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The Continuing Debate Over Global and National Insurance Regulatory Reform

by Elizabeth Ahlstrand, with Heather McCoy and Shrina Faldu

Insurance regulatory reform has been a source of continuing debate in both the United States and abroad for over a decade. Indeed, industry groups, such as the National Association of Insurance Commissioners ("NAIC"), the National Conference of Insurance Legislators ("NCOIL"), and the American Insurance Association ("AIA") have long been recognized as vocal critics to a "federalized" insurance regulatory framework.

Presently, these groups are turning their attention to two key reports released at the end of 2013, which propose further insurance regulation reform on a national and international level. Specifically, stateside, the Federal Insurance Office of the Department of Treasury ("FIO") released its long-awaited report identifying areas where increased federal monitoring and regulations would be most beneficial to the state insurance regulatory base. At the global level, the International Association of Insurance Supervisors' ("IAIS") announced a plan to develop the first ever risk-based global insurance capital standard by 2016.

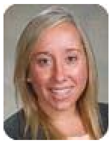
The FIO Report – National Legislation to Come?

In December of 2013, FIO issued a report entitled *How to Modernize and Improve the System of Insurance Regulation in the United States* (the "FIO Report"), which provided its recommendations for areas where increased federal monitoring and regulations would improve issues of inefficiency, redundancy, and lack of uniformity in the United States' state-based insurance regulatory system. *See* FIO, U.S. Department of the Treasury, "*How to Modernize and Improve the System of Insurance Regulation in the United States*," (Dec. 2013) *available at* http://www.treasury.gov/initiatives/fio/reports-and-notices/Pages/default.aspx.

The FIO Report addresses regulatory problems in two broad areas of insurance regulation – (i) prudential regulation covering an insurer's financial condition and its ability to satisfy policyholder claims; and (ii) marketplace regulation involving an insurer's business conduct, such as premium pricing, advertising, minimum standards governing policy terms, licensing of agents and brokers, and general issues of consumer protection, including approval of insurance products for sale and market conduct examinations. *Id.* at 1.

With respect to prudential regulation, the FIO Report concludes that the states need to improve insurer oversight, and warns that FIO will more closely monitor state regulatory developments in the future. *Id.* at 65. It is further recommended that states implement various improvements, such as: (i) develop a process for state regulators to obtain the consent of regulators from other states regarding solvency oversight decisions; (ii) establish an independent third-party review system to improve the consistency of solvency oversight; and (iii) implement principles-based reserving conditioned upon consistent binding guidelines. *Id.* at 28, 35.

With respect to marketplace regulation, the FIO Report finds that marketplace oversight varies greatly state by state and recommends states cure the lack of uniformity, by: (i) participating in the Interstate Insurance Product Regulation Commission which develops nationally standardized forms and terms and provides a central electronic filing system for certain insurance products; (ii) developing personal auto insurance policies for U.S. military personnel enforceable



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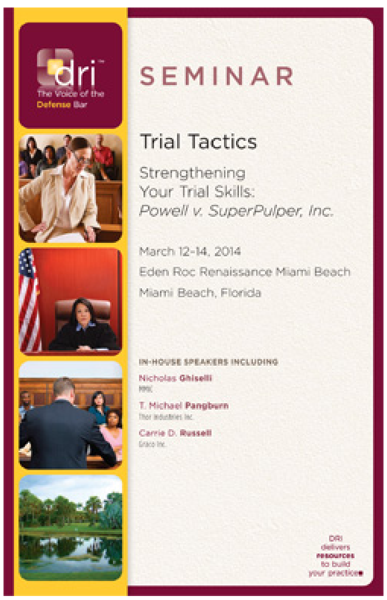

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across state lines; and (iii) reforming market conduct examination and oversight practices. *Id.* at 48, 49, 52, 65.

