Volume XXIX, Number 1 | March 2022

nolhga journal

A Publication of the National Organization of Life and Health Insurance Guaranty Associations

The View in '22

How will the insurance public policy landscape play out in 2022? We look at regulation, resolution & more

By Pat Hughes & Sara K. Manske

As an eventful 2021 rolled into 2022, a number of issues were at the top of the list waiting for policymakers and stakeholders coming back from the holidays. Climate change is a dominant theme—among *the* dominant themes when one considers how far the issue reaches across federal, international, NAIC, and individual state activity. The NAIC and federal actors also have been discussing new capital structures and how they fit with current regulatory frameworks. Group capital and group supervision initiatives that have been long in development are being enacted into law and implemented. And the NAIC's Race and Insurance initiative remains a priority—involving industry, state regulators, and the NAIC, and raising important issues around the use of data, defining unfair discrimination, and diversity both in government and in the industry.

We want to take that 2022 public policy view and narrow in on workstreams, initiatives, and developments most important to the life and health insurance guaranty system. And, while activity across jurisdictions has never been more interconnected, we'll break it down into state, federal, and international activity—with a closing note looking ahead to the political landscape developing farther out in 2022.

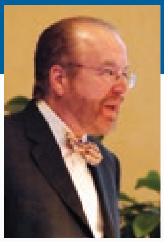
State Action on Resolution & the Guaranty System

In 2021, there was a good deal of Model Act development and other NAIC activity that could impact insurance resolution and the guaranty system, with some work ahead in 2022. NOLHGA continues to contribute to those discussions (i) where they directly impact the guaranty system's mission or its ability to serve consumers and other stakeholders, or (ii) where NOLHGA has unique perspectives or experiences to offer.

Essential Services from Affiliates: The NAIC in 2021 adopted a set of changes to the Model Holding Company Act and

["The View in '22" continues on page 12]

IN THIS ISSUE



President's Column by Peter G. Gallanis

The Meaning Behind What We Do

The following comments were adapted from my President's Address, delivered on October 26, 2021, at NOLHGA's 38th Annual Meeting.

It occurred to me last night that this will be the 22nd year that I've had the honor of delivering one of these addresses. Our dear friend Bob Ewald, who attended so many of these meetings until health issues started keeping him closer to home, always described this annual address as our "State of the Union." In that spirit, I am happy to report that the state of this particular union remains strong. Without doubt, we do have some very serious challenges before us, but before I address those challenges, I'd like to take stock of some accomplishments.

Four-plus years into our work on the Penn Treaty runoff, we're doing better for the policyholders and for our system's stakeholders than ever would have been predicted by anyone aware of all the terrible challenges presented by that case. Likewise, we're now eight-plus years into the runoff of ELNY, another terribly complicated and difficult case in which this system, under the leadership of Nick Latrenta and Jack Falkenbach, has done stellar work on behalf of policyholders and the stakeholders of our system. That's just as true of the other cases where we've been called upon to act: Cases old and new; large and small; life, annuity, health, long-term care insurance (LTCi), or otherwise. Every time the bell has rung for this system, we've done our job, and we've done it well.

But we do have serious challenges before us—for the insurance industry and its regulators generally, for insurance receivers, and for the guaranty system. This is the point in the speech where I usually inventory the challenging *substantive* issues confronting us, but today I'd like to focus on a more conceptual issue: The issue of how we can manage to do our jobs well in the face of complex and sometimes daunting *transitions*.

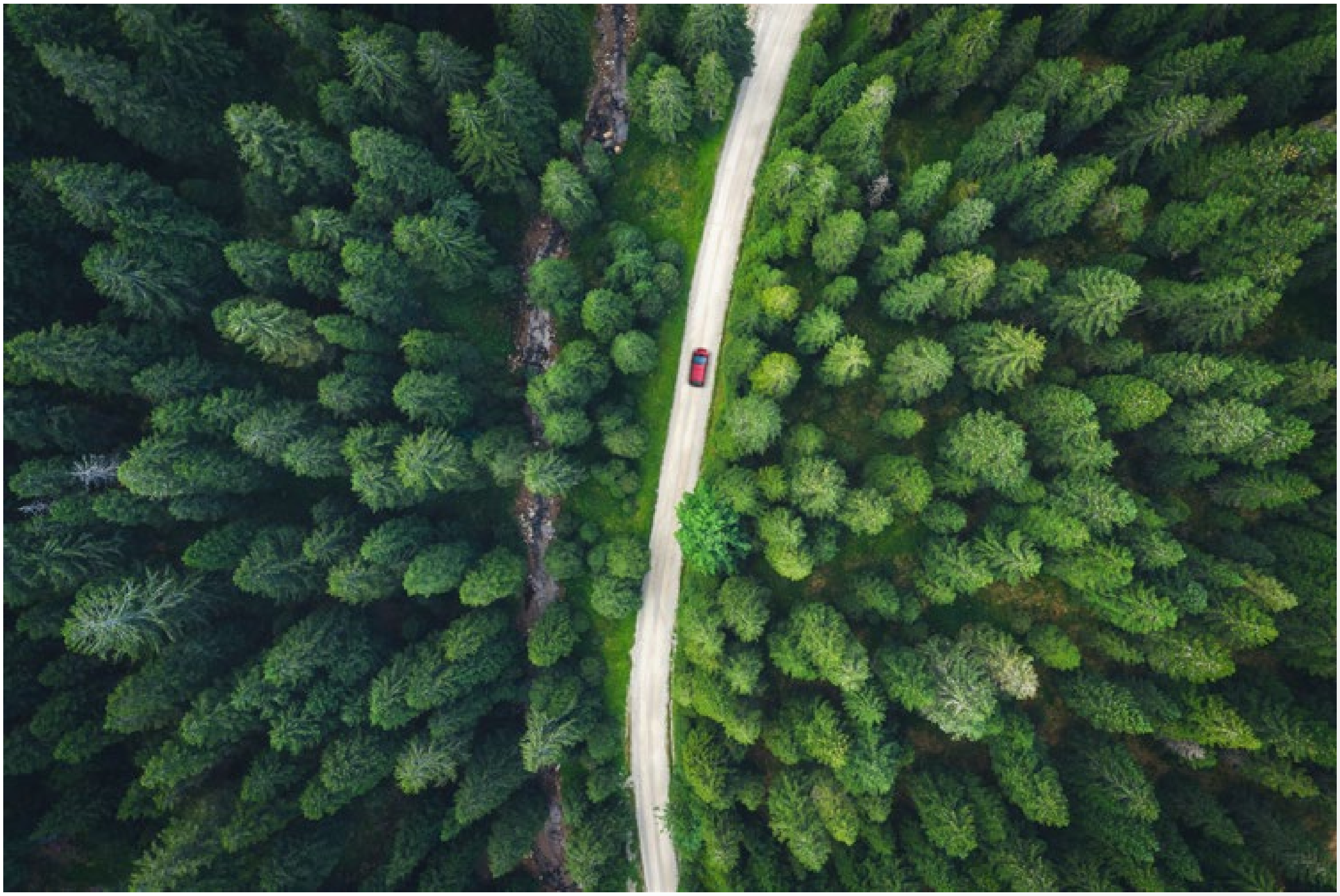
The most obvious transitional challenge we've seen recently has involved the COVID-19 pandemic. In early 2020, we all had to shift from ordinary-course business to virtual modes, and in our personal lives had to consider how to adjust our lifestyles so as to protect ourselves, our loved ones, and our communities. Now we're hoping soon to be able to transition out of our personal pandemic "operating systems" into different modes of relating to each other that we hope will resemble pre-pandemic normal life, as nearly as can be. The original transitions responsive to the pandemic weren't easy; and we now see, both in society at large and in our little family, that transitioning out of the current situation also will present complications.

