BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF IOWA

In the matter of the Application of Transamerica Life Insurance Company (TLIC) for Approval of Its Plan of Division	(Iowa Code Chapter 521I)

BEFORE THE INSURANCE COMMISSIONER AND THE ATTORNEY GENERAL OF THE STATE OF IOWA

In the matter of the Application of Transamerica Life Insurance Company (TLIC) for Approval of the Merger of Newly Formed Company with SCOR Global Life USA Reinsurance Company	(Iowa Code Chapter 521)

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OF INTERVENOR JOHN HANCOCK

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John Hancock Life Insurance Company (U.S.A.) and its affiliate The Manufacturers Life Insurance Company (Bermuda Branch) (collectively, "John Hancock"), intervenors in the above-captioned proceedings, respectfully submit this Memorandum of Law in Support of their Motion for Summary Judgment (the "Motion").

INTRODUCTION

This Motion presents a threshold legal question that Transamerica Life Insurance Company ("TLIC") and SCOR Global Life USA Reinsurance Company ("SGLUSA") (collectively, the "Plan Proponents") also ask the Commissioner to decide prior to the public hearing in this matter: whether Iowa Code Chapter 521I (the "Iowa Division Law") authorizes TLIC's attempt to accomplish a statutory novation of ***assumed*** reinsurance treaties issued by TLIC to cedents like John Hancock. As explained below, the answer to this question is an unequivocal "no."

The Plan Proponents' approach to the legislative choice made by Iowa depends entirely on treating a cedent under a negotiated reinsurance treaty as if it were a retail policyholder. That decision by TLIC and SGLUSA to swap out one term used by the statute for an entirely different term not used by the statute sits at the foundation of the entire Proposed Plan. Once John Hancock is relabeled as a "policyholder," the Plan Proponents argue that they may divide assumed reinsurance obligations into a new company, merge that company into SGLUSA, and leave SGLUSA as John Hancock's substituted counterparty without John Hancock's contractually-required consent. But the Iowa Division Law is not a tool for regulating the reinsurance market. It never references the transfer of assumed reinsurance obligations and does not refer to "cedents," "reinsureds," "assumed reinsurance," or "statutory novation" even once. And yet, TLIC's proposed Plan of Division (the "Proposed Plan") proceeds with this legislative fiction.

In its Petition for Intervention ("Petition"), John Hancock laid bare the statutory problem with the Proposed Plan. Now that the Plan Proponents are being forced to confront the problem

with their framing, they have shifted gears. In their Responses to the Petition (collectively, the "Responses"), they now attempt to instead recast John Hancock as a "creditor" under the statutory scheme. This does nothing to save their Proposed Plan. Their belated attempt at labeling John Hancock as a "creditor," in addition to being an implicit acknowledgement of the flaws in the "cedent as policyholder" posture, is equally unsupported by the statutory text, and mischaracterizes the economics of life reinsurance where neither a cedent nor a reinsurer is uniformly a "creditor" or "debtor" in any meaningful statutory sense.

The core of the legal disagreement is the Plan Proponents' attempt to have the Commissioner convert a Corporate Division statute into an Insurance Business Transfer ("IBT") statute in the absence of legislative authority for such a transformation. As discussed below, state legislatures across the country, along with the insurance industry, have for several years considered and established various statutory restructuring frameworks. Corporate Division and IBT statutes are two that have been enacted. It is, however, indisputable that those two options hold distinct differences, as reflected not only in statutory language, but also in the history of their development. Corporate Division statutes apply only to the division of policyholder liabilities; IBT statutes can apply to assumed reinsurance business (though, even there, individual state statutes are often further limited by line of business and should involve discussions with contractual counterparties).[1]

Here, the Iowa legislature has chosen only one of the two distinct statutory frameworks: the Iowa Division Law, a Corporate Division statute. Despite the fact that the legislature has not passed an IBT statute, the Plan Proponents seek Commissioner approval for their attempt at

[1] For example, while Illinois has adopted an IBT statute, it only applies to property and casualty business. *See* Stat. 5/1705(c)(iv) ("Illinois IBT law").

counterparty substitution for John Hancock as if it has, all without authority in the text of Iowa's law.

The Proposed Plan itself exposes the statutory mismatch at the heart of this proceeding. It is undisputed that TLIC proposes to (1) divide a defined block of its assumed reinsurance business, one where TLIC acts as reinsurer to cedents like John Hancock, into a newly formed entity, TLIC-A, and (2) then simultaneously merge TLIC-A into SGLUSA, an unaffiliated reinsurer, with SGLUSA as the surviving entity. The Plan Proponents, as a practical matter, seek a novation of assumed reinsurance obligations from one party acting as a reinsurer (TLIC) to another reinsurer (SGLUSA) without seeking the contractually required consent of TLIC's reinsurance counterparties (cedents, such as John Hancock). The Plan Proponents attempt this maneuver under a law that does not allow for such novation and only allows for retail insurance policy transfers by operation of law.

This backdoor attempt to impermissibly substitute John Hancock's counterparty without consent fails as a matter of law. The Iowa Division Law was not enacted for the purpose of allowing sophisticated reinsurance market participants, whose reinsurance treaties are fundamentally different from retail insurance policies in size, form, substance and how they are regulated, from circumventing what they contracted for. The manner in which an insurer contracts with its policyholder cannot be equated to the manner in which a reinsurer contracts with its cedent. The latter relationship operates on a vastly different sophisticated level of economic complexities, including, but not limited to, how they strike the balance of how carefully selected reinsurance counterparties can change.

Indeed, there is nothing in the text of the Iowa Division Law that suggests in any way that the Insurance Division should choose for cedents who will serve as their counterparty to

reinsurance treaties, or decide how and when those counterparties can change. Rather, the law is premised on a domestic insurer's division of insurance liabilities, *i.e.*, obligations an insurer has to its own retail policyholders. It is for that reason that the Iowa Division Law is rooted in the language of "policyholders." The term "policy" or "policyholder" is used twenty-two (22) times in the statute; in contrast, the words "cedent" or "reinsured" are not used once. Indeed, the only use of "reinsurance" anywhere in the statute is in relation to *ceded* reinsurance, *e.g.*, where an insurer who seeks to divide policies is required to provide notice to reinsurers who have reinsured those policy obligations.[2]

The Plan Proponents nevertheless insist they can use the Iowa Division Law in a way it was not written. In seeking to accomplish this legislative contortion, they engage in linguistic maneuvering, one that is announced in the Proposed Plan itself:

> WHEREAS, cedants of TLIC *will be treated as* occupying the position of policyholders, and retrocessionaires of TLIC *will be treated as* occupying the position of reinsurers, within the meaning of the Iowa Division Law.

Ex. 1 (Proposed Plan) at PDF 12 of 154 (emphases added).[3] Statutory interpretation does not work this way. The Plan Proponents cannot claim to rely on the Iowa Division Law but then announce they will "treat" one word used by the legislature as having meaning ascribed to a completely

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[2] This is why the Iowa Division Law's requirement that a plan of division describe the manner in which the dividing insurer proposes to allocate "all reinsurance contracts" is consistent with this reading. *See* Iowa Code § 521I.2(5). Reinsurance is a means by which an insurer protects itself against liabilities it has insured. Accordingly, where a dividing insurer allocates liabilities and assets among resulting insurers, so that reinsurance coverage continues to correspond to the liabilities being allocated, the Iowa Division Law sensibly requires any plan of division to also explain how existing reinsurance coverage will be allocated. That requirement does not itself authorize the transfer of liabilities to a new company. It addresses the allocation of reinsurance contracts associated with liabilities otherwise allocated under any plan. It in no way expands the categories of liabilities that may be transferred or create an independent mechanism for imposing liabilities on a completely new insurer.

[3] All references to Exhibits (Ex. __) indicate references to the exhibits filed herewith in the Affidavit of Suman Chakraborty ("Chakraborty Aff.").

different word that the legislature did not use. That is not applying the statute; that is rewriting it. Taking this approach does not advance the plain meaning of the Iowa Division Law; rather, this approach collapses that intent and applies the law in a manner inconsistent with the statute, as a matter of law.

John Hancock respectfully submits that both the industry and the legislature understand that the policyholder-insurer relationship is not akin to the cedent-reinsurer one. If the Iowa legislature wanted to include the transfer of ***assumed*** reinsurance contracts within the ambit of its Corporate Division statute, it could have used those words, just as IBT statutes in other states and model acts do. It could have also elected to simply pass an IBT, which it has not done. That legislative choice must be respected, and the Plan Proponents' strained interpretation lacks merit. The cedent-reinsurer relationship is rooted in a well-developed market between sophisticated parties and if the legislature intended to regulate that market and the structure of the reinsurance relationship, it could have just said so. That legislative choice cannot be overridden in these proceedings.

