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Bermuda Carriers Face Tricky US State Procurement Laws

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Troutman Pepper Partners John Emmanuel and Zach Lerner were quoted in the January 20, 2026 *Royal Gazette* article, "Bermuda Carriers Face Tricky US State Procurement Laws."

"I think it's probably one of the largest areas of noncompliance we see out of the international markets," Zachary Lerner, partner at New York-based Troutman Pepper Locke, told *The Royal Gazette.* "And I think Bermuda is the single largest market that we see direct procurement utilised, often in an impermissible fashion, at least under US regulatory law."

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"In theory, it is tightly constrained. In practice, lawyers say it often involves US brokers in ways that breach state rules, exposing Bermuda carriers, their intermediaries and clients to fines, cease?and?desist orders and reputational damage.

"Most of the market operates in a fashion where they pick up the phone or send an e-mail, or, even worse still, have their US broker reach out to the Bermuda carrier to get coverage, and that is not in compliance with US constitutional law," Mr Lerner said.

John Emmanuel, partner at Troutman, added: "If you're looking at it from the Bermuda insurer perspective, if it's a direct procurement and you're not authorised in the US at all, there are parameters that must be followed in order to have that placement happen."

Mr Lerner added: "We have seen in our practice over recent years an uptick in direct procurement being scrutinised by states.

"More and more states either put out guidance or investigate and, worst?case scenarios, levy fines, penalties and cease?and?desist orders relating to impermissible direct?procurement transactions."

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"The law is no different with respect to Bermuda carriers versus United Kingdom carriers," Mr Lerner said. "Our experience is Bermuda seems to be the first jurisdiction that many of our industry contacts go to to see if they

could get non?admitted capacity through non?eligible, unauthorised insurers."

One alternative, Mr Lerner argued, is to shift as much of this business as possible into the surplus?lines channel, which sits on firmer regulatory ground.

"The biggest advantage, far and away, is the ability to do the three magic words, sell, solicit, negotiate insurance right out of the US, and that is done by and through a licensed surplus?lines broker," he said. "The contrast is, in the direct?procurement space, you're not supposed to use any broker at all, whereas in the surplus?line space, you must use a surplus?lines broker."

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"New York's rule is, if you act as an insurance consultant, then you're not wearing a broker hat, and it's permissible, but you have got to be really, really careful," Mr Lerner said. "If they get a fee, it can't be disguised as a commission for placing the policy. It needs to really be for doing that other activity."

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"They should ask themselves, is it worth it?" Mr Lerner said. "There could be a parade of horrible tomorrows if regulators start to take this more seriously.

He said carriers should ask themselves: "Why are we not doing surplus lines?"

"There's a handful of firms, including ours, that can get those companies on that list pretty darn quickly, and that puts them on a much better footing from a compliance perspective."

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