

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

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| IN THE MATTER OF THE 2013 ANNUAL) | |
| PUBLIC HEARING REGARDING) | HEARING OFFICER'S |
| <u>N.J.A.C. 11:1-34, THE SURPLUS LINES</u>) | REPORT |
| INSURANCE EXPORTABLE LIST) | |

The annual Exportable List hearing was held on Wednesday, January 8, 2014 at the Department of Banking and Insurance (“the Department”) in accordance with N.J.S.A. 17:22-6.43 and N.J.A.C. 11:1-34. N.J.S.A. 17:22-6.43 provides that the Commissioner of Banking and Insurance (“the Commissioner”) may declare generally eligible for export any class or classes of insurance coverage or risk for which, after a hearing, he or she determines that there exists no reasonable or adequate market among authorized carriers in New Jersey. The list of such risks, lines or classes of insurance is known as the Exportable List.

The purpose of this hearing is to receive testimony and public comment from interested parties that support the addition or deletion of items on the current Exportable List. Upon review of the relevant information, the Department will decide which items, if any, should be added to the Exportable List, based upon a conclusion that there does not exist a reasonable or adequate market among authorized carriers in the State of New Jersey for those particular lines, risks or classes of insurance, and which items, if any, should be deleted from the list based upon a conclusion that such a market does exist in New Jersey for those items.

The Department notes that Mr. Evan Hecht, representing the Flood Insurance Agency, located in Gainesville, Florida, and Mr. Steven Powell on behalf of the New Jersey Surplus Lines Association, testified at the hearing.

Mr. Powell testified that the Surplus Lines Association favored the current exportable list with no additions or deletions.

1. Addition of Flood Insurance

Mr. Hecht testified that he was requesting the addition of flood insurance to the Exportable List. One of the factors that he noted is that the conditions of procurability for flood insurance have changed. Mr. Hecht directed the Department's attention to the Biggert-Waters Flood Insurance Reform Act of 2012. Mr. Hecht stated that the legislation passed by the United States Congress, as well as newspaper headlines that are not only in New Jersey but around the country right now, give support to the fact that flood insurance is currently much harder to obtain. He noted that flood insurance in the United States is predominantly made available by the Federal Insurance Administration through the National Flood Insurance Program administered by the Federal Emergency Management Agency ("FEMA").

FEMA allows that program to be marketed by private insurance companies that do not act as insurance companies, but act in a fiduciary capacity representing the National Flood Insurance Program. Mr. Hecht had submitted documentation evidencing that these insurance companies operate only in a fiduciary capacity and in fact are, as a result of the arrangement with FEMA, prevented from offering private insurance in addition to representing FEMA. Mr. Hecht stated that such insurers have a choice of either representing FEMA or representing themselves. In his testimony he noted Article 13 of the Financial Assistance Subsidy Arrangement of FEMA (Restriction on Other Flood Insurance). He stated that it provides that, as a condition of entering into this arrangement, the company agrees that, in any area in which the administrator authorizes the purchase of flood insurance pursuant to the program, all flood insurance offered and sold by the company to persons eligible to buy coverage available under the program shall be written

pursuant to this arrangement. Mr. Hecht further testified that, as a result, all of the insurance companies that are household names in New Jersey that represent FEMA are not allowed to sell private flood insurance as an admitted carrier. Mr. Hecht stated that his company is marketing a private flood insurance program that mirrors the National Flood Insurance Program and is currently offering that program in ten other states. He also noted that when his company's representatives asked several New Jersey consumers and their insurance agents whether they were able to find coverage available in the private market, in every instance they were informed that there were no admitted carriers offering flood insurance.

Mr. Hecht noted that other states, among them Connecticut and Pennsylvania, are adding flood insurance to their exportable lists. The Department is aware that several other states have taken action to do so.

Based upon a review of the record, including the testimony provided and written documentation submitted, it is evident that there does not exist a reasonable or adequate market among authorized carriers in the State of New Jersey for flood insurance. Consequently, it is appropriate that flood insurance for primary and excess coverage should be added to the Exportable List.

Conclusion

Based on the Department staff's and my review of the record, including the written documentation submitted and the testimony adduced at the public hearing, I recommend that the Exportable List recited in N.J.A.C. 11:1-34 be revised. Specifically, I recommend that N.J.A.C. 11:1-34(a) be amended as set forth below to add flood insurance for primary and excess coverage to the list of items designated therein as eligible for export.

Revisions shown with asterisks, *thus*, deletions indicated with brackets [thus].

