

Continuing Education

From the optional federal charter to Dodd-Frank to the International Capital Standard, NOLHGA's Education Project has been there through it all

NOLHGA's Education Project has entered its third decade, and while some of the names have changed, the goal remains the same—educating decisionmakers on the value of the guaranty system. How did it start, and how has it grown into what we see today? Let's ask the major players.

NOLHGA Journal: At the highest level, what exactly is the "Education Project?"

Nancy Davenport (NOLHGA Chair and Chair of the Public Policy Coordination Committee):

The Education Project is how we refer to the collective efforts of NOLHGA and the National Conference of Insurance Guaranty Funds (NCIGF) to safeguard the state-based guaranty system against negative impacts from policy actions at the state, federal, and international level. It was named the Education Project because in many instances we are educating policymakers or other stakeholders about the guaranty system so they understand our capabilities and any potential unintended consequences that may flow from their policy decisions.

NOLHGA Journal: How did the project get its start?

Peter Gallanis (President, NOLHGA): In 2001, as optional federal charter (OFC) proposals started to gain momentum in Washington, D.C., NOLHGA and NCIGF leadership feared that many in Congress lacked a basic understanding of how the guaranty system protects consumers, how it operates, and its track record and capabilities. We knew that it would be too late to educate the key players in Congress if we waited until one of the OFC charter proposals started to get legislative traction.

Charlie Richardson (Former Partner, Faegre Drinker Biddle & Reath): Those concerns were exacerbated after an



August 2001 conference in San Francisco. The seminar featured a panel discussion on various OFC proposals that were in vogue at the time and the insolvency safety net mechanisms contained in each. Among other things, the discussion highlighted that the insurance trade associations at the time did not consider the defense and retention of the state-based guaranty system to be their most important priority in the looming national debate. It was a wakeup call for the guaranty system. NOLHGA and the NCIGF

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Being Prepared for the Mission

This issue of the *Journal* contains a profile of Jana Lee Pruitt, who recently assumed the role of Executive Director of the Kentucky Life & Health Insurance Guaranty Association. Jana Lee is one of a number of people who have recently become guaranty association Executive Directors or members of guaranty association Boards. The article notes Jana Lee's broad and deep history of involvement with the guaranty system. Other talented individuals who have recently joined our system don't have such a history with us. For them, understandably, what we in the system do and how we do it requires some backgrounding.

In particular, we are sometimes asked by those unfamiliar with (or new to) NOLHGA what NOLHGA does, and how NOLHGA's activities relate to the those of our 51 member guaranty associations. This issue of the *Journal*, reporting elsewhere on the recent Legal Seminar/Insolvency Workshop, the July MPC meeting, and our longstanding Education Project, provides many data points that help answer that question.

If you read the quarterly management reports from NOLHGA staff to the NOLHGA Board (which are sent out to our membership via the *GA Update Online* after each Board meeting), you will recall that NOLHGA activities can be summarized as falling within three general (and somewhat overlapping) "buckets": support of the insolvency response work done by the MPC and its task forces and committees; support of our members and their member companies through education programs, publications, meetings, and "help desk" assistance; and developing and strengthening relationships with external constituencies important to the guaranty system.

Supporting mission continuity and sharing institutional knowledge are important parts of strengthening and develop-

ing all organizations; the guaranty system is no exception. For that reason, former NOLHGA Board Chair Kermitt Brooks announced at the commencement of his term that the signature focus of that term would be enhancing guaranty system preparedness. He proposed to do that by working both to familiarize our newer Executive Directors and Board members with foundational knowledge about guaranty association and receivership laws, practices, and procedures; and to arm them with hands-on experience in how the associations work together with receivers and NOLHGA's MPC Task Forces to analyze and respond to troubled company situations.

Sean McKenna's article in this issue, "Back to School," provides an overview of the in-person and hybrid sessions held in April and July to pursue those goals. There isn't space here to thank all those whose contributions were invaluable, but I'd be remiss not to recognize the leadership of Illinois Executive Director Janis Potter in connection with the April "Insolvency 101" program and Indiana Executive Director Amanda Barbera for her work on both the April program and the July Legal Seminar/Insolvency Workshop as Chair of the Legal Seminar Planning Committee.

Sean's article recapping the July MPC meeting and the Legal Seminar/Insolvency Workshop touches on both NOLHGA's insolvency support function and the member support and education function. Another article in this issue, "Continuing Education," provides an overview on how and why NOLHGA has worked over the years to develop and strengthen relationships with external entities, agencies, regulators, lawmakers, and organizations.

As the article makes clear, policy decisions material to the guaranty system are developed and advanced in many different

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arenas, including some where expertise is thin when it comes to insurance generally, and receiverships and guaranty associations specifically. Since the beginning of the “Education Project” discussed in the article, the goal of the Project has been to make sure that those who develop policy important to us understand the guaranty system and its history, performance, and capabilities. The article describes specific examples where such engagement through the Education Project has benefitted our system.

What we talk about when we talk about NOLHGA is different for different people. For some, it’s the individuals in our membership whose experience and dedication contribute so much to protecting insurance consumers. To others, it’s our history of accomplishment. To still others, it’s a set of institutions and resources.

There is merit to all those perspectives, and they aren’t mutually exclusive. When I think of NOLHGA, another notion that springs to mind is how our ongoing processes

provide a forum for mutual support, collaboration, analysis, and planning.

The processes involved in supporting insolvency response activity, member education and support, and constituency development don’t ever end. In that sense, the recent activities discussed in this issue are merely snapshots of achievements on a long-term continuum.

Educational efforts like those that culminated in the April and July programs will continue on into the future, along with efforts to build strong relationships with stakeholders in and out of our system. In fact, it’s a certainty that we’ll be reporting on more such efforts from our MPC meeting and Annual Meeting in Tempe, Arizona, in late October. You can read about that meeting in the next issue of the *Journal*. ★

Peter G. Gallanis is President of NOLHGA.

