STAYING ON TOP OF U.S. REGULATORY CHALLENGES

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STAYING ON TOP OF U.S. REGULATORY CHALLENGES.

- Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb's insurance regulatory law practice is ranked highly by Chambers & Partners, a premier legal rating service, for its "enduring connections to the most prominent regulators across the country" and its "great depth of industry knowledge." Fred E. Karlinsky, a Firm Shareholder, represents U.S. and international insurers and reinsurers in a wide variety of regulatory, transactional, corporate and governmental matters.

Disclaimer

The materials in this presentation are intended to provide a general overview of the issues contained herein and are not intended nor should they be construed to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature, you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.

Agenda

- Federal Insurance Office (FIO)
- Terrorism Risk Insurance Program Reauthorization Act (TRIPRA)
- NAIC - Solvency Modernization Initiative
  - Group Supervision
  - Credit for Reinsurance

Agenda Continued

- Dodd-Frank Act/Non-Admitted and Reinsurance Reform Act (NRRA)
  - NIMA and SLIMPACT
  - Foreign Risks
  - Eligibility of Surplus Lines Insurer
- Florida – Depopulation of Residual Market

Agenda Continued

- Drafting Managing General Agents Agreements
  - Key Contractual Provisions & Pitfalls
- Certificates/Modification of Policy

Federal Insurance Office

- The FIO is not a regulator or supervisor.
- The FIO monitors all aspects of the insurance industry, including identifying issues or gaps in regulation.
- The FIO coordinates and develops Federal policy on aspects of international insurance matters.
- The FIO monitors access to affordable insurance by traditionally underserved communities and consumers, minorities and low to moderate income persons.

Federal Insurance Office

- The FIO's authorities extend to all lines of insurance except health insurance, long-term care (except that which is included with life or annuity insurance components), and crop insurance.
- The FIO represents the United States at the International Association of Insurance Supervisors (IAIS).
- FIO became a full member of IAIS in 2011 and joined the Executive Committee on February 24, 2012.
- Michael McRaith was appointed by the Obama administration to head the FIO in March 2011.

Federal Insurance Office

- The Dodd-Frank Act required the FIO to conduct a study on modernization of the U.S. insurance regulatory system.
  - "How to Modernize and Improve the System of Insurance Regulation in the United States"
- The FIO report was officially due to Congress on January 21, 2012, but was not released until December, 2013.

Federal Insurance Office

- The FIO received close to 150 comment letters from the industry with recommendations on how to improve the regulatory system.
- The FIO also organized various meetings with industry leaders via the Federal Advisory Committee on Insurance.

Federal Insurance Office

The FIO report is composed of five parts:

1. Introduction, including recommendations for near term reform and direct federal involvement.
2. History of insurance in the U.S. up to the present.
3. Prudential oversight recommendations.
4. Market oversight recommendations.
5. Account of modernization in the context of basic principles of regulatory reform.

Federal Insurance Office

Near Term Recommendations

- For solvency oversight, the states should coordinate to improve consistency, and work towards more uniform solvency and capital standards.
- States should move forward cautiously with the implementation of principles-based reserving.
- States should develop corporate governance principles that impose character and fitness expectations on directors and officers appropriate to the size and complexity of the insurer.

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Federal Insurance Office

Near Term Recommendations

- In the absence of direct federal authority over an insurance group holding company, states should continue to develop approaches to group supervision and address the shortcomings of solo entity supervision.
- States should identify, adopt, and implement best practices to mitigate losses from natural catastrophes.

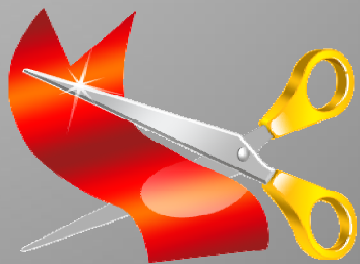
Federal Insurance Office

Areas for Direct Federal Involvement

- Federal standards and oversight for mortgage insurers should be developed and implemented.
- Treasury and the United States Trade Representative should pursue a covered agreement for reinsurance collateral requirements.
- The National Association of Registered Agents and Brokers Reform Act of 2013 should be adopted and its implementation monitored by FIO.
- FIO will continue to monitor state progress on implementation of the NRRA.

