



November 12, 1998

Via Facsimile (4 total pages) 717-772-1969

Peter J. Salvatore, Regulatory Coordinator
Office of Special Projects
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

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Dear Mr. Salvatore:

I am writing on behalf of the Professional Insurance Agents Association of Pennsylvania, Maryland and Delaware (PIA) concerning amendments to the Surplus Lines Insurance regulation (Title 31, Chapter 124) as proposed by the Insurance Department in the October 3, 1998 *Pennsylvania Bulletin*.

Surplus lines insurance is intended to provide coverage for unusual or difficult risks that do not fit into the underwriting guidelines of most admitted insurers. As perhaps the predominate source of business into the surplus lines market, PIA and our members have a vested interest in the proposal. As we stated in our letter of June 26, 1997 to the Department on the exposure draft, our goal is to "sustain a viable surplus lines marketplace" as an alternative market that serves consumers and agents alike.

Many of the changes to the exposure draft PIA recommended were incorporated into this document. However, we remain concerned with the attempt to further clarify what constitutes a diligent search. A producing broker, i.e., a licensed broker, is required under the law to execute a diligent search of the admitted market prior to placing a risk with a surplus lines insurer. And since the declinations need to be from insurers that write the coverage, it is nearly impossible to set forth any credible formula that ties an agent's company appointments to the number of declinations as proposed in 124.5(1)(i).

In a November 14, 1997 letter (attached) to PIA, the Department writes: "If, for example, a broker is looking to place coverage on a fleet of taxicabs, the statute obligates the broker to get declinations from 3 admitted insurers that generally insure taxicabs." This ignores market realities and undermines agents' underwriting authority. For example, an agent can have five appointments with admitted carriers generally willing to write a certain risk, yet the coverage he needs to secure may not be "comparable to the coverage being sought" (124.5). He would be in violation of the requirement unless three declinations could be secured. What if an agent has ten appointments, but only one carrier "generally" writes the needed coverage, is this agent required to get only one declination?

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More importantly, the agent does a disservice to his clients who expect an independent agent to find the best coverage at the most affordable rate.

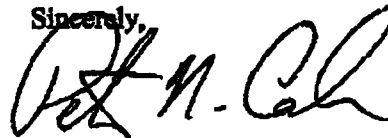
If adopted, the process for completing a diligent search will prove nearly impossible when market conditions change. In the early 1980's, we experienced a very hard medical malpractice market that suffocated the admitted market. While many insurers had filed and approved products, they were essentially shut down for business. Under this scenario, an agent would be unable to place business in either the admitted or surplus lines markets because the necessary declinations could not be secured.

Furthermore, the Department assumes that an agent with no appointments could secure a declination for an admitted carrier. How? Our experience has been that few insurers would be willing to provide a declination to someone with whom they do not have a business relationship.

The Department proposes that should the agent be unable to secure the necessary declinations, he must then attach a notarized statement affirming the number of appointments held. In light of the vital role the surplus lines market has in the marketplace, this is totally unnecessary, cumbersome and expensive for the producing broker. The Department can easily determine the number of appointments an agency has through its own licensing records. Furthermore, its investigative abilities, as well as the penalty provisions of the law, are more than adequate to police the act without adding this unnecessary layer. In light of the problems with the formula approach noted above, PIA recommends 124.5(1)(ii) be deleted from the final form.

Once again, we appreciate the opportunity to comment on the regulation. If you have any questions, please call me.

Sincerely,



Peter N. Calcara, Vice President
Government and Industry Affairs

Attachment

cc: Honorable Edwin G. Holl
Honorable Nicholas Micozzie
Honorable Jay Costa
Honorable Nicholas Colafella
IRRC



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November 14, 1997

Mr. Peter Calcara, VP Government and Industry Affairs
Professional Insurance Agents Association
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RE: Draft Surplus Lines Regulation

Dear Mr. Calcara:

Thank you for providing comments to the draft surplus lines regulation. As you will recall, the Pennsylvania Insurance Department ("Department") solicited comments to an exposure draft of the surplus lines regulation from interested parties on March 11, 1997.

Attached is a current draft amended as a result of comments received and after additional consideration by the Department. Revisions to the exposure draft are noted on the attached current draft. Following are Department comments with respect to your observations:

1. **paragraphs 2 and 6 of your letter** - Section 124.5 of the draft regulation is an attempt at defining what constitutes a diligent search identifying the roles of both the producing broker and surplus lines licensee. Significant changes have been made to the earlier draft with respect to the responsibilities of each licensee particularly the surplus lines licensee. Subsection (a)(1) sets out "minimum" efforts of the producing broker in making a diligent effort to place the coverage in the admitted market. Previous law set the minimum number of declinations in all cases as 3. The sliding scale was an effort to address the concerns of brokers who did not have 3 insurers that would accept their business. Having no agency appointments does not, however, relieve the producing broker from the responsibility to make a diligent effort to place the risk in the admitted market. The Department has been advised that some carriers will take business on a direct brokerage basis or through managing general agencies. In addition, subsection (a)(2) was added to allow the broker to assume a declination when an insurer fails to timely respond to a broker.
2. **paragraphs 3 and 4 of your letter** - Section 1604 of the Insurance Company Law (40 P.S. §991.1604) requires a diligent search among admitted insurers "who are writing, in this Commonwealth, coverage comparable to the coverage being sought." If, for example, a broker is looking to place coverage on a fleet of taxicabs, the statute obligates the broker to get declinations from 3 admitted insurers that generally insure taxicabs. A

Mr. Peter Calcara
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declination from an insurer that does not insure taxicabs but does, however, insure fleets of trucks does not constitute an acceptable declination. Therefore, the broker looking at underwriting guidelines that clearly specify that the insurer does not insure taxicabs would not be calling that insurer for a declination. In the example that you gave on dynamite manufacturers, the placement would be exempt from the diligent search requirement as the coverage appears on the Department's current export list.

3. **paragraph 5 of your letter** - New language in 124.5 has been developed to address your concern.
4. **paragraph 7 of your letter** - Section 1612 of the Insurance Company Law (40 P.S. §991.1612) notes that if the contract of insurance is not available "immediately" upon the placement of insurance, some form of evidence of insurance must be delivered to the insured. Section 1612 contemplates that the insured get some form of documentation evidencing insurance coverage upon placement of insurance. The Department believes that a 30-day time period would not be consistent with the intent of Section 1612.

It is the Department's goal to have the proposed rulemaking published on or before April 1, 1998, in the Pennsylvania Bulletin for public comment. Any additional comments may be submitted during the 30-day public comment period.

Thank you again for your input in this proposed rulemaking.

Very truly yours,



Willard Smith, Director
Bureau of Licensing and
Financial Analysis

cc: Cressinda Bybee

**Professional Insurance Agents Association
of Pennsylvania, Maryland and Delaware**



PLEASE DELIVER TO:

IRRC

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DATE: NOVEMBER 12, 1998

PAGES: 5 (including cover page)

Per Your Request Urgent For Review Please Reply/Comment

MESSAGE:

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