

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE 2006 ANNUAL)
PUBLIC HEARING REGARDING)
N.J.A.C. 11:1-34, THE SURPLUS LINES)
EXPORTABLE LIST)

HEARING OFFICER'S
REPORT

The annual Exportable List hearing was held on Tuesday, January 9, 2007, 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 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 for them in New Jersey.

Pending the outcome of the hearing and a determination by the Commissioner, the current Exportable List may 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 interest 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 has also reviewed the transcript of the public comment portion of the hearing, in which testimony was received regarding the following items:

I. The Deletion of Commercial Automobile Liability Insurance Coverage for Limousines from the Exportable List

Cynthia Codella, Secretary and Executive Vice President with Proformance Insurance Company (Proformance) requested (in her testimony, as well as in her written submission prior to the hearing), that the Department delete commercial automobile liability insurance coverage for limousines from the Exportable List. Ms. Codella testified that she believes that the marketplace for limousine coverage has greatly improved and that there currently exists a reasonable and adequate market among authorized insurers in New Jersey for such coverage. She stated that authorized carriers are actively competing for limousine business, and that the best indicator of a reasonable and adequate market is that there is no longer an availability problem. Ms. Codella stated that the policyholder average rate from authorized carriers dropped approximately 5.5 percent last year and that twelve authorized companies are now actively competing for this business.

Ms. Codella contends that the total limousine market in New Jersey is estimated at roughly \$35,000,000. The top two companies, Proformance and Lancer, account for almost 50 percent of the market with the remainder of the market divided among the other twelve

companies. The average premium for small limousine accounts of 1-4 units in New Jersey is \$2,800. The average premium for accounts with 5-10 units is \$2,400 and premiums per unit can be significantly less for large accounts.

Ms. Codella stated that policyholders are benefiting from obtaining coverage from authorized carriers, as opposed to non-authorized carriers. Ms. Codella noted that policyholders receive the benefit of the Property-Liability Insurance Guaranty Association (PLIGA) in the event an authorized carrier is declared insolvent. She stated that these policyholders would be without any safety net if they purchase this particular coverage from an unauthorized carrier because there would be no guaranty fund protection.

Additionally, Ms. Codella contends that policyholders of authorized carriers receive the ultimate protection of the Department if they get canceled mid-term. In this case the policyholder would seek recourse under the purview of the Department to get their unearned premiums returned to them. She stated that no such protection is afforded when the policyholder deals with an unauthorized carrier. Ms. Codella also stated that most authorized carriers offer generous pay plan options, where non-authorized carriers have no payment plans available and force customers to finance premiums at high interest rates.

George Hansen, the first Vice-President of HUB International (HUB International is an insurance broker and agent) also testified in support of the removal of commercial automobile liability for limousines from the Exportable List. Mr. Hansen stated that in New Jersey HUB writes automobile liability coverage for limousines for eight authorized carriers. Mr. Hansen stated that he has been writing insurance for limousine service for 23 years and he has previously not seen as much competition among authorized carriers for this class of business as there is now.

Mr. Hansen noted that his renewal list for the last 90 days, as opposed to last year, showed a five percent to 30 percent decrease in premiums. He stated that he believes that there is a market and competition among authorized insurers. Additionally, he stated that if limousine liability is removed from the Exportable List, it will not stop unauthorized carriers from writing in this State, as long as they get three declinations (see N.J.A.C. 11:1-33 et. seq.).

Barry Lefkowitz, Executive Director of the Limousine Association of New Jersey testified against deleting limousines from the Exportable List. Mr. Lefkowitz stated in his testimony that Proformance is a B rated company and that he was shocked to find that they purportedly wrote 50 percent of limousine industry insurance. He noted that Charter Risk, which Proformance referred to in their testimony, was a captive insurance company that originally was started by South Jersey Limousine Association. According to Mr. Lefkowitz, Charter Risk started out successfully until it expanded its business beyond writing limousines. Once it started adding such things as residences and other kinds of client bases, it destroyed the captive and that is why it went under.

Mr. Lefkowitz stated that 250 limousine companies are presently being written by the companies on the exportable list in this State, totaling about \$7 million in premium, based on "Limousine Digest." Mr. Lefkowitz noted that there are about 1,800 limousine companies registered in this State.

Mr. Lefkowitz contends that when Mr. Hansen was talking about the 5 percent to 30 percent decrease in premiums, he neglected to remind the Department that before this coverage was added to the Exportable List, the increases were so dramatic that there were some limousine companies that had to close because they were getting 50 to a 100 percent premium increases from the very companies who are testifying at the hearing.