Back to School

NOLHGA's 2022 Legal Seminar/Insolvency Workshop continued the organization's focus on education and preparedness

By Sean M. McKenna

Summer school is usually something to be avoided (unless we're talking about the 1987 Mark Harmon/Kirstie Alley classic of the same name). And it's easy to understand why. The phrase comes equally freighted with punishment and guilt: "You should have learned this already, but you didn't, and now you have to give up your summer."

NOLHGA's 2022 Legal Seminar/Insolvency Workshop, which was held in July in Washington, D.C., and online, took a slightly different approach. Taking place the day after a meeting of the Members' Participation Council (MPC) that included reports from several active insolvency task forces (which provided an excellent context for what was to follow), the insolvency workshop wasn't meant to teach people things they should already know. Instead, it was designed to teach people things they haven't had a chance to learn

yet. No guilt, no punishment—just hands-on learning and a chance to meet new people.

A lot of new people. In fact, that's how all this got started.

Fresh Faces & New Cases

As anyone who's attended a recent NOLHGA meeting can tell you, there are a lot of new people in the guaranty community. More than 20 guaranty association Executive Directors have been with their associations five years or less. And it's not just Executive Directors. "I've seen retirements of people who have been on my Boards for decades," says Amanda Barbera, head of both the life/health and property/casualty Indiana guaranty associations and Chair of the 2022 Legal Seminar Planning Committee.

Fresh faces aren't the only change the system is facing. New receiverships bring new challenges—dealing with long-term care (LTC) policies, new products, and complex company structures, to name a



Luncheon speaker Karima M. Woods (Commissioner, District of Columbia Department of Insurance, Securities & Banking)

few. "The infrastructure of the world where we operate has changed in some important ways," says NOLHGA President Peter



*Tom English, moderator of the **Life Insurer & Annuity Insolvency Challenges** panel.*

Gallanis. “We’ve had to rethink some of our approaches, as have the regulators and receivers.”

We’ve also had to rethink some of our basic assumptions. “For a lot of years, we may have implicitly taken for granted that most people in our system had what I’ll call ‘a foundational knowledge’ of the insolvency system and how guaranty associations operate together to respond



A report from the July 2022 MPC meeting.

to an insolvency,” Gallanis explains. “We shouldn’t make that assumption. Though it’s no fault of their own—rather just a consequence of being new and not having faced personally various situations—a lot of the newer people have had limited exposure to actual insolvencies.”

Which is why, at the 2021 Annual Meeting last October, new NOLHGA Chair Kermitt Brooks announced that “enhanc-

ing the readiness of the guaranty associations is my top priority for the coming year,” emphasizing that “we need to make sure our member associations have everything they need to face the challenges and make the most of the opportunities that lie ahead.”

Their primary need, he added, was education. In his speech, Brooks described “an interactive and comprehensive ‘table-

top' exercise" featuring a hypothetical troubled company scenario. Attendees would break into teams to analyze different aspects of the company and propose solutions to the problems they present. The focus would be on participation, problem-solving, and the importance of working together.

As the old saying goes, you have to walk before you can run—or, in this case, sit at a table and discuss insolvencies.



Former NOLHGA Board Chair Kermitt Brooks.

Before people could participate in this sort of complex program, they needed a thorough grounding in how the system operates over the lifespan of an insolvency, from "Houston, we have a problem" all the way to "and they lived happily ever after."

They got just that at the April 2022 MPC meeting, which included an educational workshop entitled *Insolvency Fundamentals 101* (produced jointly by the Administrators Education Steering



Nancy Davenport, member of the **Life Insurer & Annuity Insolvency Challenges** panel.

Committee and the planners of the Legal Seminar/Insolvency Workshop). The April workshop featured segments on fundamental receivership issues, guaranty association responsibilities and practices, and special issues that insolvency task forces might face in a receivership. As the title indicates, it was designed to give newcomers an introduction to task force operations and some of the twists and turns insolvencies can take—in other words, the foundational tools they'd need for the Insolvency Workshop.

"I view the July workshop as operationalizing the knowledge from the April program," Gallanis says. "We couldn't cover everything a task force goes through in two days, but we illustrated the steps that individual guaranty associations and a task force have to take, as well as the types of decisions that have to be confronted."

Thinking Caps On

When you think of Washington, D.C., and education, one thing springs to mind—a lonely scrap of paper sitting on the Capitol steps singing "I'm Just a Bill." Unfortunately, due to licensing issues with *Schoolhouse Rock*, the Legal Seminar/Insolvency Workshop was not allowed to use animation and catchy tunes to teach attendees about insolvencies. Instead, the program (see "Insolvency Workshop Playbill" on p. 7) presented attendees with a troubled company (very troubled, in this case) scenario that challenged them on multiple fronts.

In the workshop scenario, a holding company (Omnibus Insurance Holdings) is experiencing troubles with one or more of its insurance company subsidiaries, which include companies in the health, life/annuity, and long-term care (LTC) mar-



The **Health Insurer Insolvency Management** panel (from left to right, William O'Sullivan, Keith Passwater, Christine Cappiello, Joel Glover, and Dan Watkins).