N.J.A.C. 11:1-34

(a). The Exportable list is as follows:

1. Amusement Devices, Parks and Carnivals;
2. Animal Mortality;
3. Armored Cars;
4. Auto Racing and Race Tracks;
5. Day Care Center Liability;
6. Difference In Condition;
7. Environmental Impairment Liability Insurance;
8. Excess and Buffer Liability;
9. Excess Loss and Excess Aggregate for Self-Insurers; Public Liability and

Workers' Compensation;

10. Golf Driving Range;
11. Fine Arts Dealers;
12. First Loss and Excess of First Loss Insurance;
13. House Movers and Building Demolition;
14. Kidnapping, Ransom and Extortion Insurance;
15. Manufacturers and Contractors Liability for Floor Waxers, Building

Maintenance People, Window Washers and Exterminators;

16. "Large Risks" which means any insured:

i. Which procures insurance for any property casualty risk by use of the services of either an employee who is a full-time insurance manager or buyer, or a regularly and continuously retained qualified insurance consultant; and

ii. Whose aggregate commercial premiums for insurance (excluding, Life, Health and Accident, Annuities and Workers' Compensation insurance) total at least \$500,000;

17. Motor vehicle coverage as follows:

i. Physical Damage Coverage for Limousines; and

ii. Physical Damage Coverage for Trucks, including trailers and trailer interchange (over 10,000 pounds) for Non-Fleet (one to five) risks, and commercial fleet (over five) risks irrespective of gross vehicle weight;

18. Mortgage Impairment;

19. Pony Rides/Riding Academies;

20. Physical Damage Coverage for Private Passenger and Commercial Vehicles with an original cost new of \$60,000 or above;

21. Product Liability Products or Products Recall Coverage;

22. Professional Liability insurance as follows:

i. Errors and Omissions; and

ii. Professional Liability except:

(1) Legal malpractice liability;

(2) Medical malpractice liability

(A) Hospitals Professional Liability

(B) Physicians and Surgeons Professional Liability

- (C) Dentist Professional Liability
- (D) Employees Professional Liability
- (E) Nurses Professional Liability
- (F) Optometrists Professional Liability
- (G) Physiotherapists Professional Liability
- (H) Chiropodists Professional Liability
- (I) Surgery Centers Professional Liability

23. Short Term Events;

24. Skating Rinks (Roller and Ice) and Skate Board Parks;

25. Swim Clubs/Swim Pools;

26. Vacant and Unoccupied Building;

27. Warehouseman's Legal Liability;

28. Automobile Personal Injury Protection (PIP) coverage in excess of \$250,000;

29. Commercial auto liability for taxi cabs and limousines; (Eligible Surplus Lines insurer's certificate of eligibility must state that they are permitted to write this risk.)

30. Commercial auto liability for intermediate and long-haul trucking; (Eligible Surplus Lines insurer's certificate of eligibility must state that they are permitted to write this risk.)

31. Liquor Liability;

32. Employment Practices Liability;

33. Livestock Gross Margin Policies;

34. Gap Coverage for Private Passenger and Commercial Automobile [.] *;

and

35. Flood insurance for primary and excess coverage.*

(b) With the exception of Special Risk Disability and Personal Accident Coverage as set forth in (b)3 and 4 below, the following kinds of insurance, if sold by eligible surplus lines insurers, are specifically not eligible for export, since the Department has determined that they are procurable from authorized or admitted insurers after a diligent effort:

1. Health insurance, including specific excess or aggregate excess purchased by self-funded health benefit plans, as defined by N.J.S.A. 17B:17-4.

2. Annuities including Funding Agreements or Guaranteed Investment Contracts (GIC's) as defined by N.J.S.A. 17B:17-5.

3. "Special Risk Disability and Personal Accident Coverage" means insurance providing coverage on a professional athlete, a professional musician or entertainer, or an executive essential to the insured's business operations obtained by a policyholder who procures insurance:

i. For risk of financial loss caused by the cessation of earned income due to disability from sickness, ailment or bodily injury;

ii. For risk of financial loss caused by a contractual requirement to pay an executive or other person essential to the insured's business operations who can no longer perform his or her duties due to disability from sickness, ailment or bodily injury;

iii. For risk of accidental death in an amount equal to or exceeding \$1,000,000 in face amount only where no reasonable or adequate market exists among admitted insurers; or

iv. For risk of financial loss caused by a contractual requirement to pay an executive or other person essential to the insured's business operations who can no longer

perform his or her duties due to death. Such coverage, where no reasonable or adequate market exists among admitted insurers, must be purchased in an amount equal to or exceeding \$1,000,000 in face amount only and with policy period not to exceed 24 months .

4. Insurance providing coverage on a person that is not a professional athlete, professional musician or entertainer, or executive or other person essential to a business operation, for any of the risks listed in subparagraphs i.-iv. of paragraph 3 above may be placed with an eligible surplus lines insurer after a diligent effort has been made by a licensed New Jersey insurance producer to procure the insurance from authorized or admitted insurers. The New Jersey surplus lines producer that places such insurance shall submit a separate report to the Life and Health Office of the Department of Banking and Insurance of placements made during each calendar quarter, with 15 days after the end of such calendar quarter. Such report shall include a copy of the certification of diligent effort (Form NO. SLPS-6CERT1) and a description of the nature of the risk and the basis of export. This reporting requirement shall apply to placements made through December 31, 2012.

(c) Life insurance is specifically not eligible for export pursuant to N.J.S.A. 17:22-6.40 et seq.

(d) The Department shall publish and update on its website a list of Unauthorized Insurers that qualify as Eligible Surplus Lines Insurers in New Jersey.

February 21, 2014
Date

/s/ DeWayne H. Tolbert
DeWayne H. Tolbert
Hearing Officer

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