Federal Insurance Office

- FIO "concludes that the proper formulation of the debate at present is not whether insurance regulation should be state or federal, but whether there are areas in which federal involvement in regulation under the state-based system is warranted."
- FIO also concludes that "should the states fail to accomplish necessary modernization reforms in the near term, Congress should strongly consider direct federal involvement."



Federal Insurance Office

- Director McRaith testified before the House Financial Services Subcommittee on February 4, 2014.
  - Director McRaith reiterated the positions the FIO took in the modernization report.
  - The Representatives expressed reserve regarding imposition of bank-centric capital standards on U.S. insurers.
  - The conversation also dealt with TRIA reauthorization and the FIO's support for uniform federal capital standards for mortgage insurers.

TRIA Reauthorization

- NAIC and industry continue to support reauthorization of TRIA.
- Objective is to have private market innovations and solutions to address terrorism risk.
- August 26, 2013 – Resolutions adopted by the NAIC supporting reauthorization of TRIA.
- September 16, 2013 – New York Department of Financial Services Letter.
- September 16, 2013 – NAIC submits letter to the Federal Insurance Office providing comments on the TRIA program.

TRIPRA

- In November 2002, the Terrorism Risk Insurance Act (TRIA) was passed by the U.S. Congress to provide government reinsurance backstop so that commercial insurers would offer terrorism coverage.
- The act – extended and amended in 2005 and 2007, and now known as the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) – is set to expire on Dec. 31, 2014.

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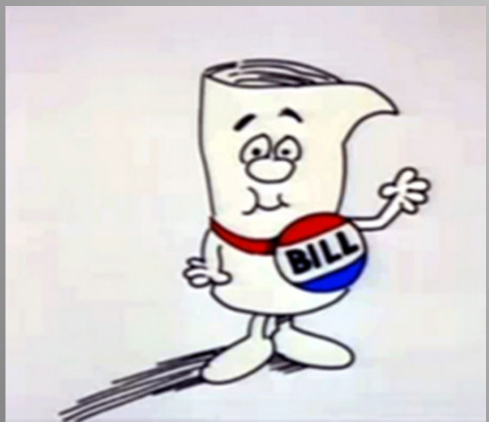
TRIPRA

- The looming expiration has created uncertainty among insurers as policies written in 2014 may extend into 2015, past TRIPRA’s current expiration date.
- In the event TRIPRA is not renewed or its protection is altered materially, insurers would have to obtain private reinsurance if they don't have it already.

TRIPRA

- Three bills, designed to extend the program by either five or 10 years, have been introduced in the U.S. House of Representatives to reauthorize the act. They are:
  - H.R. 508 Terrorism Risk Insurance Act of 2002 Reauthorization Act of 2013:
    - Introduced on Feb. 5, 2013, and referred to the House Financial Services Committee.



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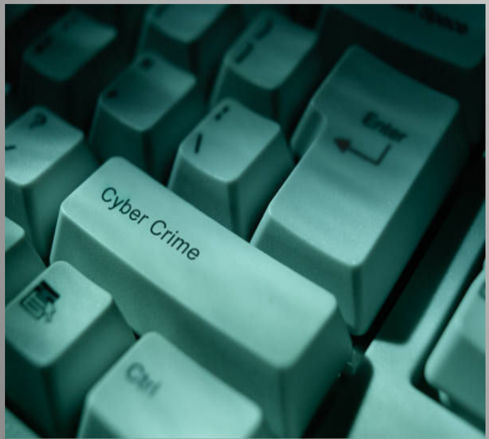
TRIPRA

- H.R. 1945 Fostering Resilience to Terrorism Act of 2013:
  - Introduced on May 9, 2013, and referred to the House Financial Services Committee and to House Homeland Security Committee.
  - On May 29, 2013, referred to the Cybersecurity, Infrastructure Protection, and Security Technologies Subcommittee.



TRIPRA

- H.R. 2146 Terrorism Risk Insurance Program Reauthorization Act of 2013:
  - Introduced May 23, 2013, and referred to the House Financial Services Committee.

