



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

James J. Wrynn
Superintendent

**Supplement No. 1 to Circular Letter No. 20 (2008)
February 17, 2010**

TO: All insurers, reinsurers and insurance producers

RE: Contract certainty

STATUTORY REFERENCE: N.Y. Insurance Law §§ 107, 201, 301, 308, 1114, 2110, 2118, and 3103; and Arts. 23, 31, 34, 61, 63, 64, 65, 66, 67, and 69.

In October 2008, the New York State Insurance Department issued Circular Letter No. 20 (“CL No. 20”), which sets forth the Superintendent of Insurance’s expectations regarding contract certainty with respect to property/casualty insurance policies and reinsurance contracts. The purpose of this Supplement is to provide further guidance in response to inquiries posed to the Department by various stakeholders -- including insurers, producers, and trade associations -- in the wake of the issuance of CL No. 20.

CL No. 20 advises insurers and producers doing business in the State of New York that they should, no more than twelve months from the date of that Circular Letter, develop and implement practices to assure that policy documentation is delivered to the insured before, at, or promptly after inception. “Promptly” is generally interpreted to mean within thirty business days (not, as some have queried, calendar days), and any extensions beyond that period should be carefully documented by insurers (and, wherever possible, establish “good cause” for such delay). CL No. 20 also states that any principles and practices established to ensure contract certainty must comply with all existing statutory or regulatory provisions concerning the content, timing, or delivery of insurance policies.

The Department received numerous inquiries about how it intends to ensure adherence to CL No. 20. On a prospective basis, the Department will focus its resources on those types of policies where, because of the unique nature or size of the risk, issues regarding contract certainty are most apt to surface. Such policies include those issued to: (1) large commercial

insureds, written on a standard or manuscript basis; (2) the special risk market, written pursuant to Insurance Law Article 63; (3) policyholders in the excess line market; and (4) other insurers via reinsurance. In the latter half of 2010, the Department may issue letters of inquiry to licensees aimed at gathering information regarding how, and to what extent, licensees have developed and implemented practices to assure that contract certainty is routinely achieved.

A number of queries centered on the policy documentation necessary for contract certainty. The Department has endeavored to develop a contract certainty standard that strikes an appropriate balance between insureds, on the one hand, and insurers and producers, on the other. To that end, the Department, mindful of the global nature of the insurance industry, refers insureds, insurers, and producers to the principles and standards of contract certainty established in the United Kingdom, <http://www.abi.org.uk/information/business/521.pdf>, and Bermuda, http://www.abir.bm/downloads/032208_ContractCertaintyCode_of_PracticeforBD_FINAL.pdf. Those principles and standards will guide the Department to the extent that they are not inconsistent with the New York Insurance Law or regulations promulgated thereunder.

Thus, in accordance with those codes of practice, “policy documentation” for purposes of contract certainty should contain all the agreed terms of the contract, and may include an insurance policy, binder of insurance, schedule of cover, signed contract wording, endorsement, or a complete slip. Similarly, documentation of a reinsurance contract can be evidenced by a binder, cover note, or similar documents, provided that it reflects all agreed terms and conditions to which the reinsurers have agreed.

Because CL No. 20 states that contract certainty generally should be achieved within thirty days, and given that insurers and producers must work together to best serve the insured, many licensees requested guidance as to how the time frame should be allocated. In the United Kingdom, the allocation of time for placement of coverage is left to the marketplace. Accordingly, insurers and producers seeking to take steps to consistent with CL No. 20 and this Supplement should work out the allocation amongst themselves. The Department believes that generally speaking, where a producer intermediates a transaction, the insurer should endeavor to deliver policy terms and conditions to the producer within eighteen business days post-inception to enable the producer to do its part to implement the processes necessary to check the terms and conditions for accuracy, advise the policyholder, and, where necessary, to interface further with the insurer to assure a final meeting of the minds. The broker then would generally have twelve business days to deliver the contract to the policyholder. But it bears emphasizing that in any given circumstance, it is incumbent upon the insurer and producer to decide between themselves how to allocate the time afforded by the thirty-day period. Note, however, that in all events, should the time frames suggested by CL No. 20 and this Supplement conflict with the some provision of the New York Insurance Law or regulations promulgated thereunder, the latter provision will control.

Please direct any questions regarding the content of this Supplement to James Everett at jeverett@ins.state.ny.us or (518) 408-1593.

Very truly yours,

Michael Moriarty
Deputy Superintendent