Another important set of transitions involves the changes in the people in our lives—both professionally and personally. For example, within the past several years we have seen a number of guaranty association Executive Directors leave their positions, and the associations have had to identify qualified successors. At the level of the NOLHGA staff—a staff that has been remarkably stable for many years—we have had to embark on several transitions recently, some expected and one quite unexpected. Most established organizations are confronting this transition challenge, in part because of the so-called "greying of the American workforce."

Another type of transitional challenge has involved changing trends in the insurance sector. I note here particularly the life and health insurance guaranty system's great challenge of this still-young century—a challenge shared by the industry and the regulators: Namely, the concerns about legacy LTCi business blocks.

We began studying those issues intensively 20 years ago, and they involve deeply all of our direct and indirect constituencies, but especially classes of guaranty association member companies that previously might not have been deeply concerned about guaranty system operations, decisions, or assessments. I need not tell this audience that getting to the right answers on this set of questions, as with pandemic transition questions and personnel transition questions, is not always

"Every time the bell has rung for this system, we've done our job, and we've done it well."



simple. People of good faith from different perspectives often have diverging, strongly held views.

Forests & Trees

Navigating through difficult transitions can be one of the hardest things people do, in general and within our guaranty system family. There are two factors I see that can aid significantly in managing difficult transitions toward good outcomes.

The first is being prepared, to the extent that preparedness is possible. A public figure a few years ago told us that strategizing involved preparing for known knowns, known unknowns, and unknown unknowns. At least as to the first two, and maybe even the third—the unknown unknown, "black swan" events—a degree of preparedness can be achieved through education, training, research, and outreach.

A second factor that can aid greatly in navigating difficult transitions is maintaining an appropriately balanced, centered, long-term perspective.

Most of us in the guaranty system family are technicians by nature and training, whether we have been trained and certified as attorneys, accountants, actuaries, managers, or otherwise. And the great strength of technicians is that they can quickly focus on the technical problems presented by a situation and formulate specific strategies to address those technical problems.

That ability to focus intently on technical challenges usually is a great advantage; but sometimes, if we're not careful, it can also become its own sort of problem. In a difficult, complex transition, parties can easily focus on particular subsidiary issues. In running such subsidiary issues to ground, it's human nature that the specific sub-issues can assume disproportionate importance for those working so hard to find the specific solutions. In other words, our perspective can go a bit awry. This is what we mean when we say that our focus on specific trees can cause us to lose sight of the forest.

Keeping the forest in sight is really important, though it's not always easy. Some very thoughtful people, both outside our little world—and, more important to us, those within it—have offered some observations on keeping the right balanced, centered, long-term perspective.

Austrian psychiatrist Viktor Frankl saw up close some of the most disastrously disruptive developments in the history of the human race, especially beginning around 1942. Though most of his family was murdered in the ensuing years, Frankl survived and then spent much of the rest of his life thinking and writing about those terrible circumstances.

Psychiatry is not my field—I'm more a consumer than a purveyor—but I understand that a major element of Frankl's thinking about how best to confront the sort of crisis posed by difficult transitions involves, for each of us, identifying a positive purpose in life, and then keeping that purpose constantly before us as a guide for short-term decisions and long-term orientation. Put another way, for Frankl, nothing was more important than recognizing *meaning* in one's life. Rabbi Harold Kushner summarized the three sources Frankl saw for finding that meaning: in doing *work* that is significant; in the *love* involved in caring for another person; and in *being courageous* during difficult times.

Chicago, Wyoming & Beyond

As we navigate the difficult changes that sometimes confront us in the guaranty system, is there a source of meaning that can help us stay balanced and centered, so as to keep our attention trained on the meaningful forest, notwithstanding the temptation to worry overmuch about the technical trees?

On that score, I can only offer what I've heard from some of the people I most respect who have worked in our system.