Insolvency Workshop Playbill

Here's the program for the 2022 Legal Seminar/Insolvency Workshop
(Sessions 1–4 also featured breakout sessions and reports on those sessions,
which are not listed here) and the people who made the workshop happen:

Session 1 Panel: An Insurance Group in Trouble: Pre-Regulatory Action & Regulator/GA System Coordination

- Peter G. Gallanis: President, NOLHGA (Moderator)
- Amanda Barbera: Chair, Legal Seminar Planning Committee
- Nicholas D. Latrenta: Former General Counsel, MetLife
- Susan Voss: Board Member, Nebraska Life & Health Insurance Guaranty Association
- Daniel L. Watkins: Principal, Law Offices of Daniel L. Watkins

Session 2 Panel: Health Insurer Insolvency Management

- William P. O'Sullivan: Senior Vice President & General Counsel, NOLHGA (Moderator)
- Christine Cappiello: Senior Director, Government Relations, Anthem, Inc.
- Joel A. Glover: Partner, Faegre Drinker Biddle & Reath
- Keith Passwater: Managing Director, PascoAdvisers
- Daniel L. Watkins: Principal, Law Offices of Daniel L. Watkins

Session 3 Panel: Life Insurer & Annuity Insolvency Challenges

- Thomas F. English: Former Senior Vice President, Deputy General Counsel & Chief Insurance Counsel, New York Life Insurance Company (Moderator)

- Nancy S. Davenport: Vice President & Associate General Counsel, Brighthouse Financial
- Kevin P. Griffith: Partner, Faegre Drinker Biddle & Reath
- Ted D. Lewis: Executive Director, Utah Life & Health Insurance Guaranty Association

Session 4 Panel: Special Insolvency Challenges of LTC

- Michael D. Heard: Executive Vice President & Chief Operating Officer, NOLHGA (Moderator)
- Ralph Donato: Principal Consulting Actuary, LTCG
- Caryn Glawe: Partner, Faegre Drinker Biddle & Reath
- Germaine L. Marks: Vice President, Government Affairs, Prudential Financial, Inc.

Session 5 Panel: Lessons from Litigation

- Cynthia J. Borelli: Principal, Bressler, Amery & Ross, P.C.
- Franklin D. O'Loughlin: Partner, Lewis Roca Rothgerber Christie LLP

Session 6: Ethics of Negotiation

- Joel A. Glover: Partner, Faegre Drinker Biddle & Reath

With special thanks to the moderators of the breakout sessions and the "volunteers" who reported on the findings of each breakout group (Todd Thakar chief among them).

This workshop was a crash course into how we prepare and respond to an insurer insolvency and liquidation. The breakouts enabled us to build trust and learn from each other. The ability to practice how we develop solutions is a great way to strengthen our problem-solving skills. —Amanda Barbera

kets. The liquidation of one or more of these companies is likely.

Complicating matters, Omnibus is itself a subsidiary of Parentus Financial, and it and its insurance subsidiaries rely on other Parentus subsidiaries for claims administration, IT services, investment management, and other matters. Due to

the interrelationships among these companies, the failure of one could trigger failures in other companies that otherwise appear to be financially healthy.

With that as a backdrop, the first four sessions of the workshop presented more information on the troubled holding company's situation and that of the three main

subsidiaries—the health, life/annuity, and LTC companies. Attendees were then asked, in the spirit of the movie *Speed*, “what would you do?”

Actually, each panel presented attendees with specific questions before sending them off to breakout sessions, in which the various groups discussed the



A scene from the **An Insurance Group in Trouble: Pre-Regulatory Action & Regulator/GA System Coordination** panel presentation.

challenges presented by the panel and possible solutions. Attendees then reconvened in the main ballroom, where each breakout group presented its findings. After that, the panel and the audience discussed those findings and other issues the scenarios presented.

The breakout groups wrestled with the same issues task forces have to address, such as the best way to engage with receivers; asset/liability analysis; resolution plans for the life/annuity, health, and LTC blocks; policyholder communications; estate litigation; reinsurance; deciding between running off policies or moving them via an assumption transaction; and many more.

The emphasis throughout the workshop was on getting people involved, which made the problem-solving breakout sessions—with attendees sharing ideas and debating different courses of action—the key to the program. “This workshop was a crash course into how we prepare and respond to an insurer insolvency and liquidation,” Barbera says. “The breakouts enabled us to build trust and learn from each other. The ability to practice how we develop solutions is a great way to strengthen our problem-solving skills.”

Based on comments from attendees, the focus on participation was a success. On post-meeting evaluation forms, attendees praised the content and format of the meeting, singling out the breakout sessions in particular. Commenters said they “enjoyed the interactive format” and “loved the interaction and opportunity to brainstorm issues with my colleagues” (for more comments, see “Audience Feedback”).

The final two sessions, which dealt with lessons learned from receivership litigation and the ethics of negotiation, also garnered their fair share of praise. One attendee said of the litigation panel,

Audience Feedback

Here are a few comments from Insolvency Workshop attendees:

- This is the best CLE seminar I can remember. It was informative, interactive, and very well coordinated. I was afraid of chaos and disorganization when I saw breakout sessions on the agenda. However, this was perfectly orchestrated.
- I learned so much from each of these sessions. I've never had to work through this as a Board member, so it was very helpful.
- I enjoyed the breakout format. It was helpful hearing different perspectives from conference attendees, not just the speakers.
- The depth of experience and knowledge of the panel members made for an engaging discussion. The review of applicable law was excellent.
- As usual, another great job and this time with a very different format that provided a great learning experience with dialogue and discussion.
- This should have been very helpful to people that are new to the system.
- Super way to educate the general membership.
- As someone who doesn't do this every single day, I feel like this is the first time I really got a sense for how an insolvency is handled.
- Very creative program that was executed at a very high level. A real value to present many GA issues and processes to the new administrators in a practice way rather than a theoretical topic lecture format.

“excellent—wish this session can be longer” (you don’t see that often on meeting evaluations—trust us), while another noted that the session was “a great reminder that receiverships are litigation.” Another attendee said the ethics session was “perhaps one of the more relevant ethics presentations I have seen in years.”

To Infinity & Beyond

NOLHGA’s focus on education and guaranty system readiness didn’t start with the Legal Seminar/Insolvency Workshop, and it won’t end with it. “There’s been a growing emphasis in our system on knowledge transfer and education, and I think our April and July programs fit well into a



long-term commitment to those goals,” Gallanis says.

