

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE 2003 )  
ANNUAL PUBLIC HEARING )  
REGARDING N.J.A.C. 11:1-34, )  
THE SURPLUS LINES )  
EXPORTABLE LIST )

HEARING OFFICER'S REPORT

This hearing was held on Wednesday, January 7, 2004, 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 generally 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 in New Jersey for these items.

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 Department has reviewed the written responses that addressed issues raised at the Exportable List hearing. The Department also reviewed the transcript of the public comment portion of the hearing, in which testimony was received regarding the following items:

I. The Addition of Disability Insurance

David Alter, chief executive officer of International Planning Alliance, testified that the disability insurance marketplace has been hurt by carrier insolvencies and by carriers exiting the marketplace due to poor loss ratio. Mr. Alter stated that many individuals cannot qualify or obtain disability insurance in New Jersey. Mr. Alter cited the examples of government employees and athletes who are not able to obtain coverage.

Mr. Alter testified that Meniere's disease, which is a disease of the inner ear that affects balance, disqualifies someone for disability insurance in the traditional market. Mr. Alter stated that a person's net worth or income are also grounds for being disqualified for coverage. Mr. Alter also stated that employers looking to obtain key employee coverage to protect their company against the loss of a key employee due to illness or injury cannot obtain that coverage.

Mr. Alter stated that, since disability insurance is included in the broad definition of health insurance based on the Department's rule found at N.J.A.C. 11:1-34, this coverage is not allowed to be exported.

Mr. Alter noted that the Department provided him with a list of carriers that have forms on file. Mr. Alter testified that a number of the carriers who are listed are no longer in the business or have been absorbed by other carriers. Mr. Alter also stated that one company, for example, is listed as an individual disability rider but they advised Mr. Alter that they only write carrier and accident insurance. Mr. Alter testified that they will not write individual disability insurance and that they will only write such insurance on a payroll deduction basis covering at least five lives. Another company only provided coverage for their own employees. Mr. Alter stated that a third company only writes the coverage through their own agents and a fourth company only writes group disability. According to Mr. Alter, there are other carriers that will not write through independent agents. Mr. Alter noted that Lloyds of London and at least one other carrier would be willing to write this coverage.

Based upon a review of the record and the testimony provided to the Department, the Department believes that there is a reasonable or adequate market for individual disability insurance in this State. The Department will amend the Exportable List to permit licensed insurance producers to request an exemption from the export prohibition after making a diligent effort to procure an individual disability policy. The request shall include the applications, three declinations, the specific coverage sought and an explanation as to why the Department should permit the coverage to be exported.

## II. The Addition of Livery Service

Several people testified on behalf of adding livery service to the Exportable List. The first person to testify on this issue was Ken Marks, the Executive Officer of Marks Solvens and Associates, which is an insurance agency founded in New Jersey in 1990. Mr. Marks testified that there are only two A-rated carriers in New Jersey, although three carriers currently write livery service. Mr. Marks stated that since 9/11 the hospitality (livery) transportation industry has taken a huge hit. He noted that they have gone from having 11 companies bidding on a \$25 to \$30 million dollar book of business down to three, and of those three, only two aggressively. Mr. Marks stated that they have contacted several carriers of which one is currently on the waiting list to qualify as a surplus lines insurer. Additionally, Mr. Marks noted that physical damage for limousines' sister type business, taxi insurance, is currently on the Exportable List.

Mr. Marks stated that he doesn't believe that there is competition or a healthy environment for livery service insurance coverage. Mr. Marks stated that carriers are non-renewing two livery service companies per week. He stated that they are not able to obtain insurance quotes because companies are not bidding on this business.

Mr. Marks testified that many livery service companies cannot get coverage, or that the coverage being offered is not acceptable. Mr. Marks cited an example of a policy that last year renewed at \$97,000. This year he stated that the individual is only being offered a renewal quote through the CAIP, and his offer for liability is \$200,000. Mr. Marks testified that they have seen rates go up 50 to 100 percent from what they were in 1999.

Mr. Marks stated that 99 percent of the accounts are in excess of \$10,000 per year. He stated that, at this point, there is no cap on the rate increases companies can impose. He testified

that they have seen rates from \$13,000 to \$19,000 on some accounts. He stated that the majority of limo accounts are from \$5,000 to \$10,000 a unit for liability on a car.

Mr. Marks stated that he believes that the problem for the livery service industry is that there are not enough companies supplying the demand and competing on business. Mr. Marks testified that in 1996, liability was \$2,200 for 1.5 million in coverage per unit, and that now it's \$3,500 to \$10,000. Mr. Marks stated that, in order for some companies to stay in business, they have taken \$25,000 deductibles on their liability coverage, and \$5,000 deductibles for physical damage coverage on their vehicles. Mr. Marks noted that, on a weekly basis since the 9/11, their business has gone down. He stated that their corporate clients have gone down, but their premiums have tripled and, in some cases, quadrupled.

