

THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK  
42 WEST 44TH STREET  
NEW YORK, NY 10036-6689

COMMITTEE ON INSURANCE LAW

HEIDI A. LAWSON  
CHAIR  
919 THIRD AVENUE  
NEW YORK, NY 10022  
(212) 909-6112  
FAX # (212) 909-6836

[halawson@debevoise.com](mailto:halawson@debevoise.com)

KATHLEEN M. GOLDEN  
SECRETARY  
787 SEVENTH AVENUE  
NEW YORK, NY 10019-6099  
(212) 728-8861  
FAX # (212) 728-8111

[kgolden@willkie.com](mailto:kgolden@willkie.com)

June 5, 2003

The Honorable Joseph L. Bruno  
Majority Leader  
New York State Senate  
909 Legislative Office Building  
Albany, NY 12247

The Honorable Sheldon Silver  
Speaker  
New York State Assembly  
932 Legislative Office Building  
Albany, NY 12248

Re: A.8536/S.3878A, Derivative and Replication Transaction - Extender

Dear Majority Leader Bruno and Speaker Silver:

The Committee on Insurance Law is one of the many committees at the Association of the Bar of the City of New York and is comprised of members from various areas in the insurance industry, including but not limited to, insurance companies, brokers and various law firms. The members of the Committee on Insurance Law wanted to bring the following problem to your attention.

As June 30<sup>th</sup> moves closer without any action by the New York State legislature, the Committee is concerned that the New York Insurance Law provision (N.Y. Insurance Law § 1410) authorizing both New York domestic insurers and New York licensed insurers to enter into derivative and replication transactions will actually sunset. As discussed below, bills have been introduced to provide for the extension of that provision, but your help is needed to ensure that the legislature takes appropriate and timely action on this provision which is an important one for insurers doing business in New York State.

New York State is regarded as the home of the financial center of the United States, if not the world. Derivatives transactions are an essential part of that market. While there have been a number of improprieties in the financial markets over the past several years, derivatives have not been at the core of those improprieties and derivatives transactions of insurers doing business in New York State do not seem at all to have played a role in those improprieties.

To the contrary, They are an essential part of the nation's financial markets. They allow financial services and business firms to better manage their risks.

Senator Seward, Chair of the Senate Insurance Committee has introduced and moved to the Senate floor, S.3878--A, which would extend Section 1410 through June 30, 2008. Chairman Seward's initial draft sought to make this provision permanent. Unfortunately, the bill was ultimately amended under the theory that a simpler bill would be easier to move.

On the Assembly side, Chairman Grannis has introduced A.8536, which would also extend this provision through 2008. The Assembly Insurance Committee seems to be hesitant to move this bill forward.

Both bills would provide that transactions entered into after the expiry date and before the bill's effective date are nonetheless deemed to be authorized. That provision is well meaning but will not prevent a hiatus in the use of derivatives by insurers doing business in New York State. At the time of a derivative transaction, the parties covenant that they have the requisite authority to enter into the transaction. For many transactions currently authorized, the insurer will be unable to agree to that covenant. In addition, the insurer's counsel will be unable to opine that the insurer has the authority to enter into that type of derivative transaction. As a result, the insurer would be unable to enter into certain derivative transactions after the June 30 expiry date, if the bill is not enacted by that time.

If this legislation fails to become law, or even if it fails to become law prior to June 30<sup>th</sup>, insurers doing business in New York State to face the heretofore non-contemplated problems associated with derivative and replication transactions. At the very least insurers doing business in New York will be at a competitive disadvantage as compared to other firm, financial and non-financial alike. The gap will also create an incentive for this business to done by insurers not chartered or licensed by the New York Insurance Department, especially insurers located in non-United States financial centers. This is why your immediate action on this issue is vital to the interests of the insurance industry.

It is for this reason that the Insurance Committee urges that you foster efforts to move this important legislation before the June 30 expiry date.

Please feel free to contact me if you have any questions regarding the Committee on Insurance Law's concerns on this issue.

Sincerely,

Heidi A. Lawson  
Chair

cc: The Honorable James L. Seward  
Chair, Senate Insurance Committee  
New York State Senate  
917 Legislative Office Building  
Albany, NY 12247

The Honorable Alexander B. (Pete) Grannis  
Chair, Assembly Insurance Committee  
New York State Assembly  
712 Legislative Office Building  
Albany, NY 12248

Alan Rothstein  
General Counsel  
The Association of the Bar of the City of New York  
42 West 44th Street  
New York, NY 10036