The July workshop was the “dry run” before members of the guaranty community—old and new—are thrown into the deep end of a new insolvency. “If you take meaningful practice swings and simulate the processes you go through in coming up with a response, you should be better prepared for it,” Gallanis explains. “The July program should better position our members to be ready for the real thing when it happens.”

Like Gallanis, Barbera was thrilled with the July workshop—and she adds that it’s just the start. “Success to me is progress. If we have people who have gained knowledge and insight, learned, strengthened relationships—that’s success,” she says. “But it’s never the end. We build on this going forward.” ★

Sean M. McKenna is NOLHGA’s Director of Communications.



Scenes from the **Health Insurer Insolvency Management** panel and from one of the breakout sessions.

New Kentucky Home

Jana Lee Pruitt is no stranger to Kentucky, or to the guaranty system



By Michael P. McDonald

When Tom Peterson announced his intention to retire as the Executive Director of the Kentucky Life & Health Insurance Guaranty Association in 2021, finding a replacement for 30 years of life and health insurance guaranty association experience seemed like an insurmountable task. Then along came Jana Lee Pruitt.

Born in Spokane, Washington, Pruitt has lived a peripatetic life—she's lived in nine states, the District of Columbia, and Germany. A self-proclaimed “Air Force brat,” her family moved every three years until she was in tenth grade, when her father retired from the service and they moved to Kentucky, her parents’ home. She stayed in Kentucky for school, receiving her B.A. in Political Science from the University of Kentucky and her J.D. from the University of Louisville. “The two schools did not compete in sports in my day, but the rivalry between the two has become intense since then,” says Pruitt. “My loyalty is clear, though. I am a [UK] Wildcat fan through and through.”

After law school, Pruitt hit the road again. She began her career in the insurance industry with the American Insurance Association in New York in 1982. While there, Pruitt was introduced to the guaranty system and began working with the National Conference of Insurance Guaranty Funds (NCIGF). Next, she head-

ed to the Nation’s Capital to work for the Health Insurance Association of America (now AHIP) and then the American Council of Life Insurers (ACLI), which was looking for a replacement for Eden Sarfaty, who had left the ACLI to become the first President of NOLHGA after its initial sponsorship by ACLI ended and it became a completely independent organization. During the early years of her stint at the ACLI, she worked under future NOLHGA President Jack Blaine and spent 10 years handling guaranty association work, as well as legislative and regulatory affairs in multiple states.

In 1998, Pruitt moved back to California to become Assistant General Counsel for Transamerica Occidental Life Insurance Company in Los Angeles, where she served on the Boards of the Hawaii and New Mexico guaranty associations. Over the next several years, Pruitt was in private law practice in the District of Columbia and Texas. She also returned to New York and spent nine years as Senior Vice President and then Executive Vice President of the Life Insurance Council of New York (LICONY). In 2018, she returned to Kentucky after rejoining the ACLI as Regional Vice President in the State Relations Department, where her focus was on legislative and regulatory advocacy in Alaska, Kentucky, Louisiana, Mississippi, Tennessee, and West Virginia.

Pruitt retired in December 2021 and had no plans to work again. “I thought

I can never replace Tom Peterson, but I hope I can live up to the high standard he set for this position and this association.

I’d had as much fun with insurance as possible,” she says. However, before her official retirement date, she received a call about Tom Peterson’s impending retirement. As a former guaranty association Board member, she had always appreciated the Executive Director role and thought it would be a great opportunity, so she pursued the job. The rest, as they say, is history.

Pruitt recognizes that she has big shoes to fill. Tom Peterson spent more than 30 years at the Kentucky association, and he was integral in making the guaranty system what it is today. Nevertheless, she brings a wealth of experience—with insurance and with the guaranty system—to the table. “I can never replace Tom,” she says, “but I hope I can live up to the high standard he set for this position and this association.” ★

Michael P. McDonald is Senior Counsel with NOLHGA.

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realized that they couldn’t necessarily count on others to carry their water with Congress and federal policymakers.

NOLHGA Journal: *So what happened?*

Gallanis: To counter what could have become an existential threat, NOLHGA and the NCIGF embarked on a joint effort to educate Congress, federal agencies, and key stakeholders regarding the state guaranty system. We prepared materials and started a state guaranty road show. NCIGF President Roger Schmelzer, Charlie Richardson, and I—sometimes flanked by other Faegre Drinker lawyers—hit the streets of Washington to sit down with members of the House Financial Services Committee and Senate Banking Committee, as well as officials at Treasury, the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency. We also met with the key trade associations.

NOLHGA Journal: *I know a number of OFC proposals were circulating. Did any of them require special attention?*

Richardson: Yes, the National Insurance Act of 2006 would have created a national insurance guaranty corporation and could have preempted any state guaranty associations that did not provide specified benefits. In addition to discussing the bill with key stakeholders, NOLHGA and the NCIGF submitted written comments aimed at ensuring there would be little or no reliance on the fallback federal guaranty mechanism.

NOLHGA Journal: *We know that congressional interest in an optional federal charter eventually waned. In hindsight, was the collective investment in the Education Project necessary?*

Gallanis: Absolutely—but, as with so many things, the project was useful for reasons we didn’t foresee at the outset. The time we spent building relationships and educating policymakers about the OFC proposals enabled us to respond effectively to an even bigger threat: the push for systemic risk regulation that grew out of the 2008 financial crisis. Following the near collapse of one of the world’s largest insurance businesses—largely for reasons unrelated to insurance—there were a lot of questions at the federal level about what would have happened if that entity’s insurer subsidiaries had gone into liquidation. Policymakers were considering putting the FDIC in charge of certain insurance company receiverships, and there were even discussions about a federal guaranty corporation.

