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Pa. Insurance Department's Role in Global Regulation

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Special to the Legal

Pennsylvania is the fifth-largest insurance market in the United States and the 14th-largest in the world, outranking countries such as Australia, Spain and India, according to data from the National Association of Insurance Commissioners. The Pennsylvania Insurance Department is charged with regulating this vast marketplace in accordance with the state's insurance laws, which focus the department's duties on Pennsylvania's insurance issues. However, over the past 15 years, although not part of the department's express statutory charge, a number of Pennsylvania insurance regulators have become leading voices on a number of important regulatory initiatives



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impacting the national and international insurance marketplace.

In the United States, the NAIC serves as the principal forum for the development of insurance regulation and best practices for the industry, convening the chief insurance regulators from each state to coordi-

nate regulatory oversight between the states, as well as on the international front. Pennsylvania's current insurance commissioner, Mike Consedine, is presently serving as NAIC vice president, participating on a number of committees focused on both domestic and international matters. He is slated to become NAIC president in 2016 (so long as he remains Pennsylvania's commissioner), which would make him the second NAIC president from Pennsylvania in the past 10 years. Diane Koken, who was Pennsylvania's insurance commissioner from 1997 to 2007, also served as president of the NAIC in 2004 and 2005. Additionally, Joel Ario was an officer of the NAIC and in leadership roles while serving as Pennsylvania's commissioner from 2007 to 2010.

As NAIC leaders, these commissioners and many key department

personnel supporting them have been closely involved in charting the course for the NAIC, helping craft the national and international agenda for insurance regulation. This increased participation and prominence on the global regulatory stage has, in turn, strengthened the department's ability to understand and interface with insurers of all types and sizes and with regulatory counterparts across the globe, often inuring to the benefit of the Pennsylvania insurance marketplace.

ON THE NATIONAL STAGE

Unlike most financial services sectors, insurance regulation is still largely dictated by state law. The debate over the efficacies of state versus federal regulation of insurance has ebbed and flowed for decades, but resurfaced steadily since the financial crisis in 2008. Notably, the Dodd-Frank Act created the Federal Insurance Office to inform Congress on insurance matters, through the issuance of several annual and ad hoc reports. In December 2013, the FIO released its study titled "How to Modernize and Improve the System of Insurance Regulation in the United States." The report highlighted the need for uniformity in the U.S. insurance regulatory system, but did not conclude that federal regulation should displace state regulation. Instead, the report recommended a hybrid approach to insurance regulation, and identified short-term actions to modernize U.S. insurance regulation. As the FIO continues to develop its courses of action, Pennsylvania will have an important seat at the table. In November 2011, the U.S.

Treasury Department named Consedine to serve on the Federal Advisory Committee on Insurance to advise the FIO.

Pennsylvania is also at the helm of efforts to craft regulatory updates required for the NAIC's solvency modernization initiative. Launched in response to the 2008 financial crisis, the initiative is a critical self-examination of U.S. insurance solvency regulation framework and focuses on assessing enterprise risk within a holding company system. The initiative has addressed a number of areas, including communications between regulators, access to and collection of information, enforcement measures and capital assessment. Pennsylvania Deputy Insurance Commissioner Stephen Johnson serves on several of the NAIC's working groups tasked with drafting regulatory updates as part of the initiative, and ushers the regulatory updates through the adoption process in Pennsylvania.

"This initiative has demonstrated the agility and the nimbleness of state regulators to attack a crisis immediately and effect true reform in response to a crisis," Johnson said.

Pennsylvania has already adopted and even enhanced several of the suggested plans developed through the solvency modernization initiative, including amendments to the Model Insurance Holding Company Act. In July 2012, Pennsylvania's Insurance Holding Companies Law was amended by the act of July 5, 2012, P.L. 1111, No. 136. On June 16, the attendant amendments to the regulations became effective in Pennsylvania. According to Johnson, "these amendments were the first

milestone accomplishments of the solvency modernization initiative in Pennsylvania—they expand our ability to understand the risk of an entire group rather than just a single legal entity, using various tools such as the enterprise risk report, supervisory colleges and additional authority to examine other legal entities within a group."

