

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE 2010	)	
ANNUAL PUBLIC HEARING	)	HEARING OFFICER'S
REGARDING <u>N.J.A.C.</u> 11:1-34,	)	REPORT
THE SURPLUS LINES	)	
EXPORTABLE LIST	)	

The Annual Exportable List Hearing was held on Monday, January 31, 2011 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 comments from interested parties that support the addition or deletion of items to or from the current Exportable List. Upon review of the relevant information, the Commissioner 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 market does exist for them in New Jersey.

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 hearing was conducted following notice of the hearing being published in the New Jersey Register on December 20, 2010 (see 42 N.J.R. 3076(a)) and on the Department's website. Mr. Anthony Montano of the New Jersey Surplus Lines Association testified that the association supported no changes to the Exportable List at this time.

There was no other oral testimony submitted at the hearing, nor did the Department receive any written comments.

#### Conclusion

Based on the Department staff's review of the record testimony and transcript of the December 20, 2010 public hearing, I recommend that no additions or deletions be made to the Exportable List as a result of the January 31, 2011 hearing.

(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; and

34. Gap Coverage for Private Passenger and Commercial Automobile.

(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 a policy period not to exceed 24 months .

4. Insurance providing coverage on a person who 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, within 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.

March 8, 2011  
Date

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

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