

Publication

A Changing of the Guard

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Policies, Programs and Court Appointments under the Obama Administration and Their Potential Effect on the Insurance and Reinsurance Industries

The global economic crisis, together with the platform of “change” on which Barack Obama rose from first-term Senator to President of the United States, is likely to usher in a new era of government oversight and regulation in the United States.

Today, much of the political debate and media focus in the U.S. is centered on reform of the nation’s healthcare system, a goal that is at, or near the top of, President Obama’s agenda. But reform is also taking shape in the areas of banking, financial services, utilities, industrial and manufacturing and, even, insurance. The White House and the Democratic majorities in both the Senate and House of Representatives are also calling for stronger consumer protection measures spurred on by the dramatic increase in mortgage and credit card defaults witnessed during the economic meltdown.

Further, the U.S. is likely to see more vigilant enforcement actions by government agencies such as the Food and Drug Administration (“FDA”), the Securities and Exchange Commission (“SEC”) and the Environmental Protection Agency (“EPA”).

In addition, an aging, and ailing, Supreme Court means that President Obama will likely appoint several new justices to the Court in the coming years, which may result in a more liberal Supreme Court. In fact, the Senate has recently confirmed President Obama’s nomination of Sonia Sotomayor — considered by many to be both a liberal and a judicial activist — as an associate justice of the Supreme Court.

Needless to say, there has been a noticeable shift in the political winds in the U.S. since the days of Republican President George W. Bush. The changes being proposed will, if they come to fruition, have both a direct and indirect impact on the insurance industry. The indirect impact may come in the form of increased claims by banks, financial institutions, pharmaceutical companies, and industrial manufacturers, among others, that may be targeted by government enforcement actions and private lawsuits for which they will seek coverage under their D&O and liability policies. The direct impact to the insurance industry may come in the form of new federal legislation governing the regulation of both domestic and international insurers doing business in the United States. This would

represent a shift from the traditional state regulation of insurance in the U.S.

While it can be said that the U.S. is currently moving to the left and to a more active government presence in business and industry, it remains to be seen how far to the left things swing and how much regulation is ultimately enacted. Already, there has been a backlash by both Congressional Republicans and a large segment of the American public over the size, scope and pace of “reform,” which has re-ignited debate in the U.S. on the scope of Constitutional powers accorded to the federal government.

There is even dissent and bickering among Democrats, including more fiscally-conservative members of the party, as evidenced by the failure to pass a healthcare reform bill to date. It may not be until the 2010 mid-term Congressional elections that we see whether Obama-style “change” was a political mandate or, like many things in modern society, a passing fad.

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