Back in the early days of planning the resolution of ELNY—one of the toughest cases we've ever had, involving some of the most sympathetic annuity payees one could imagine—the MPC held a full-day strategy session in Chicago on a Saturday. Many of you were there. We spent hours discussing in great detail some very important subsidiary, technical questions involving matters like "member company" definitions, triggering dates, coordination of coverage, and the like. After hours of focus on these details, a mentor of mine, fellow Illinoisan Bob Ewald, stood up and said, "Shouldn't we be making our very top priority the question of how to protect these poor payees?"

On a different scale, but from roughly the same time period, I recall a story told to me by Frank O'Loughlin about Ron Long, the long-time Chair of the Wyoming guaranty association, who had then recently passed away.

The Wyoming association had been trying to ascertain whether it would provide coverage for an individual who had (arguably) moved away from Wyoming just before the failure of the insurer that had issued the annuity in which that family's life savings were invested. If the Wyoming guaranty association didn't provide coverage, the individual (who had sold his Wyoming house and then lived in a motor home) might not have any coverage.

Ron asked the association's lawyers to identify any current ties the annuity purchaser had to Wyoming. Repeated efforts did not produce such a tie, but Ron insisted that they keep digging. Finally, the lawyers reported back that the annuity owner and his wife still held valid Wyoming fishing licenses. Ron concluded, "As far as I'm concerned, anyone who holds a Wyoming fishing license is a resident of my state." The guaranty association protected the family's life savings by covering the annuity.

I have heard very similar comments in comparable circumstances from a long line of leaders in this community, from people like Nick Latrenta, Ron Downing, Dan Orth, George Nichols, and many of the people attending this meeting. For example, Eric Rangen, the Board Chair of LTC Re, from whom you heard yesterday, has made it a constant refrain at LTC Re Board meetings that our overriding priority, always, is to make sure that those holding LTCi policies issued by Penn Treaty receive both the benefits to which they are entitled and the highest level of service possible.

Comments like those suggest an underlying theme, one that has a lot to do with the purpose or meaning that Viktor Frankl described, the sort of balanced and centered perspective that can help us keep our focus on the forest, rather than the trees of technical detail. It is, I submit, this simple: That insurance (including insurance company operations, insurance regulation, receiverships, and the guaranty system) exists for the primary purpose of protecting those who purchase and are covered by insurance policies.

The entire structure of insurance regulation reflects that orientation, from company inception to the closing of a liquidation estate—from cradle to grave. The regulatory framework ensures that companies are formed only if they have responsible management, appropriate capitalization, and credible business plans. Companies are closely monitored both for solvency—for the financial ability to honor *all* of their insurance promises—and for lawful and responsible conduct of business. When the finances of a company seriously deteriorate, the law permits reorganizations to rehabilitate the company, as long as policyholders are not worse off than they would be in a liquidation. If liquidation is necessary, the law

"Rabbi Harold Kushner summarized the three sources Frankl saw for finding that meaning: in doing work that is significant; in the love involved in caring for another person; and in being courageous during difficult times."

We're not just punching a clock and earning a buck. We're helping people who often are in desperate need of help.

recognizes the priority protection of the claims of policyholders and provides, for most personal-lines business, guaranty association protection.

In short, that's a structure that prioritizes the protection of policyholders, in important part through the work that we do in the guaranty system.

When we do our jobs, it ought always to be informed by that underlying theme, which is what gives meaning to what we do here in the guaranty system, as it does for those who work in companies, who conduct regulation, and who administer receiverships. This business is not about us, it's about them—the consumers who buy and are protected by insurance contracts.

To the extent that keeping in mind the overriding objective of consumer protection provides a sense of the meaning underlying what we do, that sense of meaning should help sustain us as we work through all of the complex and daunting transitional challenges we face.

We're not just punching a clock and earning a buck. We're helping people who often are in desperate need of help. When we do that, we're making a difference for the people we help; for their families; for our communities.

That's meaningful. That's a real purpose. That's something that can help sustain us through the difficult transitions.

It has been a pleasure and an honor to serve this great organization for another year, and I look forward to working with all of you in the year to come. Thank you very, very much. ✯

Peter G. Gallanis is President of NOLHGA.

Off the Road Again

NOLHGA's 2021 Annual Meeting provided great discussions on health insurance, the life/annuity market, and LTC—but no Grand Ole Opry

By Sean M. McKenna

NOLHGA's 38th Annual Meeting was held in October 2021, just as scheduled, but that's about the only thing that went according to plan. The plan was to meet in Nashville, Tennessee, to celebrate not just the Annual Meeting, but our first in-person meeting in almost two years. To renew old acquaintances and make new ones with the many new members of the guaranty community.

Didn't happen.

Instead, like so many 2021 meetings, we moved online. And while most of our 160 or so attendees were disappointed (except the ones who don't like country music—to them, you're welcome!), the meeting still delivered where it counted—with outstanding speakers discussing investment strategies and the outlooks for the health, life/annuity, and LTC markets. The only things missing were the cowboy hats.

How Healthy Is Health Insurance?

The meeting's first panel—moderated by Michelle Robleto (Florida Life & Health Insurance Guaranty Association) and featuring Christine Cappiello (Anthem, Inc.) and Payman Pezhman (UnitedHealthcare)—examined the outlook for the health insurance industry. They began with an issue near and dear to the hearts of everyone in the guaranty system—the importance of states adopting the latest version of the NAIC's GA Model Act. Pezhman noted that while 34 states have adopted the Act, "it's critical that we continue the work we have undertaken to pass the Model Act in these remaining states, not only to make sure that the guaranty associations have adequate resources to manage the health accounts in case of insolvencies, but also because

it's the right thing to do." He added that most states that haven't adopted the new Act have a large percentage of HMO business, making it all the more important for states to adopt the new Act, which defines HMOs as member insurers.

The conversation turned to transparency and the No Surprises Act, which provides consumers with protections against surprise medical bills (for example, receiving a bill from an out-of-network doctor after being treated at an in-network hospital). Speaking on transparency, Cappiello said that "healthcare consumers need to have as much information as possible as they spend their money," but she warned that the challenge is providing them with information they can use. "You want to make sure that it's right, and you want to make sure that people understand it," she explained. "We can't just spend a whole lot of money on something that isn't meaningful for people."

