers, and guaranty funds the states could consider using in the event of an unexpected liquidation to enhance pre-liquidation coordination and communication; and 2) discussed proposals and options for enhancing pre-liquidation coordination and communication proposed by the National Conference of Insurance Guaranty Funds (NCIGF).

Mr. Kosky made a motion, seconded by Mr. Holloway, to adopt the Working Group's June 10 minutes (Attachment Three-A) and its May 12 minutes (Attachment Three-B). The motion passed unanimously.

2. Discussed a Proposal for Enhancing Pre-Liquidation Coordination and Communication

Mr. Baldwin said Rowe Snider (Locke Lord LLP) walked the Working Group through the draft MoU from its June 10 meeting. Edits were made based on comments from that meeting, including the addition of a cover page that provides background of the MoU. The Working Group agreed to expose the draft MoU for a 45-day public comment period ending Sept. 1 (Attachment Three-C).

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

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Draft: 7/19/22

Receivership Law (E) Working Group  
Virtual Meeting  
June 10, 2022

The Receivership Law (E) Working Group of the Receivership and Insolvency (E) Task Force met June 10, 2022. The following Working Group members participated: Kevin Baldwin, Co-Chair (IL); Laura Lyon Slaymaker, Co-Chair (PA); Joe Holloway and Jack Hom (CA); Jared Kosky (CT); Kim Cross (IA); Tom Travis (LA); Christopher Joyce (MA); Robert Wake (ME); James Gerber (MI); Shelley Forrest (MO); Justin Schrader (NE); Shawn Martin (TX); and Charles Malone (WA). Also participating was: Matt Gendron (RI).

1. Discussed a Proposal for Enhancing Pre-Liquidation Coordination and Communication

Mr. Baldwin said the National Conference of Insurance Guaranty Funds (NCIGF) gave presentations on its proposals related to pre-liquidation coordination and information sharing to the Financial Analysis (E) Working Group at the 2021 Fall National Meeting and to the Receivership and Insolvency (E) Task Force at the Spring National Meeting (Attachment Three-B1).

Ms. Slaymaker said during the last call, the Working Group talked about the various proposals from the NCIGF related to pre-liquidation coordination and information sharing. On that call the Working Group decided to pursue the Memorandum of Understanding (MoU) option. The MoU would be entered into during the process of planning for a liquidation to provide legal ability to share information in advance of liquidation.

Rowe Snider (Locke Lord LLP) said the draft is very flexible. He said similar agreements have been used sporadically in certain rehabilitations, run-offs to liquidation and other insolvency situations. The intent is to make the process better. This document although drafted as a form could be affected by the legislative backdrop in a particular state where state laws affect the kinds of information that could be passed along under this agreement or that may have other constraints or authorizations that might need to be taken into consideration in the documents.

Mr. Snider explained each paragraph of the draft MoU as follows. Discussion or questions were addressed as shown below.

- Introduction and Parties to the Agreement

Mr. Snider said the first paragraph identifies the parties to the agreement and would be tailored to the specific circumstances. It would include the state department of insurance, the receiver, and the applicable guaranty funds. Mr. Kosky asked if the company would need to be a party to the agreement depending on the timing of the receivership, for example, at rehabilitation, or earlier stages such as conservation or supervision. Mr. Kosky said in Connecticut, supervision proceedings are confidential and would need to understand how this agreement would work with that proceeding. Mr. Snider said the intent is to use the document early in the process after a troubled company is identified so there is a long runway into liquidation; longer than has traditionally been in the past. Mr. Snider said there may be occasions where the company would be a party to the agreement if the regulators desired them to be. He said the obligations, duties, and responsibilities of the trouble company would be defined by the laws of the state that govern the obligation of the company to turn over information to the state insurance regulator. The state insurance regulator would then turn over information to the guaranty funds under the terms of the agreement. From a guaranty fund perspective, the preference would be that the troubled company is not party to the agreement. There are enforcement provisions in the agreement that in some

situations, the troubled company could cause problems if they were opposed to the next step in the process, such as moving from rehabilitation to liquidation. He said companies may need to be informed about the dissemination of information in pre-liquidation but that is separate from this agreement.

- I. Definitions
  - 1.1, 1.2, and 1.3

Mr. Snider said within the Definitions section, paragraphs 1.1, 1.2 and 1.3 define confidential information and evaluation materials. These definitions came from models that NCIGF had and are not unusual definitions. Mr. Holloway asked if “material risk of receivership” should be “material risk of liquidation” since guaranty funds are triggered at liquidation. Mr. Snider said if there is a long glide path to liquidation, he did not feel strongly about the phrase.