John Hancock believes that the Proposed Plan is an attempt to avoid John Hancock's negotiated anti-assignment and consent rights. But the Commissioner need not resolve that question when addressing the threshold legal question raised in this Motion: is TLIC's attempt, in its role as a reinsurer, to transfer ***assumed*** reinsurance contracts (as opposed to retail insurance policies) authorized by the words and intent of the legislature, as set forth in the Iowa Division Law. The answer is no, and summary judgment should therefore be entered on behalf of John Hancock and against the Plan Proponents.

BACKGROUND

John Hancock submits with this Memorandum of Law a Statement of Material Facts ("SOMF"), which sets forth the undisputed facts that apply to this Motion. The facts regarding

John Hancock's relationship with TLIC, and the nature of the contracts it entered into with TLIC, are not in dispute. The issue for the Commissioner is whether, as a matter of law given the words of the Iowa Division Law, a reinsurance contract between a cedent (John Hancock) and a reinsurer (TLIC) can be substituted for statutory purposes with a contract between a policyholder and an insurance company.

Because the statutory question turns on the terms selected by the legislature, we begin with background that is basic to the Commissioner, but that is far from basic to the public, and to most lawyers and judges. Accordingly, we start with a few foundational principles, and a brief summary of the history of the parties' dealings, that together make clear why the Iowa Division Law does not apply to assumed reinsurance. In short, there would have been no reason for the legislature to extend the law to the cedent-reinsurer relationship, and every reason not to.

I. THE REGULATORY AND COMMERCIAL DISTINCTION BETWEEN INSURANCE AND REINSURANCE

A. Insurance Is a Promise Sold to the Public, So the Law Protects the Public by Statute and Regulation.

Insurance, in its ordinary sense, is a promise sold to the public. A family purchases a life insurance policy to protect against the loss from death of a breadwinner. The policy is a standardized contract that has undergone regulatory review, and the expectation is that the two parties—insurer and insured—are inherently in an uneven bargaining position. The family selects coverage from one of the established offerings by various direct carriers (each of which is regulated by the Commissioner and the Iowa Insurance Division), pays premiums for years or decades, and trusts that the company will be there—solvent and willing—when the insured event finally occurs.

That standardization is by design, and it is what makes the business work. A life insurer makes the same promise, on the same terms, to hundreds of thousands of households at once. Indeed, anti-rebating laws prohibit insurance carriers from engaging in individual negotiations

with applicants. And so the law supplies those protections, in abundance: policy forms must be filed and approved; market conduct is examined; guaranty associations—industry-funded safety nets—step in to pay claims if an insurer fails; and if an insurer must be liquidated, policyholders go to the front of the line of those waiting to be paid. That is the nature of insurance at the consumer level.

Iowa is no different: the legislature has charged the Commissioner with "provid[ing] assistance to the public and to consumers of insurance products and services in this state." Iowa Code § 505.8(6). The whole body of consumer insurance regulation reflects a deliberate allocation of roles: in the retail consumer market, protection comes from regulation, not from individual negotiation. Policyholders rely on that framework—reasonably, and by design.

B. Reinsurance Is a Promise Negotiated Between Sophisticated Entities, So the Parties Protect Themselves by Contract.

Reinsurance is a different business conducted between different parties on entirely different terms. Reinsurance is a risk-sharing mechanism between equally sophisticated parties where the direct insurance company that issues policies to consumers (the "cedent") transfers, or "cedes," a portion of the risk from its own policies to another company that has no privity of contract with the consumers (the "reinsurer"), in exchange for a negotiated share of the premium paid by the consumer. The contract that accomplishes this transfer is known in the industry as a reinsurance "treaty," a term that itself signals that these agreements are not standardized policies issued to the public; but, rather, are negotiated compacts between institutions. In the life insurance space, a reinsurer usually does not reinsure a single policy. Rather, it agrees to reinsure a block of business that can include thousands of policies issued to thousands of consumers. A block of business can be comprised of policies issued in numerous jurisdictions spanning many years and includes different types of insurance policies developed by carriers. This is part of the fundamental

difference between an insurance policy and a reinsurance treaty: a breadwinner who purchases a single life insurance policy from an insurer is protecting their family from the risk of financial loss stemming from their death; an insurer purchasing reinsurance coverage is protecting its financial exposure to a much broader set of risks. Depending on the type of reinsurance treaties entered into, that set of risks includes not only the death of its insureds, but also other factors that impact profits and losses, such as interest rate risk and distribution risk.

The retail policyholder is a stranger to the reinsurance arrangement. The policyholder's contract can only be with the issuing company; the reinsurance treaty sits behind it, invisible to the consumer, allocating risk between two companies and continuing or concluding without the consumer ever knowing about it.

A reinsurance treaty is described differently depending on which side of it a company sits. From the cedent's side, the risk it shares is "ceded" reinsurance—protection the cedent has *purchased*. From the reinsurer's side, the risk it takes on is "assumed" reinsurance—obligations the reinsurer *owes*. And because reinsurers are themselves cognizant of the exposure, a reinsurer may choose to further diffuse risk by passing along part of the risk it has assumed to yet another reinsurer. That second-level transaction is a "retrocession"; the reinsurer passing along the risk is the "retrocedent," and the reinsurer accepting it is the "retrocessionaire." At every level, the structure is the same: sophisticated companies bargaining with one another over who will bear risk under individualized terms.

Nothing about these transactions resembles the consumer transaction described above. There are no standardized forms filed with regulators. Each treaty is a bespoke contract drafted by companies equally equipped to negotiate every term. As one authority puts the point, there is "no such thing as the 'average' reinsured or the 'average' reinsurance price"—each treaty is

individually negotiated and individually priced to the particular needs and risk profile of the ceding company. David R. Clark, *Basics of Reinsurance Pricing: Actuarial Study Note* at 2 (Revised 2014), available at https://www.soa.org/globalassets/assets/files/edu/edu-2014-exam-at-study-note-basics-rein.pdf. The negotiations are extensive because they must be; the mutual obligations under a life reinsurance treaty routinely continue for *decades*, until the last underlying policy within the reinsured block terminates by death, lapse, or maturity. Every provision reflects a deliberate, bargained-for allocation of risk between two companies that each employ armies of actuaries and lawyers.

C. The Identity and Potential Substitution of a Reinsurance Counterparty is Built into the Treaty.

Chief among the terms a cedent bargains for is the identity of its counterparty. A cedent choosing a reinsurer is not a consumer choosing a brand; it is a company deciding who it will trust to satisfy its obligations for not just one policy, but perhaps hundreds of thousands of policies. Actuarial standards of practice require ceding companies to assess "counterparty credit risk"—the risk that the company on the other side of the treaty will be unable to pay when the time comes. Cedents deliberately spread their business among multiple reinsurers so that no single failure can imperil them. And—critically—cedents protect these judgments the way sophisticated commercial parties always do: *by contract*. Reinsurance treaties commonly include anti-assignment and consent provisions ensuring that the cedent's carefully chosen counterparty cannot be swapped for a different, perhaps weaker, party without the cedent's agreement.

One more principle completes the picture. A reinsurer that wants another company to be substituted in its place and to stand behind its treaty obligations has two well-worn paths. The difference between them is stark.

The first is indemnity reinsurance—the retrocession just described. The reinsurer buys its own reinsurance, but its obligations to its cedents remain entirely intact; the cedent's treaty is untouched, and the cedent's counterparty is unchanged. Because nothing about the cedent's rights changes, including the counterparty with whom it originally bargained with, nothing requires the cedent's consent.

The second path is a consensual novation—a process by which the reinsurer is actually *replaced* as a party to the treaty, its obligations extinguished and a new obligor substituted in its place. A novation changes the one thing the cedent bargained hardest for—the identity of the company that owes it money—and for precisely that reason, reinsurance contracts generally require the cedent's consent. The scope of that consent—including when it can and cannot be withheld—is often a carefully negotiated term in reinsurance agreements.

And that is the fundamental distinction that frames everything that follows. In the retail consumer market, protection comes from the regulatory framework, because individual negotiation is not permitted. In the reinsurance market, protection comes from the contract itself, because negotiation is the whole point. The policyholder relies on the statute; the cedent relies on its bargain.

II. JOHN HANCOCK AND TLIC HAVE A REINSURANCE RELATIONSHIP, NOT AN INSURANCE RELATIONSHIP

A. Overview of the John Hancock and TLIC Reinsurance Treaties.

The relationships at issue in this proceeding follow the reinsurance template exactly. John Hancock is a life insurance company. It issues policies of insurance to its policyholders in states across the country and is regulated as an insurance company. As part of its risk management process, John Hancock purchases reinsurance from various companies in the reinsurance market.

