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# Locke Lord QuickStudy: OK Court Gives Enstar's IBT The OK

Locke Lord LLP

## WRITTEN BY

[John N. Emmanuel](#) | [Robert A. Romano](#) | [Jonathan Bank](#)

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On October 15, 2020, the Oklahoma County District Court for the State of Oklahoma, issued its Judgement and Order of Approval and Implementation of the Insurance Business Transfer Plan ("IBT Plan") ("Order") filed by Providence Washington Insurance Company ("PWIC"), applicant and the transferring insurer and Yosemite Insurance Company, the assuming insurer ("Yosemite"). This transfer between PWIC and Yosemite is the first insurance business transfer approved under Oklahoma's Insurance Business Transfer Act.<sup>1</sup> PWIC and Yosemite are affiliates; both are members of Enstar Group Limited.

The Court's approval comes almost 11 months to the day that PWIC filed its IBT Plan (which was filed on November 13, 2019) with the Oklahoma Insurance Department.<sup>2</sup>

The Court took its action following the evaluation of the IBT Plan by the Oklahoma Insurance Commissioner, who approved the IBT Plan on November 26, 2019, and by an Independent Expert.<sup>3</sup> There were no objections filed with the Court and no third party requested to be heard at the Court's hearing.

The Court's Order noted that the National Conference of Insurance Guaranty Funds ("NCIGF") filed a comment with the court providing, in essence, that an IBT should not reduce, eliminate or in any way impact guaranty fund coverage nor should an IBT create, expand or in any way impact guaranty fund coverage.<sup>4</sup> The Order also stated that no individual state guaranty association or regulator filed any objection or claim asserting the IBT Plan would reduce, eliminate or in any way impact guaranty association coverage. The issue of whether guaranty fund protection continues following the transfer was a topic of discussion at the national meetings of the National Association of Insurance Commissioners Restructuring Working Group.

The Court concluded that the implementation of the IBT Plan will not materially adversely affect the interests of policyholders or claimants that are part of the Subject Business (policies which are the subject of the IBT Plan), nor or any other person or entity and ordered that the IBT plan be approved and implemented as of the effective date of the order, October 15, 2020.

As a result of the approval, all of the policies, with respect to both policyholders or reinsureds, subject to the IBT Plan, were order transferred and, in effect, novated pursuant to Oklahoma's IBT law.<sup>5</sup> Following the Order, all rights, obligations or liabilities with respect to the PWIC are extinguished, PWIC is released from any and all obligation or liabilities under the policies, and all property and liabilities, including ceded reinsurance of the transferred policies and contracts, were ordered transferred to Yosemite. As an aside, the transfer did not attach

to policies or reinsurance agreements regulated by Massachusetts or New York, as Yosemite was not licensed there. The transfer for those policies would occur upon the date Yosemite obtains its licenses in those jurisdictions.

With the success of the first now approved and effective IBT, it is likely that more will follow. As we noted in previous client alerts, insurers continue to look for new solutions to provide economic and legal finality to transfers of legacy and in some cases ongoing portions of current insurance risks as a means to improve the efficient allocation of capital and management resources to both legacy and on-going insurance operations. To date, Rhode Island, Oklahoma, Arizona, Connecticut, Illinois, Iowa, Michigan, Pennsylvania and Vermont have adopted IBT or corporate division statutes with varying requirements and procedures to segregate insurers' books of business. Given the success of these transfer mechanisms in the UK and Europe, it was inevitable that the US would soon follow suit, and it is not surprising that the Sooners of OK were first!

Locke Lord will continue to monitor and report on any new developments with respect to the use of IBTs in the U.S.

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1. Okla. Stat. Tit. 36, Section 1681, et al.
2. Okla. Stat. Tit. 36, Section 1686(A).
3. Id.
4. Letter from Roger H. Schmelzer, President and CEO, NCIGF, to Judge Stallings, 2 (March 12, 2020) (Exhibit 1 to the NCIGF Comments).
5. Okla. Stat. Tit. 36, Section 1681, et al.

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