Mr. Baldwin said “evaluation materials” may be too vague and suggested the definition be more specific on the types of information, analysis, studies, etc., are needed. Barbara Cox (Barbara Cox LLC, representing NCIGF) said it would be broader than “data,” such as odd policy forms or unique lines of business. She said NCIGF can clarify this definition. Mr. Snider said the definition was intended to be broad in case there is material that gets shared so that regulators and receivers have comfort that anything turned over will be confidential. Mr. Baldwin suggested it still have the broad language for that reason but suggested adding a list that is “including but not limited to.” Ms. Cox said she would add a list.

Ms. Slaymaker said in paragraph 1.2.b, it includes information that is subject to “privilege.” She said she would be concerned about accidentally waiving the privilege by turning over this information. Mr. Snider said if there was a necessity to turn over privileged information, e.g., attorney client privileged information, there would have to be either a written common interest agreement to preserve the privilege or a state statute that allows and maintains the privilege for examination information that is turned over by the receiver. That is an individual situation. This agreement is intended to be flexible. The agreement does not create an obligation on the part of the regulator to turn over privileged information.

- 1.10

Mr. Snider said in paragraph 1.10 covered claims is defined by reference to the appropriate state statute.

- II. Recitals
  - 2.1, 2.2 and 2.3

Mr. Snider said recitals are articulations of the background. Recitals 2.1 and 2.2 explain the responsibility of the commissioner and regulatory background. “Material risk of receivership” can be changed to “material risk of liquidation.” Patrick Cantilo (Cantilo & Bennett LLP) suggested changing “Commissioner will” to “Commissioner may” in 2.2. For 2.3, Mr. Cantilo suggested adding “or if other statutory requirements are met” after “a finding of insolvency” as there may be other statutory triggers for liquidation. Mr. Snider agreed.

- 2.4

Mr. Snider said 2.4 is the premise of the agreement that preparation for liquidation and transition is essential. It doesn’t create any obligations but puts the parties on the same page.

- 2.5

Mr. Snider said 2.5 articulates the process of sharing appropriate and necessary information. It states what is shared is subject to the commissioner’s discretion. It does not create an obligation. The last sentence is a comfort sentence that is an emphatic confidentiality clause. The clause is an express ability for the commissioner, under

appropriate circumstances to withhold the name of the company. The guaranty funds have enormous incentive to comply with these agreements, which is the motivation to add this clause.

- 2.6

Mr. Snider said 2.6 articulates that this memorandum is consistent, necessary, and proper with respect to the statutory roles of the guaranty funds, the state insurance regulator, and the receiver.

- III. Use and Treatment of Evaluation Materials

- 3.1

Mr. Snider said section three is critical to the agreement. He said 3.1 limits and articulates the legitimate purposes for which the guaranty funds can use the evaluation materials including copying them for their own purposes.

- 3.2

Mr. Snider said 3.2 is key to the confidentiality provisions. This language is the sort of confidentiality clause that appears in protective orders and common interest agreements. With respect to “privilege,” even though privilege is mentioned here, there is no obligation to share any privilege, which is a protective aspect.

- 3.3

Mr. Snider said 3.3 is a clause that permits the guaranty funds and NCIGF to share evaluation materials with consultants, attorneys, and agents, as necessary. It requires those persons to agree to the terms of the agreement and subjects them to the injunctive remedies. It also creates a joint liability whereby if a guaranty fund or NCIGF turned over information to a consultant, attorney or agent and that agent breaches the agreement, both the turnover party and the breaching party would be liable and subject to an injunction.

Mr. Gendron said the examination statutes have language that information is confidential and not subject to subpoena. Does this clause cover subpoenas? Mr. Snider said the privilege that is alluded to in this agreement is not limited to the conventional attorney client privilege that you might see in a common interest agreement or a protective order in the litigation context. That is a statutory privilege. The privilege language in this agreement is intended to preserve that. It’s a question for each states’ interpretation of how that works. If you interpret that as having authority to provide privileged information to third parties, this says the guaranty fund will work with the state to preserve that privilege. He said there is no intention that sharing information under the agreement waives any of the protections for that information. Guaranty funds do not want to be subpoenaed for information in their custody that they think is protected. Mr. Snider said it may need tailoring to your state or the citation to the state statute may need to be added. Mr. Gendron suggested using the language that is in *Model Law on Examinations* (Model #390) section 1.A.