Mr. Marks noted that physical damage coverage is not a mandatory coverage but the \$1.5 million (DMV-required minimum liability insurance coverage) is mandatory and that livery service companies can't obtain it. Mr. Marks stated that a quote through the voluntary market was \$3,000 to \$5,000 for a one-car unit, just for liability. He stated that with the commercial insurance program, it's \$10,000 for territories in South Jersey.

Mr. Marks stated that another concern is that there are only three agents specializing in this type of coverage now. He noted that there used to be 11 to 15 agents writing livery service insurance. He contends that there are not enough choices for the livery service operators, and that the first agent into a company blocks other agents, so there's a good chance that the livery service owners are not even seeing the best quote available to them right now. He also testified that livery service owners are getting a take it or leave it quote and then have no recourse.

Mr. Barry Lefkowitz who is the Executive Director of the Limousine Association of New Jersey and also the governmental affairs representative for the National Limousine Association

testified that, prior to 2001, the limousine operators in New Jersey, on average, were paying between \$2,000 to \$3,000 for coverage, depending on whether they were in North or South Jersey. Mr. Lefkowitz stated that, based on the State legislation which mandated minimum liability insurance coverage of \$1.5 million, consistent with the Federal mandate of \$1.5 million for 15-passenger vehicles or less, including the driver, many livery service operations are paying \$3,500 to \$10,000 per vehicle in order to be insured and continue to conduct business in this State. Mr. Lefkowitz testified that, in many cases, the deductible has been increased from \$1,000, to in some cases \$25,000 deductibles.

Mr. Lefkowitz cited an example of a member located in Princeton who was only able to get one quote. Mr. Lefkowitz testified that even with 210 cars the individual could only get one company to provide a quote, and in order to get that quote he had to take a \$25,000 liability deductible with a cap of \$200,000.

Mr. Lefkowitz stated that it is also very confusing to have increased premiums being charged on renewal when an owner has little or no losses. For example, a South Jersey operator, who owns three cars and has been in business for 13 years, and has not had a single loss, was given a quote that takes them from \$12,000 to \$19,000.

Mr. Lefkowitz testified that this particular operator was going to have to close his doors. Mr. Lefkowitz stated that they spoke with their attorney and the Department, after which the operator wrote a letter (copying the attorney and the Department) and requested in writing the basis for the increase in rates when there weren't any losses. According to Mr. Lefkowitz the quote went down from \$19,000 to \$13,000. Mr. Lefkowitz wondered what could be the explanation for such a drop.

Mr. Lefkowitz also notes that another member was given a quote after being refused by two other companies and her premiums rose \$60,000 on her 60 cars, a thousand dollars per vehicle, even though the cars are equipped with special drive cams. A drive cam gives real time feedback when anything happens, for example when a driver improperly accelerates or is involved in an accident. Mr. Lefkowitz stated that, even with these programs being implemented, there was still a \$60,000 increase. This year the operator was once again refused coverage by the present company writing insurance in New Jersey and only one other company would provide a quote. Therefore, in order for the operator to maintain current premiums (which already included a \$60,000 increase from the year before) the operator had to go from a deductible of \$1,000 per car to \$5,000 per car in order to keep the premium reasonable.

Mr. Lefkowitz testified that the Limousine Association of New Jersey hired an actuary to compare its losses to what insurance companies are saying they have to pay in premiums. The report was done on 1400 vehicles. Mr. Lefkowitz stated that, if you took the two shock losses out, the average loss was \$800 per vehicle.

Mr. Lefkowitz questioned how that justified the \$3,500 to \$10,000 in the premiums that his members are paying. Mr. Lefkowitz testified that 62 percent of the premium dollars account for insurance company expenses, and then if you add about a historical 12 percent for brokers fees, that's 74 percent of the cost of the premium dollars. He stated that this has nothing to do with losses or paying claims.

Mr. Lefkowitz stated that 87 percent of the operators in New Jersey are one to three car operators. Eighty-seven percent gross between \$50,000 and a half a million dollars a year. Mr. Lefkowitz argued that when they start getting hit with those kind of rate increases because there is no competition and they can only get one quote, something has to be done.

Jim Moseley president of James Limousine Service in Cherry Hill, New Jersey also testified in support of the addition of livery service to the Exportable List. Mr. Moseley notes that he has been in business for 22 years. Mr. Moseley stated that prior to 2001 he was insured by St. Paul Insurance Company through a broker in Pennsylvania. (Mr. Moseley was licensed to do business in Pennsylvania, New Jersey and Delaware). Mr. Moseley testified that, in 2001, he switched carriers and the cost of his policy for 26 cars for \$5 million worth of coverage was \$60,000 a year. That works out to about \$26,000 to \$27,000 including comp and collision.