NAIC - Solvency Modernization Initiative

Priorities of the Solvency Modernization Initiative:

- Create a document articulating the U.S. insurance regulatory system, to communicate to domestic and international audiences.
- Examine international developments (e.g., in the area of accounting and insurance supervision) and their potential use in U.S. insurance regulation.
- Comply with the IAIS Insurance Core Principles (ICPs) to the full extent appropriate in the U.S. system to aid assessment in the International Monetary Fund's (IMF) Financial Sector Assessment Program (FSAP).
- Apply lessons learned from the global financial crisis, especially in regard to group supervision, while recognizing that the recent financial crisis was not triggered by insurance matters.

NAIC - Solvency Modernization Initiative

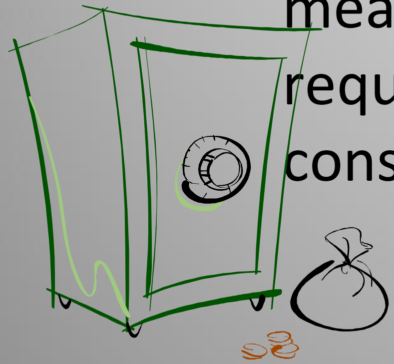
- Key components of the Financial Solvency Framework:
  - Capital requirements;
  - Governance and risk management;
  - Group supervision;
  - Statutory accounting and financial reporting; and
  - Reinsurance.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Capital Requirements

- Risk-based capital (RBC) is one of the methods used to monitor the capital adequacy of insurers and focuses on measuring a minimum amount of regulatory capital required for an individual insurance company in consideration of its size and risk profile.



NAIC - Solvency Modernization Initiative

Details of Key Components:

Capital Requirements

- RBC Measurement - Missing Risks:
  - Endeavors to capture the following material risks in the RBC formula:
    - Asset risk;
    - Insurance/underwriting risk;
    - Credit risk;
    - Interest rate risk; and
    - Business risk.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Capital Requirements

- State insurance regulators are developing an explicit catastrophe risk charge for inclusion in the property/casualty RBC formula (with adjustments to related charges that are currently embedded in other risk calculations) and are considering a pandemic charge in the health RBC formula (and removing the current charges out of other risk calculations).

NAIC - Solvency Modernization Initiative

Details of Key Components:

Capital Requirements

- The NAIC is also reviewing the credit risk calculation to improve its accuracy. At present, the NAIC is reviewing the asset risk factors, classes of investments and asset quality designations based on historical default experience.
- Operation Risk - Efforts are underway to develop a specific operational risk charge in the RBC formula, with initial consideration of factor-based methods (as used in other jurisdictions), which could eventually be augmented or replaced by an approach that incorporates qualitative elements or adjustments.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Corporate Governance

- In 2013, the NAIC adopted the Proposed Response to a Comparative Analysis of Existing U.S. Corporate Governance Requirements.
- Goal is to require insurers to submit annually corporate governance information and maintain effective audit function.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Risk Management

- The NAIC has decided to adopt the international approach to implement an Own Risk and Solvency Assessment (ORSA).
- In September 2012, the NAIC adopted the newly created Risk Management and Own Risk and Solvency Assessment Model Act (#505), which provides a statutory basis for requiring a risk management framework and the filing of an ORSA Summary Report.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Group Supervision

- All states and the District of Columbia have adopted substantially similar language found within the NAIC Insurance Holding Company System Regulatory Act (#440) and its related Insurance Holding Company System Model Regulation (#450).

NAIC - Solvency Modernization Initiative

Details of Key Components:

Group Supervision

- 2010 Revisions to Models #440 and #450:
  - Expansion on the ability of the regulator to look at any entity within an insurance holding company system.
  - Enhancements to the regulators' rights to access information.
  - Introduction of, and funding for, supervisory colleges.
  - Enhancements in corporate governance management responsibilities.
  - Guidance on disclaimer of affiliation filings.
  - Additional standards for reviewing affiliated agreements.
  - Filing of the new Form F.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Group Supervision

- Form F is meant to evaluate enterprise risk.
- "Enterprise risk" is any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Group Supervision

- Form F filings should contain:
  - Information on strategy, internal audit findings, compliance or risk management.
  - Any changes of 10% shareholders in the system.
  - 12 month business plan and strategies of the system.
  - System capital resources and material distribution patterns.
  - Discussions with rating agencies which may cause potential negative movement in credit ratings of the system.
  - Material activity or developments that senior management believes could adversely affect the system.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Statutory Accounting and Financial Reporting:

- Interface between statutory accounting principles (SAP) and generally accepted accounting principles (GAAP); and
- Utilization of Principle-Based Reserving (PBR).

