

Insurance Industry Update

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New York "Free Trade Zone" Law Revised

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New York Governor Andrew Cuomo has signed legislation making significant changes in the "Free Trade Zone" established by Article 63 of the Insurance Law, which permits licensed insurers that apply for and obtain a special permit to issue policies that are exempt from filing and approval requirements. These changes will take effect on November 15, 2011.

The new legislation greatly expands the scope of insurance that may be written through the Free Trade Zone. It amends Section 6301(b) of the Insurance Law to newly include a number of additional lines of insurance,¹ as well as insurance deemed substantially similar thereto by the Superintendent of Financial Services (the "Superintendent"). However, it excludes the following from eligibility: (1) insurance subject to Section 2305(b) of the Insurance Law² (except for medical malpractice); (2) motor vehicle insurance where rates are subject to prior approval pursuant to Section 2328 thereof; (3) insurance required to satisfy financial responsibility requirements of the State of New York; and (4) group insurance policies.

A new subsection which states that policies issued under Article 63 are not exempt from any applicable provision or standard of the Insurance Law, any regulations promulgated thereunder, or any other requirement of state law has been added to Section 6301. This is consistent with the limitation of the Free Trade Zone exemption to policy form and rate filing requirements.

Existing law requires any licensed insurer that seeks to issue Free Trade Zone coverage pursuant to Article 63 to apply for and maintain a special permit. This permit is issued separately from the company's insurance license and must be renewed. An insurer seeking to qualify for or maintain the special license must now maintain a minimum surplus to policyholders at least equal to 200% of authorized control level risk-based capital (which is increased to 250% for an insurer issuing policies to a "large commercial insured"). Until June 30, 2014, a domestic property/casualty insurer may qualify for the permit if it maintains a surplus to policyholders at least equal to 200% of the minimum required for the lines of insurance for which it is licensed if 95% of its total direct premiums are medical malpractice insurance and it meets other specified requirements.

The requirement that the insurance be underwritten and transacted from an underwriting office within the state of New York remains unchanged, along with the current authorization to issue Free Trade Zone policies where (1) the risk has an annual premium of at least \$100,000 or such higher amount as may be prescribed by regulation; or (2) the risk or class is of unusual or high hazard or difficult to place,

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as specified in Insurance Department Regulation No. 86 (11 NYCRR Part 16). (These risks are referred to as “Class 1” and “Class 2” in the regulation.)

Effective through June 30, 2013, a policy other than a medical malpractice insurance policy, which does not qualify as a Class 1 or Class 2 risk, may be written through the Free Trade Zone if issued to a “large commercial insured.” That term is defined as an entity that (a) generates annual commercial risk insurance premiums in excess of \$25,000 for the kinds of insurance newly added to section 6301 and described above; (b) meets other criteria specified in the statute (depending on the nature of the entity) with respect to net worth, gross assets, gross revenues, annual budget size, number of employees or, in the case of a municipality, population; and (c) employs or retains a special risk manager who meets specified criteria. The \$25,000 premium threshold is subject to adjustment annually to reflect changes in the consumer price index.

An insurer issuing a Free Trade Zone policy to a large commercial risk must file with the Superintendent a certificate evidencing the existence and terms of that policy within one business day after binding coverage. Where the policy form has not been previously filed, it shall be filed for informational purposes within three business days after first delivery of a policy using such form, but not less than sixty calendar days after the inception of the policy. The insurer must also give notice to the policyholder that rates are not subject to filing requirements and forms are not subject to approval requirements.

The Insurance Department is expected to revise existing Regulation 86 to reflect the provisions and requirements of the new law prior to its effective date. We understand that business written under the new “large commercial insured” category will be classified as Class 3 risks.

The original law was enacted in order to provide an alternative mechanism that allowed insurance producers to place large or unusual risks with New York licensed insurers, as opposed to dealing with unlicensed insurers in out-of-state or London markets. It is anticipated that the current expansion will foster economic development by providing better access for both emerging businesses and large commercial risks to the unique or unusual insurance products they need.

¹ The newly added types of insurance as set forth in Section 1113(a) of the Insurance Law are as follows: (4) Fire; (5) Miscellaneous Property; (6) Water Damage; (7) Burglary and Theft; (8) Glass; (9) Boiler and Machinery; (10) Elevator; (11) Animal; (12) Collision; (13) Personal Injury Liability; (14) Property Damage Liability; (16) Fidelity and Surety; (17) Credit; (19) Motor Vehicle and Aircraft Physical Damage; (20) Marine and Inland Marine; (21) Marine Protection and Indemnity; (22) Residual Value; (27) Prize Indemnification; and (29) Legal Services.

² This section sets forth the kinds of insurance for which rates are subject to prior approval and includes workers' compensation insurance; for-hire motor vehicle insurance or self-insurance surety bonds; motor vehicle assigned risk insurance; joint underwriting; insurance issued by

the New York Property Insurance Underwriting Association; risk sharing plans among insurers authorized by Section 2318 for persons otherwise unable to obtain coverage; title insurance; insurance issued by the Medical Malpractice Insurance Association; mortgage guaranty insurance; credit property insurance; gap insurance; and private passenger automobile insurance.

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