- 3.4

Mr. Snider said this is a forbidden recipient clause that guaranty funds or NCIGF will not share information with a list of recipients but focuses on boards of directors who might be recipients only as necessary to discharge their official duty.

- 3.5

Mr. Snider said 3.5 is a promise to cooperate. It is common language in other agreements. It obligates the guaranty funds to take reasonable actions to prevent confidentiality.

- IV. Remedies

- 4.1

Mr. Snider said the intent of this section is to provide injunctive relief and is common language in other agreements.

- 4.2

Mr. Snider said 4.2 is an attorney's fee clause providing for reasonable fees and the source of the fees. There is a clause that forbids guaranty funds or NCIGF from filing a claim in the estate for reimbursement of attorney's fees.

- 4.3

Mr. Snider said 4.3 is a standard non-waiver clause.

- 4.4

Mr. Snider said 4.4 is a disclaimer of liability or assertion of liability by the recipients of the evaluation materials against the commissioner or receiver. This is related to paragraph 5.4.

- V. Warranties and Representations

- 5.1

Mr. Snider said 5.1 is a mutual good faith, cooperation and communication clause that is standard in these types of agreements.

- 5.2

Mr. Snider said 5.2 states that guaranty funds and NCIGF have authority to enter into this agreement.

- 5.3

Mr. Snider said 5.3 is a representation with respect to authorized signatures.

- 5.4

Mr. Snider said 5.4 is an express disclaimer of warranties about the accuracy or completeness of evaluation materials made by the recipients, guaranty funds and NCIGF. This is intended to provide comfort about the disclosures creating any kind of liability with respect to accuracy or completeness.

Mr. Cantilo suggested a new paragraph 5.5 to state that the guaranty funds understand and acknowledge that the evaluation information may include information furnished by consultants, access to which will require additional agreements with such consultants, for example, actuarial agreements. Mr. Snider and Ms. Cox agreed.

- VI. Termination

- 6.1

Mr. Snider said 6.1 permits termination of the agreement with 30-days' notice. The termination of the agreement, without further agreement, does not eliminate the confidentiality of the evaluation materials. The term receivership can be changed to liquidation.

- 6.2

Mr. Snider said 6.2 articulates what the guaranty funds can do with evaluation materials up to the date of termination. It also addresses that the agreement would terminate without obligation to destroy evaluation material or maintain it as confidential, in the event of a receivership order. The term receivership can be changed to liquidation.

Mr. Baldwin asked if the intent of 6.2 is to mean that the confidentiality is over? He asked that upon liquidation the receiver would enter into confidentiality agreements with the guaranty funds, so why would this

confidentiality be terminated? Mr. Snider said yes, as drafted, it would terminate the confidentiality. He said the guaranty funds would prefer to eliminate the pre-planning agreement and replace it with another agreement upon entering liquidation. He said guaranty funds could be flexible on this or this paragraph could be stricken.

- 6.3

Mr. Snider said 6.3 addresses the duty of the guaranty funds to destroy evaluation materials and not retain anything if the agreement is terminated without an order of liquidation and to provide an affidavit attesting to the destruction. Another option that could be tailored to the situation is to return the materials; however, with digital copies it is easier to destroy than to return.

Ms. Slaymaker said that because the Pennsylvania insurance department's office of corporate and financial regulation is separate from the receivership office, the receivership office would not be able to agree to some of these terms without the other office. Mr. Snider said the parties to the agreement could be tailored, as necessary.

Ms. Cross asked how fees and expenses of the guaranty fund as a result of pre-planning would be handled and if fees would be assessed to the receivership estate. Ms. Cox said she feels these expenses will not be material since most files will be electronic. She said she has not yet fully vetted this topic with guaranty fund and NCIGF is open to discussion about this topic.

- VII. Miscellaneous Provisions

- 7.1

Mr. Snider said 7.1 states there is no attorney client relationship.

- 7.2

Mr. Snider said 7.2 is a choice of law provision that suggests the domiciliary state be the law chosen.

- 7.3

Mr. Snider said 7.3 is a counterparts provision that allows signature pages to be exchanged.

- 7.4

Mr. Snider said 7.4 allows the agreement to be retroactive for evaluation materials that were shared before the effective date of the agreement.