Mr. Moseley stated that, for the renewal of January 2002, the carrier said that his premium would be going up to \$90,000, a 50 percent increase. Mr. Moseley stated that he picked up the phone and called the broker from his previous carrier, St. Paul, who was still writing for New Jersey, and the next afternoon had a quote of \$75,000. He then stated that he called his broker and said he just got a quote for \$75,000. Mr. Moseley testified that he was told that they will match the offer over the phone, without calling an underwriter or anybody else.

Mr. Moseley questions the underwriting basis for the second quote. Mr. Moseley testified that he stayed with the first company because the word was out that St. Paul was leaving the market. Actually, the broker for the New Jersey company told him that.

Mr. Moseley stated that two weeks later he found out that his company had not matched the \$75,000 premium quote he received from St. Paul, but they gave him an additional three and-a-half million dollars worth of coverage. Mr. Moseley stated that his renewal quote this year for five million dollars of coverage was \$146,000, but he could not afford it.

Mr. Moseley noted that the federal law requires that any vehicle that crosses a state line with less than 15 passengers, including the driver, requires a million and-a-half dollars worth of coverage. Vehicles over 15 passengers require five million. Mr. Moseley stated that he has one



22-passenger bus and he eventually settled on a \$96,000 premium for 25 vehicles at a million and-a-half in coverage and one vehicle at five million in coverage.

Additionally, Mr. Moseley stated that the company would not accept 12 even payments. The company wanted 25 percent down and ten remaining payments. Mr. Moseley stated that, at that point, he made up his mind to close the doors because he could not afford it and he explained that to the carrier. According to Mr. Moseley, they finally came back and said why not and he stated that he did not then have 25 percent of \$100,000 (\$25,000) in his checking account. Mr. Moseley testified that the carrier finally accepted ten even payments of \$9,900 or \$9,800.

Mr. John Maziarz owner (along with his wife) of Arrive in Style Transportation Service based in Trenton, New Jersey, also testified. He stated that he started Arrive in Style in 1989 with one vehicle and one stretch limousine and that by the year 2000 they had 15 vehicles, but after 9/11 they went down to 12 vehicles.

Mr. Maziarz stated that, in the year 2000, they were paying \$2,000 per vehicle for insurance. In 2001, that went to \$2,131.60, in 2002, it went to \$2,263, and in 2003, it went to \$3,549 which was a 57 percent increase in insurance and, in 2004, it went to \$4,155, which was a 17 percent increase in insurance. Mr. Maziarz stated that, over the last five years through the actuarial loss runs that they have done, they determined their average loss per vehicle per year was \$2.10. In the meantime, their rates have gone from \$99 for an airport run in the city to \$105.

Jim Viyda, the vice president of transportation with All Risk Limited, also testified. All Risk Limited is a managing general agency, incorporated in Tacoma, Maryland. Mr. Viyda testified that currently All Risk Limited is in discussions with a carrier in Florida to underwrite

livery service in various states including New Jersey. He stated that, when asked what their interest would be in providing automobile liability insurance for this type of risk in New Jersey, they stated their interest is only on a non-admitted basis and if this class of business was on the Exportable List.

David Ani also testified. He works for All Risk as well. He is an underwriter for this state, as well as Pennsylvania and Maryland, for the public livery class of business. He has been underwriting this class of business for 17 years, and had two markets for New Jersey up until last year. He stated that General Security and Diamond State (which is part of United National) both left the State because they just scrapped their entire program.

Mr. Ani stated that they have been searching for two years to replace those markets, and there is no one willing to provide coverage on an admitted basis at all. Mr. Ani stated that one of the big problems is reinsurance. He stated that overseas reinsurance companies do not want to touch American liability insurance right now. Mr. Ani contends that there are companies that will provide coverage for the first \$50,000 or \$200,000 of insurance, but they are not willing to come in for the whole million and-a-half and they cannot get reinsurance to support them.

Mr. Ani testified that they have had two carriers that indicated they would be interested in coming into this State on an exportable basis, but they will not come in on an admitted basis, and that they already have the capacity to do the \$1.5 million.

Mr. Kevin Englelke, who represented the New Jersey Surplus Lines Association also testified. Mr. Englelke stated that the New Jersey Lines Surplus Association is an association made up on wholesalers in this State and represents many of the largest wholesalers in the State. He testified that none of his members have come to them requesting any changes in the

exportable list. On that basis, the New Jersey Surplus Lines Association is recommending that no changes to the exportable list take place.

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

I find that the evidence, testimony and information provided indicate that commercial automobile liability for limousine services should be added to the Exportable List.

#### Conclusion

Based upon the Department staff's review of the record, including the evidence, testimony and transcript of the public hearing, I recommend that the Exportable List found in N.J.A.C. 11:1-34 be amended in accordance with the attached revised Exportable List.

May 26, 2004  
Date

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

(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 Rises/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) 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; except as provided by 1(a) below:

- 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; and

**\*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, he may request an exemption from the prohibition in (b) above;**

**ii. The request shall include the applications, three declinations from authorized insurers, the specific coverage and an explanation as to why the Department should permit the coverage to be exported;**

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

**iv. 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.**