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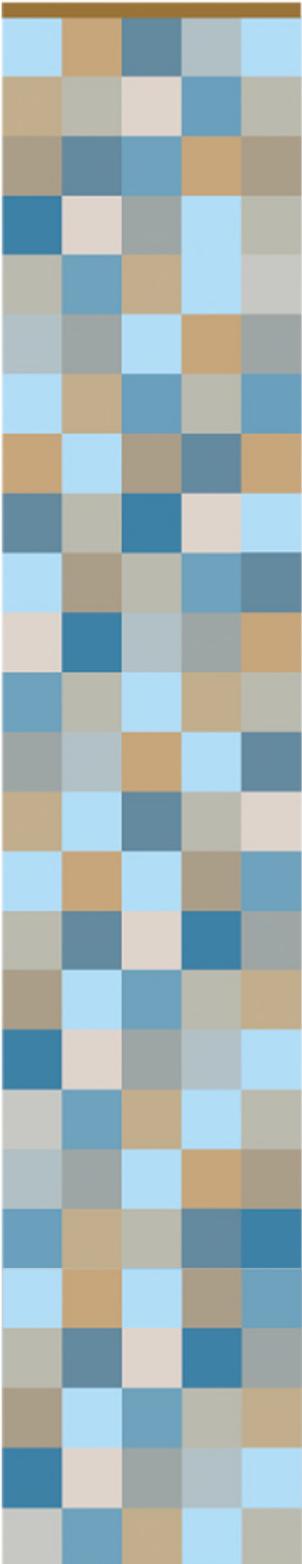
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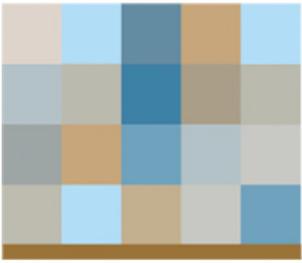
New York Offers Property and Casualty Insurance Relief to Small Businesses Affected by COVID-19

By: James P. Chou & Alex D. Corey

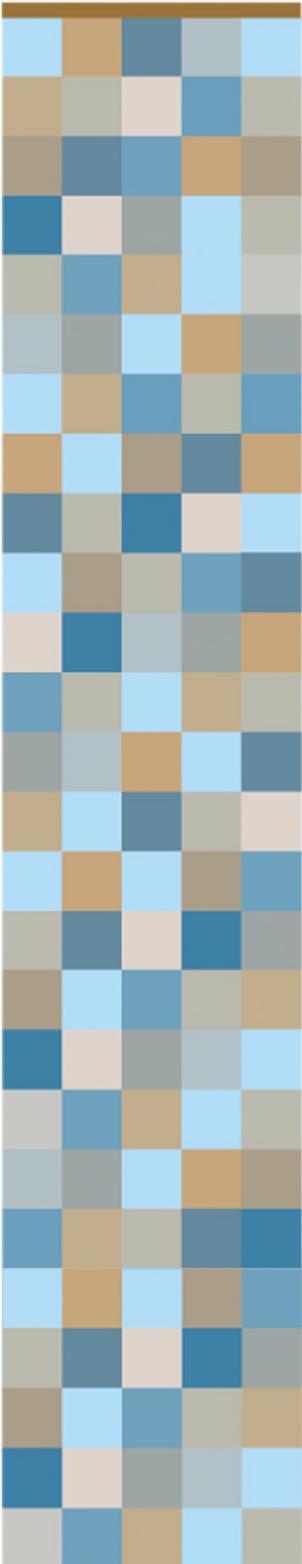
On March 30, 2020, the New York State Department of Financial Services ("NYDFS") adopted emergency regulations, [available here](#), requiring New York-regulated issuers of life insurance and annuity contracts, property and casualty ("P&C") insurers, and premium finance agencies ("PFAs") to provide relief to New York State businesses and consumers experiencing financial hardship from the COVID-19 health crisis. The NYDFS promulgated the forbearance rules in response to Governor Andrew Cuomo's March 29, 2020 Executive Order No. 202.13 (the "Executive Order"), [available here](#), which modified, among other things, New York Insurance Law pertaining to grace periods, cancellations, non-renewals and conditional renewals of insurance policies, including personal and commercial line P&C policies. In particular, the Executive Order imposes a moratorium on a P&C insurer's ability to cancel, non-renew, or conditionally renew any P&C policy for 60 days where the policyholder is facing financial hardship as a result of the COVID-19 pandemic. The NYDFS' newly adopted regulations further clarify and expand on this relief to P&C policyholders in a number of significant ways.

