



### Captive Team

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### OSAZEE IMADOJEMU JOINS PRIMMER PIPER EGGLESTON & CRAMER AND OPENS NEW OFFICE SPACE IN WASHINGTON, D.C.

Join us in welcoming to the firm Osazee (Osa) Imadojemu. Osa is based in our new District of Columbia office and has spent the last several years working as General Counsel and Deputy Committee Director for the Council of the District of Columbia's Committee on Health. He joins our firm to expand the reach and services provided to our captive insurance, health care and government relations practices.

Osa brings with him a deep understanding of insurance, politics, agency regulation and health care policy in D.C. Before joining our firm, he was responsible for performance and budget oversight of all health-related government departments and agencies, annually revising the District's \$3.8 billion health budget, and negotiating and collaborating with regulators, hospital executives, health insurance companies, corporations, and community organizations to develop legislation and policy. Osa also drafted and navigated numerous legislative bills and budget allocations in the areas of health, insurance, education, and housing.

We look forward to introducing you to Osa and discussing how our expanded presence in D.C. provides an opportunity for additional insights and legal services.

### TRIA REAUTHORIZATION

The Terrorism Risk Insurance Program (the "Program") established under the Terrorism Risk Insurance Act of 2002 ("TRIA"), as amended, was extended for seven years on December 20, 2019. Key stakeholders advocated for reauthorization well in advance of the expiration of the Program in order to avoid disruptions similar to those that arose from the brief lapse of the Program in early 2015. The Program was reauthorized with the following key changes.

- The Program will expire on December 31, 2027.
- The scope of the annual report submitted by the Secretary of the Treasury to the House Financial Services Committee the Senate Banking, Housing, and

Urban Affairs Committee was expanded to include an evaluation of the availability and affordability of terrorism risk insurance, including an analysis of availability and affordability specifically for places of worship.

- The Government Accountability Office was directed to conduct a study analyzing and addressing various issues related to cyber terrorism risks. The study must be completed and a report must be submitted to the House Financial Services Committee and the Senate Banking, Housing, and Urban Affairs Committee by June 17, 2020. The report will include recommendations on how Congress could amend TRIA to meet the next generation of cyber threats.

Other key provisions of the Program were essentially left unchanged.



## **NEWS FROM THE VERMONT STATE HOUSE**

### ***SECOND YEAR OF BIENNIUM – CAPTIVE INSURANCE IN THE MIX***

The Vermont General Assembly convened on January 7, 2020, for the second year of what is technically a single session (or “biennium”). Early days saw hundreds of bills introduced. This committee process will focus priorities for the session, which is expected to last until mid-May.

Divided government remains the rule with Republican Governor Phil Scott facing a strongly Democratic General Assembly with both houses able to override gubernatorial vetoes with cooperation from Progressives and a few Independents. This went unused last year, and an early contest on paid family leave demonstrated that the House Democratic supermajority could not hold together. Increased minimum wage is next — vetoed, but not fully overridden as of this writing.

All this comes with the increased rhetoric of a state and national election year. The first week of the session saw an unusual flurry of individuals announcing election intentions. Lt. Governor David Zuckerman (D/P) will seek the Governor’s office in November, challenging an expected reelection bid by Governor Scott for a third term. Senate President Pro Tem Tim Ashe (D/P – Chittenden) immediately announced he will seek the office of Lt. Governor, with other Senators and individuals either announcing or contemplating a run. That opens up two coveted Chittenden County (surrounding Burlington and one-quarter of the Vermont population) Senate seats that will be hotly contested. The dust has yet to settle.

Despite this, captive insurance remains strongly supported by those in all positions. This year’s housekeeping legislation started as S.255, introduced in the Senate. The bill is now pending in the House where it should pass readily. The bill, backed by the Department of Financial Regulation and the captive insurance industry, contains a series of modest proposals for new flexibility and technical amendments. These include:

- Clarifying and narrowing required disclosure from an agency captive insurer to the original policyholder that the captive may enter into a reinsurance or other risk-sharing arrangement with the agency or brokerage.
- Providing discretion to the Commissioner in setting the minimum capitalization of a dormant captive.
- Providing for a series of amendments related to sponsored captive insurance companies and protected cells, including:

- reducing the minimum capitalization of the core from \$250,000 to \$100,000 with the focus on capitalization of the cell;
  - allowing both unaffiliated business and the creation of a separate account within a protected cell, subject to Commissioner approval; and
  - granting authority to a sponsored captive insurer and protected cell to submit an investment plan for approval in lieu of statutory investment standards developed and in place for traditional insurance companies (similar to authority granted to other captives in recent years).
- Clarifying in statute for NAIC accreditation purposes the exam procedure and timeline for risk retention groups.

Several other bills or issues also carried over from the last session that remain active and pending this session. A couple are worth mentioning as they may have some impact on certain captives or risk retention groups, or captive insurer service providers.