NAIC - Solvency Modernization Initiative

Details of Key Components:

Reinsurance

- The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) prohibits a state from denying credit for reinsurance if the domiciliary state of the ceding insurer recognizes such credit and is an NAIC-accredited state.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Reinsurance

- The NRRA preempts the extraterritorial application of credit for reinsurance laws by states other than the ceding insurer's domiciliary state.
- The NRRA gives sole responsibility to the reinsurer's domiciliary state for regulating the reinsurer's financial solvency.
- FIO wants the federal government to enter into covered agreements with foreign nations.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Reinsurance

- In November 2011, the NAIC adopted revisions to the Credit for Reinsurance Model Law and Regulation.
- NAIC is maintaining a list of "conditionally qualified jurisdictions."
    - In December, 2013, the NAIC approved Bermuda, Germany, Switzerland, and the United Kingdom.

NAIC - Solvency Modernization Initiative

Details of Key Components:

Reinsurance

- To date, 18 states have adopted reduced credit for reinsurance statutes or regulations.
- Of those states, only Connecticut, Florida, Missouri, New York and Pennsylvania have certified any reinsurers for collateral reduction.
  - Other states are reviewing applications.

Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

- On October 24, 2005, numerous industry trade associations, surplus lines stamping offices, and other industry stakeholders commenced development of a uniform system for the collection and allocation of surplus lines premium taxes.
- Since then, several pieces of legislation were introduced in Congress to provide for the enactment of the NRRA.
- The NRRA was finally passed in 2010 in the wake of the 2008 financial crisis.

Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

- The NRRA creates uniform standards for the taxation and regulation of surplus lines placements by implementing a surplus lines home-state tax and compliance system.
- The NRRA went into effect on July 21, 2011.
- Dodd-Frank Act declared that Congress intends that each state adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this Act.

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Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

- Authorizes states to enter into a compact or otherwise establish procedures to allocate among themselves the premium taxes paid to an insured's home state.
- Allows an insured’s home state to require surplus lines brokers and certain insureds to file annual tax allocation reports detailing the portion of the nonadmitted insurance premiums attributable to properties, risks, or exposures located in each state.

Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

- Declares that state law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer is not preempted.
- Prohibits a state from collecting fees relating to licensure of a surplus lines broker in the state unless it has a regulatory mechanism in effect for participation in the national insurance producer database of the NAIC, or any other equivalent uniform national database.

Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

- Prohibits a state from prohibiting a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the U.S. and listed on the NAIC International Insurers Department Quarterly Listing of Alien Insurers.
- Requires the Government Accountability Office to study, consult with the NAIC, and report to Congress on the nonadmitted insurance market in order to determine the effect of this title upon the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

- The GAO released the NRRA report in January, 2014.
- The report concluded that some states were making additional requests of surplus lines insurers beyond the requirements of the NRRA.
  - NAIC is investigating.
- The report further concluded that the NRRA had little, if any, effect on the prices or availability of coverage.
- There has been little noticeable shifting in coverage between the admitted and surplus lines markets.

Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

- Prohibits a state from establishing eligibility criteria for nonadmitted insurers domiciled in a U.S. jurisdiction except in conformance with certain provisions of the NAIC Non-Admitted Insurance Model Act, unless the state has adopted nationwide uniform requirements, forms, and procedures developed in accordance with this Act that include alternative nationwide uniform eligibility requirements.

Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

- Provides that a surplus lines broker seeking to procure or place nonadmitted insurance in a state for an "exempt commercial purchaser" is exempt from any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers, under certain conditions.
- If ceding insurer's state of domicile is an NAIC-accredited state or equivalent standards and recognizes credit for reinsurance, then no other state may deny such credit for reinsurance.

