

Insurers often fight class action certification on the theory that insurance regulation is a state matter and varies too much from one state to another to justify class actions. The following opinion identifies some of the weaknesses of this argument in the life insurance context. The true identities of the parties are obscured.

I, Tim Ryles, declare as follows:

1. I am the former Commissioner of Insurance for the State of Georgia, having served as Commissioner for the term beginning in January of 1991 and ending in January of 1995. During my term as commissioner, I had principal responsibility for administering the laws and regulations governing insurance in Georgia. Additionally, I assumed a very active role in the National Association of Insurance Commissioners (NAIC) during my tenure. For example, I served on the Executive Committee of the NAIC, chaired the NAIC Anti-Fraud Committee, served as Vice-Chair of the Southeastern Zone, Vice-Chair of the Market Conduct and Consumer Affairs Committee, and was an active member of other NAIC committees, including the committee responsible for accrediting state departments of insurance. I also appeared on behalf of the NAIC before committees of the U.S. House of Representatives and the U.S. Senate and represented the NAIC in other federal related activities. Since completing my term as commissioner, I have maintained my involvement in certain NAIC activities on behalf of clients and as a matter of professional interest.

2. Since completing my term as Commissioner, I have operated a business, the principal function of which is to provide expert consultation and expert witness

testimony in insurance litigation and regulatory matters. I am also associated with a similar company, Robert Hughes Associates of Dallas, Texas. I have appeared as an expert witness by deposition and/or trial testimony in several cases, including class actions. A current curriculum vitae summarizing these activities, my professional qualifications, and experience is attached to this declaration as Attachment A.

3. I have been asked to provide this declaration on behalf of the plaintiffs. As part of my preparation for this declaration, I reviewed, among other things, Plaintiffs' Consolidated First Amended Class Action Complaint, Plaintiffs' Memorandum in Support of Motion for Class Certification, and Defendants' Response to Plaintiffs' Motion for Class Certification.

4. In its response to plaintiffs' motion for class certification, Great LifeCo asserts that the life insurance industry is highly regulated by State Departments of Insurance and that substantial differences prevail in the manner in which life insurance is regulated from one state to another. For the reasons stated below, it is my opinion that life insurance regulation among the states tends more toward uniformity than toward diversity and that life insurance products and marketing practices represent a form of insurance with a common, nationwide regulatory framework. This common framework arises from the changing nature of the role of state regulation over the past two decades, the nature of the life insurance industry itself, and the business efficiencies derived from a common marketing and sales network.

5. Regulators, working with insurers, through the NAIC have developed a common regulatory framework. The NAIC, formed in 1871, is comprised of regulators from the 50 states, the District of Columbia, and four U.S. territories, representing a total of 55

jurisdictions. It has offices in Kansas City, Missouri, Washington, D.C., and New York City and its projected revenue for 1999 is estimated to be \$44.4 million. By the terms of its constitution and by-laws, the NAIC meets quarterly, but as a practical matter, NAIC meetings, either by conference call or otherwise, occur almost daily.

6. Avoiding federal regulation of insurance is an important objective of NAIC programs. In fulfilling this objective, the NAIC has formulated a series of Model Laws and regulations, examination standards, financial regulatory accounting practices, and information retrieval systems as the foundation of a common regulatory scheme, particularly for heavily marketed products like life insurance. Indeed, on May 5, 1999, the NAIC Vice president addressed a congressional committee concerning how the NAIC works for a uniform regulatory framework. (See the Testimony of George Nichols III to the Special Committee on Financial Services Modernization of the NAIC Before the Committee on Commerce, U.S. House of Representatives, Regarding HR 10 and Financial Services Modernization, May 5, 1999.) NAIC's president described the NAIC's Codification of Statutory Accounting Principles as a project "designed to streamline accounting guidance for regulators and insurers in one comprehensive source. Further, it will provide uniform statutory guidance that will facilitate analysis of annual statements filed by insurers." (See NAIC News Release of November 21, 1997, "State Legislative Domain Preserved." The testimony and news release are available from NAIC's web page, <http://www.naic.org>.)

7. With respect to formal uniform governance, currently there are five volumes of Model Laws and Regulations. Since life insurance is one of the types of insurance reflecting a common regulatory system, it is important to identify some of the model

laws and regulations applicable in one way or another to life insurance and the degree to which these governing standards appear in identical or in substantially similar form among the states. By way of illustration, the following models demonstrate the point:

<u>NAIC Model Law/Regulation</u>	<u>Jurisdictions Adopting Out of 55 Members</u>
Model Examination Act	54
Model Liquidation/Rehabilitation Act	54
Model Policy Loan Interest Rate Bill	52
Deceptive Trade Practices Model Act	52
Model Holding Company Act	51
Replacement Model Regulation	46
Unfair Claims Settlement Practices Act	47
Language Simplification Model Act	35
Life Insurance Disclosure Model Regulation	42
Life Insurance Illustrations Model Act	35

8. In addition to formulating a common body of law to govern insurance products and practices, the NAIC also maintains a common framework for reporting insurers' Annual Statements, financial condition, financial examination, and market conduct.