Pezhman touched briefly on the transparency issue ("relative to every other industry and every other product out there, we've done a horrible job of being transparent about pricing") and then moved to the No Surprises Act, noting that many states had already passed similar laws. "My biggest concern is understanding and navigating the interplay between federal and state laws," he said, noting that a household could very well have one member covered by a state law and another covered by the federal law. He added that he expects more states to pass surprise billing laws or tweak existing laws, in particular with respect to the arbitration process between insurers and providers that determines the final fee for services.

Cappiello explained that insurers were still waiting for final guidance from the federal government on the Act, which was slated to go into effect at the beginning of 2022. That includes guidance on how the arbitration process would work, but she predicted that the process would eventually be an effective one. "As long as it's laid out properly, I think you'll find that a fair amount of the time, the insurers will prevail, and a fair amount of time the providers will prevail," she said. "If that's what happens, then it was a good arbitration. If everybody walks away a little bit unhappy, it's been a good negotiation."

The meeting's second presentation on the health market came from noted expert James Capretta (American Enterprise Institute), and he had some good news for insurers as far as arbitration is concerned. "The Biden administration has put out a series of three regulations that make it very clear that they're siding more with the insurance industry on how to go about this," he said. "They're headed toward a system where the presumption is a median rate for the same services in a market might be viewed as the prevailing rate, and therefore, the burden of proof will be on the provider to prove why they should be charging more than the median rate." He added that, not surprisingly, the providers aren't fans of this approach.

Capretta seconded the previous panel's take on the need for transparency. "My own perspective is that our health sector is excessively costly and somewhat overbuilt and inefficient," he said. "I'm very much for putting some significant pressure back on disclosing and making visible some of the dysfunction that is associated with pricing in American healthcare." He also predicted that if the Biden Administration was unsuccessful in addressing key healthcare issues in the Build Back Better Bill (and they were), they could still take action on things like drug pricing and changes to the Medicare Advantage program through regulatory and executive actions.

While the Administration had hoped to include a public option for health insurance in Build Back Better, Capretta noted that three states—Colorado, Nevada, and Washington—have passed public option legislation. "Interestingly, what they are passing isn't what you would expect the public option to be," he explained. "They're going to create a more regulated private insurance plan where the state is much more involved in dictating some of the terms of these options, but they're going to be run by private insurance carriers—they're not going to be run by the state government."

Washington state has seen very small enrollment, in part because "there's been major pushback from the hospital industry and from the insurers," Capretta said. The experience of Washington (which has made adjustments to its law to boost participation) highlights the twin challenges of the public option, in Capretta's opinion.

"Healthcare consumers need to have as much information as possible as they spend their money."
— Christine Cappiello

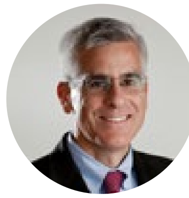
First, how do you get insurers to participate ("the industry is sort of saying, 'Why do we want to sell against ourselves?'")? And second, how do you get providers onboard ("you've got to get the hospitals and physicians to agree to accept less, and that's no easy task")? Despite these challenges, he thinks other states could pursue a public option.

AI, LTC, etc.

The life and annuity outlook panel—moderator William Fisher (Massachusetts Life & Health Insurance Guaranty Association) and panelists Meghan Doscher (Brighthouse Financial) and Robert Huntsman (Prudential Financial)—began their discussion with a look at how AI (artificial intelligence, not the overrated movie by Steven Spielberg) is changing underwriting and other aspects of the industry. The short answer is, a lot.

"Recent surveys show that upwards of 80% of firms in the industry either already have programs in place or plan to have programs in place to automate parts of the underwriting process using machine learning," Huntsman said, adding that Prudential has been using AI in its underwriting for 6 years. For the company's individual life insurance policies, "we're now up to the point where we can instantly decision about 20% of cases, or we can accelerate cases in application 70% of the time." The primary challenge, he said, is the same one traditional underwriting faces: "Are we introducing any unintentional sources of bias?" The ACLI has a group looking into this very issue, and Prudential has invested a considerable amount of time and money into developing algorithms that will detect potential sources of bias.

AI and "big data" have also found a place in sales and marketing. "We've been



"Our health sector is excessively costly and somewhat overbuilt and inefficient. I'm very much for putting some significant pressure back on disclosing and making visible some of the dysfunction that is associated with pricing in American healthcare." — James Capretta

Chairs Highlight Collaboration & Preparedness in Annual Meeting Speeches

Outgoing NOLHGA Chair Bob Corn and Incoming Chair Kermitt Brooks cited collaboration and enhancing preparedness as crucial to the continued success of the guaranty system in their addresses at the 2021 Annual Meeting. Corn praised the system's performance over the past year as "we try—somewhat in fits and starts—to emerge from the ravages of this damnable pandemic." In addition to the work of various insolvency task forces, he pointed to some of the non-insolvency work done by NOLHGA and its member associations.

"We have embarked on a mission to see how we can further the cause of diversity, equity, and inclusion in the guaranty system and with vendors and organizations that work with and serve the system," Corn said, noting that the guaranty system had also placed renewed emphasis on being ready for new insolvencies and on maintaining close relationships with the NAIC and state regulators.

Outgoing NOLHGA Chair Bob Corn

Incoming Chair Kermitt Brooks

In closing, Corn reminded attendees of the vital role collaboration plays in the work done by the guaranty associations. "If we all have the goal and will and courage to do what is fair and in the best interests of the policyholders

"We've been a touch antiquated in our ability to transact in a digital way, using data and technology to really enhance the experience for the end consumer. But I think we are making great strides." — Meghan Doscher

a touch antiquated in our ability to transact in a digital way, using data and technology to really enhance the experience for the end consumer," Doscher said. "But I think we are making great strides." The key, she added, is using the data to target messages to specific audiences to make the value of insurance and annuities as clear as possible. "We're asking people to take their hard-earned money in a world of unknowns and invest it in a promise. Having those digital capabilities and tools accessible to consumers to make it a bit more tangible—so they can feel good about the investment they're making—is huge."

