

Draft Circular Letter from the New York Insurance Department regarding Contract Certainty

January 11, 2010

The New York Insurance Department (the "Department") has issued a draft Circular Letter for comment regarding contract certainty. The draft Circular Letter provides clarification in response to industry questions following the October 2008 publication of Circular Letter 20, which imposed a 1-year deadline on insurers and producers doing business in New York to implement practices to assure that policy documentation was delivered to insureds within 30 days after inception of the policy. The Department is requesting comments by January 22, 2010.

The key points of clarification addressed by the Department are as follows:

1. That "prompt" delivery of policy documentation means it is delivered to the insured within 30 business days, and any extensions beyond that period should be documented by insurers with good cause established for such delay;
2. With respect to required policy documentation, the Department refers insureds, insurers, and producers to the principles and standards of contract certainty established in the United Kingdom, <http://www.abi.org.uk/information/business/521.pdf>, and Bermuda, http://www.abir.bm/downloads/032208_ContractCertaintyCodeofPracticeforBD_FINAL.pdf, as they will guide the Department to the extent that they are not inconsistent with New York Insurance Law or regulations promulgated thereunder;
3. "Contract documentation" for purposes of contract certainty should contain all the agreed terms of the contract, and may include an insurance policy, schedule of cover, signed contract wording, or a complete slip;
4. Documentation of a reinsurance contract can be evidenced by a binder, cover note, or similar document, provided that it reflects all agreed terms and conditions to which the reinsurers have agreed;
5. Where a producer intermediates a transaction, the insurer should attempt to deliver policy terms and conditions to the producer within 18 business days post-inception to enable the producer to implement the

process of checking the terms and conditions for accuracy, advise the policyholder, and to interface with the insurer;

6. If the insurer acts as above, the broker would then have 12 business days to deliver the contract to the policyholder; and
7. Should the time frames suggested by Circular Letter No. 20 and this Supplement conflict with some provision of New York Insurance Law or Insurance Regulation, then the latter provision will control.

The draft Circular Letter also states that, prospectively, the Department will focus its resources on policies where, because of the nature or size of the risk, issues regarding contract certainty are most apt to surface. Such policies include those issued to: a) large commercial insureds, written on a manuscript basis; b) the special risk market, written pursuant to Insurance Law Article 63; c) policyholders in the excess line market; and d) other insurers via reinsurance.

Also of note, in the latter half of 2010, the Department may issue letters of inquiry to licensees to gather information as to how, and to what extent, licensees have developed and implemented practices to assure that contract certainty is routinely achieved.

Dewey & LeBoeuf is providing assistance in delivering comments on this new draft Circular Letter to the Department by the January 22, 2010 deadline. Comments can also be directed to James Everett at jeverett@ins.state.ny.us or (518) 408-1593. One potential topic for comment is whether it is appropriate to have the same 30-day contract delivery standard apply to reinsurance contracts as to direct insurance. Another topic of interest is the purported applicability of these contract certainty standards to all reinsurance policies issued to New York insurers. At present, it is unclear how, in practice, the Department would enforce these standards against unauthorized reinsurers, although the circular letters do appear to contemplate that the new standards would also apply to such policies. We expect that these new requirements will be of particular interest to accredited reinsurers and/or eligible excess lines insurers in New York.

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