We communicated closely with the same groups we’d briefed on the OFC proposals—but the tone of the meetings had changed considerably. The Administration and Congress were determined to pass laws to address what they saw as deficiencies with the nation’s supervisory framework for large financial institutions, including insurance groups. We faced a slew of questions about the guaranty system. What was the system’s capacity? Was it sufficient? Had the system ever truly been tested? Could it handle multiple, large insolvencies at the same time? Could we really have handled a major insurer’s failure? We also were asked—many times—whether life insurers are susceptible to a “run on the bank” scenario.

Richardson: Some audiences were tougher than others. We were told, at various times, that the guaranty system was certainly “on the radar” of people in Treasury. A high-ranking FDIC official told us that the FDIC could handle the guaranty system’s role. We heard that Senate Banking Committee staff were considering creation of a federal guaranty system for policyholders of institutions subject to the federal resolution authority. In fact, the Senate version of what became the Dodd-Frank Act would have done just that. Fortunately, we had a good story to tell, as the guaranty system has a long track record of protecting insurance consumers.

NOLHGA Journal: *Ultimately, the passage of Dodd-Frank didn’t really impact the guaranty system, right?*

Davenport: That’s right. And that was the point of NOLHGA’s engagement on Dodd-Frank—to preserve the state-based guaranty system. Our job was to demonstrate that the guaranty system has been tested and has improved with every test it’s faced. That preserving the guaranty system isn’t keeping the status quo—it’s protecting a system that’s constantly evolving to meet new challenges.

NOLHGA Journal: *So we made it through Dodd-Frank unscathed. Did our federal engagement end at that point?*

Scott Kosnoff (Partner, Faegre Drinker): Not at all, but it did change. We entered into years of Federal Reserve and FDIC rule-making, building out the Dodd-Frank framework. New federal agencies were added by Dodd-Frank, namely the Federal Insurance Office (FIO) in Treasury and the Financial Stability Oversight Council (FSOC). We’ve spent years building relationships with those bodies so that we are on speed dial whenever insurance resolution matters are raised.

NOLHGA and the NCIGF have briefed FSOC on the guaranty system and responded to questions from FIO on numerous occa-

Preserving the guaranty system isn’t keeping the status quo—it’s protecting a system that’s constantly evolving to meet new challenges. — Nancy Davenport

We asked why a U.S.-only company was attending a meeting about international standards, and the response was, “the cake is baked by the time issues get back to the U.S.” — Scott Kosnoff

sions. We still have to field preparedness and capacity questions, although to a lesser extent than during the Dodd-Frank legislative process. Our federal relationships remain critical to our international efforts—but that’s a whole separate chapter.

NOLHGA Journal: *There’s no major financial services legislation moving through Congress right now. Is our federal engagement on pause?*

Gallanis: Our activity in Washington, D.C., certainly is not what it was during the Dodd-Frank era. But we maintain an appropriately scaled-back level of focus on Congress and the federal agencies for a number of reasons. First, as we mentioned earlier, if we wait until there’s a crisis before engaging with legislators and policymakers, it’s too late. We need to maintain and develop new relationships with an ever-changing cast of characters.

Second, NOLHGA and the NCIGF seek to be trusted resources when Congress or federal agencies have any questions related to insurance resolution or the guaranty system, separate and apart from any crisis. For example, Director Steven Seitz and Alex Hart from FIO recently reached out to NOLHGA and the NCIGF to obtain information related to climate change and some current resolution activity. The guaranty system needs to be available and at-the-ready when called upon.

Kosnoff: To add to that, the issues (and the key players) we care about are intertwined. Whether the action is playing out at the federal level, internationally, or at the NAIC, it’s often the same people in the room, helping to shape the outcome. The Federal Reserve, FIO, and International Association of Insurance Supervisors (IAIS) regularly send representatives to NAIC meetings. The NAIC, Federal Reserve, and FIO are members of the IAIS. The Federal Reserve is a key driver at the Financial Stability Board (FSB), an international body that monitors and makes recommendations about the global financial system. FIO is a member of the FSB’s resolution group.

Moving Beyond Washington

NOLHGA Journal: *It sounds like the project’s origins are on the federal side. Why the need for state engagement as well?*

William O’Sullivan (Senior Vice President & General Counsel, NOLHGA): Our federal and state engagement efforts are not as distinct as you might think. During the passage of Dodd-Frank and its aftermath, the NAIC was keenly interested

in the potential impact of Dodd-Frank on state regulation of insurance, including resolution matters. We wanted to make sure that our messages to Washington were consistent with those of the NAIC.

We engaged in hours of conversations with state regulators and NAIC staff to ensure that state-based insurance resolution and the guaranty system were not only preserved, but could be strengthened. We worked closely with Jim Mumford, Chief Deputy in Iowa and Chair of the NAIC’s Receivership & Insolvency Task Force (RITF), and his deputy at the time, Pat Hughes, as well as Mark Sagat from the NAIC staff. We also worked with RITF leadership to make sure the NAIC’s response plan for systemic-level receiverships included NOLHGA and the NCIGF.

As a result, the guaranty system is incorporated into the plan, and the plan is designed to preserve guaranty association protection. Likewise, the development of a new NAIC Receivership Financial Analysis Working Group (R-FAWG) grew out of our collective work with the NAIC on Dodd-Frank.

Gallanis: We continued working closely with the RITF under the leadership of John Finston, then Deputy Commissioner and General Counsel for the California Department. He and Christy Neighbors, who at that time was the Deputy Director and General Counsel of the Nebraska Department, turned to NOLHGA for assistance in responding to the resolution portions of the 2015 U.S. Financial Sector Assessment Program (FSAP), an analysis of a country’s financial sector conducted by the International Monetary Fund (IMF).

NOLHGA teamed up with the NAIC and the FDIC to respond to questions from and meet with the IMF during the course of that FSAP, a collaboration that was repeated in 2020. The strong relationships and trust developed during Dodd-Frank built a great foundation for working together on purely state-based issues as well.