Mr. Lefkowitz stated that one reason some limousine companies switched carriers is because many of their members were upset with the fact that there was no competition and that there was no ability to have any control over pricing for their limousines. Therefore, when there was an opportunity for an operator to go to an A-plus rated company like Nationwide, the limousine operator took advantage of it. Mr. Lefkowitz stated that limousine operators felt that they had been taken advantage of by the very people who are now trying to remove this coverage from the Exportable List.

Mr. Lefkowitz contends that there was a hard market for a number of years due in part to the stock market spiral. According to Mr. Lefkowitz, although there is now a soft market, experts are predicting that the stock market is going to begin to tailspin again. Mr. Lefkowitz stated that during the previous hard market limousine operators were stuck with dramatic increases. Mr. Lefkowitz stated that although companies are talking about competition, it is still difficult for a new limousine company to get insurance from the traditional companies in this State. According to Mr. Lefkowitz, in order to do so they have to be in business for three years, and carriers base their coverage decisions on vehicle type, and whether the operator has been in business during the one to three-year period. Additionally, he stated that they look at the premium payment history and loss runs for three years.

Mr. Dennis Pellegrino, Jr., representing the New Jersey Surplus Lines Association, testified that he supported the Exportable List in its current form with no additions or deletions. Mr. Pellegrino stated that twelve carriers in the admitted market does not constitute a viable solution to the problem. Mr. Pellegrino stated that if the Department removed this item from the Exportable List, that there would be a lot of agents out there that would have a tough time

coming up with three declinations because they don't have access to those markets. He stated that he is not exactly sure how many agents would be able to write a limousine company.

Mr. Dave Aune, representing All Risk Limited, testified that he has been underwriting for 20 years. He stated that he was once an underwriter for All Risk Limited, for General Security and Diamond State, and that the latter two companies left the New Jersey limousine market. Mr. Aune contends that when the rates were rising, most of the same carriers that are underwriting limousine insurance in New Jersey now were also writing the coverage at that time as well. He noted that there are a couple of new carriers, but he is not sure how much limousine business they write.

According to Mr. Aune, although HUB International may have eight companies, he does not underwrite for them. He stated that HUB controls much of the distribution system for limousine insurance in the State of New Jersey. Mr. Aune stated that there are not a lot of limousine specialists. He contends that although other agents may have access to those 12 carriers, they're not really specialists in the limousine industry. Mr. Aune stated that out of the 12 carriers that are referred to, he may see six carriers on a regular basis as true competition. There may be other carriers that say that they will write limousine business, but he stated that he does not see them on a day-to-day basis. Mr. Aune believes that there are probably five that compete with him on a regular basis.

Mr. Aune stated that as far as premium financing goes, there are several strong premium finance companies out there that provide reasonable rates to reasonable risks. He noted that although his company does not have a premium payment plan, it is not an impediment to limousine operators buying insurance from him. Mr. Aune stated that it certainly makes their overall premiums a little bit higher, but it makes for reasonable competition.

Cynthia Codella, Secretary and Executive President of Proformance, supplemented her hearing testimony with a subsequently submitted letter to the Department. In her letter, Ms. Codella responded to some testimony presented at the hearing. In response to the state of the market, she notes that there can be no question that New Jersey is in the midst of a soft property casualty market. She stated that authorized carriers are actively competing for all lines of business - with many carriers going so far as to write certain coverages that they did not even fathom writing before. Ms. Codella contends that these are the current market conditions that must guide the Department in deciding whether a certain coverage is added or removed from the Exportable List.

Ms. Codella took note of her previous testimony, as well as the testimony of others who intended to establish that the marketplace among authorized carriers for liability coverage for limousines is more than adequate. Ms. Codella noted that Mr. Hansen testified, in both his written and oral testimony, that his policyholders have experienced significant rate reductions from authorized carriers. Ms. Codella stated that Proformance's policyholders have experienced the same. (The Department notes that Proformance attached one broker's examples of significant rate reductions from admitted carriers within the last 90 days.) Ms. Codella contends that these rate reductions are being caused by the additional capacity for this coverage among authorized carriers and that policyholders are receiving competitive quotes. Ms. Codella reiterated her hearing testimony that twelve authorized carriers are competing for limousine liability insurance business. Ms. Codella contends that Proformance's knowledge of this competition consists of either policies that they have lost to one of these companies or policies written with premium reductions due to a competitive quote from one of these companies. Ms. Codella contends that the current number of carriers writing this business represents a significant

increase from just a few years ago when the Department added this coverage to the Exportable List.

Ms. Codella stated that there is also evidence that by having this coverage on the Exportable List limousine companies are not receiving quotes from authorized carriers. Ms. Codella contends that brokers are not doing a thorough search to place their limousine clients with an authorized carrier. Ms. Codella stated that removing limousine liability coverage from the Exportable List will still allow limousine companies to place their coverage with a non-authorized carrier but only after they have gone to authorized carriers and have received the three declinations as required by New Jersey law.