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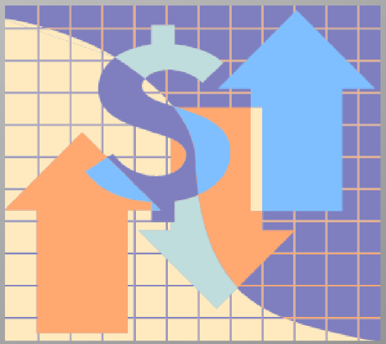
Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

- If the state of domicile of a reinsurer is an NAIC-accredited state or equivalent financial solvency requirements, then such state shall be solely responsible for regulating the financial solvency of the reinsurer and no other state may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary state.



Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

- Only the home state of the insured may require premium tax payment or otherwise regulate surplus lines placements.
- Only insured's home state may require licensure of a surplus lines broker for nonadmitted contract.
- The home state is where insured maintains its principal place of business or residence.
- Special rules if no risk in identified state and for affiliated group of companies.
- Only the home state may regulate the surplus lines insurer.

Non-Admitted & Reinsurance Reform Act (NRRA)

Nonadmitted Insurance Multi-State Agreement (NIMA)

- NIMA facilitates the payment and allocation of premium tax among participating states.
- A clearinghouse has been established to facilitate the receipt and distribution of premium taxes.
- Provides a tax allocation formula that is based upon rates established by participating states.
- Endorsed by the National Association of Insurance Commissioners (NAIC).

Non-Admitted & Reinsurance Reform Act (NRRA)

Nonadmitted Insurance Multi-State Agreement (NIMA)

- Only states that sign onto NIMA (participating states) are entitled to utilize the clearinghouse.
- If an insured's home state is a participating state, a non-participating state will not be entitled to any portion of the premium tax on the insured's surplus lines policy, even if a portion of the covered risk is located in the non-participating state.
- Current participating states are: Florida, Louisiana, Puerto Rico, South Dakota, Utah and Wyoming.

Non-Admitted & Reinsurance Reform Act (NRRA)

Surplus Lines Multi-State Compliance Compact (SLIMPACT)

- SLIMPACT is intended to streamline surplus lines market efficiencies through implementation of uniform regulation among its member states.
- SLIMPACT provides for a commission which will adopt mandatory rules to implement the NRRA.

Non-Admitted & Reinsurance Reform Act (NRRA)

Surplus Lines Multi-State Compliance Compact (SLIMPACT)

- SLIMPACT will become effective for purposes of adopting rules and creating a clearinghouse when ten (10) states, or states representing 40% of all surplus lines premium volume, enter into the compact.
- Nine states have joined so far: Alabama, Indiana, Kansas, Kentucky, New Mexico, North Dakota, Rhode Island, Tennessee, and Vermont.
- Even when the ten state or 40% threshold is reached, the clearinghouse will not become operational for more than a year.

Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

Foreign Risks

- On June 5, 2012, the Florida Surplus Lines Service Office issued a bulletin indicating surplus lines agents and independently procured filers do not need to report non-U.S. premium allocations on multi-state policy filings.
- New York, Texas and California have reached similar conclusions because of pressure from the insurance industry.

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Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

Surplus Lines Insurer Eligibility

- To comply with NRRA, some states have eliminated "white lists" requirements in order to be an eligible surplus lines insurer.
- Certain states have elected to maintain a "voluntary approved list" of carriers.
- Objective is to limit state review or requirement to data available from the surplus lines insurer's domiciliary jurisdiction or the NAIC database.
- North Dakota recently became the 7th state to allow domestic surplus lines insurers.

Dodd-Frank Act/Non-Admitted & Reinsurance Reform Act (NRRA)

FIO Criticism

- In its report on how to modernize insurance regulation, the FIO was critical of the states' failure to make uniform surplus lines regulations under the NRRA.
- FIO wrote "implementation of the NRRA demonstrates the challenge of facilitating coordinated state action when coordinated action may materially impact state general revenue funds."