Advances in technology are also helping companies address disparities in how they deal with under-represented communities, though there are limits to what data alone can do. "One of the big challenges is that in the underwriting process, we don't collect data that allows us to actually home in on underserved communities," Huntsman explained. Nevertheless, "we're trying to come up with new products that meet the needs of underserved communities, and at the same time we are scrutinizing every variable that we use in our underwriting process to make sure that there's no adverse impact on any underserved community."

Doscher noted that Brighthouse is "in the process of updating our consumer segmentation," which hasn't been done since 2015, "and we did have a lens on underserved communities, just to make sure we're in touch with their needs." While still early in the process, they've found that people in underrepresented communities are "very open to working with financial professionals. I think a lot of this becomes very overwhelming for all of us—not just underrepresented communities—and it goes back to financial education and really getting the word out as simply as possible so people don't opt out of the conversation."

No outlook would be complete without a discussion of new products, and the panel

impacted by an insolvency," he said, "we have the best chance to end up with a result that is right and just."

Brooks echoed Corn's praise of the work performed by the guaranty system in 2021, noting that the system responded so well to the pandemic because, in the past few years, "we placed enormous importance on preparing for the challenges we saw, and in doing our best to speculate on those challenges that were just over the horizon—the kind you cannot see, but know are coming." In that spirit, he announced that "enhancing the readiness of the guaranty associations is my top priority for the coming year." The centerpiece of this effort will be an insolvency workshop, with a step-by-step breakdown of how guaranty associations deal with a troubled company, that will begin at the April MPC meeting and culminate in July at the Legal Seminar.

Brooks added that this workshop will focus on the collaboration that Corn noted in his speech and "will demonstrate that what some view as a weakness of our system—having strong and independent guaranty associations in every state—is in truth one of our greatest strengths." The guaranty associations, he explained, have a history of innovation, and of sharing their innovations with each other. "The guaranty system is a self-improving system, and to achieve our goal of enhanced preparedness, we need to harness that drive to improve and feed it what it needs."

One of its primary needs is a return to in-person meetings once those meetings can be conducted safely. The guaranty system's outstanding response to the pandemic was founded on the camaraderie and relationships formed over the years, primarily at meetings. "We have been drawing on a reservoir of shared experiences, and we need to refill that reservoir so that we stand ready for the next challenge," Brooks said. "The only way to do that is by sitting at tables rather than staring at screens." Building that cohesion—and in doing so, enhancing the readiness of the system—is crucial: "The guaranty system is too important to the industry, and to the consumers who rely on us, to be caught flatfooted."

did not disappoint in this area. "You're seeing a shift away from the interest rate–sensitive products," Doscher said. "A huge emerging category is the registered index–linked annuity, or RILA, space. It's a protected growth strategy where you select a few indices—you might give up a little of the upside, but you have more protection on the downside, and consumers are gravitating to that space." She also mentioned hybrid LTC products and the move toward embedding annuities in 401(k) plans as growth markets.

"Carriers, in my experience, are much better now at identifying where they're really going to be able to gain significant benefits from attacking fraud."
— Nolan Tully

Huntsman added that the new products are meeting the same needs consumers have always had. "One of the great unknowns for our clients is mortality risk," he said. "How long are they going to live, and how do they make sure they don't outlive their assets? That is a huge need in the market, and that's where we're seeing most of the growth."

Concerns about outliving your assets dovetailed nicely with the next panel, *Emerging Issues in LTC*, which included moderator Michael Heard (NOLHGA) and panelists Jodi Anatole (Endeavor

Money Talk

While most of the 2021 Annual Meeting program looked at the outlook for various segments of the insurance industry, one panel—*Post-Pandemic Investment Strategies*, moderated by Lynda Loomis (Lynda G. Loomis Consulting and GABC) and featuring Jeffrey Whitehead (FBL Financial Group) and Chris Wittemann (LGIM America)—analyzed how insurance companies are dealing with the pandemic and the "lower for longer" investment environment.

Whitehead spelled out the challenge for insurance companies. "Yields are incredibly low," he said. "But we have money coming in every day, so it's incumbent on us to put that money to work." When you're looking for yield, he added, you can extend the duration of your investments (which works well for insurance companies), take greater risks, or look for new places to put your money. The insurance sector is doing all three, to varying degrees.

Wittemann pointed out that no matter where companies put their money, they have to tailor their investments so that their assets mirror their liabilities. "The good news is that insurance companies are well aware of the liabilities that underwrite their policies," he said. "If you have the right investments—high quality, diversified, and with the right kind of asset liability management—the assets and liabilities are going to move in tandem."

Where are companies investing these days? Whitehead mentioned collateralized loan obligations (CLOs) and investment-grade emerging market debt, which he believes "has been underutilized by the insurance industry in the United States." He and Wittemann cautioned that companies have to be careful not to put all their eggs in one or two baskets—diversification is key. "When a crisis happens, it tends to hit a particular sector or a particular part of the economy," Wittemann explained. "Insurance companies do a great job at making sure they don't have too many investments in a particular sector."

Both speakers cited some headwinds in the face of a roaring economy—inflation, the tight labor market, and the Fed easing back on purchasing while increasing interest rates—but they also seemed confident that the economy would weather the storm. However, Wittemann sounded a note of caution going forward. "Our perspective on the markets is, be greedy when others are fearful and be fearful when others are greedy," he said. "Having a little bit of a defensive mindset in this environment makes sense."

