

## EXTRA! EXTRA! Read it Here First!

Certain information about the insurance business in New York is being exclusively presented here for the very first time! This information is not otherwise publicly available and was mined from the Department of Financial Services

regulatory purpose that seems to be filed away somewhere and not used for any purpose at all.

A brief refresher: the Free Zone allows domestic NY insurers, through an annual special risk license, to insure certain

surplus lines business than we do about the domestic Free Zone business.

My Quixotic quest for more information on this corner of the market began through a 2012 FOIL request for summary information about Free Zone writings. That request was denied on the basis that DFS did not have that information in summary form and “an agency is not required to create records in order to comply with a FOIL request.” But DFS had the records! Each year companies holding special risk licenses are required to complete an availability study of Free Zone business, giving details of writings not just by class but also by line of business within each class. This survey is an electronic filing that appears to be constructed so that filings of all responding companies could be readily combined into a composite form. Or so it seems.

A more targeted FOIL request was made in November 2013 and again in January 2014, resulting eventually in receipt of three pdf schedules of direct premium written by class – but not by line of business and without totals – for each Free Zone licensee for the calendar years 2009, 2010 and 2011. With some work, however, the schedules were converted into Excel spreadsheets, which enabled the creation of the summary table accompanying this column.

Rather than being a significant success for openness, the principal takeaway from this quest for information is how sparse and stale the data released by DFS is compared to the information required to be filed by Free Zone licensees. For example, the latest of the three documents represents the writings for calendar year 2011 reported in the 2012 survey and filed with DFS in 2013. The 2012 writings, included in the 2013 survey, were filed earlier this year, but the DFS Report will not be ready for several more months. Likewise, the 2013 writings will be included in the 2014 survey, which will be filed in 2015. Also, the information released by DFS is by class only and not by line of business, although as indicated Free Zone licensees are required to file their writings by both Class



***It is not that this information is so sensitive or mysterious that it has to be withheld for some greater political, business or regulatory purpose. It is simply another example of data collected at the industry's expense for a specific regulatory purpose that seems to be filed away somewhere and not used for any purpose at all.***

Peter H. Bickford

through the magic of the Freedom of Information Law (FOIL), with the help of an app that converts pdf documents into Excel spreadsheets (yes, there is an app for that – several, actually!). Although DFS has had this information all along, it was not included in either of the first two DFS annual reports nor was it the subject of any release, bulletin or other publication issued by the DFS.

The subject information presented publicly for the first time relates to business written as special risk insurance under Article 63 of the New York Insurance Law, also referred to as the Free Trade Zone, by class for the years 2009, 2010 and 2011 (see the chart below). It is not that this information is so sensitive or mysterious that it has to be withheld for some greater political, business or regulatory purpose. It is simply another example of data collected at the industry's expense for a specific reg-

hard to place or other risks free of rate and form filing requirements. There are three classes of risks that can be written in the Free Zone: Class 1 risks with an annual premium in excess of \$100,000; Class 2 “special” or hard to place risks listed by regulation; and Class 3, added in 2011 as a result of the Nonadmitted and Reinsurance Reform Act (part of the Federal Dodd-Frank legislation), for policies issued to “large commercial insureds” employing or retaining a professional risk manager and with a \$25,000 premium threshold.

The Free Zone business has grown into a market comparable in size to the surplus lines market in the state – not an inconsequential business. The difference is that because of the excellent reporting on the surplus lines business by the Excess Line Association of New York (ELANY), we know a lot more about the non-admitted

NY Free Trade Zone – Direct Premium Written by Class 2009-2011 (Dollar amount in millions)				
Year	Class 1 Premium	Class 2 Premium	Class 3 Premium	Total
2009	\$828.0	\$1,517.8	N/A	\$2,345.8
2010	\$857.0	\$1,647.2	N/A	\$2,504.2
2011	\$796.3	\$1,700.9	\$0.05	\$2,497.3

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## [INSIGHT]

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and line of business.

An example of the consequences of the failure to make information timely and fully available to all affected constituencies – legislators, insurance consumers and industry participants – is the Class 3 addition to the Free Zone, which was added late in 2011 and is scheduled to sunset on June 30, 2015. The amendments to the Free Zone

regulations adopted by DFS incorporating new Class 3 into the Free Zone scheme included some very restrictive requirements that called into question whether the new class would in fact allow for expanded use of the Free Zone as a boon to domestic insurance companies and their customers. One of those inexplicable restrictions – requiring the filing of a certificate of coverage within 24 hours of binding – was removed from the regulation last year without explanation. Was this because of

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concern that the restriction was hindering the use of the new class or for some other reason? The information provided by DFS in response to my FOIL request cannot possibly answer this question.

Because Class 3 was incorporated into the Free Zone regulation late in 2011, the nominal Class 3 premium shown on the accompanying chart cannot be considered indicative of much of anything. The first full year of Class 3 availability was 2012, but as DFS advised in its April 2014 cover e-mail providing the pdf schedules: “the 2013 report [on the 2012 writings] is not complete yet, and you may wish to make another request for that record in a few months’ time.” Further, “the 2014 report [on the 2013 writings] will not be filed with the Department until 2015.”

In other words, at the time the legislature will be considering an extension, it will have only one full year of data on which to make a determination, but only if the DFS provides the information. To date it has been reluctant to do so fully, openly and timely.

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*Note: If any reader would like Excel copies of the full reports, showing the writings of each Special Risk licensee by class for calendar years 2009, 2010 and 2011, send an e-mail request to me at [pbickford@pbny.com](mailto:pbickford@pbny.com).*

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