Ms. Codella further responded to testimony at the hearing that this coverage should remain on the List due to predictions of a hardening market and speculation that the limousine insurance coverage marketplace may change. Ms. Codella stated that at the hearing, there was testimony that an impending stock market crash would cause carriers to not write limousine liability coverage. Ms. Codella stated that the stock market has nothing to do with whether a carrier, authorized or not, will write a particular line of business. Rather, the profitability of that line dictates whether a carrier will write that business. Ms. Codella contends that authorized carriers are writing limousine liability coverage because they can make money on that line (or it can help them make money on other lines). Ms. Codella stated that quite simply, it is a business decision. She contends that any suggestion that the stock market crashing will impact a company's willingness to write a certain type of coverage is due to a lack of knowledge of the insurance market. She reiterated that the ISO Loss Cost for limousine liability coverage dropped by 5.5 percent last year, which means that this business is 5.5 percent more profitable than in previous years.

Ms. Codella also stated that she wanted to clarify the record with respect to her reference to the Charter Risk Retention Group Insurance Company. She stated that the example was provided to remind the Department of the risk associated with policyholders obtaining insurance from non-authorized carriers. She stated that Charter Risk was not an authorized carrier in New Jersey and noted that, consequently, there was no guaranty fund safety net to protect policyholders and that if a non-authorized carrier encounters solvency issues, the policyholder is at risk. She stated that she was not suggesting that non-authorized carriers were currently canceling policies mid-term. Ms. Codella contends that she only provided the example as a hypothetical situation where the policyholder would most likely receive any unearned premium more promptly from an authorized carrier due to potential Department involvement - involvement that would not occur with a non-authorized carrier. Additionally, she contends that these examples are some of the reasons why a particular coverage should only be on the Exportable List as a last resort and that New Jersey public policy dictates a preference that coverages be written by authorized carriers. Lastly, she wanted to clarify for the record that Performance is A rated by Demotech and was recently upgraded by AM Best to a B+ rating.

Based upon a review of the record, the testimony and the other information provided to the Department, it appears that at this time there still is not a reasonable or adequate market for limousine service insurance in this State.

The Department believes that the indications that there currently are more sources from which limousine operators may obtain commercial automobile liability insurance coverage than was the case in prior years is due to the presence of this item on the Exportable List. Consequently, the Department has concluded that market availability for limousine operators has not reached a point where this coverage should be removed from the Exportable List. The

Department will continue to monitor the status of this market and is amenable to revisiting this issue in the future should it obtain information that indicates that the level of competition in the market has sufficiently increased so as to warrant further consideration of the removal of limousine service insurance from the Exportable List.

I find that the evidence, testimony and information provided indicate that the interests of New Jersey's policyholders and limousine operators will be best served by retaining commercial automobile liability insurance for limousine services on the Exportable List.

II. The Addition of Used Car Dealers to the Exportable List

Mr. Bill Malone from Continental Marmorstein & Malone testified that he was at the hearing looking for some clarification regarding coverage for used car dealers. Mr. Malone questioned if automobile liability exposure needs to be written by a standard carrier, like St. Paul Travelers Group, which is a very stable, very well financed company, that has a program for used car dealers. Mr. Malone questioned if he could write this coverage if the primary exposure is garage liability. Mr. Malone contends that there may or may not be some auto exposure because a used car dealer may drive one of his own vehicles with used car dealer plates. Mr. Malone stated that he did not believe that there were a lot of companies trying to write used car dealers. Mr. Malone questioned whether it was permissible to write a used car dealer that may have some auto exposure, as long as he has a complete due diligence form.

Mr. Malone's issue is not an issue for the Exportable List Hearing, but an inquiry for the Department. Accordingly, the Department will respond to him directly. Regardless, the Department believes that currently there is a reasonable and adequate market for garage liability as well as a separate market for automobile liability except as currently identified on the Exportable List.

I find that the evidence, testimony and information provided indicate that the best interest of New Jersey's policyholders will be served by not placing this item on the Exportable List.

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 shall remain unchanged.

4/10/07
Date

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

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(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 \$40,000 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) With the exception of disability insurance as set forth in (b)1 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. Insurance producers may, however, request an exemption for the export of individual disability insurance. Such requests, and any exemptions granted on the basis of such requests, shall be subject to the following provisions:

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 in the admitted market, he may request an exemption to export disability insurance;

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

iii. If granted, such an exemption shall enable the producer to place an individual disability policy with an eligible surplus lines insurer which has a New Jersey certificate of eligibility which includes accident and health;

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

v. 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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