"One of the great unknowns for our clients is mortality risk. How long are they going to live, and how do they make sure they don't outlive their assets? That is a huge need in the market, and that's where we're seeing most of the growth."
—Robert Huntsman

Consulting and LTC Re), Ralph Donato (LTCG), Anne Ingoldsby (TriPlus Services), Nolan Tully (Faegre Drinker Biddle & Reath), and Erin Vaughn (TriPlus Services). The panel began with a look at the increasing popularity of wellness programs, which are designed to help policyholders maintain their health and remain in their homes, rather than moving to assisted living facilities.

"We're very early in the journey for wellness and what we'll call aging in place," Anatole said, adding that LTC Re has recently implemented a wellness program for former Penn Treaty/ANIC policyholders. Most programs are aimed at "pre-claimants"—people who are not yet eligible to access their benefits—and feature elements like fall prevention, cognitive exercises, and even meal delivery. The goal is to help policyholders preserve their benefits by delaying the time when they go on claim.

"There's definitely an appetite for these programs," Ingoldsby said, but some policyholders are concerned that the programs are somehow tied to their policy. "In products we're working on with LTC Re, there won't be any impact to the policy terms, and I think that really works out well." Tully stressed that these programs need to be voluntary to allay any policyholder fears that these efforts are merely focused on saving the company money. "Every carrier that I'm aware of has run an opt-in program right now, and I think that really pushes back against the idea that this is utilization management or aimed solely at saving claim dollars."

It was left to Donato, the panel's only actuary, to break down the dollars and cents value of these programs. "We don't have more than a few years of experience for some of the early pilot programs, but they absolutely show savings," he said. The difficulty comes in quantifying the savings and comparing them with the cost of the program. If a program helps prevent a policyholder from falling and going on claim, how much have you saved? "The question is, how much would that claim have evolved?" In true actuarial fashion, Donato concluded that the jury isn't in yet. "I think as we evolve in our delivery method and get a higher participation rate, we will be able to more solidly support the financial impact of these programs going forward."

Boosting participation will hinge on informing policyholders about the programs, which naturally led the panel to its next topic—communications. "We are definitely seeing an increase in customer expectations in the long-term care world," Vaughn said. "They want simpler, faster service." This is partially due to the pandemic, which produced added call volume (and call length) as well as spotty mail service, and partially due to the fact other industries have really ramped up their speed and efficiency.

But while simpler and faster have more or less become codewords for "more technology," that's not always the case with LTC policyholders. "We really have pushed the use of portals and other electronic means of communication," Vaughn said, but it's been a tough sell. "Trying to get this population to sign up for the portal, where they can actually send us information and communicate with us online, has been a bit of a challenge," Ingoldsby said. "There are some folks who have embraced it, but there are a lot who haven't."

A number of panelists mentioned that going high-tech isn't as easy as it sounds. Tully pointed out that most of these policies were written long before online portals and email were even contemplated—bringing them up to date poses some regulatory challenges. "The ACLI has a very significant 'temporary to permanent' program where they're trying to influence various regulatory bodies and hoping to get what they would say are common sense regulations aimed at permitting electronic communication with policyholders," he said. In addition, the technology systems of the carriers can sometimes be as outdated as the regulations. "As insurers, you have to keep your systems updated," Anatole said. "If fax is the only method you can accept because that's what goes into your system and works well, that does not help the customer."

Even that goal—helping the consumer—can be more complicated than it sounds. "You have to meet them where they are, and they're all over the place," Ingoldsby said. "We're dealing with everybody—people in their nineties down to sons and daughters and grandchildren."

["Off the Road Again" continues on page 16]

["The View in '22" continues from page 1]

Regulation regarding the continuation of essential services from affiliates in receivership. The proposals were developed as part of the Receivership & Insolvency Task Force (RITF) charges related to the NAIC Macroprudential Initiative. The amendments include a proposal from NOLHGA and the NCIGF regarding receivership authority and limited jurisdiction in order to address those essential services.

The NAIC did *not* make these changes an accreditation requirement; rather, it will recommend, but not require, that states adopt these revisions. The next step on those changes is state-by-state adoption. Without the hammer of accreditation, stakeholders in each state may need to explain why they view those changes as important.

Restructuring Mechanisms: NOLHGA continues to contribute to deliberations around Insurance Business Transfer (IBT) and Corporate Division (CD) regulatory policy. The National Council of Insurance Legislators (NCOIL) has adopted models that would establish IBT and CD state processes. NOLHGA has contributed to those discussions and successfully made technical changes that would help preserve guaranty coverage.

The NAIC has now exposed and accepted comment on a long-expected white paper on restructuring mechanisms. The draft white paper underscores the importance of continued guaranty coverage but leaves several technical questions unanswered. The white paper contemplates a referral to the RITF to dive into those questions. NOLHGA, along with the NCIGF, has supported pursuing the referral as soon as possible, rather than waiting for the white paper to be adopted.

Receiver's Handbook: In 2021, the RITF established a Receiver's Handbook Subgroup to take on a comprehensive review and update to the *Receiver's Handbook for Insurance Company Insolvencies*. The subgroup established drafting groups made up of regulators and interested parties to propose

The NAIC has now exposed and accepted comment on a long-expected white paper on restructuring mechanisms.

Handbook revisions. NOLHGA and the NCIGF are participating and substantially contributing to the drafting groups.

While the work is deep in the weeds of resolution, there have been discussions that touch on core NOLHGA goals, like guaranty associations contributing to receivership planning to ensure a smooth transition to liquidation (where necessary). The work plan extends into 2022 and will continue to touch on important topics.

The Federal Landscape

Congress: The Biden administration and the 117th Congress have only been in place for a year, but what a grueling year it's been. Attention has now largely shifted away from financial services and insurance policy toward housing and social policy. That level of focus contrasts with the previous Democratic administration, which oversaw Dodd-Frank implementation, systemic designations, and a Federal Insurance Office (FIO) activating its new role. Those winds can quickly shift, of course, and NOLHGA's ongoing engagement with Congress and staff remains an important part of education efforts.

