

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE 2004 ANNUAL)
PUBLIC HEARING REGARDING N.J.A.C.)
11:1-34, THE SURPLUS LINES)
EXPORTABLE LIST)

HEARING OFFICER'S
REPORT

The hearing was held on Monday, December 20, 2004, at the Department of Banking and Insurance ("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 ("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 supports 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.

Pending the outcome of the hearing and a determination by the Commissioner, the current Exportable List will remain in effect. If the Commissioner determines that any items on the Exportable List should be added or deleted, an amendment to N.J.A.C. 11:1-34, will be proposed and published in the New Jersey Register. If an amendment is proposed, it may include more, all,

some or none of the classes of insurance set forth on the current list. The Commissioner must be satisfied by the evidence and testimony presented that the best interests of New Jersey's policyholders will be served by the elimination, and/or the addition, of one or more classes or lines of insurance from the current list.

The Department has reviewed the written responses that address issues raised at the Exportable List hearing. The Department also reviewed the transcript of the public comment portion of the hearing, in which testimony was received regarding the following items:

I. The Increase of Physical Damage Coverage from the current \$40,000 to \$60,000

Joe Botte, president of the Insurance Brokers Association of New Jersey, did not testify but submitted a letter to be part of the record. Mr. Botte requested an increase in the item regarding physical damage coverage for private passenger and commercial vehicles with an original cost new, from the current exportable list amount of \$40,000 to \$60,000. His letter notes that this will correspond to a symbol 24 vehicle. Mr. Botte's letter stated that this change is necessary in order to protect the consumer due to the value of vehicles having increased over the last five years. According to Mr. Botte, the consumer currently has to pay \$600 to \$700 for excess premium paid to excess and surplus carriers.

Based upon a review of the record and the testimony provided to the Department, it appears reasonable to amend the item on physical damage coverage for private passenger and commercial vehicles with an original cost new from the \$40,000 to the \$60,000 amount. The Department believes that this change to the exportable list will permit more higher priced vehicles to be written in the admitted market, which is presently adequate for such coverage.

Conclusion

Based on the Department staff's review of the record, testimony and transcript of the public hearing, I recommend that the Exportable List found in N.J.A.C. 11:1-34 be amended in accordance with the attached revised Exportable List.*

3/3/05
Date

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

* The current text of N.J.A.C.11:1-34.6 does not reflect (b) and (b)1 on the attached Exportable List, which were included in Order A04-131 issued subsequent to the 2003 Exportable List hearing. The Department anticipates proposing amendments to these rules in the near future to conform them to the attached list.

(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 Rises/Riding Academies;
20. Physical Damage Coverage for Private Passenger and Commercial Vehicles with an original cost new of [\$40,000] *\$60,000* or above;
21. Produce 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
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; and

33. Gap Coverage for Private Passenger and Commercial Automobile.

(b) 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; except as provided by 1. below:

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; and

i. If a licensed New Jersey insurance producer, after making a diligent effort to procure an individual disability policy with an authorized insurer, finds that the coverage is unavailable, he may request an exemption from the prohibition in (b) above;

ii. The request shall include the applications, three declinations from authorized insurers, the specific coverage and an explanation as to why the Department should permit the coverage to be exported;

iii. Requests that are not granted within 30 days of receipt by the Department shall be deemed disapproved; and

iv. The request shall be submitted to:

Department of Banking and Insurance
 Life and Health Office
 Attention: Gale Simon, Assistant Commissioner
 20 West State Street
 P.O. Box 325
 Trenton, NJ 08625-0325

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

(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 annually publish a notice in the New Jersey Register, which lists Unauthorized Insurers that qualify as Eligible Surplus Lines Insurers in New Jersey.

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