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There's No Place Like Home: New York's Attempt to Keep Its Life Insurance Companies in New York

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Why stay in New York? With over 49 jurisdictions to choose from, a majority of which appear to be changing with the times and facing head-on issues of the 1990's, many New York life insurance companies are beginning to question whether they should redomesticate out of New York to a state that may better address their needs. New York state domiciled life insurance companies have expressed concern that excessive insurance regulations are preventing them from competing on a level playing field with companies from other states. This concern can be heard throughout the halls of many of New York's cornerstone life insurance companies. In response, the New York Insurance Department ("Department") has taken drastic measures designed to make New York more amenable to the growing financial services climate and ultimately, keep its insurance companies in New York.

Compensation to Producers

For example, one of the major thorns in the sides of New York life companies is a 90-year-old law on the book with no comparable statute or regulation on the books in any other state.[1] The major objection life companies have to the law is that through a complex system of regulations and controls, it painstakingly specifies and restricts how much and the manner in which life companies can pay for the acquisition of new and renewal business. Additionally, the companies contend that it was promulgated at a time were there were many abuses in the life insurance industry and very little regulation - conditions which no longer prevail.

In response, the Department recently established guidelines for fund-based compensation and fund-based expense allowance payments to life and annuity agents. See Circular Letter No. 7 (1996). Recognizing that many insurance companies seek to offer their agents fund-based compensation plans, but have been deterred under the Department's strict interpretation of Section 4428 of the New York Insurance Law,[2] the Department issued guidelines to facilitate the filing of fund-based compensation plans for approval.[3]

The guidelines provide that, in any plan for compensation submitted under Section 4228(d)(5) and in any plan for expense allowance payments for the sale of annuities submitted under Section 4228(o), any premium-based payments that could have been paid on a policy or contract may be converted into fund-based payments based on the fund under such contract, subject to the following:

If the rate of fund-based payments is level over all years in which fund-based payments are paid and such payments begin in the year in which the premium is paid and continue only while the policy or contract is in force (including the period after annuitization if the company so elects), the maximum allowable payment is 0.1429% (one seventh of one percent) per annum of fund value for each 1% of premium based payments that could otherwise have been paid with respect to the premium. Model rates shall be level and the sum of such rates within a year may not exceed the maximum annual rate. The maximum rate of fund-based payments that can be made in any year, if the plan is as described above and all compensation and expense allowance payments are fund-based, is one percent, which is equivalent of seven percent of premium based payments.

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Although through these guidelines and the proposed regulation the Department is becoming more receptive to alternative plans for compensation to agents, it may be some time before New York companies will be placed on an even footing with non-New York insurers and other financial services institutions.

Additionally, on October 31, 1996, the Department repealed Regulation 93 (Part 30 of Title 11 of the official Compilation of Codes, Rules and Regulations of the State of New York), which established stringent rules concerning agency conferences of life insurers, including the length of conferences, educational requirements, procedures to qualify to attend and location of conferences. Market Conduct examinations of life insurers often focused on agent compensation issues, including alleged violations of Regulation 93. One unnamed life insurer was quoted as saying "Regulation 93, which restricts agent awards and conferences, unnecessarily limits a company's ability to motivate and reward superior agents."[4] The Department determined that Regulation 93 imposed a burden upon the life industry far greater than any regulatory or other benefit.

Sales Practices

Another area of concern for the Department and the life insurance industry is the area of marketing and sales of life insurance and annuity products. The Department recently addressed "churning," a practice under which agents persuade clients to use built-up cash value of older policies to finance new, more expensive ones. Policyholders are often mis-informed about the nature of the transaction and the extent to which it harms the value of their insurance coverage.

The Department has proposed stringent "anti-churning" rules designed to prevent the improper replacement of life insurance policies and annuities. See Proposed Amended Regulation No 60. The proposed amendments to the regulation would be applicable to new life insurance policies or annuity contracts purchased, delivered, or issued for delivery in New York if the agent knows that as part of the transaction existing policies or contracts have been or are likely to be lapsed, surrendered, modified, reissued, or assigned as collateral.

The proposed amendments specifically outline the duties of each agent and insurer. Each agent must include with each application a list of all the applicant's existing life insurance policies including a "Definition of Replacement"; a statement as to whether replacement is involved and if so, why it is necessary to meet the needs of the current policyholder; and a completed "Disclosure Statement". Each insurer is required to inform its agent of the requirements of the regulation; require with each application a list of all the applicant's existing life insurance policies including a "Definition of Replacement"; maintain completed signed copies in its office for a period of three years; and require with each application a statement signed by the agent as to whether replacement is involved in the transaction.

Commitment Agreements

In Circular Letter No. 19, issued on December 20, 1996, the Department announced that after reviewing various Commitment Agreements which some New York domestic life insurance companies have been required to sign as a condition of initial licensure or continuation of licensure, the Department determined that the Agreements have likely hindered the growth of the New York life insurance industry and have given an unfair edge to companies not subject to such Agreements. Moreover, the Department released all companies subject to a Commitment Agreement from its terms. The Department added that notwithstanding the release from the Agreements, the insurance companies were still mandated to comply with all statutes and regulations applicable to insurers licensed to engage in the business of insurance in the state of New York and that any and all future determinations as to terms and conditions to be followed by insurance companies will be imposed pursuant to an amendment of the Insurance law or regulation promulgated in accordance with the State Administrative Procedures Act.

Conclusion

There can be no doubt that tremendous inroads have been made over the past year to change the regulatory climate in New York for the life insurance industry and ultimately, keep New York life companies from relocating. Additional modifications are expected to be made over the next several years. It is too early to determine the impact of the Department's efforts, but what is obvious is that the Department is finally listening and is no longer turning a deaf ear on the cries of the life insurance companies that call New York home.

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Endnotes

1. Compensation to agents of life and annuity insurers is governed by Section 4228 of the New York Insurance Law. N.Y. Ins. Law 4228 (McKinney 1985). Specifically, sections 4228(d)(4) and (d)(5) authorize companies to compensate their agents on a plan other than commissions, provided that the plan does not exceed the aggregate limits set forth in subsections (a), (b) and (d)(1) and the Superintendent approves the plan. Section 4228(o) authorizes the Superintendent to prescribe a regulation establishing maximum amounts of expense reimbursements to agents.

2. A survey by the American Council of Life Insurance (ACLI) indicates that 88% of companies operating in New York believe Section 4228 has hindered their ability to compete.

3. The life insurance industry has been pleading with the Department for reform, if not repeal of 4228 for years. A proposed regulation under 4228 is due to be released in Spring 1997.

4. Towards An Improved Regulatory Climate, New York State Insurance Department (1995).