Congressional outreach now and in the near-term centers on members and staff new to the Senate Banking Committee, the House Financial Services Committee, and its subcommittee on Housing and Insurance. Leadership and committee staff of both parties are important sources of information when attention does turn to insurance and insurance resolution—they dictate the agenda and hold the pen. Ensuring there is staff on both sides of the aisle that know NOLHGA and see it as a credible resource has proved essential in the past. Fortunately, NOLHGA and the NCIGF have been able to continue outreach efforts, even during the pandemic—it turns out that Zoom calls with Capitol Hill staff work almost as well as face-to-face meetings.

Holidays and attention to the "Build Back Better" reconciliation effort slowed

The FSB is once again turning its attention to insurance resolution matters. Areas of FSB focus often result in IAIS workstreams, which in turn can drive U.S. regulation.

down federal education outreach late in 2021; however, we have already restarted the effort and completed meetings with staff from the House Financial Services Subcommittee Chairman and Ranking Member (top Republican) offices. We learned in those meetings that the House Subcommittee is interested in scheduling hearings on insurance-related topics later this year, potentially around auto and cyber-insurance; however, nothing has been finalized to this point.

The House's passage of another Continuing Resolution funds the federal government through March 11 and should avert the threat of a federal shutdown. The short-term deal is expected to give Congress enough time to complete its work on an omnibus FY 2022 spending deal. That bill is also expected to carry an extension of the National Flood Insurance Program through the end of September.

More broadly, it will be a difficult year to legislate given the upcoming elections, including the ongoing redistricting that is occurring at the state level. We continue to monitor Member retirements, as they will also shape the federal legislature moving forward. To date, over 30 House Members and seven Senators will not seek re-election (including now–Vice President Harris.) We expect this number to grow in the coming months. The lack of legislative activity will likely push the Administration to continue implementing its agenda through rulemakings and Executive Orders.

Treasury & FIO: The Biden administration's first FIO annual report had minimal references to the guaranty system and put its focus on other administration priorities. Obama-era reports had taken sharper looks at resolution and the guaranty system, and we remain watchful during 2022, while keeping channels of communication open.

At the Department of the Treasury (where FIO resides), the organization chart of political appointees and decision-makers is starting to fill in. At the top of those appointees is Undersecretary for Domestic Finance Nellie Liang, to whom Graham Steele, Assistant Secretary for Financial Institutions, reports. Felton Booker is in the Deputy Assistant Secretary role that involves closer to day-to-day work with FIO. These new faces mean that 2022 brings decisions on how best to stay connected to Executive Branch activity and establish and maintain credibility where it matters.

Observers of federal activity are looking out for additional activity around systemic regulation from the Financial Stability Oversight Council (FSOC). With no insurers designated as systemically important, FSOC's work would focus on the "activities-based approach," which, like it sounds, focuses on activities—rather than specific entities—that may carry systemic risk.

Climate will again be a focus, as well as attention to non-bank financial activity and changing capital structures in financial services. Where those initiatives pull in state-based insurance regulation, inquiries on resolution and the guaranty system may call for NOLHGA as a resource. Our efforts with policymakers are meant to maintain and preserve credibility and relationships so that we can fulfill that "resource role" effectively.

International Developments

While the international standard setters were primarily focused on international capital standards, systemic risk in the insurance sector, and climate change during most of 2021, some attention turned back to resolution matters in the fourth quarter.

We'll begin our trip abroad with the International Association of Insurance Supervisors (IAIS), which consists of insurance supervisors and regulators from more than 200 jurisdictions. As a reminder, the IAIS is the international standard-setting body responsible for developing and assisting in the implementation of principles, standards, and other supporting material for the supervision of the insurance sector.

Observers of federal activity are looking out for additional activity around systemic regulation from the FSOC.

Directly related to NOLHGA's responsibilities, the IAIS's Resolution Working Group (ReWG) will be developing an issues paper on global practices around policyholder protection schemes (PPSs)—one of the international terms for a guaranty association—and their role in insurer resolution. The ReWG has a draft workplan for the paper, and although we don't expect to see a formal public consultation until early 2023, NOLHGA has already been asked to respond to a survey that will provide input for the paper.

Our next stop is with the Financial Stability Board (FSB), an international body primarily made up of senior policy makers from ministries of finance, central banks, and supervisory and regulatory authorities for the G20 countries. The FSB promotes international financial stability by coordinating its members' activities as they work toward developing strong regulatory, supervisory, and other financial sector policies.

The FSB published three papers related to resolution in December 2021 and January 2022:

- The *2021 Resolution Report* observes mixed progress among jurisdictions' implementation of post-financial crisis reforms for resolution of systemically significant insurers.
- The *Internal Interconnectedness in Resolution Planning for Insurers* paper highlights current practices across the globe whereby insurance supervisors obtain information mapping and assessing financial and operational interconnectedness within insurance groups for purposes of resolution planning.
- The *Resolution Funding for Insurers* paper describes internal sources of resolution funding within insurance groups, liquidity facilities for distressed insurers, PPSs, and stand-alone resolution funds. It does not set forth new standards or provide guidance on how resolutions should be funded. NOLHGA has already submitted comments on this paper.

The recent FSB papers provide an informative snapshot of actions various countries are taking with respect to resolution matters. The greater importance, however, is the fact that the FSB is once again turning its attention to insurance resolution matters. Areas of FSB focus often result in IAIS workstreams, which in turn can drive U.S. regulation. Pairing that with the PPS paper already underway at the IAIS, we will be keeping a close eye on the insurance standard setters and what might be on the horizon with respect to resolution. International standards have found their way into NAIC and state legislatures—it's important to monitor and influence such standards in their germinal stage.

As far as NAIC leadership on international issues, 2021 saw the retirement from the Texas Department of Insurance of RITF Chair James Kennedy, who also helped represent the NAIC on the IAIS ReWG. Bob Wake of the Maine Bureau of Insurance also serves on the ReWG, so there will be continuity for the team while other roles evolve. NOLHGA's engagement with leaders in these roles will continue in 2022.