- 7.5

Mr. Snider said 7.5 is a notice provision that can be tailored to the specific situation.

- 7.6

Mr. Snider said 7.6 is a good faith cooperation clause that adds an agreement to meet periodically to discuss the implementation of the agreement.

Jane Koenigsman (NAIC) suggested adding a cover page to address some of the comments. Ms. Cox said NCIGF could draft edits based on the discussion. Mr. Baldwin said NAIC staff would circulate the notes from today's call to those that had comments and to NCIGF to draft edits. He asked for edits to be sent to NAIC staff by July 1.

Bill O'Sullivan (National Organization of Life and Health Insurance Guaranty Associations—NOLHGA) said life guaranty associations have not experienced challenges entering into these kinds of arrangements, when necessary to get access to information, in a variety of situations, even pre-receivership, which is rare. He said typically, the agreements are more complicated. The agreements are typically confidentiality, and joint and

common interest agreements. For these reasons NOLHGA does not want to sidetrack this effort by pursuing a similar sort of effort on the life side. Mr. Baldwin suggested the cover memo indicate this MoU is applicable to property and casualty.

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

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Draft: 7/19/22

Receivership Law (E) Working Group  
Virtual Meeting  
May 12, 2022

The Receivership Law (E) Working Group of the Receivership and Insolvency (E) Task Force met May 12, 2022. The following Working Group members participated: Kevin Baldwin, Co-Chair (IL); Laura Lyon Slaymaker, Co-Chair (PA); Joe Holloway (CA); Rolf Kaumann (CO); Jared Kosky (CT); Miriam Victorian (FL); Tom Travis (LA); Christopher Joyce (MA); Robert Wake (ME); James Gerber (MI); Shelley Forrest (MO); Brian Riewe (TX); and Darryl Colman (WA).

1. Discussed a Proposal for Enhancing Pre-Liquidation Coordination and Communication

Mr. Baldwin said the National Conference of Insurance Guaranty Funds (NCIGF) gave presentations on its proposals related to pre-liquidation coordination and information sharing to the Financial Analysis (E) Working Group at the 2021 Fall National Meeting and to the Receivership and Insolvency (E) Task Force at the Spring National Meeting (Attachment Three-B1).

Ms. Slaymaker summarized the NCIGF's proposals. She said the reasons the NCIGF gave for proposing changes to the pre-receivership coordination process are that companies that fail are more complex and have a high volume of electronic claims files, and multiple information technology (IT) systems and claims operations are delegated to third-party administrators (TPAs). The NCIGF's need is for a more consistent and timely transfer of usable claims data to guaranty funds and receivers at the time of insolvency. The NCIGF's proposed solution is to have a confidential exchange of fundamental information between state insurance regulators, receivers, and guaranty funds well before the liquidation order is signed. The type of information would be policy information, claims records, and information about TPA relationships. The NCIGF proposed that states implement statutory changes that would modify the *Property and Casualty Insurance Guaranty Association Model Act* (#540), the *Insurance Holding Company System Regulatory Act* (#440), and the *Model Law on Examinations* (#390). However, understanding that that may not be a solution for all states and states may not be willing to revise those models, the NCIGF has proposed the revisions as a model guideline. Another proposed alternative approach is a memorandum of understanding (MoU). The NCIGF stated in its presentation to the Task Force that to protect confidentiality, the information would not be shared with the NCIGF or state board members, which includes industry members. The NCIGF said it has a plan to work through that. A final part of the proposal is to make updates to NAIC handbooks, including the *Troubled Insurance Company Handbook*, which is confidential and maintained by the Financial Analysis (E) Working Group; the *Financial Analysis Handbook*; and the *Financial Condition Examiners Handbook*, to include guidance, references, and reminders for early coordination.

Barbara Cox (Barbara Cox LLC, representing NCIGF) said if information flow is not timely, it creates problems for receivers, guaranty funds, and hurts consumers. For example, with health care claims, the guaranty fund cannot authorize surgery for a consumer without policyholder information. Another example with auto insurance is that the guaranty fund cannot authorize payment for repairs for auto damage without policy and claim information, delaying the claimant's ability to get their car out of the shop.

Ms. Cox said the guaranty fund system is studying cybersecurity risk, which has a different time frame from that which guaranty funds are used to. The longer the situation remains without mitigation or repairing data, the longer the situation is on hold. This may be worse for small to medium size companies.

