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*Commissioner*

BULLETIN NO.: 08-11

TO: ALL PRODUCERS, ALL SURPLUS LINES PRODUCERS, ALL ADMITTED  
INSURERS AND ALL ELIGIBLE SURPLUS LINES INSURERS

FROM: STEVEN M. GOLDMAN, COMMISSIONER

RE: EXPORTABLE LIST - CLARIFICATION OF N.J.A.C. 11:1-34.6(a)16 AND  
22.ii.(1) AND (2)

N.J.S.A. 17:22-6.43 provides that the Commissioner may by rule declare eligible for export certain lines or classes of insurance for which there exists no reasonable or adequate market among authorized carriers in this State. N.J.A.C. 11:1-34.6 specifies those lines or classes of insurance that the Commissioner has so declared as being included on the "Exportable List" referenced in that rule.

It has come to the Department's attention that some confusion exists with respect to N.J.A.C. 11:1-34.6(a)16 and 22ii. Pursuant to N.J.A.C. 11:1-34.6(a)22ii.(1) and (2), legal malpractice and medical malpractice liability insurance are excepted from the Exportable List. Consequently, these lines may not be exported unless the originating producer obtains three declinations from New Jersey authorized insurers that write that specific line of coverage. The Department notes that, with the exception of legal malpractice liability and medical malpractice liability as listed in N.J.A.C. 11:1-34.6(a)22.ii 2.(A) through (H), professional liability insurance coverage is eligible to be exported without the producer having first made a diligent effort to place the coverage with an authorized insurer in the admitted market. See N.J.A.C. 11:1-33. The Department is aware that some producers have attempted to rely upon the definition of "Large Risks" found in N.J.A.C. 11:1-34.6(a)16 to justify the export of medical malpractice liability insurance coverage, thereby bypassing the three declination requirement. The purpose of this Bulletin is to clarify that the Professional Liability insurance coverages specified in

N.J.A.C. 11:1-34.6(a)22ii(1) and (2) can only be exported if the producer has obtained three declinations from authorized insurers that write that specific line or coverage.

Additionally, producers are reminded of their obligation to adhere to the requirements of N.J.A.C. 11:1-33 when procuring insurance from eligible surplus lines insurers. Pursuant to the definition of a “diligent effort,” found in N.J.A.C.11:1-33.2, a producer can only place coverage with an eligible surplus lines insurer after the risk has been declined by three authorized insurers, each of which is authorized to write insurance of the kind requested in New Jersey and is an insurer that the producer has a good faith reason to believe might consider writing the type of coverage or class of insurance involved. The receipt of a declination from an insurer that is authorized but does not write the line of coverage being sought would not constitute having made a “diligent effort” to place the coverage with an authorized insurer as is required by N.J.A.C. 11:1-33.3(a). Producers or insurers who violate these rules will be subject to enforcement action by the Department.

6/03/08  
Date

/s/ Steven M. Goldman  
Steven M. Goldman  
Commissioner

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