A Look Ahead

If all politics is local, then for the insurance regulatory and resolution community, the first outcome we watched was the annual leadership and committee assignments at the NAIC. Following the election of its 2022 officers in December 2021, the NAIC started to fill in the key leadership and committee roles. For the guaranty system, leadership on financial, regulatory, and international work holds special interest, particularly the leadership of the RITF and its working groups. For all these key roles, NOLHGA continues to coordinate with regulators on issues that impact the guaranty system and its ability to protect consumers.

NAIC appointments to date with the most direct impact include:

- Louisiana Commissioner Jim Donelon has been appointed Chair of the RITF, while Texas Commissioner Cassie Brown will be Vice Chair.

- Working groups and subgroups under the RITF will be led by veteran voices with whom we often work, including Kevin Baldwin (Illinois), Toma Wilkerson (Florida), Donna Wilson (Oklahoma), and Laura Lyon Slaymaker (Pennsylvania).
- Maine Superintendent Eric Cioppa will chair the Financial Stability Task Force, to whom the Macroprudential Working Group (chaired by Nebraska's Justin Schrader) reports.
- Virginia Commissioner Scott White continues to chair the Financial Condition (E) Committee, which oversees the work of all of the above groups. Commissioner White and Vice Chair Beth Dwyer (Rhode Island) are technical, experienced regulators who know the guaranty system's role.
- Massachusetts Commissioner Gary Anderson will continue to chair the International Insurance Relations (G) Committee, and Commissioner Eric Dunning (Nebraska) will serve as Vice Chair. Commissioner Anderson's continuity and Nebraska's leading voice will represent the United States well during a year more focused on guaranty system issues at the international level.

The IAIS's Resolution Working Group will be developing an issues paper on global practices around policyholder protections schemes—one of the international terms for a guaranty association—and their role in insurer resolution.

The 2022 state electoral landscape features four insurance commissioner races, all with incumbents running (California's Ricardo Lara, Georgia's John King, Kansas's Vicki Schmidt, and Oklahoma's Glen Mulready). Two so far are unopposed, and, while November is a way's away, the outlooks for these incumbents seem stable.

For governors, this is the "big year" in the four-year gubernatorial cycle, with 36 races in November. A sampling of ones to watch: Democratic pick-ups four years ago—including Kansas, Maine, Michigan, New Mexico, and Wisconsin—translate to battleground races this year. Democrats are eyeing Maryland and Massachusetts—open seats in "Blue" states with strong Republican incumbents off the ballot in 2022, and among the six Republican-led states that Biden won in 2020. And, while the insurance commissioner is separately elected, Georgia looks to retain its recently established place as a top political battleground with David Perdue's primary challenge to Gov. Brian Kemp, followed by the Republican nominee facing Stacey Abrams's second bid for Governor.

Prognosticators cite a number of factors pointing to the prospect of Republican control of Congress in 2022. The starting point is the traditional midterm drubbing of the incumbent party in the White House. Beyond that, some see the Biden Administration's popularity declining, accompanied by an incomplete record on which to run, as further headwinds for congressional Democrats. From a financial regulatory perspective, we have not seen much activism out of the Democratic House, Senate, and Biden Administration. A Republican Congress with a deregulatory philosophy would only solidify that direction in Congress (but could put added pressure for action on the Administration).

Once again, interconnected activity across jurisdictions, now and throughout the year, will impact the work of the guaranty system and insurance regulation. NOLHGA's ongoing focus on those developments, and its availability as a resource to all policymakers while they chart their course, continues to well serve the guaranty system and its stakeholders. ✯

Pat Hughes and Sara K. Manske are Partners with Faegre Drinker Biddle & Reath.

["Off the Road Again" continues from page 11]

They are also dealing with some people who aren't afraid to try to game the system if they think they can make a few bucks. Fraud prevention is a big issue for LTC insurers, and here again, technology is leaping into the fray. "There's something called electronic visit verification, where the caregiver has to check in and they literally have a GPS," Anatole said. "It's amazing to find out that the caregiver really isn't at the policyholder's home, even though they said they were." Ingoldsby added that TriPlus has a fraud analytics tool that sorts through data to identify factors that most likely lead to fraud, waste, and abuse.

The question is, what do you do when you find fraud? The answer isn't as clear as you might think. "Investigating fraud, waste, and abuse can be a little bit expensive, and sometimes you don't want to irritate the customer or cause a Department of Insurance complaint," Ingoldsby explained. Tully noted that an insurer that detects fraud has to consider whether the policyholder can pay the judgment from a trial. Also, even if fraud is detected, the policyholder can usually maintain the policy. "I think for a long time, it seemed like an expensive proposition with potentially limited upside," he said. "But carriers, in my experience, are much better now at identifying where they're really going to be able to gain significant benefits from attacking fraud." He also pointed to a recent case in California where the court allowed the company to cancel the policy due to fraud.

Not surprisingly, the actuary had the last word on this cost-benefit analysis. "It's important to be able to quickly measure the impact of these programs on the financial side," Donato said, adding that any changes should be easy to measure in real time. "But also, you have to consider whether those changes are going to be sustained. There's a couple cases where companies changed protocol, saw some value and improvement in their claims experience, but then backed off the practice because they felt like it was a liability risk from a lawsuit perspective." ✪

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

NOLHGA Calendar of Events

2022

April 4–8	NAIC Spring National Meeting Kansas City, Missouri
April 25–26	**MPC Meeting/Insolvency Fundamentals Workshop Indianapolis, Indiana**
July 27	**MPC Meeting Washington, D.C.**
July 28–29	**NOLHGA's Insolvency Workshop Washington, D.C.**
August 9–13	NAIC Summer National Meeting Portland, Oregon

NOLHGA Journal
Vol. XXIX, No. 1 | March 2022

The *NOLHGA Journal* is a publication of the National Organization of Life and Health Insurance Guaranty Associations dedicated to examining issues affecting the life and health insurance guaranty system.

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