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BULLETIN TO ALL MEMBERS:

RE: DIVISION OF LIABILITY COVERAGE INTO
PRIMARY AND EXCESS LAYERS.

Members' attention is directed to the Insurance Commissioner's Rule No. 22 appearing on pages 28 and 29 of our Manual, which reads as follows:

"RULE 22. Liability. (Insurance Code Sec. 108)

(It should be noted that the code definition of Liability Insurance includes "insurance against loss resulting from liability for damage to property or property interests of others, but does not include workmen's compensation, common carrier liability, boiler and machinery or team and vehicle insurance.")

The question has been submitted as to the propriety of dividing liability lines into:

- (1) Primary coverage and (2) excess coverage for submission purposes, and the commissioner has been asked to rule whether such division would be considered a violation of the artificial division rule.
- Unless the excess coverage upon any risk is written in non-admitted insurers at a rate or premium comparable with that regularly chargeable for the excess portion by the primary carrier on such risk, the division of such risk into primary and excess will be considered a violation of the artificial division rule, subject to the following exceptions:
- Excess insurance written by non-admitted insurers in excess of a net retention of risk by the assured.
 - Excess insurance written by non-admitted insurers because of a refusal in writing by the primary admitted insurer to assume the limits of liability desired by the assured.
 - Excess insurance written by non-admitted insurers because of a written demand by the assured that the entire liability be not placed with one insurer, such request to set forth specifically the assured's reason therefor."

It is desired to call particular attention to the first part of this rule dealing with those cases where Liability coverage is written with non-admitted carriers from the "ground up" and is divided into Primary and Excess layers. From the foregoing rule, it is quite apparent that notwithstanding the division of the coverage into Primary and Excess layers, the cost of the insurance for the total combined limits must not be less than the lowest rate or premium which could be obtained from an admitted insurer in accordance with the terms and conditions of Section 1763 of the Insurance Code.

This bulletin does not supersede or nullify any prior regulation or bulletin.


MANAGER