In response, NAIC released several statements, including one wherein NAIC Chief Executive Officer remarked that while NAIC "appreciate[s] the FIO's suggestions for improvement, the states have the ultimate responsibility for implementing regulatory changes." *See* NAIC, "*NAIC Statements on FIO Modernization Report,*" (Dec. 12, 2013), *available at* http://www.naic.org/Releases/2013_docs/naic_statements_fio_report.htm. Likewise, in January NCOIL sent a letter to FIO's Director pushing for state legislative membership on the FIO's Federal Advisory Committee on Insurance. In a press release announcing the letter, NCOIL asserted that the addition of a state legislator to the Committee's 21 person membership "would provide diversity" and show "lawmakers – at the state and federal level – that policymaker input is important to the FIO mission." *See* NCOIL, "*NCOIL Urges State Legislative Membership on FIO Federal Advisory Committee on Insurance,*" (Jan. 13, 2014) *available at* http://www.ncoil.org/HomePage/2014/2008121.pdf.

Notably, FIO is not a regulatory agency and its recommendations do not displace the state insurance regulatory system. However, it is authorized to monitor all aspects of the insurance sector, to collect data and information on the insurance industry, and it advises the Secretary of the Treasury on national and international insurance matters. Thus, it remains to be seen whether Congress will take further steps towards implementing FIO's recommendations.

The IAIS's "ComFrame" – An International Regulatory Test Case

The IAIS, an organization whose members are comprised of nearly all of the world's insurance supervisors, also released a controversial report in late 2013. The report, formally referred to as "The Common Framework for the Supervision of Internationally Active Insurance Groups," but known simply as "ComFrame," is aimed at developing the first ever risk-based global insurance capital standard by 2016. *See* IAIS, "The Common Framework for the Supervision of Internationally Active Insurance Groups," (October 17, 2013), *available at* http://www.iaisweb.org/Common-Framework--765.

ComFrame, expected to be fully implemented by 2019, provides a set of international supervisory requirements to assist insurance supervisors in addressing industry activities and risks, as well as avoiding regulatory gaps and coordinating supervisory activities. In particular, ComFrame creates a group-wide regulatory framework for Internationally Active Insurance Groups (IAIGs) requiring key firms, such as AIG, MetLife and Prudential Financial, to hold enough capital to avoid a collapse that would pose a risk to the international financial system. Prospective IAIGs are insurance groups that have total assets of at least USD 50 billion (or gross written premiums of at least USD 10 billion) over a three year period, and write premiums in three or more international jurisdictions (or at least 10% of its total gross premiums are written outside the home jurisdiction).

In response to IAIS's introduction of ComFrame, the AIA expressed support for the development of a global insurance capital standard, but emphasized that the standard must be applied without compromising competition between insurers and without adding regulatory levels. *See* AIA, "AIA Statement Responding to IAIS' Plans to Develop a Global Insurance Capital Standard" (Oct. 9, 2013), *available at* http://www.aiadc.org/aiadotnet/docHandler.aspx?DocID=361945. Similarly, the

NAIC expressed concerns over ComFrame's regulatory requirements, stressing that ComFrame must be a dynamic and flexible framework focused on regulatory collaboration. *See* NAIC, "U.S. Insurance Regulators' Views: IAIS Common Framework for the Supervision of Internationally Active Insurance Groups 'ComFrame,'" (Aug. 2013), *available at* http://www.naic.org/documents/committees_g_comframe_position_statements.pdf.

As IAIS begins to roll out ComFrame, one question remains, and that is, whether and how IAIGs will be compelled to participate in the regulatory framework.

On Goes the Debate

The publication of the FIO Report and ComFrame is expected to continue to arouse debate and criticism regarding the feasibility of implementing the recommended reforms. Indeed, given the tension between state-based insurance regulation proponents and certain factions of the federal government, there will undoubtedly

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be a more formal and specific industry response to the FIO Report. Further, as ComFrame begins to test its standard over the next two years, members of the international insurance industry will be anxious to see how IAIGs respond to the increase in regulation and whether the regulations increase costs for insurers and policy holders. Thus, the debate regarding insurance regulation marches on.

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