Between 1997 and 2010, John Hancock negotiated more than twenty reinsurance treaties with TLIC ("Treaties"), which wrote its assumed reinsurance business through its Transamerica Reinsurance Division, "Transamerica Re." SOMF ¶ 4, 5.[4] While TLIC operated this reinsurance division, its primary business was as a "direct writer" issuing retail insurance policies to consumers. By the late 2000s, few companies wore dual hats as a direct writer and reinsurer; even fewer mirrored TLIC's corporate structure where their reinsurance arm was a "division" within the company, rather than a separate, standalone entity. Nevertheless, the roles of the parties to the Treaties are undisputed: (1) John Hancock is a cedent of TLIC's, not its policyholder; (2) TLIC is John Hancock's reinsurer, not its insurer.

The Treaties cover a wide range of products issued by John Hancock over the years. Some of the Treaties are "yearly renewable term" treaties, under which TLIC covers a share of the death-benefit risk on John Hancock's underlying life insurance policies for as long as those policies remain in effect. Others are "coinsurance" treaties, under which the two companies share proportionally not just the death-benefit risk but the broader economics of the underlying policies—premiums, investments, and expenses alike. *Id.* ¶ 6.

Under either structure, the treaty endures until the last underlying policy ends: these are relationships measured in decades. John Hancock accordingly bargained for anti-assignment protections barring TLIC from handing off its rights and obligations to another company without John Hancock's consent. *Id.* ¶ 7. The following clause predominates in the parties' Treaties:[5]

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[4] Nineteen Treaties between John Hancock and TLIC are listed in the Proposed Plan and remain in place. SOMF ¶ 5.

[5] TLIC indicates that its review concluded that twelve (12) Treaties have this language. Ex. 7 (TLIC's Response) ¶ 54.

> Neither the Company nor the Reinsurer may assign any of the rights and obligations under this Agreement, nor may either party sell, assumption reinsure or transfer the policies without the prior written consent of the other party. Consent will not be withheld if the assignment, sale, assumption reinsurance or transfer does not have a material effect on the risks transferred or the expected economic results to the party requested to consent. This provision shall not prohibit the reinsurer from reinsuring the policies on an indemnity basis.

SOMF ¶ 7; Ex. 3 (Petition) at PDF 11 of 52. This language is designed to protect both parties from an involuntary counterparty substitution in the reinsurance relationship. Three elements of this clause are notable for purposes of the Motion.

First, TLIC is specifically referred to as the "reinsurer," which is the role it plays in the administration of the Treaties. SOMF ¶ 7.

Second, the clause permits the "reinsurer" TLIC to further reinsure its obligations on an "indemnity basis." SOMF ¶ 7. In other words, the Treaties allow TLIC to enter into a retrocessional relationship with a third party without John Hancock's consent, but only in a manner that preserves John Hancock's reinsurance counterparty.

Third, the provision states that John Hancock cannot withhold consent if the proposed transfer or assignment "does not have a material effect on the risks transferred or the expected economic results to the party requested to consent." SOMF ¶ 7. This demonstrates a point made above: sophisticated reinsurance parties can negotiate the contours of a transfer of their contractual obligations in a way policyholders cannot. Here, the parties made the assessment the "material effect on the risks transferred or the expected economic results" to John Hancock a matter of contract rights.

B. TLIC Retrocedes Its Liabilities to SCOR in 2011.

In 2011, TLIC sought to extricate itself from its assumed reinsurance business issued under the Transamerica Re brand. It chose the first of the two paths described above: indemnity reinsurance. It entered into retrocessional agreements ceding 100% of its assumed reinsurance

business to SCOR Global Life Americas Reinsurance Company ("SGLA"), an affiliate of SGLUSA, and named SGLA its agent and attorney-in-fact for administration of that business. SOMF ¶¶ 8, 9. Because TLIC and SGLA structured their transaction as indemnity reinsurance, it changed nothing about John Hancock's contractual position; John Hancock remained in privity solely with TLIC, and TLIC remained ultimately responsible to John Hancock on the Treaties. *Id.* For that very reason, no consent from John Hancock was required—and none was sought. The retrocessional arrangement was finalized in August 2011. *Id.* ¶ 8. This was purely a deal between TLIC and SGLA.

C. John Hancock's Consent for a Novation Was Sought and Refused in 2012.

In 2012, SGLA proposed taking the second path described above: it asked to novate the Treaties from TLIC to one or more SGLA entities. SOMF ¶ 10. That path *did* require John Hancock's consent, and John Hancock declined to give it. *Id.*; *see also* Ex. 3 (Petition) at PDF 52 of 52. Under ordinary principles of contract law, that was the end of the matter. TLIC remained John Hancock's contractual counterparty exactly as the Treaties provide, and SGLA did not raise the issue of novation with John Hancock again after 2012. The fact that SGLA sought this novation is reflective of its understanding that indemnity reinsurance and novation are two very different things. Moreover, at no time did SGLA or TLIC ever argue that John Hancock's consent had been improperly withheld.

The Proposed Plan now before the Commissioner seeks to reach the destination that consent-based routes could not. TLIC proposes to (1) divide the same block of assumed reinsurance business into a newly formed entity, TLIC-A, and (2) simultaneously merge TLIC-A into SGLUSA, with SGLUSA surviving. *See* Ex. 1 (Proposed Plan) at PDF 2–3 of 154. The practical effect is the very transaction John Hancock declined in 2012—the substitution of a SGLA entity for TLIC as John Hancock's counterparty—is accomplished this time without asking. The

question this Motion presents is whether the Iowa Division Law authorizes that result. The statute's origins and architecture, to which we now turn, show that it does not.

LEGAL STANDARD

Motions for summary judgment in Iowa Insurance Division contested cases must comply with the Iowa Administrative Code and specifically, Section 191—3.15(17A). Prehearing motions must be in writing and must state the grounds for relief and relief sought. Iowa Admin. Code § 191—3.15(1). Iowa Rules of Civil Procedure 1.981 through 1.983 are incorporated by reference. Iowa Admin. Code 191—2.2(17A.22). Summary judgment is included therein and therefore, is a proper motion.

Summary judgment is appropriate where the record shows "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3). Because statutory interpretation is a question of law, the question of whether the Iowa Division Law permits the transfer of assumed reinsurance obligations is properly the subject of a summary judgment motion. *See Am. Asbestos Training Ctr., Ltd. v. Eastern Iowa Community College*, 463 N.W.2d 56, 57 (Iowa 1990) ("Statutory interpretation is a question of law for the court to determine.") (internal citation omitted).

As with all cases involving statutory interpretation, the language of the statute is used to determine what the statute means.

The first step "is determining whether the meaning of the provision is ambiguous; if it is not, we go no further and apply the unambiguous meaning of the language used in the provision." *See Com. Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021) ("If the text of a statute is plain and its meaning clear, we will not search for a meaning beyond the express terms of the statute or resort to rules of construction."). If the text is ambiguous, canons of statutory construction are used to determine what the ambiguous language of the statute means. *See State v. Doe*, 903 N.W.2d

347, 351 (Iowa 2017) ("If there is no ambiguity, we apply that plain meaning. Otherwise, we may resort to other tools of statutory interpretation.").

Ambiguity may arise in two ways: (1) from the specific language used in the statute or (2) when the provision is considered in the context of the entire statute or other related statutes. *See Iowa Ins. Inst. v. Core Grp. of Iowa Ass'n for Just.*, 867 N.W.2d 58, 72 (Iowa 2015). "In other words, even if the meaning of words might seem clear on their face, their context can create ambiguity." *Id.* "[T]he determination of whether a statute is ambiguous does not necessarily rest on close analysis of a handful of words or a phrase utilized by the legislature, but involves consideration of the language in context." *State v. Richardson*, 890 N.W.2d 609, 616 (Iowa 2017) (alteration in original).

ARGUMENT

I. LEGISLATURES HAVE CREATED TWO DISTINCT TOOLS FOR MOVING INSURANCE OBLIGATIONS WITHOUT CONSENT—AND IOWA ENACTED ONLY ONE OF THEM.

The enactment of Corporate Division statutes began with the consent problem described above. An insurer, like any contracting party, cannot shed its obligations by handing them to someone else; a true substitution of obligors—a novation—requires the consent of the party owed the obligation. For an insurer that issues retail policies, that rule long made certain restructurings practically impossible. An insurer wishing to move a block of hundreds of thousands of policies to another entity would need to reach every policyholder and obtain an affirmative answer from each. Such an undertaking may not be realistic because many policyholders have moved or changed contact information over the decades a policy stays in force, and many more simply never respond to mail about a transaction that does not change their coverage. The restructuring that made economic sense could never be completed—not because anyone objected, but because a consent process at that scale cannot practically be run.

