

STATE OF NFEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE 2007 ANNUAL)	
PUBLIC HEARING REGARDING)	HEARING OFFICER'S
N.J.A.C. 11:1-34, THE SURPLUS LINES)	REPORT
EXPORTABLE LIST)	

The annual Exportable List Hearing was held on Monday, December 17, 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. This 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 notes that only Mr. Dennis Pellegrino, who represented the New Jersey Surplus Lines Association, testified at the hearing. Mr. Pellegrino stated the Association supported the exportable list in its existing form and did not recommend any changes. The Department left the record open until January 18, 2008, in the event that an interested party desired to submit any documents or exhibits. The Department has received written comments which requested that the Department amend the Exportable List to address the following items:

I. The addition of Special Risk Disability and Personal Accident Coverage

John P. Mulhern of Dewey & LeBoeuf, submitted written comments requesting that the Department add special risk disability and personal accident coverage to the Exportable List because they have been advised by producers that coverage is not available for these lines of business in the admitted market in New Jersey. The commenter stated that while the Exportable List does currently contain a provision for placement by placement analysis regarding the export of this type of business, they have been advised by producers who are actively involved in this area that the mandated procedures do not work well in practice and entail an unacceptably high risk that the insured will be required to go without coverage. It has also been stated that these procedures should not be mandated because there is in fact no admitted market for this business.

The commenter noted that other states, including New York and California, have recently addressed these issues and have concluded that export to the surplus lines market under the laws of their respective states should be permitted.

The commenter suggested that the Department amend the Exportable List by adding Special Risk Disability and Personal Accident Coverage as follows:

“Special Risk Disability and Personal Accident Coverage” which means any insured:

i. Who procures insurance for risk of financial loss caused by the cessation of earned income due to disability from sickness, ailment or bodily injury where the Commissioner has found that this class of underlying disability insurance is not available from an authorized insurer;

ii. Who procures insurance 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 where the Commissioner has found that this class of underlying disability insurance is not available from an authorized insurer;

iii. Who procures coverage 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. Who procures insurance 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 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 must be short term in nature, specifically with a policy period not to exceed 24 months.

The Department has determined that before acting on this request it requires additional information from persons and entities that may be affected by the addition of Special Risk Disability and Personal Accident Coverage to the Exportable List. Therefore, the Department will seek to receive additional information regarding whether Special Risk Disability and Personal Accident Coverage should be added to the list at the next Exportable List Hearing. The Department encourages interested parties to provide testimony in support of or against the addition of this coverage to the Exportable List at the January 14, 2009 hearing.

II. Commercial automobile liability for those livery operations recognized by the State of New Jersey as limousine operations

Barry Lefkowitz, Executive Director of the Limousine Association of New Jersey (LANJ), in his written comments submitted to the Department, stated that the ability of the alternative insurance carrier to write coverage for members and non-members of the LANJ has obviously been enhanced by the inclusion of their industry on the Exportable List. However, some LANJ members have been unable to enjoy this competitive opportunity due to the wording on the Exportable List being unclear and susceptible to an interpretation that the only risks that a carrier can insure are those that have limousine vehicles only (vehicle capacity up to fourteen passengers).

Mr. Lefkowitz stated that many LANJ member and non-member operators have mixed fleets that include vehicles with a seating capacity that exceeds fourteen passengers, including stretch SUV's and limousine buses. For the alternative insurance carrier to legitimately handle these risks, and provide competitive pricing for their industry, the wording on the Exportable List must be made more clear and not restrict vehicle type for those who have mixed fleets. He suggested that the wording could be: “Commercial automobile liability for those livery operations recognized by the State of New Jersey as limousine operations.” He believes that this would be a simple change without causing harm to the intent of having coverage for the limousine industry on the Exportable List.

Based upon a review of the record and the written information submitted, the Department believes that there is a need to amend the Exportable List as suggested by Mr. Lefkowitz to provide that: “Commercial automobile liability for those livery operations recognized by the State of New Jersey as limousine operations.” However, N.J.S.A. 33:1-1aa defines “limousine” as “A motor vehicle used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route, or is furnished without a fare as an accommodation for a patron in connection with other business purposes, and with a seating capacity in no event of more than 14 passengers... This shall not include taxicabs, hotel or airport shuttles and buses, ...” (emphasis added). At N.J.S.A. 48:16-13 “limousine” is defined in essentially the same manner. To remain consistent with these statutory provisions, before the Exportable List can be changed as proposed the definitions of “limousine” in N.J.S.A. 33:1-1aa and 48:16-13 would have to be changed.

Conclusion

Based on the Department staff's review of the record, testimony, transcript of the public hearing, and written submissions, I recommend that the Exportable List found in N.J.A.C. 11:1-34 remain unchanged.

10/28/08
Date

/s/ DeWayne H. Tolbert
Hearing Officer

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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.