

## INSURANCE LAW ALERT

MARCH 2010

### Superintendent Wrynn Discloses His “Road Ahead in New York”

On December 23, 2009, Samuel A. Wachtel, Supervising Attorney with the State of New York Insurance Department, filed the Insurance Department’s Regulatory Agenda for publication in the January 6, 2010 issue of the *State Register*. The Agenda identified regulatory additions and amendments to Title 11 of NYCRR that the Department was considering during the first half of 2010. The published Agenda includes 78 items.

At the February 23, 2010 luncheon of the Association of Professional Insurance Women, Superintendent James J. Wrynn of the New York Insurance Department was the keynote speaker. He addressed his primary concerns for 2010 and identified the following areas, which appear to be his highest priorities:

- Streamline form filing.
- Broker Disclosures – related to adoption of a disclosure law was Wrynn’s recent decision to permit brokers to charge contingent compensation, if fully disclosed. The New York Department also rescinded its prior agreement with Aon, Willis and Marsh prohibiting each from accepting contingent commissions so that these organizations could conduct business on a “level playing field” with the rest of the industry.
- The availability of medical malpractice insurance and the need for rate relief to carriers willing to write the coverage in New York.
- Life settlements.
- Title Insurance. The Department expects to monitor certain business practices in the title industry and to more comprehensively supervise title insurers authorized to write title insurance in New York.
- Reinstitution of the New York Insurance Exchange similar to Lloyd’s of London.
- Flex rating in automobile insurance, revisions to Regulation 68 and promotion of legislation to increase fraud investigations.
- Reform in the homeowners insurance arena with creation of a temporary homeowners panel and regulatory efforts to curb nonrenewal of homeowners policies in coastal areas. Additionally, on this point, Superintendent Wrynn noted that New York must begin to prepare for a catastrophe, such as a hurricane. He firmly believes that the state needs to take steps to fund a pool or a captive arrangement in the event of such a natural disaster.
- Long term care insurance, i.e., rate reform, as carriers apparently anticipate much higher lapse rates on existing coverages.
- Reform in the financial guaranty insurance industry. In its Agenda, the Department identified adoption of a new part to 11 NYCRR to incorporate and implement the “best practices” procedures for financial guaranty insurers set forth in the Department’s Circular Letter 19 (2008). Superintendent Wrynn noted that adherence to these best practices

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would enhance the financial solvency of financial guaranty insurers. Wrynn also stated that the Department was working with AMBAC and the Wisconsin Department to monitor solvency concerns with respect to that entity.

Perhaps the most interesting of Superintendent Wrynn's proclamations was his plans to enhance New York's image as a world financial center by re-establishing the currently defunct New York Insurance Exchange ("NYIE"), which operated in New York from 1980 to approximately 1987. Superintendent Wrynn's predecessor, Eric Dinallo, initiated resurgence of the NYIE, and Superintendent Wrynn is continuing to promote the idea. His view is that the Exchange would be industry driven. Towards that end, Wrynn has met with the CEOs of the largest financial services organizations operating in New York and has created a working group with each organization represented on the working group. Representatives of Lloyd's of London have reportedly agreed to participate on the working group as well. Superintendent Wrynn was adamant that the NYIE would not compete

with Lloyd's, but noted several aspects of Lloyd's that the NYIE would emulate. The Superintendent believes that contract certainty, standardization of forms, a claims protocol and establishment of a port of entry in New York for certain types of reinsurers and excess and surplus lines carriers and risks would also enhance the viability of the NYIE and would provide access to excess and surplus lines markets through New York. In order to enhance solvency of the Exchange and all syndicates operating through it, the NYIE would follow the new Lloyd's model, which incorporates a gatekeeper concept, requiring that each syndicate supplement its business plans on at least an annual basis to assure adequate capitalization and appropriate structure. Superintendent Wrynn believes that coverage for emerging risks such as climate change, nanotechnology, pandemics and cyber security, as well as reliance upon a more sophisticated Lloyd's of London model, will all bode well for the success of the NYIE, which he predicts will provide a substantial number of jobs in New York and will be viewed as a positive development for the insurance industry. ■

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