State legislatures responded with two distinct statutory tools, and the industry has spent years discussing exactly this distinction. The first tool is the Corporate Division statute. Modeled on longstanding corporate law and, in the NAIC's description, "akin to reverse mergers," a division statute allows an insurer to split itself in two, allocating its policies and liabilities between the resulting companies by operation of law. See NAIC, *Restructuring Mechanisms: An NAIC White Paper*, at 8 (Dec. 11, 2025), available at https://content.naic.org/sites/default/files/committees-pending-action-restructuring-mechanisms.pdf ("NAIC White Paper"). In place of the individualized consent that cannot feasibly be gathered from a mass of policyholders, the statute substitutes regulatory scrutiny: notice, a hearing, and the commissioner's findings that policyholders will be adequately protected and that each resulting insurer will be qualified and capitalized to honor the policies allocated to it. The safeguards are policyholder safeguards because the consent being excused is policyholder consent.

The second tool is the Insurance Business Transfer statute, or IBT—a mechanism modeled on the United Kingdom's Part VII transfers. *See id.* Part VII transfers and their IBT equivalent are distinct legal mechanisms precisely because they allow insurance or reinsurance obligations to move to a new sophisticated counterparty with finality but importantly, they require court approval. *See id.* at 22. When a legislature wants to authorize the consent-free transfer and statutory novation of *reinsurance* obligations—obligations owed not to dispersed consumers but to sophisticated counterparties—it uses this tool, and it says so in words. The NCOIL IBT Model Act defines an "Insurance Business Transfer" as a transfer and novation of "contracts of insurance *or reinsurance*"; defines "Policy" to include "a contract of *reinsurance*"; and defines "Policyholder" to mean "an insured *or a reinsured*." Nat'l Council of Ins. Legislators, *Insurance Business Transfer Model Act* (Readopted Nov. 2025) at 2–3, available at https://ncoil.org/wp-

content/uploads/2026/02/NCOIL-IBT-Model-November-2025.pdf (emphases added). And because IBT statutes excuse the consent of parties who *could* have been asked, they carry heightened safeguards that division statutes lack—including court approval.

The court approval component is critical to IBT statutes. Because statutory novation through IBT statutes can replace a cedent's bargained-for contractual counterparty without consent, the court supplies an external check on whether the statutory standards have been met and gives affected parties a forum to object before their critical rights are altered. *See NCOIL IBT Model Act*, at 1–2 ("[The] purposes [of an IBT] are accomplished by providing a basis and procedures for the transfer and statutory novation of policies from a transferring insurer to an assuming insurer by way of an Insurance Business Transfer without the affirmative consent of policyholders or reinsureds. The novation is effected by court order."). That protection is especially important for cedents because their principal risk in assumed reinsurance statutory novation is not whether a retail policy remains unchanged, but whether the reinsurer they selected and monitored will be replaced by another without the benefit of the cedent's negotiated consent right.

The two tools are not interchangeable, and no one in the industry treats them as such. The NAIC observes that "the most significant differences that exist in [corporate division] laws are not among themselves, *but rather in comparison to IBT statutes*." NAIC White Paper at 12 (emphasis added). NCOIL calls them "similar but distinct restructuring mechanisms." Nat'l Council of Ins. Legislators, *NCOIL Adopts Insurer Division Model Act* (May 3, 2021), available at https://ncoil.org/news/ncoil-adopts-insurer-division-model-act/. States that want both enact both: Illinois and Georgia each adopted a division statute *and*, separately, an IBT statute expressly reaching contracts of "insurance or reinsurance." See 215 Ill. Comp. Stat. 5/35B-1; 215 Ill. Comp.

Stat. 5/1703; Ga. Code Ann. §§ 33-14-120 *et seq.*; 33-52-10 *et seq.* Neither state would have needed two statutes if one did the other's work.

Iowa enacted only one statutory option: a Corporate Division statute. The Iowa Division Law informed the NCOIL Insurer Division Model Act—the model that defines "Policyholder" as "the owner of an insurance policy," with no mention of reinsureds. Iowa has never enacted an IBT law.

II. THE IOWA DIVISION LAW APPLIES ONLY TO INSURANCE POLICIES NOT TO REINSURANCE CONTRACTS

The Iowa Division Law reads exactly as its lineage predicts. The words "policy" and "policyholder" appear twenty-two (22) times in the statute; the words "cedent" and "reinsured" appear zero times. Its approval standards are calibrated to the consumer relationship: the Commissioner must find that the plan "is not unfair or unreasonable to the policyholders of the dividing insurer and is not contrary to the public interest," Iowa Code § 521I.8(3)(a), and that every resulting insurer "will be qualified and eligible to receive a certificate of authority to transact the business of insurance in this state," *id.* § 521I.8(3)(c). Each safeguard supplies, through the regulatory framework, the protection that the consumer market delivers by regulation rather than by individual bargaining—the same protection that cedents like John Hancock obtained at the negotiating table.

The statute's few references to "reinsurance" fit the same design. When an insurer divides its policies, the *ceded* reinsurance it purchased to protect those policies is an asset that must travel with them—so a division statute naturally requires the plan to describe "the manner by which the dividing insurer proposes to allocate all reinsurance contracts," Iowa Code § 521I.2(5), and to give notice to the reinsurers whose contracts are affected. Allocating the reinsurance an insurer has *bought* alongside the policies it has *issued* is the hallmark of a policyholder-focused division. And

it is a very different thing from authorizing a reinsurer to divide and novate the obligations it *assumed* from its cedents in the sophisticated risk-management market. Indeed, it would be incongruous for the legislature to leave it to the Commissioner to decide who should and should not be John Hancock's reinsurance counterparty.

Nevertheless, the Proposed Plan invokes this statute for the division and transfer of TLIC's assumed reinsurance obligations. The Plan recites that "cedants of TLIC will be treated as occupying the position of policyholders, and retrocessionaires of TLIC will be treated as occupying the position of reinsurers, within the meaning of the Iowa Division Law." Ex. 1 (Proposed Plan) at PDF 12 of 154. That runs contrary to basic rules of statutory interpretation.

The Iowa Division Law must be read according to what it expressly provides for, with a recognition of what it *does not* provide for. That analysis focuses not only on the terms used by the legislature, but also the context in which those terms are used. As the Iowa Supreme Court has warned:

> [L]egislators do not legislate one word at a time, and statutes cannot be read with blinders, dissecting a provision one word at a time, setting that word aside, and then moving to the next to address its meaning outside the context of the other words used in the provision or how the provision fits into the greater statutory scheme. *See* Norman J. Singer & J.D. Shambie Singer, 2A Sutherland Statutory Construction § 46:5 (7th ed. rev. 2014) ("A statutory subsection may not be considered in a vacuum, but must be considered in reference to the statute as a whole . . . ."). Rather, context is critical, and context comes from "the language's relationship to other provisions of the same statute and other provisions of related statutes."

Beverage v. Alcoa, Inc., 975 N.W.2d 670, 681 (Iowa 2022) (quoting *Commerce Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021)).

A. The Language of the Statute Relates to Retail Insurance, not Assumed Reinsurance.

In applying the Iowa Division Law, the presiding officer must "determine the fair and ordinary meaning of the statutory language at issue." *See State v. Davis*, 922 N.W.2d 326, 330

(Iowa 2019) ("We give words their ordinary meaning absent legislative definition."); Iowa Code § 4.1(38) ("Words and phrases shall be construed according to the context and the approved usage of the language . . ."). That is where the Plan Proponents' approach to the statute fails: their pronouncement that "cedants of TLIC will be treated as occupying the position of policyholders, and retrocessionaires of TLIC will be treated as occupying the position of reinsurers, within the meaning of the Iowa Division Law" runs contrary to the Iowa Supreme Court's instruction on statutory interpretation. *See* Ex. 1 (Proposed Plan) at PDF 3 of 154. If the Plan Proponents have to *substitute* words into the Iowa Division Law, they are not ascribing to those words "the fair and ordinary meaning" of the statutory language at issue.

The language of insurance and reinsurance does not equate policyholders and cedents. Courts across the country have recognized the terms widely used in each of those contexts.

