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RE: PUNITIVE DAMAGE COVERAGE PROHIBITED IN NEW YORK

The Office of General Counsel of the New York State Department of Financial Services (DFS) issued an opinion dated August 27, 2008, which addressed the legality of placing punitive damages coverage in the excess line market insuring New York risks. The Opinion reiterates the Department's long standing position citing several cases decided by New York's highest court that insuring punitive damages violates New York's public policy and is, therefore, prohibited. The DFS's opinion expressly states that a licensed broker may not place a punitive damage cover with an excess line insurer nor hire a third party outside of New York to do so.

Recently, a few excess line brokers have submitted excess line policies to ELANY which contained language stating that punitive damage is covered "...to the extent insurable under the law of any applicable jurisdiction most favorable to insurability."

DFS has reviewed this so called "**Most Favored Nation**" **punitive damage insurability clause** and advised ELANY that the referenced language is not acceptable, has not been approved in the admitted market and punitive damage coverage **remains prohibited in New York**.

Therefore, any excess line policy submitted to ELANY, which contains the so called "Most Favored Nation" punitive damage insurability clause or similar language, will be suspended and reported to the DFS for whatever action it deems necessary.

This prohibition does not extend to language, such as approved ISO forms for certain lines of coverage which permits insuring punitive damages under a policy in a state where such coverage is not prohibited by that state's laws.

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