And lastly, a bill creating a regulated market for the purchase and sale of cannabis in Vermont again passed the Senate but remains pending in the House, where movement is expected after a couple of years of inaction. Vermont decriminalized personal possession of limited quantities of “grow your own” cannabis a couple of years ago. S.54 moves Vermont to a regulated market with licenses for production, distribution and sale to the public. The House seeks more time to consider relevant issues, including traffic safety, education, and others related to implementation, while everyone is watching the experience of the many other legal-market states.

### **CAPTIVE AND RISK RETENTION GROUP RELATED ACTIVITY AT THE NAIC**

The National Association of Insurance Commissioners (“NAIC”) Fall Meeting in Austin, Texas in early December saw continued action by its Risk Retention Group (E) Task Force (“Task Force”) to address concerns raised by industry groups related to non-domiciliary registration and regulatory challenges. The Task Force adopted Frequently Asked Questions and Best Practices documents designed to assist state regulators with the registration of RRGs. It also completed its review and revision of the NAIC Uniform Risk Retention Group – Notice and Registration form and sent this to the Property and Casualty Insurance (C) Committee for consideration and adoption.

The Task Force responded quickly to industry requests for assistance, including advocacy from the National Risk Retention Association (“NRRA”) and the Vermont Captive Insurance Association (“VCIA”). The Task Force recognized that simply updating and creating documents would not, by itself, accomplish the desired goal of increased understanding of and compliance with the Liability Risk Retention Act. The Task Force will continue to work on clarifying within its membership the respective roles of the domicile and non-domicile regulators and will provide training and additional communication as warranted.

The NAIC’s ERISA (B) Working Group (“Working Group”) continues to follow state legislative and regulatory activity concerning association health plans (“AHPs”) and multiple employer welfare arrangements (“MEWAs”). The Working Group heard from representatives of the U.S. Department of Labor regarding its current structure and the ability to work together on issues related to AHPs and MEWAs. Additional information was presented to the Working Group by the Georgetown University Center on Health Insurance Reforms regarding its requests to the U.S. Department of Labor for information on MEWA investigations. The Working Group also met for a significant portion of the scheduled time in a regulator-to-regulator only session.

Other items of interest to captives included the evaluation as Reciprocal Jurisdictions and re-evaluation as Qualified Jurisdictions of Bermuda, Japan, and Switzerland; re-approval of France, Germany, Ireland, and the United Kingdom as Qualified Jurisdictions; and the adoption of revisions to the Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#787), including a shortened time requirement to adopt the revisions as an accreditation standard by September 1, 2022.

### **CYBERSECURITY – BEST PRACTICES, DILIGENCE AND FLEXIBILITY THE NEW NORM**

This year’s Vermont captive housekeeping legislation does not include adoption of either the NAIC Insurance Data Security Model Law or a Vermont-specific mirror of either that or the New York Cybersecurity Regulation — viewed as the de facto standard. Indeed, it is possible that, as with many other things, the march of technology has outpaced laws of this type specifying an individual compliance regime. Instead, a more flexible approach emphasizing effective cybersecurity and regular diligence by management and boards with respect to cybersecurity matters may come into effect without new law. And this makes sense.

Consider an example easier to understand and as old as insurance itself. While we are sure there are exceptions, there are generally no direct requirements for insurance companies to lock the doors of headquarters when staff leave them empty overnight or for holidays and weekends. But every insurer does it. General requirements to protect assets and the security of records, personal information and financial data all mandate the practice, and insurers demonstrate to regulators and their stakeholders that their approach to physical security is effective and sufficient.

In a similar way, captives and other insurers recognize the importance of robust cybersecurity and the “new normal” includes implementation of effective regimes in-house or in connection with service providers which may or may not comply with New York or NAIC models. Just like the door locks, management must identify solutions, and boards must take responsibility for oversight of management’s accomplishments in the area and determine strategy for the future. Regulators will review both the effectiveness of selected systems and management and board oversight. Both should be documented well.

### **NEW REGULATORY REQUIREMENT – THE “ALPHABET SOUP” OF ACTUARIES**

Those familiar with captives recognize that actuaries always come with “alphabet soup” after their names. Depending on education, graduate degrees and even whether they are named after Dad, the collection of letters can be long and sometimes confusing. Some of the most common sets of initials signal readers whether an actuary has joined and/or meets the professional expectations of an accrediting body — all of which are private. There were no insurance regulatory standards for property and casualty actuaries in the United States. Until now.

Recent competition for members between several actuarial organizations caused the NAIC to promulgate minimum educational standards for property and casualty actuaries. The Property/Casualty Annual Statement Instructions for 2019 (effective December 31, 2019) include a requirement for filers of the NAIC statement to review qualifications of their appointed actuaries upon appointment, and at least annually thereafter.

Recent guidance from Vermont’s Captive Division, Department of Financial Regulation (Memo 2020-1) permits Vermont filers of the NAIC statement to first receive the qualifications along with the reserve certification and to act on them at a Board meeting later in 2020. Sooner would be fine as well. Going forward, the Board must consider the qualifications annually at the time of appointing the actuary.

While this is a new burden for actuaries, RRGs, other NAIC filers, and their boards, compliance should be easy. Look for the letters! John Q. Actuary, BA, MS, FCAS, MAAA, Jr. should have all the soup needed.

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