Pennsylvania also added a provision dealing specifically with a state acting as a lead group supervisor for an internationally active insurance group. Regulators from around the world have pointed to this "Pennsylvania amendment" as an innovative approach to dealing with group regulation of large companies.

State regulators have recently made great strides to modernize the regulation of reinsurers, which, in turn, helps increase capital in the marketplace and ultimately helps stabilize insurance pricing. For example, the NAIC's recent amendments to the Model Credit for Reinsurance Law allow for reduced collateral requirements for "certified reinsurers" that are financially stable and licensed in a jurisdiction that has a well-defined regulatory framework. In order to coordinate oversight of certified reinsurers, the NAIC also recently formed the Reinsurance Financial Analysis Working Group, or FAWG, which is chaired by Johnson. The Reinsurance FAWG has already accomplished regulatory efficiencies by streamlining the process for a reinsurer to achieve multi-state certification through a process called passporting, which allows states to defer to another NAIC-accredited state's certification.

“The Reinsurance FAWG allowed the U.S. to demonstrate worldwide that we could coordinate recognition of certified reinsurers throughout the country,” remarked Johnson.

ON THE INTERNATIONAL STAGE

Insurers and reinsurers with global operations undergo multiple layers of regulation by multiple regulators, often with differing or even competing views or agendas. This can be a significantly complex undertaking. After the financial crisis in 2008, the complexity has only escalated, with increased focus on financial solvency monitoring and maintenance. Heightened debate has ensued among global insurance regulators on various topics, such as which financial standards should apply, how regulators should analyze global operational impacts on the entities within their oversight, which regulators should coordinate the global oversight and more. Pennsylvania regulators are active in these global debates.

Consedine is presently chair of the NAIC’s International Insurance Relations (G) Committee, which is responsible for coordinating efforts between the NAIC and other international regulatory bodies. The committee also provides direct support to the U.S. government, including the FIO, on insurance-related international trade issues. As chair of the committee, Consedine collaborates directly with international regulators to identify and resolve issues of mutual interest. He and other staff members are the lead voices for U.S. regulators during international discussions with organizations such as

the International Association of Insurance Supervisors, or IAIS.

“It’s critical for us to be engaged with such international standard-setting bodies like the IAIS and Financial Stability Board because these entities are crafting the next generation of insurance regulatory requirements that will impact companies large and small,” Consedine said.

Collaborations with the IAIS currently focus on common interests such as solvency, accounting, reinsurance and group supervision, including the development of “ComFrame,” the common framework for the supervision of internationally active insurance groups, or IAIGs, which is a set of international supervisory requirements focusing on groupwide supervision of IAIGs. Pennsylvania vice-chairs the NAIC’s recently created ComFrame development and analysis working group, which is tasked with coordinating U.S. strategic input on the fast-paced and dynamic development of ComFrame and international group capital requirements.

“The NAIC has been invaluable in helping states collaborate and coordinate to ensure that we’re effectively advocating positions that best suit the U.S. market and consumers,” Consedine said. “That said, the current direction of some of these ComFrame discussions, in particular those dealing with increased capital requirements for large insurance groups, concern us because they likely will have a negative impact on U.S. companies and consumers.”

One key tool for assessing enterprise risks of IAIGs and coordinating among international regulators

is the use of supervisory colleges—essentially, a gathering of all regulatory entities overseeing the insurance group in order to examine risks faced by the group, share regulatory insights and plan for any troubled waters. In Pennsylvania, ACE Ltd. is a multi-national insurer falling under the department’s supervision. In 2012, the department led an inaugural supervisory college for ACE, hosting regulators from five states and five countries, along with the FIO. The college concluded with an agreement among the regulators to make Pennsylvania the company’s lead group supervisor.

Johnson foresees that “as supervisory colleges mature, regulators will shift from inaugural colleges, which focus on an overall understanding of each regulator’s style of regulation and overall assessment of the company, to selecting areas to explore with more depth to better understand each business unit’s risk.”

Pennsylvania’s active engagement in regulatory discussions benefits the state’s insurance industry, allowing the industry’s voice to be heard beyond the state’s borders. As the insurance industry continues to undergo transformation, stakeholders should look to Pennsylvania’s regulators to assume a lead role in the conversations and demonstrate the value for the industry of a state-based regulatory framework. •