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Wisconsin Adopts Domestic Surplus Lines Insurance Law

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On June 21, 2017, Governor Scott Walker signed Senate Bill 77 into law as 2017 Wisconsin Act 16, which permits its domestic insurers to become domestic surplus lines insurers (DSLIs) and sell surplus lines insurance in Wisconsin, clearing the way for greater efficiency and ease of operation for existing Wisconsin surplus lines insurers. Other, non-domestic surplus lines insurers should also take a close look at Wisconsin as a new state of domicile, given its long history of stable and professional regulation and this new DSLI law.

The Status Quo – Surplus Lines Carriers Need Two Separate Insurance Companies

Traditionally, a surplus lines company would be admitted in one state (its state of domicile) and could sell surplus lines insurance only in the other 49 states. The surplus lines insurer would thus be subject to full solvency regulation in its domiciliary state and would be a non-admitted company in the remaining states. As a practical matter, this means that an enterprise needs to have two licensed carriers in order to conduct surplus lines business on a 50-state basis. There would be a primary carrier, which would write surplus lines insurance in 49 states, and a second carrier to write surplus lines insurance in the primary carrier's state of domicile. Surplus lines carriers, accordingly, have to meet the burdens of having two companies to write one line of business; these burdens include duplicative regulatory responsibilities—holding company act filings, annual and quarterly statements, examinations, etc.—and the internal costs of operating two licensed companies, rather than one.

Adopting a DSLI Law Allows Surplus Lines Carriers to Simplify Their Organizational Structure

Recognizing the costs of this traditional model for surplus lines carriers, a growing number of states have permitted domestic insurers to become DSLIs. DSLIs are admitted carriers in their state of domicile, but specifically permitted to write non-admitted/surplus lines business in that state. Accordingly, a DSLI can write surplus lines in its home state and in the other 49 states, allowing a single insurer to write surplus lines on a nationwide basis. This permits a surplus lines insurer to reduce its cost of capital and eliminate the duplicative costs associated with operating two insurers in order to maintain a 50-state surplus lines business. The specific features of Wisconsin's new DSLI law are described below

Eligibility to become a DSLI

Wisconsin's DSLI law permits a Wisconsin-domiciled insurer to offer surplus lines insurance in Wisconsin (and thereby to become a DSLI) if:

- The insurer's board of directors adopts a resolution seeking certification as a DSLI;
- The insurer is already eligible to offer surplus lines insurance in at least one other state, besides Wisconsin;
- The insurer's capital and surplus is at least $15 million; and
- If the insurer has previously written admitted business in Wisconsin, it has a plan for the treatment of such policies.

Treatment of Policies Issued by a DSLI

Although a DSLI is technically a Wisconsin domestic company, it is exempted from the Wisconsin insurance security fund and is treated as a nonadmitted insurer for purposes of federal law and premium taxation. However, DSLIs are specifically made subject to Wisconsin's unfair trade practices laws and are required to follow the same rules and regulations applicable to nonadmitted insurers in the solicitation and sale of surplus lines policies in Wisconsin. Policies issued by a Wisconsin DSLI must also contain a legend clarifying that the policy is issued as surplus lines coverage, describing the surplus lines tax due, and stating that the insured is not eligible for protection by the Wisconsin Insurance Security Fund. These requirements are the same as those imposed on non-admitted carriers writing surplus lines in Wisconsin.

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