> Under a reinsurance contract, the original insuring entity (the "cedent") transfers (or "cedes") part or all of its risk under its policy or insurance to another entity (the "reinsurer"), along with a share of the premium.
>
> Reinsurers often further reinsure their obligation, as "retrocedents," to other reinsurers, known as "retrocessionaires."
>
> Typically, the cedent enters into insurance contracts with its policyholders that provide coverage for losses incurred by the policyholder during the policy period.
>
> Once a cedent pays a claim to or on behalf of a policyholder, the cedent submits claims to the reinsurer under the terms of the reinsurance contract.
>
> Once the reinsurer has paid the claim to the cedent, the reinsurer, as retrocedent, then submits claims to the retrocessionaire under the terms of the retrocessional contract.

Trenwick Am. Reinsurance Corp. v. IRC, Inc., 764 F. Supp. 2d 274, 282 n.3 (D. Mass. 2011). Here, the positions occupied by the parties to this proceeding cannot be reasonably disputed:

- John Hancock is a cedent of TLIC, not a policyholder.
- TLIC acts as a reinsurer to John Hancock, not an insurer.

- TLIC is also a retrocedent with respect to its relationship with the SCOR entities.
- The SCOR entities are retrocessionaires with respect to TLIC.

By substituting in the language of reinsurance into a statute that uses the language of insurance, the Plan Proponents are changing the statute. That is fundamentally at odds with rules of statutory interpretation. In searching for legislative intent, the presiding officer is "bound by what the legislature said, not by what it should or might have said. So [he] cannot under the guise of statutory interpretation enlarge *or otherwise change terms of a statute*." *Tallman v. W.R. Grace & Co.*, 558 N.W.2d 208, 210 (Iowa 1997) (emphasis added).

Here, the Plan Proponents seek to change the terms of the Iowa Division Law, most obviously in the following three ways.

First, they are substituting the word "cedent" into the statute where the legislature expressly used the word "policyholder." As noted above, the term "policy" or "policyholder" is used 22 times in the Iowa Division Law; in contrast, the word "cedent" is not used once. The term "policyholder" is widely understood to mean the holder of a direct insurance policy issued by an insurance company. *See* Nat'l Ass'n of Ins. Comm'rs, *01 RHS 081823 Materials* 1 (Aug. 18, 2023), available at https://content.naic.org/sites/default/files/call_materials/01%20RHS%20081823%20_Materials.pdf. (defining "policyholder" as "the original insured"); Graydon S. Staring & Dean Hansell, *Law of Reinsurance* § 3:1, Westlaw (Mar. 2026 update) (using the terms "policyholder" and "cedent" to refer to distinct actors). Black's Law Dictionary defines policyholder as "[s]omeone who owns an insurance policy, regardless of whether that person is the insured party." Policyholder, *Black's Law Dictionary* (10th ed. 2014). Webster's Third New International Dictionary similarly defines policyholder as "one . . . granted an insurance policy." Policyholder, *Webster's Third New International Dictionary* (2002). Its ordinary use does

not include a cedent under a reinsurance contract and if the legislature wished to broaden the definition of "policyholder" to include a cedent or a reinsured, it could have done so.

Second, they are substituting the word "retrocedent" for "reinsurer" where the legislature expressly used the word "reinsurer." Those are two different concepts. A "retrocedent" is a "reinsurer who reinsures all or part of its assumed reinsurance with another reinsurer." *See* Reinsurance Ass'n of Am., *Glossary of Reinsurance Terms*, available at https://www.reinsurance.org/RAA/RAA/About-the-RAA/Glossary/Glossary%20of%20Reinsurance%20Terms.aspx#r (last visited July 18, 2026). Coupled with the shift of "policyholder" to "cedent," this serves to shift the entire statutory framework from one that governs the retail, consumer-oriented relationship between a policyholder and an insurer, to one that purportedly addresses commercial relationships in the broader risk-management industry.

Third, the Plan Proponents try to find support for their rewriting of the Iowa Division Law by pointing to the use of the word "reinsurance" in the statute. *See* Iowa Code §§ 521I.2(5), 521I.8(1), (4), 521I.10(1)(f), 521I.12(3). The plain language of the statute reflects the fact that the "allocation of reinsurance" relates to the allocation of *ceded* reinsurance that accompanies the policy liabilities being divided. That is obvious from the context of the use of the term. As the Iowa Supreme Court stated, "statutes cannot be read with blinders, dissecting a provision one word at a time, setting that word aside, and then moving to the next to address its meaning outside the context of the other words used in the provision . . ." *Beverage*, 975 N.W.2d at 681. One example of this context is in Section 521I.2 of the Iowa Division Law, which sets forth the general requirements for a Plan of Division. The word "insurer" is used thirteen (13) times in that one section. It discusses the allocation of "policy liabilities." The "allocation" of "all reinsurance contracts" speaks to the *assets* that are being allocated (ceded reinsurance), not to an authorization

to divide assumed reinsurance liabilities. Using that single use of "reinsurance" in Section 521I.2 to dramatically expand the legislature's chosen framework would not interpret the law; it would create a new law.

B. Substitution of Terms Renders Sections of the Statute Meaningless.

As cited above, the Iowa Supreme Court has advised that context is critical, and it is derived from "the language's relationship to other provisions of the same statute and other provisions of related statutes." *Commerce Bank*, 956 N.W.2d at 133. Here, critical context comes from the full text of the Iowa Division Law.

First, the requirements can only be reasonably interpreted to have been drafted in contemplation of the retail consumer market. For example, one of the findings the Commissioner must make in approving the Proposed Plan is that:

> The interest of the policyholders, creditors, or shareholders of the dividing insurer will be adequately protected and the plan of division is not unfair or unreasonable to the policyholders of the dividing insurer and is not contrary to the public interest.

Iowa Code § 521I.8(3)(a). Here, the use of the word "policyholder," and the Commissioner's task in protecting "policyholders," and ensuring the Proposed Plan is not contrary to the public interest makes sense when those terms are applied in accordance with their ordinary meaning, *i.e.*, the general public as consumers of insurance products. The Commissioner is tasked by statute with "provid[ing] assistance to the public and to consumers of insurance products and services in this state." Iowa Code § 505.8. The Commissioner can conduct administrative hearings to "protect the public interest or consumers." *Id.* And while certain aspects of the reinsurance industry certainly fall within the Commissioner's purview, determining whether a plan of division is "unfair or unreasonable to the policyholders" or "contrary to the public interest," is a textbook reference to the direct insurance market. The reinsurance market, one populated by corporations contracting with corporations, is not the hallmark of the "public" or "policyholder" oversight.

Second, the context of the use of "insurer" in the statute can also be gleaned from related Iowa statutes. For example, the Iowa Unauthorized Insurers Act contains a definition of "insurer" that defines what it means to engage in the "business of insurance" in Iowa. *See* Iowa Code § 507A.3. That includes things like:

a. The making of or proposing to make, as an insurer, an insurance contract.

b. The taking or receiving of any application for insurance.

c. The receiving or collection of any premiums, membership fees, assessments, dues or other considerations for any insurance.

d. The issuance or delivery of contracts of insurance to residents of this state or to corporations or persons authorized to do business in this state.

Id. These are steps directed towards the retail consumer market, not the reinsurance market. In fact, the Iowa Unauthorized Insurers Act *excludes* reinsurance from its purview, further evincing the fact that the Commissioner's responsibilities, and the legislature's focus, is on the regulation of retail insurance policies. *See* Iowa Code § 507A.4(2).

Third, the Plan Proponents' word-substitution approach would render sections of the Iowa Division Law meaningless. For example, another requirement for plan approval is:

> All resulting insurers created by the proposed division will be qualified and eligible to receive a certificate of authority to transact the business of insurance in this state.

Iowa Code § 521I.8(3)(c). But as noted above, the business of reinsurance is not included within the Iowa Unauthorized Insurers Act. A reinsurer does not need a certificate of authority to do business in Iowa. Notably, this interpretive flaw was recognized by TLIC when it first approached the Iowa Insurance Division about its Proposed Plan. [redacted]

[redacted]

[redacted] Rather, it is a telltale sign that the Iowa Division Law *does not apply to the division of assumed reinsurance*.

Indeed, this is the very type of "context" the Iowa Supreme Court has stated is a foundational element of statutory interpretation. "It is a 'cardinal rule of statutory construction that when [the legislature] employs a term of art, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it is taken.'" *Beverage*, 975 N.W.2d at 682 (quoting *Air Wis. Airlines Corp. v. Hoeper*, 571 U.S. 237, 247–48 (2014)). Having imposed a requirement using a term of art – "certificate of authority" – it is evident that the legislature was bringing with it the associated "cluster of ideas." That indicates the legislature's intent for the resulting insurer to be one engaged in the business of insurance, not the business of reinsurance.

