

Hope for the New Year?

Abandon hope, all ye who enter here.
~Dante's *Inferno*

Hope springs eternal in the human breast
~Alexander Pope, *An Essay on Man*

No matter how discouraging, frustrating or bad the year has been, the prospect of a new year always seems to evoke a sense of optimism for a better tomorrow. A new year: a new begin-

ning. This annual ritual produces expectations that are often more fanciful than achievable.

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clude, in its December 2013 report *How to Modernize and Improve the System of Insurance Regulation in The United States*, that: "Given the likelihood that the Model Collateral Law would be of non-uniform application, together with the complicating effect of state-by-state inconsistency on economic matters of national interest, the circumstances warrant the pursuit of covered agreements for reinsurance collateral requirements." FIO's recommendation ultimately resulted in Treasury and USTRA issuing a letter to a number of Congressional Committees indicating their intent to negotiate such a covered agreement. The timing of the letters – sent during NAIC's Fall National Meeting in DC this past November – seems to have been designed for maximum embarrassment to NAIC, even though they included the same reassurance voiced by NAIC's president that: "State insurance regulators will have a meaningful role during the covered agreement negotiating process." I do not know whether NAIC leadership actually believes that pledge or whether they are resigned to accepting it on face value and hope for the best. NAIC, of course, is not alone in feeling left out. As the financial regulatory world gets swept up in bank-centric financial standards, it becomes harder and harder for insurance to be heard as a separate and distinct discipline. Consider the plight of Roy Woodall, the sole designated "insurance expert" on the federal Financial Stability Oversight Council (FSOC). Woodall, a former insurance commissioner for Kentucky, testified before the Congressional House Financial Services Panel in December that he is being blocked by Treasury Department officials from being a member of "Team USA," which aims to

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Peter H. Bickford

That does not stop us from declaring our goals or hopes even if the expectation is not always realistic.

The insurance regulatory world is no exception to this annual practice of projecting goals running the gamut from plausible to the proverbial snowball's chance in that fiery place. And it often seems that the more remote the possibility of fulfillment, the stronger the expressions of optimism.

Take for instance the spunky defense of state regulation of insurance by the National Association of Insurance Commissioners (NAIC). Despite decades of Congressional snipping away at the fabric of state regulation (see, e.g., Dodd-Frank) NAIC continues to extol the value and importance of state regulation. Although NAIC's defense of state-based regulation may be statistically supportable and deserving of far greater consideration than has been given, no one is really listening anymore, and the battle has long since been lost to the national and

Treasury Department and the United States Trade Representative (USTR) regarding their intention to initiate negotiations with the European Union of a covered agreement regarding reinsurance collateral: "We have assurances from both agencies that state regulators will have direct and meaningful participation in those discussions, and our goal will be to preserve the integrity and strength of the state-based regulatory system for the benefit of U.S. consumers and companies."

What exactly is this covered agreement all about? For years – no, decades – non-US reinsurers have sought a reduction in the 100% collateral requirements imposed by the states. Florida became the first state to adopt a reduced collateral regime in 2008, followed by New York, Indiana and New Jersey in 2011. Also, in 2011 NAIC amended its Model Credit for Reinsurance Law to provide for reduced collateral requirements for eligible reinsurers. While a number of states have adopted the revised Model Law, approval has not been universal, prompting the Federal Insurance Office (FIO) to con-

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find a common U.S. position on international insurance regulation. Woodall complained that Treasury officials won't let him engage "in any meaningful non-public or consultative role at the international level," and that he cannot even be "in the room" for meetings of the International Association of Insurance Supervisors (IAIS).

Freezing out state regulators from an active role in establishing the rules for the

industry on both a national and international level, however, is a reflection of the feds' migration toward a bank-centric regulatory scheme favored by international regulators. This is done under the guise of seeking one voice for insurance regulation on the international scene. In this way – speaking with one voice – the US believes it can be a relevant voice on the international stage. So far this has not worked, but even if it did, speaking with one voice does not mean listening with only one ear, and

the shunning of state regulators at all policy levels seems quite counterproductive and unnecessary.

The feds' frustration can be exemplified by two international developments: the EU's long anticipated, often delayed Solvency II regime, which becomes effective January 1st; and by IAIS's ongoing efforts to develop new international financial standards for global insurance operations.

It will probably be years before any judgment can be made whether Solvency II will result in any significant improvement in financial monitoring of insurance operations in the EU and internationally. Some effects are already clear, however: Solvency II has ramped up the cost of compliance to the industry; may very well result in greater capital requirements and increase the cost of insurance to consumers; and the EU's failure to provide the US regulatory framework with "equivalency" has only increased the anxiety of US companies doing business in the EU.

Likewise, the US was late to the table for the IAIS efforts to develop a framework and a risk-based group-wide global insurance capital standard to be applied to internationally active insurance groups. These efforts started in 2009 after the Great Recession, but without any coordinated US effort until FIO became a full member in 2012.

All these ongoing efforts are without any meaningful input or contribution by the regulators in the trenches – the state insurance departments. I cheer every time a state regulator makes a strong criticism of the feds' handling of things like covered agreements, designation of SIFIs, or freezing out insurance expertise from the conversation. But it is like cheering your team's touchdown knowing you are still down by three scores with a minute to play.^[A]

Peter Bickford has over four decades of experience in the insurance and reinsurance business, with particular focus on regulatory, solvency, agency, alternative market and dispute resolution issues. In addition to his experience as a practicing attorney, he has been an executive officer of both a life insurance company and of a property/casualty insurance and reinsurance facility. A complete biography for Mr. Bickford may be accessed at www.pbnylaw.com.

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