

August 4, 1988

SUBJECT: INSURANCE

Circular Letter No. 5 (1988)

August 4, 1988

TO: All Licensed Insurers, Accredited Reinsurers and Reinsurance Intermediaries

RE: Reinsurance Agreement Provisions which are in Conflict with the Required Conditions set forth in Insurance Law Section 1308

Section 1308 of the Insurance Law prescribes that there shall be no credit allowed for reinsurance recoverables due from unauthorized insurers if the terms of the reinsurance agreement do not comply with the conditions set forth in this Section. Recently, this Department has become aware of the inclusion of provisions in reinsurance agreements which are not in compliance with Section 1308.

For example, it is a condition of Section 1308 that an acceptable reinsurance agreement contain a provision whereby the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

Provisions which result in an unacceptable modification to the above condition include:

- (i) "...reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer without increase or diminution because of the insolvency of the ceding insurer";
- (ii) "...reinsurance is payable as finally determined in the liquidation or receivership proceeding without diminution because of the insolvency of the ceding insurer"; and
- (iii) any definition of terms which do not provide that, in the event of insolvency of the ceding insurer, the reinsurer must pay its share of the amount of loss which the insolvent insurer has incurred, sustained or is liable for.

The aforementioned examples are not meant to be all-inclusive, but merely illustrate conditions which the Department finds to be objectionable.

Another condition of Section 1308 requires that a reinsurance agreement be payable directly to the ceding insurer or to its liquidator, receiver or statutory successor. The Insurance Law provides that the only exceptions to this condition are:

- (1) Where an actual novation takes place, under which the assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as a direct obligation to the payees under such policies, in substitution for the obligations of the ceding insurer to such payees. Then, and only in such an event, the ceding company is entirely released from its obligation and the reinsuring company pays any loss directly to payees under such policy. Any references to such an event in the reinsurance agreement should indicate that, prior to the implementation of a novation, the certificate of

assumption on New York risks would have to be approved by the Superintendent and, as respects life insurers, may be subject to the provisions of Section 1308(f)(1);

(2) Certain fidelity and surety reinsurance agreements, as provided in Section 4118(a)(1)(A); and

(3) Where an insurer guarantees performance of a contract insuring against physical damage to property for the benefit of mortgages or other loss payees named in such contract, provided all of the conditions in Section 1114(c) have been met.

Very truly yours,

[SIGNATURE]

JAMES P. CORCORAN

Superintendent of Insurance