



THE SURPLUS LINE ASSOCIATION
OF CALIFORNIA

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No. 438

BULLETIN TO ALL MEMBERS:

RE: Proposed Amendment to Article XV of the Constitution of The Surplus Line Association of California

As a result of recent amendments to the California Corporations Code, the rights of officers, directors, employees and other agents to be indemnified by organizations for which they serve for liability incurred in connection with their organizational service are now broader. In accordance with these changes, the Executive Committee has adopted and approved amendments to the indemnification provisions of Article XV of the Constitution of The Surplus Line Association drafted by the Association's legal counsel, LeBoeuf, Lamb, Leiby & MacRae. These amendments are intended to protect those who serve on behalf of your Association.

At this time, each member of the Association is requested to indicate his or her consent, or lack thereof, to the adopted amendments by returning this Bulletin as signed and completed on the appropriate line.

A copy of the proposed amendment is attached for your review as Exhibit A. For purposes of comparison, a copy of the Association's existing indemnification is attached as Exhibit B. Please complete and return this form to the Association by September 11, 1989. The proposed amendment, if approved by a majority of members, will be effective September 11, 1989.

I consent to the amendment.

I do not consent to the amendment.

Surplus Line Broker License No. _____

Please print your name _____

A. D. Freeman, Jr.
Manager

PROPOSED INDEMNIFICATION

ARTICLE XV

INDEMNIFICATION

1. For the purposes of this section, "agent" means any person or firm who is or was a committee member, member, officer, employee or other agent of the Association; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under Section 4 or paragraph d of Section 5.

2. The Association shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Association to procure a judgment in its favor) by reason of the fact that the person is or was an agent of the Association, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding if that person acted in good faith and in a manner the person reasonably believed to be in the best interests of the Association and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgement, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Association or that the person has reasonable cause to believe that the person's conduct was unlawful.

3. The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the Association to procure a judgment in its favor by reason of the fact that the person is or was an agent of the Association, against expenses actually and reasonably incurred by that person in connection with the defense or settlement of the action if the person acted in good faith, in a manner the person believed to be in the best interests of the Association and its members.

No indemnification shall be made under this Section for any of the following:

a. In respect of any claim, issue or matter as to which the person shall have been adjudged to be liable to the Association in the performance of that person's duty to the Association and its members, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses and then only to the extent that the court shall determine.

b. Of amounts paid in settling or otherwise disposing of a pending action without court approval.

c. Of expenses incurred in defending a pending action which is settled or otherwise disposed of without court approval.

4. To the extent that an agent of the Association has been successful on the merits in defense of any proceeding referred to in Section 2 or 3 or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

5. Except as provided in Section 4, any indemnification under this Article shall be made by the Association only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Section 2 or 3, by any of the following:

a. A majority vote of a quorum consisting of Executive Committee Members who are not parties to such proceeding.

b. If such a quorum consisting of Executive Committee members is not obtainable, by independent legal counsel in a written opinion.

c. Approval of a majority of the members, with the members to be indemnified not being entitled to vote thereon.

d. The court in which the proceeding is or was pending upon application made by the Association or the agent or the attorney or other person rendering services in connection with the defense, whether or not

the application by the agent, attorney or other person is opposed by the Association.

6. Expenses incurred in defending any proceeding may be advanced by the Association prior to the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay that amount if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this Article.

7. The indemnification provided by this Article for acts, omissions, or transaction while acting in the capacity of, or while serving as, a committee member, member, officer, employee or other agent of the Association but not involving breach of duty to the Association and its members shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of members or disinterested Executive Committee Members, or otherwise, to the extent the additional rights to indemnification are authorized in the articles of the Constitution. The rights to indemnity hereunder shall continue as to a person who has ceased to be a committee member, member, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of the person. Nothing contained in this Article shall affect any right to indemnification to which such persons may be entitled by contract or otherwise.

8. No indemnification or advance shall be made under this section, except as provided in Section 4 or paragraph d of Section 5, in any circumstance where it appears:

a. That it would be inconsistent with a provision of the Constitution, bylaws, a resolution of the members, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification.

b. That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

9. The Association shall have power to purchase and maintain insurance on behalf of any agent of the Association against any liability asserted against or incurred by the agent in that capacity or arising out of the agent's status as such whether or not the Association would have the power

to indemnify the agent against that liability under this Article.

10. This Article does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in that person's capacity as such, even though the person may also be an agent as defined in Section 1 of the employer Association. The Association shall have power to indemnify and purchase and maintain insurance on behalf of any such trustee, investment manager, or other fiduciary.

EXISTING INDEMNIFICATION

ARTICLE XV

INDEMNIFICATION

1. Any person or firm made or threatened to be made a party to any action, suit or proceeding, because such person or firm is or was a member or serves or served on a committee or is or was an officer or employee of the Association shall be indemnified by the Association against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorney's fees and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, if such person or firm acted in good faith for a purpose which he, she or it reasonably believed to be in the best interests of the Association and, with respect to any criminal actions or proceedings, in addition, had no reasonable cause to believe that his, her or its conduct was unlawful. Such indemnification shall be provided whether or not at the time of such action, suit or proceeding such person or firm is a member, officer or employee or is serving on a committee of the Association and whether or not any such liability was incurred prior to the adoption of this Article. Such indemnification shall not be exclusive of other rights such person or firm may have and shall pass to the successors, heirs, executors or administrators of such person or firm. The termination of any such civil or criminal action, suit or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such person or firm did not act in good faith for a purpose which he, she or it reasonably believed to be in the best interest of the Association or that he, she or it had reasonable cause to believe that his, her or its conduct was unlawful. If any such action, suit or proceeding is compromised, it must be with the approval of the Executive Committee of the Association.

2. In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in Section 1 of this Article, shall be determined by the Executive Committee which shall also determine the time and manner of payment of such indemnification; provided, however, that a person or firm who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of the character described in Section 1 of this Article shall be

entitled to indemnification as authorized in such section. Nothing herein shall be deemed to bind a person or firm who or which the Executive Committee has determined not to be entitled to indemnification, or to preclude such person or firm from asserting the right to such indemnification by legal proceedings.