

CLIENT ALERT

New York Department of Financial Services Issues Notices Regarding COVID-19 Preparedness Plans and Business Interruption Coverage

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On March 10, 2020, the New York State Department of Financial Services (“DFS”) sent notices related to COVID-19 to certain New York regulated insurance entities. First, Insurance Circular Letter No. 5 (2020) (“Circular Letter No. 5”), addressed to the Chief Executive Officers of all New York “regulated insurance entities,” provides guidance and requests assurances that such entities “have preparedness plans to address the operational risk, and are identifying, monitoring and managing the financial risk posed by COVID-19.” (The DFS has advised that for purposes of Circular Letter No. 5, a regulated insurance entity is a domestic or foreign insurer licensed to do business in New York, and certain insurance producers that were specifically notified by the DFS.)¹ Second, all New York-licensed property and casualty insurers (domestic and foreign) received a Call for Special Report Pursuant to Section 308 of the New York Insurance Law (the “Section 308 Letter”) regarding “Business Interruption and Related Coverage Written in New York.”

¹ The DFS has advised that insurance producers that were not specifically notified of the Circular Letter No. 5 requirements, adjusters and other non-insurer and non-producer licensees are not subject to the Circular Letter at this time.

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CIRCULAR LETTER NO. 5

Circular Letter No. 5 instructs each regulated insurance entity to submit a response to the DFS as soon as possible, and not later than April 9, 2020, “describing its plans of preparedness to manage the risk of disruption to its operations and the financial risk arising from COVID-19.”

Circular Letter No. 5 states that a preparedness plan should be flexible in order to address the potential effects that may result from COVID-19, and at a minimum, should contain certain components, including: (i) a documented strategy addressing the impact of the outbreak in stages in order to appropriately scale the entity’s efforts; (ii) “employee protection strategies” that are geared to sustaining an adequate workforce during the outbreak, including employee awareness and steps that employees can take to reduce the likelihood of contracting COVID-19; (iii) assessment of a company’s facilities, systems and policies that are needed to continue critical operations and services if employees are working remotely; (iv) development of a communication plan for consumers, vendors and employees; and (v) assessment of the preparedness of critical third-party vendors.

Circular Letter No. 5 also states that a regulated insurance entity’s risk management program should include a plan to assess and monitor the financial risk to the entity that may arise from COVID-19 such as the credit risk of counterparties and business sectors, credit exposure to counterparties and business sectors impacted by COVID-19, assessment of admitted assets or other investments that are or may move to non-performing/delinquent status and assessment of the valuation of assets and investments that may be impacted by COVID-19.

Circular Letter No. 5 emphasizes that the entity’s board of directors is responsible for “ensuring that appropriate plans are in place, and that sufficient resources are allocated to implement such plans.” Senior management is responsible for ensuring that effective policies and procedures are in place to execute the plan and for “communicating the plan throughout the entity to ensure consistency in approach so that employees understand their roles and responsibilities.”

SECTION 308 LETTER

The Section 308 Letter is addressed to property and casualty insurance companies licensed in New York. Such insurers are instructed to provide to the DFS information regarding the commercial property insurance they have written in New York and details regarding the business interruption coverage for which the insurer has ongoing exposure. The Section 308 Letter instructs New York licensed property and casualty insurers to provide, by March 18, 2020: (i) information regarding the volume of business interruption, civil authority, contingent business interruption and supply chain coverage that has not lapsed as of March 10, 2020 including direct premium amounts and numbers of policies containing each coverage; and (ii) copies of explanations sent to policyholders regarding the coverage afforded by each policy as applied to COVID-19, including a representation that such explanations have been provided to policyholders. Explanations of

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coverage to commercial policyholders must be presented in a clear and concise manner and include relevant information specific to the policyholder.

The Section 308 Letter states that “[g]iven the potential impact of COVID-19 on business losses, particularly concentrated effects in local communities, [the] DFS considers [the obligations of property and casualty insurers licensed in New York] to policyholders a heightened priority.” Insurers that have written such business are required to explain to their policyholders the benefits under their policies related to COVID-19.

If you need any assistance responding to these requests, please contact the following attorneys in our Insurance Transactional and Regulatory Practice:

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