

AMENDMENT TO NEW YORK REINSURANCE REGULATION MAY PREVENT ARBITRATION BETWEEN CEDING COMPANIES AND THEIR UNAUTHORIZED REINSURERS

Francine L. Semaya • 212.908.1270 • fsemaya@cozen.com

William K. Broudy • 212.908.1289 • wbroudy@cozen.com

Interested parties are urged to submit comments to the New York Insurance Department on a proposed amendment to the regulation that governs credit for reinsurance from unauthorized reinsurers. The amendment appears to preclude arbitration of disputes arising from reinsurance agreements with unauthorized reinsurers. The deadline for submitting comments is February 7, 2009. A public hearing on the proposed rule is not scheduled.

The full text of the proposed rule, consisting of amendments to New York Insurance Regulation 20 (11 NYCRR 125), is available at: http://www.ins.state.ny.us/r_prop/pdf/rp20a10t.pdf (note that there is single underscore between “r” and “prop”). The proposed section that may preclude arbitration, set forth on page 16 of the regulation, is Section 125.2 (h) (4) (iv) (e) (1) and (2), providing that for an insurer to take credit for reinsurance ceded to an unauthorized insurer, the reinsurance contract between the ceding insurer and the unauthorized assuming insurer shall include the following provisions:

(1) “Any dispute, suit, action or proceeding under the contract, or any dispute, suit, action or proceeding arising out of directly, indirectly, or incidentally, or related to the contract or of the transactions and actions arising from performance of the contract are to be subject to the jurisdiction, *and resolved in the courts, of the United States or any state thereof*, and that the assuming insurer submits to the personal jurisdiction of such court”; and (emphasis added)

(2) “Any dispute, suit, action or proceeding under the contract, or any dispute, suit, action or proceeding arising out of directly, indirectly, or incidentally, or related to the contract or of the transactions and actions arising from performance of the contract are to be governed by and construed in accordance with [choose one option] the laws of the State of New York or the laws of the state in which the ceding insurer is domiciled.”

Reinsurance agreements typically include arbitration provisions. Because the proposed amendment contains no reference to arbitration, it clearly has the effect of taking away the freedom of the parties to specify a method of dispute resolution outside the court system, during an era when courts and other legal authorities are increasingly recommending alternative dispute resolution methods including mediation and arbitration. This could create a disadvantage for U.S. ceding insurers.

Comments should be submitted by February 7, 2009 to:

James Davis
New York State Insurance Department
25 Beaver Street
New York, NY 10004
212.480.5124
jdavis@ins.state.ny.us

If you would like us to submit a comment to the Department on your behalf, please forward to us by February 6, 2009.