Fourth, the Plan Proponents in their Responses try to shift the way they are rewriting the statute. Despite having expressly announced their intention to treat cedents as "policyholders," they change their minds in the Responses and now recast cedents as "creditors," whose interests the Commissioner is also tasked with protecting. *See* Iowa Code, § 521I.8(3)(a). This after-the-fact argument does not cure the defect in the Plan Proponents' approach; rather, it confirms that the Proposed Plan is premised on shifting labels to accomplish a reinsurance novation the statute does not authorize. A creditor is widely understood to be "one to whom a debt is owed; one who gives credit for money or goods." *See, e.g.*, Creditor, *Black's Law Dictionary* (8th ed. 2004). A

cedent does not give credit for money or goods, and whether a debt is owed to a cedent depends entirely on the economics of the transaction. It makes little sense that the legislature would use "creditor" as a substitute for "cedent," especially for purposes of a law that is to be used in an industry where those terms have different meanings.

Moreover, SGLUSA's and TLIC's "creditor" label mischaracterizes the economics of life reinsurance. Life reinsurance accounting recognizes reciprocal rights and obligations: the ceding company reports premiums or other amounts payable on reinsured risks, amounts recoverable on claims and benefits, and amounts receivable or payable for funds withheld, while the assuming company reports reinsurance premiums receivable, claims and benefit amounts payable, and funds withheld receivable or payable. Nat'l Ass'n of Ins. Comm'rs, *Statutory Issue Paper No. 74: Life, Deposit-Type and Accident and Health Reinsurance* (Mar. 16, 1998), available at https://content.naic.org/sites/default/files/inline-files/074_p.pdf. Those reciprocal accounting entries mean the net balance in a reinsurance relationship can shift in either direction. For example, if in a given month a cedent owes $100 million in premiums on a block of business and the reinsurer owes only $90 million in claims or benefits, the cedent is the payor and the reinsurer is the recipient for that period. Thus, neither a cedent nor a reinsurer is uniformly a "creditor" or "debtor" in any meaningful statutory sense. At most, "creditor" status is a temporary accounting consequence of a particular period. What happens if at a moment in time the cedent is a debtor? Are we to believe that, at that point, a cedent has no say or role in a divisional plan?

That is why TLIC's and SGLUSA's attempted recasting of John Hancock as a "creditor" under the Iowa Division Law fails. The Iowa Division Law uses specific categories and gives separate treatment to policyholders, creditors, and reinsurers. The Plan Proponents therefore cannot push the Proposed Plan through by moving John Hancock from one statutory label to

another when convenient. If the Proposed Plan cannot be approved on the basis on which it was submitted, it cannot be approved. The Plan Proponents cannot cure defects by recasting John Hancock as a "creditor" after the fact.

Finally, likely aware of the multiple interpretive flaws in their approach, the Plan Proponents seek to save the Proposed Plan by recasting their original "policyholder" treatment as a benign act of "good faith," "courtesy," or "respect," after John Hancock intervened and exposed the Proposed Plan's defect. *See* Ex. 7 (TLIC's Response) ¶ 35; Ex. 8 (SGLUSA's Response) ¶¶ 44–45, 47. This is *post hoc* rationalization. The Plan Proponents initially *needed* to treat cedents as policyholders to invoke the Iowa Division Law and try to effect a reinsurance transfer through a policyholder-focused statutory scheme, and now that John Hancock has intervened, they are attempting to retreat to the position that cedents are merely "creditors" to avoid the logical consequences of their own actions. John Hancock respectfully submits that the Commissioner should see their shifting approach to the Iowa Division Law for what it is: a contortion of the law, rather than an application of it.

C. The Plan Proponents' Remaining Textual Arguments Do Not Supply the Missing Authority.

The Plan Proponents offer three related textual responses. None establishes the extraordinary authority the Proposed Plan requires.

First, they rely on TLIC's status as a "domestic stock insurer." Ex. 7 (TLIC Response) ¶¶ 27–30; Ex. 8 (SGLUSA Response) ¶¶ 35–40. It's simple, they say: Chapter 521I applies to any domestic stock insurer, TLIC is one, so the nature of the business being divided does not matter. TLIC puts the point expressly: "[t]he statutory trigger . . . is the identity of the dividing company, not the mix of business allocated in the division." Ex. 7 (TLIC Response) ¶ 27.

That argument confuses who may invoke the statute with what the statute authorizes that company to do. John Hancock does not dispute that TLIC is a domestic stock insurer or that TLIC may use Chapter 521I for a transaction within the statute's scope. But eligibility to propose a division does not itself answer whether the statute authorizes TLIC to extinguish contractual rights and accomplish a consent-free statutory novation of assumed reinsurance treaties.

While the Plan Proponents' reading might sound logical on the surface, it proves to be absurd. Domestic stock insurers do not conduct only traditional insurance business. They have any number of other contractual obligations—to lenders, institutional investors, retirement-plan counterparties, landlords, vendors, and employees—which bear little resemblance to insurance policies issued to policyholders but are "liabilities" in the ordinary sense of the word.

If TLIC is correct that Chapter 521I "imposes no restriction on the types of assets or liabilities that may be divided," Ex. 7 (TLIC Response) ¶ 32, what is the limiting principle? Could a life insurance company allocate billions of dollars in funding-agreement obligations to a newly created insurer and thereby substitute that company as obligor without the institutional counterparty's consent? Could an insurer likewise borrow $500 million from a bank and later use Chapter 521I to substitute a newly created insurer as the borrower over the bank's objection? And how would the Plan Proponents fit that transaction into Chapter 521I's statutory categories? In those instances, would a life insurance company "treat" a bank or lender as a "policyholder," just as the Proposed Plan declares that TLIC's cedents will be "treated as occupying the position of policyholders"? Or would it simply call a bank or lender a "creditor," as the Plan Proponents now characterize John Hancock?

Neither label answers the fundamental question: where does Chapter 521I authorize the consent-free novation of that contractual obligation merely because the obligor happens to be a

domestic stock insurer? The Plan Proponents' reading offers no textual limiting principle. If the status of the dividing company and the breadth of the word "liabilities" are enough, Chapter 521I becomes a mechanism for the involuntary novation of virtually any contractual obligation on an insurer's books.

Second, the Plan Proponents rely on Chapter 521I's express references to "reinsurance contracts." Ex. 7 (TLIC Response) ¶¶ 31–33; Ex. 8 (SGLUSA Response) ¶¶ 41–43. They emphasize, in particular, the requirement that a plan describe "the manner by which the dividing insurer proposes to allocate all reinsurance contracts." Ex. 7 (TLIC Response) ¶ 8 (quoting Iowa Code § 521I.2(5)). But that phrase must be read in context. An insurer dividing policy liabilities may have substantial ceded reinsurance supporting those liabilities, and the statute sensibly requires a plan to identify where that reinsurance will reside.

The statutory terminology confirms that orientation. When Chapter 521I identifies the counterparty to affected reinsurance, it calls that party the "reinsurer." *See* Iowa Code §§ 521I.8(1), 521I.10(1)(f). That describes ceded reinsurance: reinsurance purchased by the dividing insurer to support liabilities the insurer owes. The relationship at issue here runs in the opposite direction.

Under the Treaties, TLIC itself is the reinsurer and John Hancock is the cedent or reinsured—terms Chapter 521I never uses. Indeed, if "all reinsurance contracts" in Section 521I.2(5) meant *assumed* treaties, the statute's notice scheme would be inverted. Chapter 521I requires notice to exactly two constituencies: "each reinsurer that is a party to a reinsurance contract allocated in the plan of division," Iowa Code §§ 521I.8(1), 521I.10(1)(f), and "the dividing insurer's policyholders," *id.* § 521I.8(2)(b). Nowhere does the statute require notice to cedents—the parties whose contracts the Proposed Plan most directly affects. Worse still, on the Plan Proponents' reading, the "reinsurer that is a party" to each of the Treaties is TLIC itself—meaning

the statute would direct the dividing insurer to give notice *to itself* for the reinsurance it assumes and notice to its retrocessionaires for the reinsurance it retrocedes. Interpreting the Iowa Division Law in that manner would result in cedents being exempt from the statute's notice requirements, even though they are the parties most impacted by the substitution and replacement of a reinsurance counterparty.

Let that sink in: Chapter 521I would empower a reinsurer to extinguish its cedents' bargained-for contractual rights—here, protections governing billions of dollars in ceded risk—through a state proceeding of which those cedents were entitled to *no notice whatsoever*. That cannot be, because it is blackletter law that, before a state proceeding may extinguish a party's rights, "[d]ue process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010) (internal quotation omitted).

