

August 29, 2007

Larry C. Knight, Jr., CFE
Assistant Commissioner for Insurance
Tennessee Department of Commerce & Insurance
500 James Roberson Parkway
4th Floor Davy Crockett Tower
Nashville, TN 37243

Dear Larry:

Thank you for the opportunity to provide additional feedback on the Tennessee Department of Commerce and Insurance's proposal to introduce legislation in 2008 implementing the NAIC IRMA draft. While the National Association of Mutual Insurance Companies (NAMIC) appreciates the desire for consistent regulation from state to state, our members are opposed to the IRMA draft, as you know from comments made by State Affairs Manager Tami Stanton during last week's meeting,

NAMIC is a trade association representing more than 1,350 member companies underwriting over 40 percent of the property/casualty insurance premium in the United States. In Tennessee, we have 147 members who collectively write nearly 50 percent of the property-casualty insurance market.

NAMIC staff spoke strongly against IRMA during deliberations at the NAIC, and not all of our issues have been resolved with the model. In particular, we are concerned about treatment in the insolvency process of assets from what are known as "large deductible policies." IRMA's language calls for deductible recoveries and collateral draw-downs to be treated as general assets of the insolvent estate (Section 712). A better remedy would be language specifying that deductible recoveries and collateral draw-downs should inure 100% to the benefit of the guaranty associations to the extent of their claim payments. In fact, any other approach is not acceptable from our perspective.

Because insolvencies are relatively rare and their resolution can be a welter of complexities for minimally experienced state courts, we suggest that both courts and beneficiaries will benefit – particularly with respect to time – by assignment in the legislation of large deductible assets to the related beneficiaries. IRMA's language permits the receiver to second guess guaranty association claims determinations (Section 703A) and allows claims priority that would subordinate many guaranty association expenses to policyholder class (Section 801-Option 2). It would be best for those details to be predetermined rather than left to the courts.

Other concerns NAMIC has about IRMA include the following:

- a broad immunity provision which extends immunity to outside contractors working for the estate (Section 115). Outside contractors such as attorneys, accountants and other professionals have specific professional responsibilities and private malpractice insurance. Their duties to an insolvent insurance company should not be less than afforded any other business entity for which they provide services.
- a notice and hearing provision that shifts the burden of proof on action proposed by the receiver to opposing parties (Section 107). That is, rather than require the receiver to demonstrate to the court why a particular action is appropriate, the burden is placed on the objecting party to show why it is not.
- severe sanctions on those who dispute ownership of an asset with the receiver and lose (Section 607D).
- options on guaranty association participation in the insolvency proceeding which would either not address the matter at all or permit guaranty association intervention only by leave of the Court (Section 105I).

- language permitting the receiver to defend guaranty association covered claims in the absence of defense by the guaranty association (Section 504A(15)).
- language calling for a claimant whose claim is either denied or approved at a lower amount or priority to explain why the resolution should be different, rather than calling for the receiver, in the first instance, to explain the basis for the resolution of the claim (703B and C).

Our companies want efficient, reasonably timely resolution of legitimate claims made on failed insurers. We believe guaranty associations play a vital statutory role in providing a safety net for those least able to bear their own losses in the event of an insolvency. Provisions of state insurance liquidation acts directly impact our industry as we step up to the plate through guaranty funds and fulfill obligations to policyholders.

Implementing the IRMA NAIC model in Tennessee would do more harm than good. NAMIC prefers to address specific areas of concern that you have and not “throw out the baby with the bathwater” by making wholesale changes that may or may not be necessary.

Again, thank you for the opportunity to provide written comments. We look forward to continuing discussions on this issue. Please let me know if you have any questions.

Regards,



Liz L. Reynolds, CPCU, API