Top Ten’ Resolutions for State Regulators

By Dick Goff

I haven’t had a great deal of success in keeping my New Year’s Resolutions through the years – I explain that to my wife by asking how perfection can be improved, which always gives her a good laugh – so this year I have taken another approach. In the interest of public service, I have drafted Resolutions for 2006 for state insurance regulators, primarily – but not exclusively – in the ART world.

Taking a page from Dave Letterman, we can call it the “Top Ten” ways state insurance departments can improve their service to the ART industry and their state constituencies. In order of ascending importance:

Number Ten: Trust your colleague regulators in other domiciles. Under the federal Liability Risk Retention Act, an RRG licensed in one state enjoys federal preemption to operate in all others. But some regulators accept this as a challenge to put up roadblocks and engage in over-zealous reviews. It’s a federal law, guys.

Number Nine: If your state still has a workers’ compensation second injury fund, use ART to solve its problems. The pools’ liability can be unbundled and structured into a captive insurance company owned by the state or a state-owned private corporation. This allows the state to transfer financial exposure from its balance sheet.

Number Eight: Stop fighting the 1993 “Hillarycare” battles and look ahead to what could become Hillary2 in 2008. If and when Senator Clinton has a second chance at the White House, and this time as chief executive rather than first lady, everything could change for state regulators and the industry.

Number Seven: Take a long-term economic development attitude toward the ART world. ART funded structures are among the fastest-growing “clean and green” industries any state can attract. Compared to the growth potential of the traditional insurance industry, ART structures looks like the stock market’s Google. But sometimes, particularly in the first five years of a domicile’s ART initiative, some care and feeding is required. No matter how much or how little revenue in fees and taxes captives are providing at a given time, the insurance department must provide sufficient staffing and focus to sustain it, and sufficient promotional effort to grow it.

Number Six: Better yet, spin off the captive business into a separate, autonomous agency that can engage the ART industry in the ways that will be most meaningful to the domicile’s economic development initiative and its customers.

Number Five: Practice these two words: Customer Service. Regulators that don’t practice and provide customer service will see their roster of licensees drop accordingly. Today it’s as easy as picking up a telephone – oh, I’m dating myself, all the hip people wear headsets continually now. Okay, it's as easy as clicking a speed dial phone number to set in motion the process of redomesticating an ART funding structure from one domicile to another.

Number Four: Stop singing "Silent Night" except at Christmas. The majority of captive domiciles have remained peculiarly silent about the National Association of Insurance Commissioners' deliberate misinterpretation of the spirit of the Government Accountability Office (GAO) report on risk retention groups. NAIC formed committees that are attempting to burden RRGs with traditional consumer insurance rules and practices. It looks like it was stacking the deck when NAIC invited only one (Vermont) among 22 U.S. ART domiciles to participate.

Number Three: Repeat after me: associations of bureaucrats have no legislative authority. I'm talking about the NAIC, which is NOT a suprastate regulator of insurance, but simply a trade association of insurance commissioners, some of whom wish to intimidate the rest through a scheme they call "accreditation." The weight they are throwing around really doesn't exist. Every state is empowered to run its own business, not accept dictums from the NAIC. Think of the NAIC as the United Nations of insurance regulators and you'll get the point.

Number Two: Be a New York. The Empire State politely declined to apply for NAIC accreditation, and guess what: its insurance industry is still thriving, and in fact has joined the ART world as a domicile. If other states decided to follow New York's example and stop NAIC interference with their legislative rights, nothing bad would happen to them.

And the Number One way state insurance departments can improve their service to the industry and their constituents is: Guard against the greater threat. Stop looking over one shoulder at NAIC encroachments and look over your other shoulder at the much greater approaching threat of federalization of the insurance industry. The U.S. is the only country in the world that fractures its insurance regulation into state-sized bits. As globalization continues to spread in other industries, so it will in insurance, and the archaic state-based regulatory patchwork will be the first casualty.

That's my list of New Year's Resolutions for state insurance regulators. I'm sure they'll appreciate my help.

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