

July 15, 2011

Commercial Lines De-Regulation Comes to New York

Amendments to the New York Insurance Law recently adopted by the state legislature will provide admitted insurers in New York and their large commercial customers greater freedom from cumbersome prior approval regulations, albeit on a temporary basis. On June 22, the New York legislature sent to Governor Cuomo for his signature a de-regulation bill (A.8464/S.5811) amending Article 63 of the Insurance Law concerning policies that can be written in the so-called Free Trade Zone which are therefore exempt from rate and form approval by the Insurance Department.¹ Among the other changes to Article 63 made by this legislation, an exemption from rate and form approval requirements is created for policies issued until June 30, 2013 to a "large commercial insured" which employs or retains a "special risk manager" that is licensed (unless otherwise exempt from licensing) and has specified professional credentials. The exemption would become available on the 90th day after the legislation becomes law.

Under Section 6303, as amended, an entity will be considered a "large commercial insured" if it:

- ❖ generates annual premium in excess of \$25,000 for commercial insurance policies, other than medical malpractice insurance, and meets one of the following criteria:
 - has at least 50 employees itself, or at least 100 employees together with its parent, subsidiaries and affiliates, as of the end of the insured's last fiscal year before policy inception ("Last FY End"); or
 - has a net worth of at least \$7.5 million as of the Last FY End; or
 - has gross assets exceeding \$10 million and a net worth of at least \$1.5 million as of the Last FY End; or
 - is a for-profit entity with more than \$15 million in annual gross revenues and a net worth of at least \$1.5 million as of the Last FY End; or
 - is a for-profit entity with gross assets of more than \$10 million and generates more than \$15 million in annual gross revenues as of the Last FY End; or
 - is a non-profit or public entity with an annual budget of more than \$20 million in each of the last three fiscal years; or
 - is a county, city, town or village with a population of at least 50,000 persons.

Some caveats:

- ❖ This exemption for policies issued to a "large commercial insured" expires June 30, 2013.

¹ Beginning on October 3, 2011, the Department of Financial Services.

- ❖ To use the exemption, the insurer issuing the policy must have and maintain at all times a risk-based capital level of at least 250% of authorized control level.
- ❖ In addition to being a licensed producer (unless exempt), the special risk manager used by the policyholder must meet specified educational, professional and experience requirements, such as having at least ten years of risk management experience or holding a professional designation, such as chartered property casualty underwriter (CPCU), and having at least five years of relevant experience and a bachelor's degree in risk management or a related field.
- ❖ The special risk manager may not be employed by the insurer or any affiliate of the insurer.
- ❖ The Superintendent of Insurance² may limit how much business an insurer may write under this exemption or re-impose filing and or approval requirements to the extent the Superintendent deems it in the policyholders' interest.
- ❖ Even though exempt from prior approval requirements, the policy must still comply with substantive requirements, such as the relatively new "no-prejudice" provision concerning late notice of claims in Section 3420 of the Insurance Law.
- ❖ For informational purposes insurers must file with the Insurance Department a certificate of coverage and, if not previously filed, a copy of the policy form within specified time frames.

These changes will hopefully afford greater flexibility for insurers and their customers in New York. This latest example of de-regulation for admitted insurers in New York, although not permanent, comes at a time when similar reforms are poised to go into effect in the excess and surplus line markets nationwide. Specifically, on July 21, the Dodd-Frank provisions take effect which vest regulatory authority exclusively in the "home state" of the surplus line policyholder and the domestic state of the ceding insurer in a reinsurance contract. (For a discussion of the Dodd-Frank insurance de-regulation provisions, please see our Client Alert of May 20, 2011 and the November, 2010 issue of *Insurance/Reinsurance Newswire* on our website.)

² Beginning on October 3, 2011, the Superintendent of Financial Services.

For More Information

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[Richard G. Liskov](#)
+ 1 (212) 408-5340
rliskov@chadbourne.com

[Daniel A. Rabinowitz](#)
+1 (212) 408-1188
drabinowitz@chadbourne.com

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