NOLHGA Journal: *So the Education Project doesn’t only address existential federal threats?*

Pat Hughes (Partner, Faegre Drinker): Not at all. The issues discussed at the NAIC and the National Council of Insurance Legislators (NCOIL) have the potential to directly affect the guaranty system in a meaningful way. State regulators are on the front lines in the development of model laws and handbooks that directly impact the system and how receiver-

ships are discharged. Through NCOIL, state legislators also promulgate model laws on insurance issues, including those important to the guaranty system. For instance, NCOIL has a model act on property and casualty guaranty fund issues.

When issues affecting the guaranty system are on the NAIC or NCOIL's agenda, it's important for us to have established relationships with key players and be seen as a trusted resource. Our efforts to build trust and credibility with state regulators and legislators have served us well over the last handful of years as they have tackled important receivership-related issues.

NOLHGA Journal: *What is the goal of state-level engagement? Does it differ from our goals on the federal side?*

Hughes: The overarching goal is the same—to protect and strengthen the guaranty system through sound policies, which ultimately helps us serve our main purpose of protecting policyholders. The means by which we achieve those goals, however, are a little different when dealing with state regulators. While we do educate state regulators about the guaranty system, they typically have much greater awareness of who we are and what we do (as compared to the federal regulators). State regulators recognize the importance of the guaranty system in the state-based regulatory framework. With the states, our role is much more often as the subject-matter expert on receivership issues.

NOLHGA Journal: *Are there any seminal moments during our engagement with the NAIC and state regulators?*

O'Sullivan: When NOLHGA and the NCIGF were invited to participate in the Financial Analysis Working Group (FAWG) meetings—that has always stood out as a milestone in our relationship with state regulators and the NAIC. FAWG meetings consist of confidential conversations on troubled companies and other issues affecting solvency. Our participation just solidifies the trust regulators have in the guaranty system and its importance in the state-based regulatory framework.

Gallanis: I'd also point to our collaboration with the NAIC on long-term care insurance matters. As our readers know, many issues arose during the Penn Treaty/ANIC receiverships, and the NAIC often invited NOLHGA to participate, along with other

stakeholders, in conversations about the guaranty system's contingency planning for liquidation.

After the dust settled on Penn Treaty, the NAIC continued to turn to NOLHGA to discuss legacy long-term care insurance issues, including inviting NOLHGA representatives to conduct presentations to insurance commissioners about the Penn Treaty liquidations at the first meeting of the LTC (EX) Task Force. The relationships we built with key regulators over the years allowed the NAIC to quickly turn to NOLHGA as a trusted advisor when these long-term care insurance issues started to arise.

NOLHGA Journal: *You've talked about issues where regulators have turned to NOLHGA and the NCIGF for their experience and expertise. Can you talk about some recent examples where this occurred?*

Daniel Lewallen (Attorney, Faegre Drinker): The two examples that stand out to me are the 2017 changes to the NAIC's Life & Health Insurance Guaranty Association Model Act and issues related to insurance business transfers (IBT) and corporate divisions (CD)—collectively referred to as restructuring mechanisms. The 2017 Model Act changes did two things: (1) split the assessment base for insolvencies involving insurers that wrote long-term care business between the life/annuity account and the health account; and (2) added HMOs as member insurers. We worked with regulators to ensure the Model Act changes operated as intended and did not have any unintended consequences.

O'Sullivan: With respect to restructuring mechanisms, regulators have been in unanimous agreement that any IBT or CD transaction should not affect guaranty association coverage associated with the business being transferred. NOLHGA and the NCIGF provided comments on the NAIC's draft whitepaper regarding these transactions—specifically the technical requirements that must be met to ensure guaranty coverage is retained following a restructuring transaction. Nearly all our comments were incorporated into the current exposure draft of the whitepaper. Similarly, NOLHGA and the NCIGF presented on IBT and CD issues at NCOIL as model laws on those topics were being developed. Both the IBT and CD NCOIL Models address issues related to guaranty coverage.

The relationships we built with key regulators over the years allowed the NAIC to quickly turn to NOLHGA as a trusted advisor when these long-term care insurance issues started to arise. — Peter Gallanis

NOLHGA Journal: *What opportunities with state regulators do you see moving forward?*

Hughes: We will continue to act as a resource on issues that may impact the system. Further, given the recent turnover at the commissioner level over the last few years, it will be important to maintain our presence at the NAIC and educate new regulators on our role in protecting policyholders. And just like the federal actors, the state regulators are essential partners on international matters as well. That's why we work with NOLHGA leadership to make sure we develop and maintain relationships with NAIC leaders who can influence guaranty system protection.

Frequent Flyer Miles

NOLHGA Journal: *You've mentioned international efforts twice now. What caused you to turn your attention outside of U.S. borders?*

Sara Manske (Partner, Faegre Drinker): After Dodd-Frank, we considered whether financial regulators in other countries were taking a similar interest in their local guaranty systems. In all honesty, we knew very little about the existence of or details around guaranty systems in Europe, Asia, South America, or Africa.

We discovered that European financial supervisors and standard setters were focusing a great deal of attention on so-called "Insurance Guarantee Schemes" or "IGSs"—the term used by the rest of the world to refer to guaranty associations and guaranty funds. We dove into a whole new bowl of alphabet soup, learning about the IGS-related activities of international bodies that were new to us—IAIS, EIOPA, FSB, OECD, and the Geneva Association (see "Alphabet Soup" for definitions of these terms and more).

Kosnoff: The IAIS Annual Meeting and Conference happened to be in Washington, D.C., in November 2012. At the meeting, we ran into one of NOLHGA's prominent company members that does business only in the United States. We asked why a U.S.-only company was attending a meeting about international standards, and the response was, "the cake is baked by the time issues get back to the U.S."—meaning that the time to make an impact on critical issues involving macroprudential supervision, financial stability, and resolution matters was when the world's financial supervisors (including those from the United States) were formulating policy at the global level. By the time those policies are discussed domestically at the NAIC, the regulators have already bought into, or committed to, a certain policy outcome. We realized that in order to protect the U.S. guaranty system from external threats, we had to open up an eastern front, as it were.

