

Home re incentive and case reserves.txt

From: jonathan.rosen@homeinsco.com
Sent: Wednesday, December 22, 2004 2:15 PM
To: Hartz, Doug A.
Cc: pabinsconsult@aol.com; angela.anglum@homeinsco.com
Subject: Insurer Receivership Model Act

Dear Doug:

As you are aware, we provided relatively detailed comments with respect to a preceding draft of the captioned Act. There are three provisions of the Act which we believe are of particular import in relation to which we suggested amendment, although these are not reflected in the Act as presently constituted. We accordingly respectfully request that consideration thereto be afforded. These provisions are:

(1) Section 701 (Preamble). Consistent with the amicus brief filed by the NAIC in our pending New Hampshire litigation, we would like the following sentence added after the sentence ending with "equitable remedies":

" This Section shall not be construed to prohibit any payments, as Class 1 administrative costs, to claimants in lower priority classes where those payments assist or result in the collection or recovery of assets or property, including debts, monies due or claims belonging to the insurer for the benefit of claimants in higher priority classes."

(2) Section 702 C. In order to align this provision with Sections 603 and 605, and as a means of avoiding future contention and eliminating potential ambiguity, we would like the first sentence of this provision to be deleted and replaced with the following:

" Nothing in this Act shall be construed to authorize the liquidator or any other entity to compel payment from a non-life reinsurer on the basis of estimated incurred but not reported losses or loss expenses or case reserves for unpaid losses and loss expenses, except with respect to contingent and unliquidated claims allowed pursuant to Section 605."

(3) Sections 701 B and C. Consistent with prevailing legislation in a number of states (including New Hampshire), we would like the last sentence of Section 701 B deleted and the following sentence inserted as a new second sentence in Section 701 C:

" In the case of property and casualty guaranty associations, loss adjustment expenses incurred in the settlement or defense of covered claims ."

We appreciate your consideration of the foregoing.

With kind regards,

Jonathan Rosen
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