No legislature deliberately writes a statute that authorizes the involuntary novation of a counterparty's contracts while entitling that counterparty to learn of the proceeding only by accident. The Plan Proponents concede the logical gap, even if they do not realize it: SGLUSA argues that the notice John Hancock received was "enhanced notice" extended as a "courtesy," flowing from the Plan's elective decision to treat cedents as policyholders—not from any provision of Chapter 521I addressed to cedents. Ex. 8 (SGLUSA Response) ¶¶ 45, 47. That concession is the argument. On the Plan Proponents' reading, whether the counterparties to billions of dollars in ceded liabilities receive notice of the proceeding depends entirely on the dividing insurer's grace. Due process does not run on courtesy, and the fact that the Plan Proponents had to *invent* notice for cedents demonstrates that the legislature never designed this statute to reach them. The far

more natural reading—the only reading on which the notice scheme is both coherent and constitutional—is that the drafters required notice to exactly the parties a division of policy liabilities touches: policyholders whose contracts are being novated, and the insurer's own reinsurers whose obligations travel with the divided policies. Those are the only reinsurance relationships a division was understood to involve.

Third, the Plan Proponents argue that Chapter 521I's broad references to "*all* assets and liabilities" independently resolve the issue. Ex. 7 (TLIC Response) ¶ 32; Ex. 8 (SGLUSA Response) ¶ 39 (emphasis in original). The statute defines a "liability" broadly as a debt or obligation "arising in any manner," and section 521I.2 permits allocation of "assets and liabilities, including policy liabilities." From that, the Plan Proponents reason that assumed reinsurance obligations necessarily may be allocated and novated. But if those general words themselves carry the sweeping legal consequence the Plan Proponents claim, Chapter 521I is not merely an insurance restructuring statute; it is a mechanism by which any Iowa domestic stock insurer may seek to substitute new obligors for virtually every contractual liability on its balance sheet—including billions of dollars in institutional financial obligations that involve no significant insurance risk and bear little resemblance to the policyholder relationships that dominate Chapter 521I's text and safeguards.

That is an extraordinary consequence, which raises serious constitutional concerns. The Treaties here, for example, long predate Chapter 521I, and John Hancock expressly negotiated protections concerning the identity and substitution of its reinsurer. Nothing in Chapter 521I clearly states that the legislature intended to retroactively extinguish those bargained-for protections and accomplish the consent-free novation of assumed reinsurance treaties. And "our interpretation of statutes is often powered by our desire to avoid the constitutional problem."

Simmons v. State Pub. Def., 791 N.W.2d 69, 74 (Iowa 2010); *see also Calabretto Bldg. Grp. v. Tradesmen Int'l, LLC*, 998 N.W.2d 660, 2023 WL 7391670 at 21 (Iowa Ct. App. 2023) (avoiding "an interpretation [that] would implicate the contracts clauses of the United States and Iowa constitutions"). The Iowa Division Law should not be expanded by implication to produce such constitutionally suspect (indeed, shocking) results.

In short, the Plan Proponents identify statutory language allowing a domestic stock insurer to divide, requiring reinsurance contracts to be accounted for in the division, and permitting the allocation of broadly defined assets and liabilities. None of that language expressly answers the materially different question presented here: whether Chapter 521I authorizes a reinsurer to extinguish a cedent's bargained-for contractual protections, discharge itself from decades-old assumed reinsurance treaties, and substitute another reinsurer as the cedent's counterparty without consent. The authority to accomplish that statutory novation cannot be supplied merely by repeating the words "domestic stock insurer," "reinsurance contracts," and "all liabilities."

III. IOWA ENACTED A CORPORATE DIVISION LAW, NOT AN INSURANCE BUSINESS TRANSFER ACT

The discussion in Section I above is sufficient for finding in John Hancock's favor on this Motion. The fair and ordinary meaning of the statutory language at issue does not support the Proposed Plan and the inquiry can end there. But should the presiding officer wish for additional industry context relevant to Corporate Division statutes, years of industry evidence supports John Hancock's view of the statute.

As noted at the outset, the insurance industry and state legislatures across the country have engaged in robust discussion about Corporate Division and IBT statutes. There is at least one consensus: a corporate division mechanism under a Corporate Division statute is materially different from a transfer under a state IBT statute. The distinction is not semantic. It is not merely

that the names differ, but that the corresponding procedures and protections differ in tandem. The National Association of Insurance Commissioners ("NAIC") recognizes that the two mechanisms are different, with IBT laws modeled on UK Part VII-style transfers, while Corporate Division statutes generally follow longstanding corporate law and are akin to reverse mergers. *See NAIC, Restructuring Mechanisms: An NAIC White Paper* at 8 (Dec. 11, 2025). This is precisely why NAIC points out that "the most significant differences that exist in [corporate division] laws are not among themselves, but rather in comparison to IBT statutes." *Id.* at 12. The National Council of Insurance Legislators ("NCOIL") has also referred to corporate division and IBT laws as "similar but distinct restructuring mechanisms." NCOIL, *NCOIL Adopts Insurer Division Model Act* (May 3, 2021), available at https://ncoil.org/news/ncoil-adopts-insurer-division-model-act/.

The distinction matters here because the Plan Proponents seek the finality and counterparty substitution associated with an IBT statute, while invoking only the Iowa Division Law. The Plan Proponents' reliance on the statute's phrase "allocation of reinsurance contracts" cannot overcome the mismatch. Allocation of ceded reinsurance in a corporate division is not the same as a statutory novation of assumed reinsurance obligations under an IBT. A statute designed for the former cannot be stretched to supply the latter.

A. Unlike Corporate Division Statutes, IBT Statutes Expressly Authorize The Transfer And Novation Of Reinsurance Obligations.

States that have enacted IBT statutes have expressly adopted laws intended to authorize the transfer of assumed reinsurance contracts and obligations. They have done so by doing what the Iowa legislature *could* have done: specifically saying that assumed reinsurance is included within the scope of the statute. The industry has likewise recognized that transfers of assumed reinsurance require different treatment because they effectuate statutory novations, as reflected in the policy wording of proposed statutory language that has been adopted.

As the Commissioner is aware, NCOIL is a national legislative organization with all fifty states participating in the organization through state legislator representatives. *See* NCOIL, *National Council of Insurance Legislators: Sound Public Policy in 50 States for 50+ Years*, available at https://ncoil.org/ (last visited July 20, 2026). Iowa is among those participants. *See id.* NCOIL has been at the forefront of discussions around restructuring statutes that states could consider. The NCOIL IBT Model Act ("IBT Model Act"), adopted in 2020, provides a clear example of how to *include* assumed reinsurance liabilities as a line of business that can be subject to a transfer. Throughout the IBT Model Act, there are references to *reinsureds* and *reinsurance transfers*. For example, the IBT Model Act defines "Insurance Business Transfer" as a transfer and novation of "contracts of insurance *or reinsurance*." It similarly defines "Policy" to include "a contract of *reinsurance*," "Policyholder" to mean "an insured or *a reinsured*," and "Transferring insurer" to mean an insurer *or reinsurer*."[6] *See* NCOIL*, Insurance Business Transfer Model Act* (2020) at 2–3 (emphases added).

These express IBT provisions are absent from the Iowa Division Law. As the IBT Model Act shows, NCOIL and the industry treat "insurer" and "reinsurer" separately. The Iowa Division Law does not include references to "reinsureds" or transfers by a "reinsurer." This also reflects Iowa's legislative choice in two ways.

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[6] The Oklahoma IBT Act informed the NCOIL Model Act and was adopted in 2018. *See* NAIC White Paper at 9. It follows the same structure as the Model Act and states that it provides procedures for the "transfer and statutory novation of policies" without the affirmative consent of "policyholders or reinsureds" and defines Insurance Business Transfers to include transfers of contracts of insurance or reinsurance. *See* Okla. Stat. tit. 36 § 1681. Other states confirm that legislatures enact IBT statutes when they intend to authorize transfers of reinsurance obligations by operation of law. For example, Arizona, Arkansas, Georgia, Illinois, Oklahoma, Rhode Island, and Vermont have all enacted IBT statutes. *See* NAIC White Paper at 2.

First, enacting a Corporate Division statute instead of an IBT law is a legislative choice. The Iowa legislature is presumed to be fully aware of the existence of IBT laws and has chosen not to enact one. If it does so in the future, TLIC can seek to use it and John Hancock can rely on all the protections provided in those types of laws. In the meantime, the Plan Proponents cannot make that legislative choice themselves by treating the Iowa Division Law as an IBT statute.

Second, the Iowa legislature limited its language to the relationship between a policyholder and insurer without including any references to the relationship between a cedent-reinsurer, or reinsurer-retrocessionaire. That too is a legislative choice. The absence of any reference to "reinsureds" or transfer by "reinsurers" in the Iowa Division Law shows that the legislature did not intend for the law to be used to transfer assumed reinsurance obligations by operation of law. *See Drake v. Polk County Bd. of Supervisors*, 340 N.W.2d 247, 249 (Iowa 1983) ("In construing statutes the court searches for legislative intent as shown by what the legislature said, rather than what it should have or might have said.").