NOLHGA Journal: *Once you had your eye on international activities, what were you watching for at a high level?*

Manske: Even though we were monitoring "international" conversations, that didn't mean they were occurring outside U.S. purview. Representatives of the United States (or U.S. insurance companies) are members of or participants in the key interna-

Alphabet Soup	
EIOPA	European Insurance and Occupational Pension Authority
FIO	Federal Office of Insurance
FSB	Financial Stability Board
GCC	Group Capital Calculation
IAIS	International Association of Insurance Supervisors
ICS	International Capital Standard
IFIGS	International Forum of Insurance Guarantee Schemes
IGS	Insurance Guarantee Scheme
OECD	Organization for Economic Co-Operation and Development
PPS	Policyholder Protection Scheme
ReWG	The IAIS Resolution Working Group

tional bodies, such as the IAIS and FSB. U.S. regulators and policymakers influence, and are influenced by, the international discussions surrounding IGSs.

Kosnoff: Some of the IGS issues being debated on the international level mirrored debates that were occurring in the United States. As we already discussed, during Dodd-Frank the FDIC looked into *ex post* (after the event) versus *ex ante* (before the event) funding of safety net mechanisms, favoring *ex ante* funding. In 2012, several key international bodies were advocating for *ex ante* funding of IGSs. U.S. regulators and legislators were paying attention to these debates, and we wanted to ensure that they did not start to buy into some of the arguments supporting *ex ante* funding without understanding the sound logic behind *ex post* funding for insurance safety nets (as opposed to banking, where *ex ante* funding makes more sense).

NOLHGA Journal: *Did you have issues to dig into immediately from an international perspective?*

Manske: Absolutely. In 2012 alone, we worked with FIO Director Michael McRaith on FIO's responses to an FSB resolution regime questionnaire. We provided comments to the IAIS's submission to the FSB on the Key Attributes of Effective Resolution Regimes as applied to insurers. We interacted extensively with the trades and the NAIC to impact the IAIS's Issues

Paper on Policyholder Protection Schemes and an OECD paper on Policyholder Protection Schemes. Each of these papers has become a bedrock document for international policy on resolution matters and IGSs.

NOLHGA Journal: *With so much activity, how do you decide what to comment on and what to leave alone?*

Gallanis: We generally have three objectives for our international efforts.

1. Stop bad precedent from being imported to the United States.
2. Export good ideas we think would be helpful if replicated elsewhere.
3. Tell our story fully and accurately, or educate those who are speaking for us.

We want to be efficient and targeted in our international engagement. We developed a decision tree to determine instances where we should engage and comment on workstreams. We will comment on international papers regarding resolution matters or IGSs where (1) the subject of the document has significant potential for directly affecting NOLHGA or its members; (2) NOLHGA has unique perspectives or experience to bring to bear; and (3) our input might reasonably be expected to affect the decision-making. This approach has kept us focused on efforts where we can and need to make an impact without wasting time and resources.

NOLHGA Journal: *Can you say more about how our work on those early 2012 policy papers impacted international policy?*

Manske: Good question. Let's go back to our 2012 work on the IAIS's Issues Paper on Policyholder Protection Schemes. We worked on that through most of 2012, commenting on no fewer than four different versions of the paper.

Based on relationships we had developed during the Dodd-Frank days, when first drafts of the Issues Paper were circulated, the NAIC and the ACLI separately came to us to assist with comments. The initial draft was very pro-Europe. It contained primarily European case studies and examples and espoused *ex ante* funding as the only way to fund an IGS. Given that these papers could become citable precedent for later policy and legislative work, we believed the paper needed to present a more balanced perspective, including examples from the U.S. guaranty system and its successes and a description of *ex post* funding as a viable (and perhaps preferable) funding approach. The paper was ultimately published in early 2013—with a much more equitable balance between U.S. and European perspectives.

Five years later, the IAIS published a consultation paper on an Activities-Based Approach to Systemic Risk. In reviewing the paper, we discovered it contained an assertion that an IGS could be "a source or transmitter" of systemic risk. We disagreed vehemently, and it could have been very damaging to have such an assertion become citable precedent.

We engaged with the IAIS and contacts that we had by then developed in the stakeholder community—particularly insurers

and regulators. We submitted comments expressing our strong objection to that language and were actually able to cite to language we added to the IAIS's 2013 Issues Paper that countered the assertion regarding systemic risk. The problematic language disappeared from the 2018 paper, in large part because we had worked successfully to ensure that the 2013 paper was more inclusive of the U.S. experience and perspective.

NOLHGA Journal: *Given that there was so much activity a decade ago, do international standard setters continue to consider issues we care about? Or is their work related to our efforts complete?*

Gallanis: It is true that international attention to resolution matters and IGSs ebbs and flows. Some years, we do little more than high-level monitoring to make sure we are on top of emerging international workstreams that could affect the guaranty system. Other years, there are papers or workstreams on which we need to deeply engage.

Right now, we are heading into a period of higher activity. The IAIS Resolution Working Group (ReWG) is currently working on an application paper on the role of IGSs. We're already engaging with Alex Hart at FIO, who chairs ReWG, and will continue to engage on that important project.

NOLHGA Journal: *In past discussions, we've talked about the International Forum of Insurance Guarantee Schemes. How does IFIGS fit into all of this?*

Gallanis: IFIGS was formed in 2013 by a group of IGSs from around the world interested in sharing their experiences in providing policyholder protection in the event of an insurance company failure. NOLHGA and the NCIGF were early members.

