Receivership & Insolvency (E) Task Force Members, Interested Regulators and Interested Parties:

During its meeting March 29, the Receivership & Insolvency (E) Task Force requested comments on the topic of guaranty association coverage of structured settlements, if clarifications are needed to the Life and Health Insurance Guaranty Association Model Act (#520), and including the clarifications drafted by the American Council of Life Insurer’s (Attached). Comments are due by close of business May 29, 2015. Send comments electronically to jkoenigsman@naic.org.
From: Wayne Mehlman [mailto:WayneMehlman@acli.com]
Sent: Tuesday, March 24, 2015 2:55 PM
To: Koenigsman, Jane M.
Subject: RE: Guaranty Association Coverage of Factored Structured Settlements

Jane:

As part of the RITF’s ongoing discussions on whether factored structured settlement annuities (SSAs) and life settlements should be covered by state guaranty associations and the Model Act, ACLI’s Receivership Committee discussed this issue during the past year and agreed that, with regard to SSAs, guaranty association protection is intended for insurance consumers (the original payees of SSAs) and is not designed to provide coverage to sophisticated investors who purchase SSAs in the secondary market.

We then agreed to draft clarifying language that would reflect this in Sections 3.A(5) and 3.B(2) of the Model Act (see attached). We are submitting these clarifications to the RITF for discussion purposes only. We are not proposing that these clarifications be considered or adopted by the NAIC at this time. It is simply a response to the RITF’s discussions on this issue.

The clarifying language that we are submitting pertains only to factored SSAs. At this time, we are not submitting language that would expand the Model Act’s coverage exclusions to include life settlements or other types of factored annuities, as such initiatives would require more extensive debate by our Receivership Committee as well as ACLI Board approval.

These clarifications, as well as other potential clarifications or exclusions, could be proposed by ACLI to the NAIC if and when the NAIC decides to perform a comprehensive review or revision of the Model Act.

Regards,

Wayne

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**Clarification to Section 3.A of the NAIC’s Life and Health Insurance Guaranty Association Model Act (if and when the NAIC decides to update the Model Act):**

(4) For structured settlement annuities specified in Subsection B; Paragraphs (1) and (2) of this subsection shall not apply, and this Act shall (except as provided in Paragraphs (5) and (6) of this subsection) provide coverage to a person who is a payee under a structured settlement annuity (or beneficiary of a payee if the payee is deceased), if the payee:

(a) Is a resident, regardless of where the contract owner resides; or

(b) Is not a resident, but only under both of the following conditions:

(i) (I) The contract owner of the structured settlement annuity is a resident; or

(II) The contract owner of the structured settlement annuity is not a resident; but

• The insurer that issued the structured settlement annuity is domiciled in this State; and

• The State in which the contract owner resides has an association similar to the association created by this Act; and

(ii) Neither the payee (or beneficiary) nor the contract owner is eligible for coverage by the association of the State in which the payee or contract owner resides.

(5) This Act shall not provide coverage to:

(a) A person who is a payee (or beneficiary) of a contract owner resident of this State, if the payee (or beneficiary) is afforded any coverage by the association of another State; or

(b) A person covered under Paragraph (3) of this subsection, if any coverage is provided by the association of another State to the person; or

(c) A person who becomes the owner, payee, assignee, or beneficiary of a contract pursuant to a transaction defined under 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred before or after the effective date of the referenced section of the Internal Revenue Code.

**Clarification to Section 3.B of the NAIC’s Life and Health Insurance Guaranty Association Model Act (if and when the NAIC decides to update the Model Act):**

(2) This Act shall not provide coverage for:

* * * *

(m) A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code (commonly known as Medicare Part C & D) or any regulations issued pursuant thereto; or

(n) The benefits payable under a structured settlement annuity that have been transferred in a transaction defined under 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred before or after the effective date of the referenced section of the Internal Revenue Code.
Drafting Note: The exclusion from covered persons in Section 3.A(5)(c) of those persons who have purchased structured settlement annuity benefits from the original structured settlement annuity payee, as well as the exclusion from covered benefits under Section 3.B(2)(n) for any such benefits sold by a structured settlement annuity payee, reinforce the notion that the protections afforded by guaranty associations are intended for insurance consumers, such as the original payees of structured settlement annuities. Guaranty association protection is not designed to extend to sophisticated investors who purchase structured settlements in the secondary market. These exclusions, however, do not apply to structured settlement benefits that are transferred to children, former spouses or other dependents as part of any domestic relations settlements or orders, or to other non-investors who do not remit consideration for such benefits. These clarifications, therefore, ensure that guaranty association coverage is preserved to protect structured settlement annuity benefits that are retained by the original payee and his or her dependents.