Mr. Travis said without taking a position, the Receivership Law (E) Working Group should look at options to speed up the transfer of data. In Louisiana, several property/casualty (P/C) insurers that went under due to hurricanes have resulted in problems for policyholders with the insurer and the guaranty fund largely due to the difficulties in the transition. Mr. Travis said there have been proposals in the Louisiana legislature to make the guaranty funds liable for penalties and attorney's fees under the bad faith laws, which are currently exempt.

Mr. Gerber said there seems to be a reluctance to use rehabilitation. It would give policyholders time to shop for replacement coverage and the state insurance regulator time to notify loss payees (e.g., mortgage companies and servicers). A short rehabilitation would give the state insurance regulator time to work with the guaranty fund to settle things in advance. Mr. Baldwin said there are a lot of examples of where rehabilitation has been used to achieve these kinds of goals. He asked if the fact that the rehabilitation could be used for consumer protection could be put into a guideline.

Ms. Cox said the NCIGF appreciates a long runway to liquidation and a rehabilitation where guaranty funds can do things in advance. She said a rehabilitation is normally a public proceeding, and if there is a concern that the company may be salvaged, the attention a company would get in a formal rehabilitation proceeding would not help matters. There may be reluctance on the part of the state insurance regulator to put the company into rehabilitation for this purpose. Ms. Slaymaker said in Pennsylvania, the state insurance regulator cannot use rehabilitation if they know there will be a liquidation. The court requires that they try to rehabilitate the company. Mr. Baldwin said those are good points and counterpoints, where rehabilitation may not be an available tool.

Mr. Gerber said seizure and conservation may be available, as they are confidential proceedings. Mr. Baldwin said there may be some merit to what the NCIGF is proposing; i.e., to have a clear statutory permission to share the existence of such confidential proceedings to prepare for a potential liquidation.

Ms. Cox said there may be some reluctance under current law and practice to share and coordinate with guaranty funds. Before a public proceeding, there are efforts being made to save the company. Sometimes states do not have resources to plan for liquidation while they work on saving the company. The recent changes to the IT examination guidelines might be able to ameliorate some of that, but this is still a concern. That is not to say conservation or a confidential proceeding will not work, but the culture around that type of situation needs to change.

Mr. Kaumann said an interim solution is to call a targeted examination to be able to have department staff at the company, identify key people, locate bank accounts and signatories, and identify claims systems and servers so the state can have all of the information ready when the receiver and guaranty fund arrive on day one. He said he believes this is something all states have the authority to do. This could be implemented immediately through best practices to address some of the issues. Ms. Cox said this suggestion aligns with new guidance for IT examinations where data can be reviewed on examination to determine information about data systems (e.g., if it is segregated, easily segregated, convertible to a Uniform Data Standards (UDS) format, as well as information about relationships between parties). She suggested that guaranty funds be involved in this process, as they have experience that may be helpful, or at least the information can be shared with guaranty funds at the earliest juncture. She suggested that the Receivership Law (E) Working Group hear from the IT Examination (E) Working Group about the new examination guidelines.

Mr. Riewe said the targeted examination is a logical approach because it is addressing the issue of gathering the information. He said it is often not because the state is not sharing the information with the guaranty fund; rather, the state insurance regulators cannot get to the information.

Mr. Baldwin said programming that is required to gather the information and distribute it in the format that guaranty funds need takes time.

Mr. Holloway said California uses administrative supervision as the early detection tool to get into a company and evaluate the situation. He said all goals are aligned in that claimants and consumers need to be protected and it must be ensured that there is not an interruption in the payment of claims. Where it is possible for state insurance regulators, receivers, and guaranty funds, they should coordinate their efforts in support of that goal. Mr. Holloway said California would like to work with the Working Group on the MoU. He said he believes there are enough tools available through examination to handle this issue. He does not believe changes are necessary to existing laws.

Mr. Baldwin said every state may be different, where some states may need to change their laws and others might find the MoU necessary. He asked Ms. Cox if either is acceptable. She said yes, and they would also favor handbook changes because statutory changes are hard to do. She said the NCIGF wants the opportunity to be able to share information and coordinate, however that is accomplished.

Ms. Slaymaker asked what the trigger would be to share information. Ms. Cox said it could be tied to a specific risk-based capital (RBC) level. She said in conversations with the IT Examination (E) Working Group, she was told by financial regulators that RBC may be too late. Another option is to trigger if there is “a material possibility of insolvency.” Mr. Baldwin said the Illinois Legislature recently addressed this by amending IL law to permit information disclosure to guaranty associations, based on an early RBC trigger, subject to the “Director’s discretion.”