Kosnoff: IFIGS has sought to be the international voice of IGSs, in part because international organizations like the IAIS and the FSB prefer to talk to other international organizations. For example, IFIGS has been invited to present to EIOPA working groups exploring IGS matters. As part of the IFIGS delegation, NOLHGA and the NCIGF have had the opportunity to work directly with Dimitris Zafeiris, EIOPA's Head of Risks & Financial Stability, and Juan Zschiesche Sanchez, EIOPA's Senior Expert on Crisis Management, and to be a part of presentations to share U.S. perspectives—opportunities that would not have come to us without our affiliation with IFIGS. Our membership in IFIGS has also been helpful to the overall mission of the Education Project in that we can ensure IFIGS messaging is consistent with (or at least not contradictory to) our international messaging.

NOLHGA Journal: *If you had to boil down our international messaging, what would it be?*

Manske: In the early going, it was ensuring that papers presented a balanced perspective on IGSs, not exclusively a European perspective. We've been successful in promoting that message.

The IAIS published a consultation paper on an Activities-Based Approach to Systemic Risk [that] contained an assertion that an IGS could be “a source or transmitter” of systemic risk. We disagreed vehemently, and it could have been very damaging to have such an assertion become citable precedent. — Sara Manske

Gallanis: While we will continue to keep an eye on maintaining that balance, we’ve shifted our message from a defensive to a proactive posture. We seek to ensure that international policy on IGSs is consistent with the following:

Policyholder protection should be the primary goal of insurer resolutions. We support financial stability being an additional objective, but we believe that financial stability should be achieved in a way that is consistent with—and does not compromise—policyholder protection.

IGSs should have an important role in developing and contributing to resolution strategies. They should be part of or otherwise support resolution planning, crisis management groups, and other coordination efforts, with appropriate confidentiality protections in place.

When you review international policy statements about insurance resolution matters, you will see these themes throughout. Our consistent and methodical efforts on the international scene have helped to solidify many of our perspectives as fundamental principles in international resolution policy. But we will remain vigilant!

NOLHGA Journal: *You clearly have worked as a team over the years and accomplished a great deal. How do you stay coordinated?*

Lewallen: From our end, it involves various professionals across the firm. We seek to keep both NOLHGA and the NCIGF up to date through weekly reports, monthly strategic meetings, and quarterly reports to the Board and MPC. We want to ensure that both organizations are aware of significant developments throughout the industry, particularly if such developments might affect the guaranty system.

Davenport: NOLHGA’s Public Policy Coordination Committee (PPCC) also plays an oversight role on public policy issues that affect the organization and provides guidance to the Board on these issues. The PPCC works closely with Peter and the NOLHGA team to identify issues as they arise. The professionals who serve on that committee bring an incredible amount of government affairs

experience, along with a breadth of experience in the guaranty association system. I have really enjoyed being a part of our public policy strategy as Chair of the PPCC, and I’m looking forward to continuing to engage on public policy matters as Chair of the NOLHGA Board later this year.

NOLHGA Journal: *That’s a helpful retrospective, especially for our readers who are new to the guaranty system. Looking ahead, what do you see on the horizon?*

Manske: On the international front, we already discussed the IGS paper that the IAIS will be working on for the next year. In addition, the industry is eagerly awaiting a consultation that relates to group capital. Over the past several years, the IAIS and the NAIC have been developing parallel group capital approaches — the Insurance Capital Standard (ICS) at the IAIS and the group capital calculation (GCC) at the NAIC. In order for the GCC to be accepted by countries that adopt the ICS, the GCC will have to be deemed to produce “comparable outcomes” to the ICS.

This past June, the IAIS issued a public consultation on the criteria for assessing comparability, which garnered a great deal of industry attention. We’re now awaiting the final comparability criteria, which presumably will come out in March 2023.

Kosnoff: In addition to staying in touch with our key contacts, we’ll also be watching how FSOC addresses systemic risk under its and its members’ regulatory authority. We also are following the direction policymakers may take their concerns about private equity.

Hughes: We expect issues related to restructuring mechanisms to continue to take up a lot of oxygen at the NAIC while it completes its whitepaper and develops best practices for the review of proposed IBT and CD transactions. Work also continues on a comprehensive revision of the *Receiver’s Handbook for Insurance Company Insolvencies*, which is scheduled to be completed by the end of next year. The Macroprudential

Working Group has put together a list of regulatory considerations related to private equity and others' involvement in insurance, which has received significant attention from industry and has resulted in referrals that will initiate closely watched NAIC workstreams.

NOLHGA Journal: *So after more than 20 years, there's still a lot of work to do. Looking back, was it all worth it?*

Davenport: From industry's point of view, it certainly was and continues to

be worth the effort. The guaranty system is tied to every message that matters to industry: the effectiveness of the state-based system, the insurance industry's ability to withstand significant economic disruption, systemic risk—you name it. It is critical that state, federal, and international actors understand the system and coordinate on public policy efforts.

Gallanis: I agree. All you have to do is think about how different the landscape would be if our good outcomes had gone

the other way. Our confidence in the ability to continue to defend the guaranty system going forward is derived in part from the credibility established, the relationships forged, and the strategic lessons learned along the way. ★



NOLHGA Calendar of Events

2022

December 12–16	NAIC Fall National Meeting Tampa, Florida
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2023

January 26–27	MPC Meeting (Hybrid) Clearwater Beach, Florida
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March 22–25	NAIC Spring National Meeting Louisville, Kentucky
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April 26–27	MPC Meeting (Hybrid) Milwaukee, Wisconsin
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July 26	MPC Meeting (Hybrid) Chicago, Illinois
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July 27–28	NOLHGA's 31 st Legal Seminar (Hybrid) Chicago, Illinois
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August 13–17	NAIC Summer National Meeting Seattle, Washington
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November 30– December 4	NAIC Fall National Meeting Orlando, Florida
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NOLHGA
13873 Park Center Road, Suite 505
Herndon, VA 20171
TEL: 703.481.5206 FAX: 703.481.5209
Editor: Sean M. McKenna
E-mail: smckenna@nolhga.com

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