Florida Depopulation of Residual Market

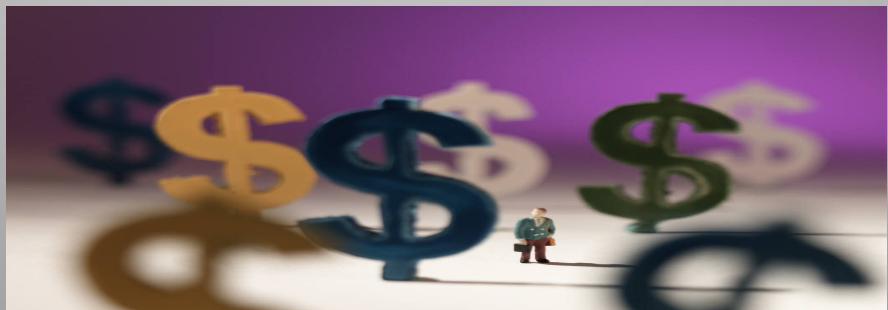
Citizens Property Insurance Corporation
(The Residual Property & Casualty Joint Underwriting Association)

- Citizens' Plan of Operation - effective August 1, 2002.
- 1.2 Million policies (current policy count).
- 600,000 policies (request to depopulate).
- 390,000 policies (takeouts recently approved).
- 900,000 policies (Citizens' goal according to CEO Barry Gilway).
- $6.8 Billion in surplus on June 30, 2013.
- $18.5 Billion in claims-paying capacity.

Florida Depopulation of Residual Market

Citizens Property Insurance Corporation

- Unfunded Liability:
  - $10.4 Billion in 2010;
  - $3.8 Billion in 2013.
- Probable Maximum Loss reduced by 15%:
  - $23.5 Billion to $19.9 Billion.



Florida Depopulation of Residual Market

Citizens Property Insurance Corporation

- Opt-Out Percentage:
  - 2013 (1st Quarter) – 73,861 policyholders and 21% "opted-out" or declined coverage;
  - 2012 – 403,902 policyholders and 24% elected to "opt-out"; and
  - 2008 – 2013 (1st Quarter) – 33% of policyholders "opted-out."
- In 2012, seven private insurance companies assumed 277,002 policies, equating to $75.9 Billion in risk.

Florida Depopulation of Residual Market

Citizens Property Insurance Corporation

- Property Insurance Clearinghouse launched on January 27, 2014.
- Purpose/Directive – match all new personal lines applicants and renewing personal lines policyholders with participating private-market insurers before placing or renewing coverage with Citizens.

Drafting Managing General Agents Agreements: Pitfalls

- NAIC Managing General Agents Model Act (#225).
- Statutory Definition: Any person who manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office) and produces and underwrites an amount of gross direct written premium of at least (5%) of the policyholder surplus as reported in the insurer's financial statement in the previous year.
- Furthermore, adjusts or pays claims in excess of $10,000 per claim or negotiates reinsurance on behalf of the insurer.

Drafting Managing General Agents Agreements: Pitfalls

- The definition of MGA does not include:
  - Employees of the insurer;
  - U.S. manager of a U.S. branch of an alien insurer;
  - An underwriting manager whose compensation is not based on the volume of premiums written; and,
  - Adjusters.

Drafting Managing General Agents Agreements: Pitfalls

- The Model Act provides that MGAs, as defined by the Act, must be licensed producers in the insurer's state of domicile, although the MGA may only have a nonresident producer license if the risk is located outside of the insurer's state of domicile.

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- There must be a written contract setting forth the responsibilities of each party where responsibilities are shared, and must contain the following minimum provisions:
  - The insurer may terminate the contract for cause upon written notice to the MGA, and may suspend the MGA's underwriting authority while a dispute is pending.

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- The MGA must render accounts to the insurer and remit all funds due under the contract on not less than a monthly basis.
- All funds collected for the account of an insurer shall be held by the MGA in a fiduciary capacity at an FDIC insured institution. The funds shall be used for all payments on behalf of the insurer. The MGA may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- Separate records of business written by the MGA must be maintained. The insurer must have access and right to copy all accounts and records related to its business in a form usable by the insurer. The Insurance Commissioner must have access to all books, bank accounts and records of the MGA in a form usable to the Commissioner. Such records shall be retained according to state's record retention statute.
- The MGA may not assign the contract in whole or in part.

