

2025 developments in New York insurance law

Viewpoint

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New York State has recently amended Section 1113 of the New York Insurance Law to authorize several new types of insurance coverage: parametric insurance and stand-alone business interruption coverage.

New York authorizes parametric insurance policies

At the end of December 2024, Governor Kathy Hochul signed legislation (Assembly Bill 10344/Senate Bill 9420) amending Section 1113 to authorize a new type of insurance in New York, parametric insurance. New York is now one of the first states to take steps to authorize and regulate parametric insurance products.

Under a traditional property insurance policy, coverage is triggered based on actual damage or loss to the insured's property. The insured must establish that the damage was the result of a covered cause of loss, and the value of that loss must be adjusted to determine the appropriate insurance payout. In contrast, a parametric insurance policy is not triggered by actual loss or damage to the insured's property. Instead, coverage is triggered by data measuring the severity of the windstorm, earthquake or

other weather-related event in proximity to the insured location. The insurance operates on the idea that these pre-determined criteria will be based on objective data and will highly correlate with the likelihood of damage to the property. For example, record wind speeds at the nearest weather station might result in a significant insurance payment based on the likelihood of damage.

Proponents of parametric insurance products emphasize that parametric insurance may eliminate many of the costs and burdens associated with traditional property insurance policies. By relying on objective criteria to establish insurance payments, the parties avoid the need to inspect and adjust property damage claims or litigate many common coverage issues.

The legislation adds new subsection (a)(34) to Insurance Law Section 1113, which defines "parametric insurance" as insurance against the "occurrence of a weather-related event" (such as a windstorm, flood or earthquake) where the insurer's obligation to indemnify the insured is "based on the proximity and magnitude of the event as measured and reported by a state or federal government agency." The legislation also adds new Section 3416 to the Insurance Law, which sets forth certain mandatory disclosures for insurers offering parametric insurance policies, including that such policies are not a substitute for property insurance or flood in-

surance, and a mortgagee may not accept a parametric insurance policy. The legislation also provides that parametric policies must be sold by licensed insurance agents.

New stand-alone business insurance

On September 27, 2024, Governor Hochul signed legislation (Assembly Bill 10342/Senate Bill 9481) authorizing insurance carriers to provide stand-alone business interruption insurance policies. As many businesses learned following the COVID-19 pandemic, under traditional business interruption coverage found in commercial property insurance policies, coverage is typically tied to direct physical loss or damage to the insured property. Following the pandemic, the majority of courts around the country found that the presence of a virus in the air or on surfaces at an insured property did not amount to direct physical loss or damage to that property within the meaning of a typical commercial property insurance policy. Indeed, the New York Court of Appeals held as much in *Consolidated Restaurant Operations, Inc. v. Westport Insurance Corp.* in February 2024.

In the sponsor memo supporting the new legislation, the legislature observed that, although existing business interruption coverage may extend to cover the loss of net profits when a business is closed by order of a civil authority, there

still must be physical damage to nearby property that makes it unsafe for the business to open. "As demonstrated with the ... COVID-19 pandemic, a business may be forced to close without the insured property or neighboring property suffering physical damage." Thus, even though most businesses closed due to governmental shut-down orders, coverage remained unavailable because insured property was not directly damaged. The sponsor memo further noted that business interruption policies not tied to physical damage to property would also be useful in providing insurance coverage for active shooter situations.

The new legislation amends New York Insurance Law § 1113(a) to add business interruption insurance as an authorized type of insurance, one that does not need to be tied to physical damage. The legislation further amends Insurance Law § 2105 to permit the insurance to be written in the excess line market. This newly authorized coverage permits businesses to purchase business interruption coverage that would protect them from business losses in the event of future pandemics or other events, such as active shooter threats, that might not result in direct physical loss or damage to property.

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