

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE 2015 ANNUAL)	
PUBLIC HEARING REGARDING)	HEARING OFFICER'S
<u>N.J.A.C. 11:1-34</u> , THE SURPLUS LINES)	REPORT
INSURANCE EXPORTABLE LIST)	

The annual Exportable List hearing was held on Tuesday, February 2, 2016, 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. Pursuant to N.J.S.A. 17:22-6.43, 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 no reasonable or adequate market exists 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. The exportable list identifies the types of insurance for which the Commissioner of Banking and Insurance has determined that there does not exist a reasonable and adequate market among authorized insurers. Consequently, those types of insurance may be placed with a surplus lines carrier without the need to first obtain and document three declinations from authorized insurers, and authorized insurers may write coverage declared eligible for export through a surplus lines agent without regard to the rate filings that might otherwise be applicable to that type of insurance, provided they comply with all applicable provisions of the surplus lines law, N.J.S.A. 17:22-6.40, et seq.

Upon review of the relevant information, the Department will decide which items, if any, should be added to the Exportable List, based upon a showing 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 showing that such a market does exist in New Jersey for those items. There was no oral testimony given at the hearing but the Department did receive two written requests – one requesting that “transportation company contingent liability for workers compensation” be removed from the Exportable List and one requesting an addition to the list of “surety bonds to lenders for their coverage on private student loans made to fund the cost of undergraduate, graduate and other forms of post-secondary education.”

Transportation company contingent liability for workers compensation

New Jersey Manufacture’s Insurance Company (“NJM”) submitted a letter requesting that “transportation company contingent liability for workers compensation” be removed from the Exportable List.¹ NJM stated that at the Department’s annual Exportable List hearing for 2014, which was held on December 18, 2014, a request was made for the addition of “transportation company continent liability for workers compensation,” based on the argument that a coverage gap or void existed for workers compensation coverage for independent contractors in the trucking industry. Based on the testimony presented at the December 2014 hearing, “transportation company contingent liability for workers compensation” was recommended to to be added to the Exportable List. NJM contends that workers’ compensation

¹ In Order No. A15-109, the Commissioner approved the recommendation in the August 24, 2015 Hearing Officer’s Report to amend N.J.A.C. 11:1-34 to add “transportation company contingent liability for workers compensation” to the Exportable List. This rulemaking has not yet occurred.

policies are readily available for purchase in the voluntary market for independent contractors including truckers.

The Department's decision to include transportation company contingent liability for workers compensation on the Exportable List is based on information summarized in the August 24, 2015 Hearing Officer's Report. The information gathered in 2014 indicated that there is not a reasonable or adequate market among authorized carriers in the admitted market in this State. Specifically, "transportation company contingent liability for workers compensation" is designed to fill a void in the transportation industry related to trucking independent contractors that are not required to be covered by workers compensation, and are generally not covered. Such independent contractors injured in the course of employment often apply for workers compensation benefits even though they are independent contractors and are not entitled to such benefits. If the trucking company has workers compensation coverage for its employees, the company reports such claims by independent contractor drivers to the company's workers compensation carrier and the carrier will defend and seek recoupment at some point for the legal fees and/or any paid benefits. If there is no workers compensation carrier in place, then the employer may be left without insurance coverage for workers compensation claims by independent contractors for which a court and/or adjudicating body may later determine that the company is liable. This addition to the exportable list only applies to policies sold to transportation network companies that provide contingent liability coverage for unanticipated workers compensation benefits payable to non-employee, independent contractor drivers. This contingent coverage is available only in the excess and surplus lines marketplace, as it is not currently offered in New Jersey by an admitted carrier.

NJM has not submitted any documentation that demonstrates that there is a reasonable or adequate market among authorized, admitted carriers in this State for this very specific line of coverage. The information currently available indicates four companies write this coverage in New Jersey, but they are surplus lines companies. Therefore, I conclude that there is not a reasonable or adequate market among authorized, admitted carriers in this State for this coverage.

Surety Bonds to Lenders for Private Student Loans

The Department also received a written comment from ReliaMax Surety Company (“ReliaMax”) an insurance company headquartered in Sioux Falls, South Dakota that provides surety bonds to lenders for the coverage on private student loans made to fund the cost of undergraduate, graduate and other forms of post-secondary education. The coverage provided by ReliaMax is structured in the form of a surety bond by which ReliaMax insures the lender against failure of the borrower to repay the loan. ReliaMax stated that to the best of their knowledge, it is only insurer offering this kind of product in both New Jersey and nationwide.

ReliaMax stated that it currently offers this line of insurance in 44 states and the District of Columbia on an excess and surplus lines basis. ReliaMax noted that since becoming authorized to place surplus lines policies in New Jersey in June 2014, ReliaMax has not received one affirmative response in either New Jersey or nationally from any insurer willing to offer a similar coverage.

ReliaMax contends that its clients are predominately credit unions and community banks that would not offer private student loans to their customers without the insurance and related services coverage that ReliaMax provides. They also noted that neither they nor their clients are attempting to compete with federal student loan programs.

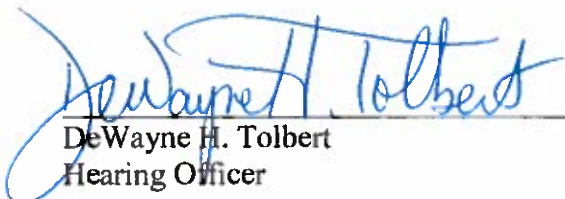
The Special Risks List, which is part of the Commercial Deregulation Act, is found at N.J.S.A. 17:29AA-3k. Fidelity, surety or forgery bonds are included in the definition of “Special Risk”. As “Special risks,” surety bonds are deregulated as to rates, rule and forms and no declinations are necessary to place this type of coverage in the surplus lines market. Therefore, it is unnecessary to add “Surety Bonds to Lenders for Private Student Loans” to the Exportable List.

Recommendation

Based upon a review of the record and the written documentation submitted, a reasonable or adequate market among authorized carriers in the State of New Jersey does not exist for “transportation company contingent liability for workers compensation.” Therefore, it is appropriate that transportation company contingent liability for workers compensation should remain on the Exportable List. Additionally, “surety bonds” are considered “special risks” in accordance with N.J.S.A. 17:29AA-3k and therefore it is unnecessary to add them to the Exportable List.

Based on my review and that of Department staff, including the written documentation submitted and the testimony adduced at the public hearing, I do not recommend any changes to the Exportable List recited in N.J.A.C. 11:1-34.

9/4/16
Date


DeWayne H. Tolbert
Hearing Officer