Mr. Baldwin asked Ms. Cox to describe the type of information to be shared. Ms. Cox said the primary focus has been on data, including claim data, location of data, condition of data, segregated data, ability to make the data transition, volume of claims, states where claims are located, policy information, and any cyber components, to name a few key types of information. She said the NCIGF had a receivership that included cybersecurity polices, which is new to guaranty funds. Other information could be on large deductible coverage, collateral securing the large deductible, how the collateral is secured, what collection processes are in place, and what would need to happen to have a seamless liquidation process.

Bill O’Sullivan (National Organization of Life and Health Insurance Guaranty Associations—NOLHGA) said the experience on the life and health side is different than the P/C side. He said the life and health guaranty funds have generally had good success in getting access to information needed; although, it is not always perfect. NOLHGA has found ways to get around concerns regarding confidentiality and privilege. The guaranty funds typically enter into common interest and confidentiality agreements early in the process (e.g., pre-receivership).

Mr. O’Sullivan said NOLHGA has experienced similar sensitivities to early sharing of information as the NCIGF describes. To the extent that there are solutions that work on the P/C side, the relevance on the life and health side and any parallel treatment on the P/C side should be considered.

Mr. Kosky asked Mr. O’Sullivan if the insurers are a party to the common interest and confidentiality agreements. Mr. O’Sullivan said yes, in certain cases, the insurer would be party to the agreement. Mr. Kosky asked Ms. Cox what the enforceability of the draft MoU would be if, as drafted, the insurer is not a party to the agreement. Ms. Cox said the involvement of the insurer is not something the NCIGF has looked at, but she would like to talk about that further. She said there is some coverage within the draft statutory revisions where the state insurance regulator should have the comfort to share information in these situations, just as they have authority to share information with federal law enforcement and other parties. She said this can be made clearer within the MoU.

Mr. Baldwin said Illinois has had experience with the insurer opposing sharing confidential information with guaranty funds, which is part of why the Illinois legislative changes include the director's discretion, regardless of the insurer's opposition. He asked Ms. Cox to explain who the information is intended to be shared with. Ms. Cox said it would be limited to guaranty fund staff, counsel, and technicians. She said it would not be shared with any other company staff that are on guaranty fund boards and committees. Sharing with guaranty fund boards and committees would be limited until such time as there is a public order of liquidation or rehabilitation, boards have voted on an assessment, etc.

Ms. Slaymaker asked the Receivership Law (E) Working Group for its preference on pursuing drafting a model guideline or an MoU. Working Group members indicated their preference for an MoU. Connecticut, Massachusetts, and Michigan all agreed with pursuing the MoU. Ms. Slaymaker said a virtual meeting would be set up to walk through and consider revisions to the initial draft MoU that the NCIGF proposed. She said regarding best practices, the Receiver's Handbook (E) Subgroup can consider revising the takeover checklists and in other areas of the *Receiver's Handbook for Insurance Company Insolvencies*. Mr. Baldwin said as he is chair of the Subgroup, it will consider revisions. Ms. Slaymaker said any recommended changes to other handbooks previously mentioned are handled by other NAIC groups, so referrals can be sent, as determined necessary, after the Working Group completes the work on the MoU.

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

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Adopted by the Executive (EX) Committee and Plenary, [REDACTED], [REDACTED], [REDACTED]

Adopted by the Financial Condition (E) Committee, [REDACTED], [REDACTED], [REDACTED]

Adopted by the Receivership and Insolvency (E) Task Force, [REDACTED], [REDACTED], [REDACTED]

## 2023 Proposed Charges

### RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

The mission of the Receivership and Insolvency (E) Task Force is to be administrative and substantive as it relates to issues concerning insurer insolvencies and insolvency guarantees. Such duties include, without limitation: 1) monitoring the effectiveness and performance of 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), 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 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 referral 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 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 because 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.

4. The **Receiver's Handbook (E) Subgroup** ~~of the Receivership and Insolvency (E) Task Force~~ will:
  - A. [Complete the R](#)review [of](#) the Receiver's Handbook to identify areas where information is outdated, updates are required, or additional guidance is needed. Based on this review, draft and propose recommended edits to the Receiver's Handbook. Complete by the 2023~~2~~ Fall National Meeting.

NAIC Support Staff: Jane Koenigsman

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