

NAIC PLOT LINE > SCOTT SINDER, JOHN FIELDING

Groundhog Day

The NAIC has a history of moving with all due sluggishness. But when it comes to cyber security, picking up speed could be harmful.

Groundhog Day is a term we've used many times to describe the National Association of Insurance Commissioners' thrice-yearly meetings. Like the life of Bill Murray's character in the 1993 movie, the NAIC gatherings of regulators, lobbyists and paid consumer reps can be monotonous and repetitive, giving the impression that nothing gets accomplished. And that isn't completely inaccurate. But it's not completely fair anymore, either.

In the old days, the joke was that you could check in on NAIC meetings every few years and not miss a beat—same issues, same people, same status. That has changed, at least on some issues important to brokers. Since the enactment of the Affordable Care Act and the Dodd-Frank financial reforms, the NAIC has engaged and

moved (relatively) rapidly through issues the feds have forced upon it. ACA implementation issues include minimum loss ratios, network adequacy and a number of old NAIC model laws that required updating due to the new federal law. Dodd-Frank issues include surplus lines reform and the creation of (and perceived competition from) the Federal Insurance Office (FIO). Let's take a closer look at the Dodd-Frank issues to see this in action (or non-action).

FIOMOVES IN

State regulators have seen their position as the only U.S. voice on insurance regulatory matters challenged by the new federal non-regulator. The Federal Insurance Office represents the United States at the International Association of Insurance Supervisors and is broadly active on international insurance regulatory



issues, most recently pressing forward on a "covered agreement" with foreign regulators addressing reinsurance collateral issues. The FIO's high profile and its forceful entry into the insurance regulatory arena—at least on the international stage—has stung the NAIC and state regulators. They have responded with rhetoric and by pushing their revamped insurance collateral model in the states. This tussle will continue while the states and FIO learn how to deal with each other.

A PASSIVE APPROACH TO NRRRA

In 2010, the Non-Admitted and Reinsurance Reform Act (NRRRA) was passed as part of Dodd-Frank to establish the insured's home state as the one and only jurisdiction to regulate and tax surplus lines transactions. While this initially prompted a rush of discussion, ultimately the NAIC served as more of a facilitator for the differing state approaches to taxation than a centralizing force for a standard state approach. Perhaps as a result, we ended up with several different approaches to surplus lines premium tax requirements, including two different multi-state compacts: SLIMPACT, pushed by state legislators at the National Conference of Insurance

HOT BUTTON

The U.S. Department of Justice started in early April a one-year pilot incentive program for companies that self-report violations of the Foreign Corrupt Practices Act. To be eligible for rewards, a voluntary report must be made before "an imminent threat of disclosure or government investigation," the DOJ says. If a company complies fully with the pilot program and a criminal resolution results, the company could receive a 50% reduction from the minimum sentencing guideline if a fine is sought. The DOJ says it plans to intensify its investigative and prosecution efforts and work more closely with foreign counterparts to find violators.

REGULATORY NEWS TICKER

Liquidation Bureau, where he oversaw liquidation of more than 25 domestic insurers and handled claims for state insurance security fund. » Names Laura Evangelista as deputy superintendent for insurance, reporting to Fischer. She moves from role as VP and assistant general counsel at Lloyd's brokerage Nausch, Hogan & Murray. » Tells health insurers to cover screenings for depression in pregnant women and new mothers ASAP, and no later than late October. » Begins

liquidation of failed co-op Health Republic. No payments on outstanding claims will be made until liquidator knows total assets available, including unpaid third-party payments to Health Republic, and total claims demands. » Attorney General Eric Schneiderman reaches agreement with seven health insurers to expand coverage for hepatitis C in nearly all commercial health plans in the state without restrictions on severity of chronic disease. www.dfs.ny.gov

OHIO Steve Buehrer resigns as CEO and administrator of Ohio Bureau of Workers Compensation after more than five years in post. He is moving to unnamed role in private sector. Sarah Morrison, BWC's chief legal officer, will serve as interim administrator and CEO. www.insurance.ohio.gov

OKLAHOMA State Supreme Court strikes down part of workers comp law that, it says, deprives workers of due process. The portion of the law that authorizes

deferral of payments for permanent partial disability for workers who return to work was invalidated by the court as unconstitutional. www.oid.ok.gov

PENNSYLVANIA Legalizes medical marijuana, though legislators say it could take two years to craft regulations and get retailers selling the drug. Law sets standards for monitoring plants, certifying physicians and licensing growers, dispensaries and doctors. www.ins.state.pa.us/ins/site/default.asp

Legislators, and NIMA, under the auspices of state regulators (although not officially endorsed by the NAIC).