Indeed, when other states addressed transfer of reinsurance obligations, they enacted separate IBT laws in addition to existing division laws. Illinois is particularly instructive because it already had a division statute allowing an insurer to "divide into 2 or more resulting companies pursuant to a plan of division," yet later enacted a separate IBT statute to provide "a basis and procedures for the transfer of . . . policies" by an insurance business transfer. *See* 215 Ill. Comp. Stat. 5/35B-1, § 35B-15 (Illinois division law); 215 Ill. Comp. Stat. 5/1703 (Illinois IBT law). The Illinois IBT statute expressly states that its purpose is to provide "finality" for transfers while protecting "policyholders, *reinsurers*, and claimants." 215 Ill. Comp. Stat. 5/1703 (Illinois IBT law) (emphasis added). It expressly allows for transfers "without the affirmative consent of policyholders or reinsureds," unlike the earlier enacted Corporate Division law. *Id.* It also defines

"Policyholder" to include "an insured" or "a reinsured." *Id.* § 1705. By contrast, its earlier enacted Corporate Division statute operates through corporate succession and confirms that the allocation of a policy or other liability does not "reduce the allocation and assignment of reinsurance as stated in the reinsurance contract," further emphasizing the key differences between the Corporate Division statute mechanisms and IBT statute transfers. *See* 215 Ill. Comp. Stat. 5/35B-1, § 35B-15 (Illinois division law).

Georgia, like Illinois, also enacted a division statute under which a "division" occurs when an insurer "divides into two or more resulting domestic insurers," before it later enacted a separate IBT statute. *See* Ga. Code Ann §§ 33-14-120 *et. seq*.; Ga. Code Ann §§ 33-52-10 *et seq*. Georgia's IBT statute expressly defines an "insurance business transfer" as a "transfer and novation" that transfers obligations and risks under existing contracts of "insurance *or reinsurance*" from a transferring insurer to an assuming insurer. Ga. Code Ann § 33-52-12(8) (emphasis added). Georgia's IBT statute also defines "Policy" to include "a contract of reinsurance" and "Policyholder" to mean "an insured or a reinsured under a policy . . ." *Id.* §§ 33-52-12(13), (14). Georgia's Corporate Division statute, by contrast, provides that policies are allocated among resulting insurers and that the resulting insurers are liable "as successors to the dividing insurer, and not by transfer." Ga. Code Ann § 33-14-128(6). That contrast supports the conclusion that a Corporate Division statute and an IBT statute perform different functions: one allocates corporate assets and liabilities among resulting insurers (and excludes reinsurance contracts and liabilities) and the other expressly transfers and novates insurance *or reinsurance obligations* and directly addresses policyholders and reinsureds. Otherwise, Georgia and Illinois would not need both statutes.

The Iowa Division Law should be read against the backdrop of these other state statutory examples. The Iowa Division Law defines only the corporate division concepts needed for insurers, not reinsurers. If the Iowa legislature intended the Corporate Division statute to operate as an IBT statute for reinsurance obligations, it would have passed an IBT law or included language similar to the IBT Model Act or other state IBT laws to make its intent clear. But it did not do so, thus choosing to exclude the transfer of reinsurance obligations from its statutory framework. *See Estate of Wilson*, 202 N.W.2d 41, 44 (Iowa 1972) ("[L]egislative intent is expressed by omission as well as by inclusion.").

B. The Model Acts Confirm That Cedents Are Not "Policyholders" Under Division Statutes.

NCOIL's model acts confirm the same distinctions between Corporate Division and IBT statutes. As briefly discussed above, the IBT Model Act and NCOIL Insurer Division Model Act (the "Insurer Division Model Act") use different definitions, and those differences confirm the distinct function of each law and the place (or lack thereof) of reinsurance in each. This is important because NCOIL is viewed "as a leader in providing states guidance on insurance restructuring issues" and adopts Model Laws for states to consider enacting into state law in a way that meets that state's local needs and realities. *See* NCOIL, *NCOIL Adopts Insurer Division Model Act*, (May 3, 2021); NCOIL, *Model Laws & Resolutions* (last visited July 20, 2026).

First, the IBT Model Act and Insurer Division Model Act treat and define policyholders differently. The IBT Model Act defines "Policyholder" as "an insured *or reinsured* under a policy" and also treats "contract holders" separately from "policyholders," confirming that its defined protected classes are not silently expanded to include every counterparty to every agreement. Nat'l Council of Ins. Legislators, *Insurance Business Transfer Model Act* at 3 (2020). By contrast, in the Insurer Division Model Act, "Policyholder" means "the owner of an insurance policy" and makes

no reference to reinsureds in its definition of "Policyholder." *See* Nat'l Council of Ins. Legislators, *Insurer Division Model Act* at 2 (2021).

Second, the Insurer Division Model Act's references to reinsurers and reinsurance contracts reinforce that when the NCOIL wanted the Insurer Division Model Act to mention reinsurers, it did so expressly. For example, this model act states that any plan must provide "a reasonable description" of "the manner by which the dividing insurer proposes to allocate all reinsurance contracts." *See id.* at 3. The Iowa Division Law mirrors this language when it says that a domestic stock insurer's plan of division shall include "a description of all liabilities and assets that the dividing insurer proposes to allocate . . . including the manner by which the dividing insurer proposes to allocate all reinsurance contracts." Iowa Code § 521I.2(5). That is not language meant to define the scope of business properly transferred; rather, as discussed above, it allocates *ceded* reinsurance that covers transferred policy liabilities. It also shows that the legislature knew about the separate nature of the reinsurance industry when drafting the law and chose to address only *ceded* reinsurance and not reinsurance transfers and novations with the Iowa Division Law. The omission of reinsureds from the language of the Insurer Division Model Act is not accidental. Its omission from the Iowa Division Law likewise should not be treated as accidental.

These differences between IBT laws and Corporate Division statutes are not semantic; they are intentional and meaningful. A Corporate Division statute does not, absent express words, confer an IBT mechanism that allows an assuming reinsurer to unilaterally substitute itself for the cedent's chosen treaty counterparty. Allowing the Proposed Plan to move forward would collapse the distinction and treat a cedent as if it were a "policyholder" under the Iowa Division Law without any evidence in the text of that legislative intent. It would mean reinsurance contracts can be treated as if they are policies of insurance when nothing in statute or industry custom does so.

And most problematically, it would give the Plan Proponents the benefit of an IBT statute without the safeguards that IBT statutes impose, including the requirement of court approval. Permitting that would impermissibly rewrite the Iowa Division Law into an Iowa IBT law that the legislature did not enact.

Nor can the Iowa Division Law be stretched into an IBT statute by implication when Iowa law already contains a separate framework for reinsurance assumptions. Iowa Code Chapter 521 governs consolidations, mergers, and reinsurance and expressly provides that "a domestic insurance company shall not assume or reinsure the whole or any part of the risks of another company, except as provided" in that chapter. TLIC knows this framework well: in 2020, it applied under Chapter 521 for approval of its reinsurance assumption agreement with Wilton Reinsurance Company. *See In re the Application of Transamerica Life Insurance Company for Approval of an Assumption Reinsurance Agreement with Wilton Reinsurance Company* (Iowa Ins. Comm'r & Iowa Att'y Gen. June 24, 2020). That prior proceeding confirms two points fatal to the Proposed Plan: Iowa law treats division, merger, and reinsurance-assumption transactions as distinct statutory mechanisms, and TLIC has previously used the reinsurance-assumption mechanism when it sought approval of a reinsurance assumption. It cannot now bypass that framework by asking the Commissioner to transform the Iowa Division Law into the IBT statute the legislature did not enact.

CONCLUSION

For the foregoing reasons, John Hancock respectfully requests that the Commissioner grant its Motion for Summary Judgment and deny approval of the Proposed Plan. The legislature's omission of assumed reinsurance transfers from the Iowa Division Law must be dispositive. Summary judgment should be granted so as to avoid the rewriting of "policyholders" in the Iowa Division Law to mean "cedents" or "reinsureds," and "division" to mean "IBT."

The Iowa Division Law applies to domestic stock insurer divisions involving insurance policies and policyholders; it does not authorize TLIC to transfer its obligations and novate John Hancock's reinsurance contracts to SGLUSA by treating cedents as policyholders when convenient, recasting them as creditors when challenged, and treating allocation as consent-free novation. This statutory limitation is dispositive as a matter of law.

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Respectfully submitted,

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