9. With respect to agent and insurance agency governance, the NAIC also plays a significant role in designing a common regulatory framework. For example, 51 jurisdictions have adopted the Managing General Agents Model Act; 49 jurisdictions have enacted the Agents and Brokers Licensing Model Act (the remaining six have statutes based upon NAIC models in one way or another), and 47 have adopted the

Agents Continuing Education Model Regulation. It is also noteworthy that the materials relied upon by the various states in instructing applicants for insurance licenses show remarkable similarities from one state to another, i.e., there is a common curriculum. Furthermore, whether they operate as captive agents or independent agents, insurance producers who pursue special designations, such as Certified Life Underwriter (CLU), Certified Financial Consultant (CFC) and Chartered Property Casualty Underwriter (CPCU) rely upon a common curriculum. Consequently, irrespective of any individual product-specific training provided by insurance companies, the core curriculum for agent preparation and training reflects considerable uniformity. It is also important to note that agents who hold certain designations and/or who belong to certain professional associations, such as the National Association of Life Underwriters, are expected to subscribe to a particular code of ethics.

10. Among the subject matters taught in agent license preparation, risk management and insurance courses, and in special designation training, is material relating to the nature of the insurance contract. Generally, insurance policies are portrayed as contracts with "special legal characteristics." Included in the description of insurance contract characteristics are elaborations on the insurance contract as a contract of adhesion, as a unilateral contract, and as a contract of "utmost good faith" (In Latin, *uberrimae fidei*). As two authorities on the subject note, "The nature of insurance requires complete honesty and disclosure of relevant facts between the parties. All parties to an insurance contract are expected to be ethical in their dealings." (Eric A. Wiening and Donald S. Malecki, Insurance Contract Analysis, 1992 Edition, American Institute for Chartered Property and Casualty Underwriters, p.14. See also 1998 Licensing Sourcebook, Life

and Health, Merritt Publishing Co. at p. 2-15. This text is widely used throughout the United States in courses designed to prepare applicants for agent licenses for their examinations.)

11. To further manage the regulatory process in a uniform and efficient manner, state insurance regulators often rely on the insurance commissioner of the state in which an insurance company has its principal offices (its "domiciliary state"). The domiciliary or "home state" regulator is the regulator with the most significant interest in supervising an insurance company's general operations and exercises principal responsibility over the "home state" companies. For example, the Texas Commissioner has primary responsibility for monitoring and supervising Texas insurance companies and is the single government agency best positioned to police Texas-based insurers with respect to all matters, including financial regulation, corporate governance, acquisition of new entities, and other issues.

12. The commissioner must approve products sold within the domiciliary state; similarly, the regulators in other states also must approve the policies for sale within their respective jurisdictions. But an important point to keep in mind is that the decisions and actions of both the regulators and the insurers are circumscribed by common points of reference: NAIC sanctioned laws, regulations, forms, and procedures reinforced by the intellectual framework of the insurance industry itself.

13. Commonality among the states in insurance regulation has been accelerated in the 1990s by the NAIC's accreditation process, which, *inter alia*, requires all states to adopt certain laws and practices as a condition of accreditation. Consistent with this nationalization and uniformity in insurance regulation, the NAIC has become a vehicle

for enforcing insurer market conduct standards. Enforcement actions involving MetLife and Prudential are among the more commonly recognizable examples of enforcement activities. For example, the NAIC president praised the multi-state enforcement action against American Bankers Insurance Group of Florida (ABIG) when 38 states and the District of Columbia jointly signed the consent order with ABIG. (See NAIC News Advisory of November 23, 1998, "NAIC President Praises State Market Conduct Efforts on American Bankers Insurance Group.")

14. Another development is the increased NAIC activity in legislative and regulatory activities at the federal level. In this regard, the NAIC speaks with a united voice on behalf of state regulators before the U. S. Congress and federal regulatory bodies.

15. Based upon my experience as a regulator and expert in insurance litigation, it is also apparent to me that insurance policies, especially those devised by insurers licensed to transact business in several states, are virtually identical in language and design, partly because there are common requirements for certain provisions in the policies and partly because a common policy facilitates sales, advertising, and training of sales personnel (agents).

16. Further, in my experience as a regulator and expert witness/consultant, I recognize the contradictory position sometimes presented by insurers and regulators. On the one hand, both vigorously defend a states' rights interpretation of the McCarran-Ferguson Act and insist upon preserving state regulation of insurance. Toward this end, it is not uncommon for regulators and insurers to point to the NAIC's uniform regulatory scheme as a defense against federal intrusion into insurance regulation. On

the other hand, when class action lawsuits raise issues about nationwide class certification, there is a tendency to argue that each state regulatory scheme is not only different but also unique. The consequence is that, paradoxically, in an attempt to prevent federal regulation, the NAIC, with support from insurers, has developed a common body of law for governing life insurance that is friendly to class action certification and facilitates class action as a means of resolving disputes. Indeed, if the NAIC can use a common framework to discipline major life insurance companies such as MetLife, Prudential and ABIG, I see no reason why private litigants who seek appropriate remedies for wrongs they have suffered at the hands of insurance companies should be deprived of the same opportunity.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this \_\_\_\_ day of \_\_\_\_ \_\_\_\_\_, at Atlanta, Georgia.

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Tim Ryles, Ph. D.