Despite these compacts, which were designed to facilitate interstate tax allocation and tax sharing, most of the states bypassed both and opted to simply collect and keep 100% of the premium tax incurred. Now, five years after the enactment of NIRA, this straightforward approach to surplus lines premium taxation appears to have won the day. SLIMPACT, which was enacted by nine states but never became operational, is dead. NIMA, which had a handful of states using its tax-sharing mechanism at the start, has lost its biggest market, Florida, whose departure will likely be NIMA's deathblow. Florida is the second NIMA jurisdiction to withdraw from the tax-sharing agreement in the past six months, leaving South Dakota, Utah, Wyoming and Puerto Rico as the only remaining members. Tennessee remains an associate member, but there doesn't seem to be any juice among other states to join.

WHEN IT COMES TO CYBER, SLOWER IS BETTER

The NAIC is currently pressing on cyber security, another issue in which the

association has been motivated (at least partly) by an interest in protecting state insurance regulators as the principal regulators of insurance. The NAIC took up this issue-du-jour last year with the creation of a task force charged with figuring out what state insurance regulators should be doing to protect consumers' data and how to respond to data security breaches. In the past year, the regulators have developed a "roadmap" and adopted "principles" for effective cyber security. Both of those documents were a precursor to the main event: developing a model act setting forth cyber security and data breach notification requirements for insurers, producers and others subject to state insurance licensing. The model has been released in draft form, and Adam Hamm, the North Dakota commissioner who is leading the cyber effort for the NAIC, has said he wants it adopted by August, when the association next meets.

Moving any model act through the NAIC in six months (or less) is rare. And moving a model as significant as the cyber model so quickly would be precipitous and unwise. As much as

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It is critical for the regulators to fully understand the issue, the proposal and its impact when taking a policy position by developing a model and recommending individual states take action by adopting it.

The cyber model as currently drafted raises significant questions and concerns, not the least of which is the concern that this could simply lead to another layer of cyber regulation on top of other state and (potentially) federal rules. Rushing the consideration and adoption of such a model, without careful discussion and full understanding of its implications, would do more harm than good.

So maybe Groundhog Day isn't so bad after all.

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TENNESSEE Gov. Bill Haslam signs law reforming self-procurement tax forgiveness, such that Tennessee-based companies with foreign captives that have liability on current or past-due procurement taxes will be forgiven that debt if they redomesticate that captive to the state by the end of 2018. Self-procurement tax forgiveness also available if company transfers complete line of business into newly formed Tennessee captive with at least \$15 million in capital and \$30 million annual premium.

Law allows companies to simply register for a transfer of their captives' domicile once Department of Insurance has approved the move, simplifying transfer process. Law clarifies that assets of any individual cell captive cannot be seized under litigation against another cell. Also gives captives, excluding risk retention groups, until March 15 to file annual financial reports—a two-week extension from previous law. RRG deadline remains March 1. <http://state.tn.us/commerce>

UTAH Gov. Gary Herbert signs asbestos "double-dipping" law preventing plaintiffs lawyers from seeking money from multiple asbestos trusts and private lawsuits for the same person. www.insurance.utah.gov

VERMONT Gov. Peter Shumlin signs H-538, allowing inactive sponsored or industrial insured captives to enter dormant status, which would exempt them from premium taxes but not require shutdown. Dormant state was available only to pure captives. H-538 also allows

"Another underlying hazard in the new federal regulatory system is the pressure to succumb to international standards. Federal regulators are traveling abroad to negotiate new, opaque global rules, before having tested them at home."

—David Sampson, president and CEO, Property Casualty Insurers Association of America, in letter to *The Wall Street Journal*