MHH Practical Takeaway: *Executive Order 202.13 and the subsequent NYDFS-adopted regulations provide clear types of forbearance for small business policyholders with P&C insurance. Given the vast array of coverages and products that fall within commercial and specialty lines of P&C insurance—such as general liability, cyber liability, errors & omissions (E&O) liability, directors & officers (D&O) liability, employment practices liability (EPL), workers' compensation, commercial auto, equipment breakdown, ocean marine, professional liability, etc.—the relief is applicable to small businesses across virtually all industries. This breadth coupled with the low threshold for establishing "financial hardship" provides small businesses (and individuals) with yet another readily available option to ease the financial burden resulting from the current crisis. That said, businesses are encouraged to carefully evaluate their*





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specific situations, needs, and other available forms of emergency financial assistance—which they may have already received— before availing themselves of additional relief.

Discussion

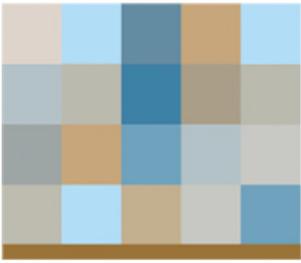
First, as a threshold matter, the relief under the new regulations as they pertain to P&C insurance, is available only to individual insureds and small business policyholders. The amended regulations expressly define "small business" as an independently owned and operated business that is resident in New York State and employs 100 or fewer individuals. Unfortunately, larger businesses unable to pay premiums for their P&C coverages as result of the COVID-19 crisis will have no recourse under the new regulations.

Second, a P&C policyholder that fails to make timely premium payments and can demonstrate financial hardship due to the COVID-19 pandemic cannot be subject to any late fees relating to those missed payments. The new regulations also expressly prohibit insurers from reporting a policyholder to a credit-reporting agency or referring the delinquent account to a debt collector.

Third, the emergency regulations afford P&C policyholders the ability to pay missed premium installments over a 12-month period, provided that the policyholders demonstrate financial hardship resulting from the COVID-19 crisis. Significantly, this relief also applies to policyholders that received a notice of policy cancellation for non-payment before the Governor's Executive Order went into effect.

Fourth, the new regulations provide P&C policyholders the same type of safeguards against actions by PFAs.¹ Assuming a P&C insured demonstrates financial hardship arising from the COVID-19 pandemic, the regulations (i) bar that insured's PFA from cancelling coverage for at least 60 days, including any contractual grace period; (ii) permit the insured to pay outstanding installments over a 12-month period; and (iii) prohibit the PFA from charging late fees, reporting the insured to a credit reporting agency or referring the insured to a debt collection agency. These forbearance measures are additionally subject to safety and soundness laws and regulations governing PFAs.

¹ Banking Law § 576(3) defines a premium finance agency as "(1) a lending institution making a loan for the purpose of financing insurance premiums in accordance with the applicable provisions of other laws authorizing and regulating the making of loans by the lending institution, and (2) a bank, or sales finance company licensed under article eleven-b of this chapter."



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Notably, unlike other recently adopted federal and state regulations, neither Executive Order 202.13 nor the corresponding regulations set forth criteria to determine whether a small business policyholder is eligible for relief other than a showing of "financial hardship"—a term that is conspicuously undefined. While the failure to define "financial hardship" might normally be problematic, the emergency regulations prescribe such a low standard of proof that the lack of clarity will likely not be an impediment to P&C Policyholders seeking relief. Indeed, the regulations explicitly direct both insurers and PFAs to "accept a written attestation from a policyholder as proof of financial hardship as a result of the COVID-19 pandemic." The regulations require no further information or elaboration regarding the policyholder's financial condition.²

As additional guidance and developments unfold, MHH will continue to provide the appropriate updates to this and other COVID-19 related issues.

We are available to advise you and these and other issues related to the operation of your business during and after the COVID-19 health crisis.

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² This is not to say that insurers will not attempt to impose additional requirements or even seek to define "financial hardship." In light of the plain language of provisions requiring insurers to accept the policyholder's word, as well as the emergency regulations' overarching objective to provide expeditious relief to insureds, it is unclear that such additional criteria would withstand legal challenge. On the other hand, the low threshold imposed by the regulations arguably creates a moral hazard that could potentially lead to widespread fraud, which would have an adverse impact on insurers. Thus, while a showing of "financial hardship" may be easily met, policyholders should nonetheless carefully assess their situations and seek legal counsel to determine whether their financial situations warrant regulatory forbearance.

