



To: State Insurance Departments

From: Financial Condition (E) Committee

Date: July 17, 2017

Re: Recognition of Stays and Injunctions in Receivership

On July 17, 2017, the Financial Condition (E) Committee adopted a recommendation from the Receivership and Insolvency (E) Task Force to encourage state departments of insurance to consider enhancements to state receivership and insolvency laws to provide express recognition, full faith and credit, and reciprocity to other states' stay orders and injunctions in a receivership proceeding.

The Receivership Model Law (E) Working Group of the Receivership and Insolvency (E) Task Force has as one of its charges the following:

Continue to study the states' receivership laws and practices in comparison to the Financial Stability Board's (FSB) Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes) and its corresponding assessment methodology. Identify and provide recommendations for possible enhancements to the U.S. receivership regime based on the study, as well as recommendations to the FSB for possible future enhancements to either the Key Attributes or the assessment methodology.

To address this charge, the Working Group identified several key topics for consideration. One primary enhancement to the U.S. receivership regime is to address differences in state laws and practices related to receivership stays and injunctions. Recommendations outlined in **Attachment A** for recognition of receivership stays and injunctions were adopted by the Working Group on May 16, 2017 and by the Receivership and Insolvency (E) Task Force on June 28, 2017. Attachment A details background information regarding this topic and a recommendation for state insurance departments' consideration.

The Committee supports the guidance and recommendations of the Task Force and its Working Group as outlined in Attachment A and requests states to consider these enhancements to their laws and practices.

If you have any questions please contact NAIC staff, Jane Koenigsman, jkoenigsman@naic.org.

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Attachment A

Receivership Model Law (E) Working Group Guidance Regarding Recognition of Receivership Stays and Injunctions

Introduction

Most state receivership laws provide for a stay of actions in which the insurer is or may become a defendant. Stays are a critical tool in a receivership. They can prevent the cost and uncertainty involved with litigating claims in multiple forums, and safeguard the assets of the insurer against preferences. This ensures the fair and consistent treatment of all claims, and reduces the cost of litigation to the receivership.

A survey of states' receivership laws revealed inconsistencies with respect to the scope of stays, and the recognition of stays issued in receiverships in other states. This guidance suggests clarifications to address deficiencies in receivership laws regarding stays.

Background

State insurance receivership laws are derived from one of the NAIC model acts. The original 1939 Uniform Insurers Liquidation Act was supplanted by NAIC Model 555 (the "Model"). The NAIC has adopted three versions of the Model: the *Insurers Supervision, Rehabilitation, and Liquidation Model Act*; the *Insurers Rehabilitation and Liquidation Model Act* ("IRLMA"); or the *Insurer Receivership Model Act* ("IRMA"). Every state has a law that is either derived from, or incorporates elements of, one of the Models.

A majority of receivership acts are based on a version of the Model that contained two stay provisions: *Actions by and Against Rehabilitator* ("Rehabilitation Stay") and *Attachment, Garnishment, and Levy of Execution* ("Attachment Stay").

The Rehabilitation Stay provides for a temporary stay of actions in which the insurer is a party, or is obligated to defend a party. Typically the stay is a period of 90 days, and can be extended by the court. This section also states that the rehabilitator shall petition the courts in other states for stays when necessary.

The Attachment Stay prohibits attachments, garnishments, or levies of execution during the pendency of an insolvency proceeding. In some states the stay applies to any delinquency proceeding, while in others it applies only to a liquidation proceeding. Also, some states apply the stay to insolvency proceedings in any other state, while others limit it to proceedings in a "reciprocal state".

These provisions can force receivers to seek stays or defend lawsuits in multiple forums, particularly in a rehabilitation. The patchwork of differing stays can also result in inconsistent outcomes in different states. The NAIC attempted to address these problems in the 1999 version of IRLMA. Section 5 (C) provided a broad stay of actions against the insurer or the liquidator, and recognized liquidation stays in other states:

The courts of this state shall give full faith and credit to any stay of all new actions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when such injunctions are pursuant to an order to liquidate an insurer issued in accordance with corresponding provisions in other states.

In 2005, IRMA § 1002(A) extended the recognition of stays to all receivership proceedings:

The statutory provisions of another state and all orders entered by courts of competent jurisdiction in relation to the appointment of a domiciliary receiver of an insurer and any related proceedings in another state shall be given full faith and credit in this state. For purposes of this Act, another state means any state other than this state. This state will treat all foreign states as reciprocal states.

Recommendations

An effective stay provision promotes judicial economy and predictability, which benefits all participants in the receivership process. However, the significant improvements in the NAIC Model regarding stays have not been widely adopted. States should review their receivership laws, and consider the following:

- 1) States with no stay provisions, or provisions based on older NAIC models, should compare their laws to the more recent NAIC Models, and evaluate the benefits of a more comprehensive stay.
- 2) States with no reciprocity provisions, or provisions based on older NAIC models, should consider adopting a provision similar to IRLMA § 5 (C) (2) or IRMA § 1002 (A). In the alternative, a state could update its definition of a “reciprocal state” to include any state that has adopted an act that is substantially similar to any of the receivership model acts promulgated by the NAIC.

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