



**THE SURPLUS LINE ASSOCIATION
OF CALIFORNIA**

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BULLETIN #1197

RE: EXPORT LIST HEARING

The California Department of Insurance (CDI) has scheduled the annual public hearing on the Export List for Friday, December 11, 2009 at 10:00 a.m. in San Francisco at 45 Fremont Street, 22nd Floor hearing room. The hearing will discuss the coverage and risk categories that can be exported to companies on the List of Eligible Surplus Line Insurers (LESLI) without having to conduct a diligent search of the admitted market (Sec. 1763.1).

Enclosed is a copy of the CDI notice of public hearing and a copy of the current Export List. The SLA has received requests for eight additions to the Export List. Below are the eight coverages followed by descriptions of the type of risk loss represented by each:

1) Website copyright/infringement: Sometimes electronic or internet content coverage is included within this insurance. This component is designed to insure against intellectual property and defamation claims resulting from Internet based content, such as what is displayed on the insured's web site. Non-electronic media such as published or broadcast media would not be covered by this provision. Policy wordings vary.

2) 1st and 3rd party legal liability for computer system breaches: Liability to a third party as a result of a failure of the company's network security to protect against destruction, deletion or corruption of a third party's electronic data, denial of service attacks against Internet sites or computers; or transmission of viruses to third party computers and systems. Also, liability to a third party (including employees) as a result of the company's or information holder's failure to properly handle, manage, store or otherwise control 1) personally identifiable non-public information or 2) corporate information identified as confidential and protected under a nondisclosure agreement. Coverage may apply to electronic or physical release of information. Policies may also contain coverage for unintentional violation of privacy regulations and can include defense for regulatory actions.

3) Privacy breach notification costs and credit monitoring: 1) Forensic expenses to conduct an investigation of computer systems to determine the source or cause of the

failure of network security to prevent a privacy breach. 2) Fees and expenses to comply with privacy regulations, such as communication to affected customers (notification expense coverage). 3) Fees and expenses associated with offering credit monitoring services to all the individuals that are affected by the release of their personally identifiable information. 4) Expenses incurred in retaining a public relations firm for the purpose of protecting/restoring company's reputation as a result of the actual or alleged violation of privacy regulations.

4) Privacy regulatory action - defense costs and fines: Defense expenses and civil fines or penalties paid to a governmental entity in connection with an investigative demand or civil proceeding regarding actual or alleged violation of privacy laws

5) Cost to repair damaged information assets: Recovery of the company's costs and expenses incurred to restore, recreate or regain access to any software or electronic data from back-ups or from originals. Policy wordings vary.

6) Loss of revenue due to failure of security or computer attack: Reimbursement of the company's own loss of income or extra expense resulting from an interruption or suspension of its systems due to a failure of network security to prevent a security breach. Policy wordings vary.

7) Cyber extortion: Ransom or investigative expenses associated with a threat directed at the company to release, divulge, disseminate, destroy, steal, or use the confidential information taken from the Insured, introduce malicious code into the company's computer system; corrupt, damage or destroy company's computer system, or restrict or hinder access to the company's computer system. Policy wordings vary.

8) Skilled Nursing Facility (SFN): A nursing facility with the staff and equipment to give skilled nursing care and/or skilled rehabilitation services and other related health services. The level of care requires the daily involvement of skilled nursing or rehabilitation staff that, as a practical matter, can't be provided on an outpatient basis. Examples of skilled nursing facility care include intravenous injections and physical therapy. The providing of custodial care (for example, assistance with activities of daily living, like bathing and dressing) does not, in itself, qualify a facility as a skilled nursing facility.



Theodore M. Pierce
Executive Director

NOTICE OF PUBLIC HEARING REGARDING EXPORT LIST

NOTICE IS HEREBY GIVEN that the Insurance Commissioner of the State of California will hold a public hearing, at the time and place set forth below, concerning the renewal of the export list in the surplus lines area.

December 11, 2009
10:00 a.m.
Department of Insurance
45 Fremont Street, 22nd Floor
San Francisco, California 94105

THE HEARING ROOM IS ACCESSIBLE TO PERSONS WITH MOBILITY IMPAIRMENTS. IF ACCOMMODATIONS NEED TO BE MADE FOR OTHER DISABILITIES, SUCH AS HEARING IMPAIRMENT, PLEASE PHONE THE CONTACT PERSON LISTED IN THIS NOTICE BY NOVEMBER 30 SO ARRANGEMENTS CAN BE MADE.

EXPORT LIST

Pursuant to Insurance Code Section 1763.1, the Commissioner may by order declare eligible for placement with a nonadmitted insurer and exempt from all the requirements of Section 1763, except the filing of a confidential written report, any type of insurance coverage or risk for which he or she finds after a public hearing that there is not a reasonable or adequate market among admitted insurers.

Pursuant to this mandate, the Commissioner has previously collected information on whether or not there is a reasonable or adequate market among admitted insurers for certain risks or coverages. The Department reviewed the export lists in other states. We contacted California surplus line brokers and surveyed them as to the risks most placed by them. We received industry input from admitted carriers and through the Surplus Line Association. We also have held annual public hearings and solicited public comment from all interested parties including surplus line brokers, admitted insurers, trade associations representing admitted insurers, agents and brokers, and consumer groups to provide us with evidence of a lack of a reasonable or adequate market amongst admitted carriers for a particular risk or coverage. After this process, the Department adopted the attached EXPORT LIST.

RENEWAL

Pursuant to Insurance Code Section 1763.1 a public hearing shall be held annually regarding the export list. The above noticed hearing is being set to take testimony on the export list to see if any items should be added or removed.

