BUSINESS INSURANCE

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Captives Expand Focus to Other Domiciles as Legislation and Regulation Increase

Vermont monitors legislation in other domiciles

August 17, 2014

BURLINGTON, Vt. — While captive insurers once could keep their legislative and regulatory attention on activities in their domicile, a growing number of domiciles — some looking to grow rapidly — along with actions from federal officials, the National Association of Insurance Commissioners and international regulators have forced those promoting captives' interests to broaden their focus.

So it's been necessary for organizations such as the Vermont Captive Insurance Association to find ways to give association members "early warning" of developments from any number of directions that might affect their captives, said William D. Riley, director at the Paul Frank & Collins P.C. law firm in Burlington, Vermont, and the chairman of the VCIA's board.

Richard Smith, president of the VCIA, said that while in the past the VCIA could concentrate largely on developments in Vermont's capital, Montpelier, now the association also must focus on other state capitals, Washington, the NAIC and even internationally with such developments as the European Union's Solvency II.

"Now captives are subject to more influences then they were previously," said Robert H. Myers Jr., partner at the Morris, Manning & Martin L.L.P. law firm in Washington. Captives now must look beyond their domicile's regulators to the actions of groups like the International Association of Insurance Supervisors, the Organization for Economic Co-operation and Development and others who often try to apply regulations to captives based on banking principles, Mr. Myers said.

"I think you have to be more inclusive about your vigilance about where some of these ideas are coming from that may have an influence on captives," he said.

To do so, the VCIA has created a legislative monitoring system so it can keep track of significant developments, Mr. Riley said earlier this month at the annual conference of the Vermont Captive Insurance Association in Burlington.

David F. Provost, deputy commissioner in the Captive Insurance Division of the Vermont Department of Financial Regulation, said that 35 states are passing captive insurance laws or seeking to reinvigorate existing laws.

"We don't mind having the competition," Mr. Provost said during a "hot topics" discussion at the VCIA's annual conference that also included Mr. Myers. "Now when we go to the NAIC meeting, we're not the only mouse squeaking."

Still, Mr. Provost suggested all those new domiciles aren't likely to be long-term players in the captive business. "The economics just don't work in a lot of states," he said. "I think some of these states will eventually give it up."

"Certain domiciles are having growth pains," said Mr. Myers said. In addition, "There are some domiciles that I think are clearly what I call defensive," he said, looking only to keep home state companies' captive insurance business in the state rather than seeking to attract captives from elsewhere.

Mr. Provost said he thinks most regulators in new captive domiciles are qualified individuals and "tend to be experienced insurance regulators," if sometimes unfamiliar with captives. Those lacking familiarity might be more conservative in their regulation of captives until better acquainted with the alternative risk transfer vehicles, he added.

Daniel D. Towle, director of financial services in the Vermont Department of Economic Development, said he's concerned some of the new domiciles might have pressure to grow rapidly, which might influence the quality of their regulation. "I am not under pressure to grow 35 captives every year. Those other states — I'm not sure what kind of pressures they're under," Mr. Towle said.

Talking about the Federal Insurance Office and the Federal Advisory Committee on Insurance created to advise it, Mr. Provost said he unsuccessfully sought a spot on the FACI panel.

As constituted, "They've got some captive detractors but no captive promoter," Mr. Provost said.

Mr. Myers said that while working with the NAIC “is awkward and sometimes difficult,” he thinks the situation could be more difficult for alternative risk transfer vehicles if they faced federal regulation.

“You can work with the NAIC and get things done,” Mr. Myers said, something he’s not sure would be the case with a federal regulator.

This year’s VCIA annual conference drew more than 1,000 attendees from 40 states and eight countries to the Sheraton Burlington Hotel & Conference Center. Next year’s VCIA annual conference is scheduled for Aug. 11-13, 2015, in Burlington.