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- Required underwriting guidelines of contract:
  - Maximum annual premium volume;
  - The basis of the rates to be charged;
  - The types of risk which may be written;
  - Maximum limits of liability;
  - Applicable exclusions;
  - Territorial limitations;
  - Policy cancellation provisions; and,
  - The maximum policy period.

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- The insurer must have the right to cancel or non-renew any policy of insurance subject to the applicable laws and regulations [concerning cancellation].
- The MGA must maintain a bond for the insurer's protection of at least $100,000 or 10% of the MGA's annual written premium, but not to exceed $500,000.
- The insurer may require the MGA to maintain an errors and omissions policy.

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- If the MGA may settle claims on behalf of the insurer:
    - All claims must be reported to the insurer in a timely manner.
    - A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim meets certain criteria, such as the amount in dispute.

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- All claim files are joint property of the insurer and MGA until an order of liquidation is filed by the insurer, at which point the insurer takes ownership.
- The MGA's settlement authority may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause of termination.

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- Where electronic claims files are in existence, the contract must address the timely transmission of the data.
- The MGA may only use advertising related to the insurer's business with the insurer's prior written approval.
- The MGA may have the authority to determine the amount of interim profits, but such profits shall not be paid to the MGA until one year after they are earned for property lines, or five years for casualty lines.

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- The MGA shall not:
  - Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the reinsurance agreement meets requirements laid out by the insurer;
  - Commit the insurer to participate in insurance or reinsurance syndicates;

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- The MGA shall not:
  - Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed;
  - Pay a claim without the insurer’s prior approval over a specified amount, not to exceed 1% of the insurer’s policyholder’s surplus of the preceding year;

Drafting Managing General Agents Agreements: Pitfalls

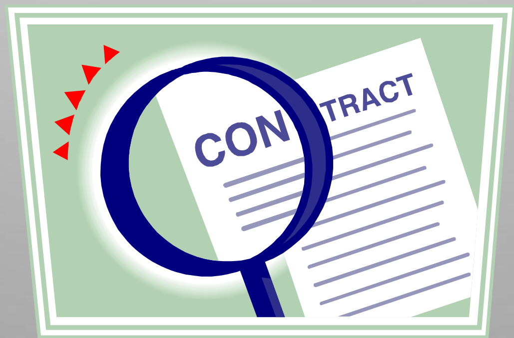
Required Contract Provisions

- The MGA shall not:
  - Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer; without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;
  - Permit its subproducer to serve on the insurer’s board of directors.

Drafting Managing General Agents Agreements: Pitfalls

Required Contract Provisions

- The MGA shall not:
  - Jointly employ an individual who is employed with the insurer; or,
  - Appoint a sub-MGA.



Drafting Managing General Agents Agreements: Pitfalls

- Additional Pitfalls – Commercial Issues:
  - Scope of business covered.
  - Exclusivity, non-compete, and non-solicit agreements.
  - Rights of expiration.
  - Fiduciary accounting and credit risk.
  - Cancellation – “sudden death” provisions.

Drafting Managing General Agents Agreements: Pitfalls

- Markets are enquiring whether an MGA is AAMGA in the vetting process.
  - Minimum eligibility requirements, education and code of ethics are good indicators of an MGA to whom binding authority can be delegated and avoid potential pitfalls.

Certificates/Modification of Policy

- Problem
  - Certificate fraud by agents and insureds.
  - Onerous contractual insurance requirements imposed by large contractors, governmental/public entities, etc…
  - Failure to notify certificate holders (additional insureds and loss payees) of cancellation.
- ACORD issued new pronouncement pertaining to ACORD 25 – Certificate of Liability Insurance, specifying that notice of cancellation is governed purely by the terms of the insurance policy.

Certificates/Modification of Policy

Regulatory Fixes

- Kansas – August 30, 2010 Bulletin issued by department mandating that certificates be filed and approved by department or comply with Kansas law.
- North Carolina – On February 1, 2010, department endorses use of revised ACORD forms.
- Texas – Statute requires that certificates be submitted to department for approval.

Questions?

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