In preparing your comments and/or testimony please be aware that items not appearing on this list will still be exportable but subject to the full documentation of the search being performed pursuant to Insurance Code Section 1763.

HEARING AND WRITTEN TESTIMONY

As stated before, this hearing is public and interested parties may testify as time permits. The hearing will be structured with time and place priority afforded to those who have signed up in advance to speak. If you wish to sign-up in advance to speak, submit your written request to the contact person listed below. Some of the areas of coverage which may be presented are 1) professional and general liability insurance for skilled nursing facilities and 2) network security and interruption insurance.

PLEASE BE AWARE THAT IN ORDER FOR THE COMMISSIONER TO CONSIDER ADDING A RISK OR COVERAGE TO THE EXPORT LIST, THE COMMISSIONER MUST HAVE EVIDENCE THAT THERE IS NOT AN ADEQUATE OR REASONABLE MARKET FOR THE RISK OR COVERAGE IN THE ADMITTED MARKET. SUBMISSION OF A STATEMENT SIMPLY REQUESTING A RISK OR COVERAGE TO BE ADDED TO THE LIST WITHOUT OTHER SUPPORTING EVIDENCE OF THE LACK OF AN ADEQUATE OR REASONABLE ADMITTED MARKET WILL NOT BE ENOUGH FOR THE COMMISSIONER TO ADD A RISK OR COVERAGE TO THE LIST.

All written testimony, comments, or documents must be sent to the Department of Insurance in triplicate (original and two copies) and received by the Department of Insurance at the address given below no later than 5:00 p.m. on December 11, 2009. All written testimony received at the hearings will be considered part of the hearing record. The Department of Insurance will not accept any written testimony, comments, or documents which are transmitted to it by facsimile.

Please direct any questions regarding this Notice of Investigatory Hearing, opportunities to testify, and written submissions for the record, to: Carol Frair, Senior Staff Counsel, California Department of Insurance, 45 Fremont Street, 21st Floor, San Francisco, CA 94105, (415) 538-4408.

DATED: November 16, 2009

STEVE POIZNER
Insurance Commissioner

By Carol F. Frair Carol F. Frair, Senior Staff Counsel

EXPORT LIST 2009

Automobile

Exotic/Classic/Antique Autos With a Value in Excess of
\$100,000

Aviation

Aviation Excess Liability
Short Term Media/Entertainment Non-Owned Contingent Aircraft Liability
(Film/Entertainment Productions)

Crime

Excess Crime
Kidnap & Ransom

Disability

Bridge Plan*
High Limits Disability**
International Major Medical

Event Coverage

Event Cancellation

Fire & Allied Lines

Amusement Parks/Carnivals and Amusement Devices
Commercial DIC/Stand Alone Earthquake
Disaster Income Protection
Excess Flood
Explosive Manufacturing/Sales/Storage
Hay in the Open
Homeowners Earthquake-Excess Limits or Deductible Buyback
Individual Insureds With Large Schedules Where the TIV(Total
Insured Values)Are in Excess Of \$500 million
Sawmills
Vacant Buildings

General Liability

Ambulance Service Including Professional Liability
Amusement Parks/Carnivals/Devices
Blasting Contractors
Building Moving
Contractors Engaged In Construction of New Tract Homes
And/Or New Condominiums
Clinical and Similar Tests of Pharmaceutical, Medical, Biological and Other
Similar Products

Crane and Rigging Contractors
Demolition Contractors
Employment Practices Liability
Environmental Impairment Remediation and Pollution Liability
Excess Liability Where Part of Underlying Is Nonadmitted
Explosives Including Manufacturing/Sales/Storage
Fireworks Displays
Foster Family(occurrence based only)
Hot Air Balloon
Limits That Attach In Excess of \$150 Million
Oilfield Contractors
Outfitters & Guides
Patent/Trademark/Copyright Infringement
Products/Completed Operations (written on a stand alone basis)
Products Recall
Security Guard Services
Seasonal or Mobile, Concessionaires, Vendors and Fairs, with or without
Liquor Liability
Short Term Special Event(excluding hole-in-one-coverage)
Tattoo and Body Piercing Shops

Inland Marine

All vessels in excess of 30 feet and rated with a maximum speed
of 45 mph
Any vessel with a Maximum Rated Speed in Excess of 55 mph
Excess Motor Truck Cargo
Personal Articles Floaters Written On a Stand Alone Basis where the value of
the schedule is in excess in of \$1,000,000 or contains a single item(s) over
\$100,000

Political

Political Risks Including Expropriation, Confiscation, Unfair Calling

Prize

Prize Indemnification (excluding hole-in-one-coverage)

Professional Liability

Architects & Engineers/Condo coverage only
Campaign Treasurers
Creditors' Committees
Tattoo and Body Piercing Shops

Railroad

Short Term Media/Entertainment Railroad Protective Liability (Film/Entertainment
Productions)

Miscellaneous

Short Term Media/Entertainment Failure to Survive Coverage for \$5 million and over (Film/Entertainment Productions)

The items in bold are headings only and not export items in and of themselves.

*The Bridge Plan covers 65 year old people who must wait a certain period before they can enroll in Medicare. These people either 1) failed to meet the residency requirement of Medicare and must wait 5 years to meet the residency requirement or 2) failed to enroll during the proper Medicare enrollment period and now must wait a brief period before they are eligible to enroll.

**High Limits Disability is coverage that offers benefit amounts over the admitted market maximum issue and participation limits and/or includes occupations which are not eligible through the admitted markets.