ALERT
February 6, 2012

Global Insurance Group
News Concerning
Recent Insurance Coverage Issues

COZEN O'CONNOR
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California, Washington, and New York to Require Most Insurers Doing Business in Their States to File Climate Change Disclosures

Benjamin A. Blume • 312.382.3112 • bblume@cozen.com
Daisy Khambatta • 312.382.3113 • dkhambatta@cozen.com

On February 1, 2012, California's Insurance Commissioner, Dave Jones, announced that California would join New York and Washington in requiring insurers to disclose how climate change may affect their businesses. The three states will now require all insurers writing in excess of $300 million in direct premiums to respond to a climate change survey form developed by the National Association of Insurance Commissioners (NAIC). This will likely require virtually every large insurer to make disclosures related to climate change.

The NAIC asserts that the disclosures are important because of the growing impact that climate change has on insurer solvency and insurance affordability across all major categories of insurance. The stated goal of the survey is to "provide regulators with substantive information about the risks posed by climate change to insurers and the actions insurers are taking in response to their understanding of climate change risk." The form itself seeks responses to such questions as the means and method by which insurers are assessing climate change-related risks, whether they have encouraged policyholders to reduce losses caused by climate change-influenced events, and the actions taken by insurers in managing the risk that climate change poses to their business.

The NAIC first adopted the climate change survey in March 2009, though states were allowed to make it voluntary and insurers were only required to file in the state where they were primarily licensed. According to Commissioner Jones, compliance was limited. "Our experience and other states' experience as regulators is you get a far better response rate if you require response to be provided than if you just allow companies to decide when and how they will respond," said Jones. "Between the three states our hope is to survey all companies in the United States with premiums in excess of $500 million."

The NAIC originally contemplated keeping the individual survey responses confidential, releasing only aggregate information to the public. However, it is unclear how the three states will treat the information they collect. Commissioner Jones indicated that the states' "goal is to have the most complete, best and accurate information possible for investors, the insurance industry, regulators and the broader public." This would suggest that the individual responses could be disclosed.

According to A.M. Best Company, 2011 was the worst year in the insurance industry's history for natural disaster losses. Insurers and reinsurers worldwide lost more than $100 billion on catastrophes, including earthquakes, hurricanes, tornadoes, and flooding. The California Department of Insurance notes that a significant portion of those losses were due to severe storms and flooding. Insurers in the United States saw claims from nearly 2,000 tornadoes, plus thousands of hail and high wind events. If the tornado/storm season was to be considered a single event, it would have cost $21.3 billion in insured losses, making it the fourth-costliest insured event in U.S. history, behind Hurricane Katrina ($47.6 billion), Hurricane Andrew ($25 billion), and the September 11, 2001 terrorist attacks ($24 billion).

Many insurance companies, particularly large international reinsurance firms, have been grappling with how to assess risks that are not reflected in the historical record of insurance payouts. The recent unprecedented losses are driving the new mandate by the commissioners.

"We're seeing the same severe climate trends of recent years continue into 2012," said Washington State Insurance Commissioner Mike Kreidler, who is the chair of the NAIC Climate Change and Global Warming Working Group. "Our job as regulators is to confirm that companies are adequately addressing the impact of climate change on their risk profiles and ensure that the public has access to insurance to cover these severe weather events. The data from this survey will give us a real time benchmark for how insurers are preparing for the impacts of climate change."

Roughly 25 percent of the industry's large property, casualty, and life insurance companies participated in an earlier version of the survey sent out by California and five other states last year.

The new rule change, combined with California's partnership with New York and Washington, will mean that 300 of the larger insurers will now have to comply.

To discuss any questions you may have regarding the issues discussed in this alert, or how they may apply to your particular circumstances, please contact:

Benjamin A. Blume at 312.382.3112 or bblume@cozen.com
Daisy Khambatta at 312.382.3113 or dkhambatta@cozen.com

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