



December 18, 1992

BULLETIN #541

BULLETIN TO ALL MEMBERS:

**RE: DEPARTMENT OF INSURANCE BULLETIN #92-11 - LEGISLATIVE AND
REGULATORY CHANGES EFFECTING THE TRANSACTION OF SURPLUS
LINE INSURANCE IN CALIFORNIA**

Enclosed is a copy of Bulletin #92-11 issued by the California Department of Insurance providing information and guidelines concerning Regulation 2174.1, AB 2608 and SB 1145. For additional information, we refer you to the Association Bulletins concerning these changes.

James S. Pugh
Assistant Manager

JSP/imb

Enclosure(s)

STATE OF CALIFORNIA
Department of Insurance
45 Fremont Street
San Francisco, CA 94105

December 18, 1992

Bulletin No. 92-11

TO: Surplus Line Brokers, Insurance Producers and Other Interested Persons

SUBJECT: Surplus Line Insurance

The purpose of this notice is to advise surplus line brokers and other insurance producers of significant legislative and regulatory changes affecting the transaction of surplus line insurance in California.

REGULATION 2174.1

Effective November 25, 1992 the Office of Administrative Law adopted Sections 2174.1 through 2174.14 of Title 10, California Code of Regulations. These regulations establish minimum standards respecting the financial stability, reputation and integrity of nonadmitted insurers proposed for use by surplus line brokers in California. Included among the minimum standards are the following:

- * \$15 Million in Capital and Surplus
- * \$5.4 Million U.S. Trust Account for Alien Insurers
- * 3 Years of seasoning
- * A license to sell insurance in the country/state of domicile or other jurisdiction that issued the license.
- * Satisfactory record concerning market conduct, regulatory actions and code violations.

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The regulation requires surplus line brokers to demonstrate compliance with these minimum standards before placing insurance with a nonadmitted insurer. Specifically, before placing business with a nonadmitted insurer, surplus line brokers must submit specified documents to the California Department of Insurance (CDI), along with a filing fee of \$1,500. Upon submission of the required documents and fee, the submitting broker may then make placements with that insurer. Documents to be submitted to the CDI include:

1. A copy of an annual statement not more than 12 months old.
2. A copy of an audited financial report showing the insurer's condition as of a date not more than 12 months prior to submission.
3. A certified copy of the trust agreement for alien insurers including a verified copy of the most recent quarterly statement or list of assets in the trust.
4. A certified copy of the insurer's license including a certificate of good standing, certificate of compliance or other equivalent certificate.
5. Identification of the insurers agent in California for service of process.
6. The complete street address, mailing address, and telephone number of the insurer's principal place of business.
7. A certified or verified explanation, report or other statement from the insurance regulatory office of the insurer's domiciliary jurisdiction concerning the insurers record regarding market conduct and consumer complaints.
- 8 A verified statement from the insurer or surplus line broker regarding any currently known regulatory actions pending against the insurer.

List of Filings

The CDI will publish a List of Filings showing the names of those nonadmitted Insurers for whom the CDI has received substantially complete filings under this new regulation. Any other surplus line broker who wants to make placements with an insurer whose name appears on the List of Filings must submit a Department Form A (6/92) to the CDI along with a \$35 filing fee. Upon submission of this form and filing fee, the submitting broker may then make placements with that insurer.

An insurers name will remain on the List of Filings for a period not to exceed 1 year unless the required documents are updated and resubmitted to the Department within twelve months from the initial submission. In other words, the documents submitted pursuant to the regulation must be filed and updated annually.

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The CDI will maintain an updated List of Filings showing those nonadmitted insurers for whom the Department has received substantially complete filings. This list will be available for review at the Department's public counters in Los Angeles, San Francisco, Sacramento and San Diego. Additionally, the CDI will provide an updated List of Filings to The Surplus Lines Association of California on an ongoing basis.

Transition Period for On-going Insurers

The regulation provides a transition period for surplus line brokers who make placements with an insurer which has been used for surplus line placements prior to the effective date of this regulation. The transition provision allows those brokers to submit the required documents for those companies to the CDI not later than 180 calendar days after the effective date of this regulation. Thus, the documents required for on-going insurers must be submitted to the Department no later than May 24, 1993.

AB2608

Assembly Bill 2608, Chapter 1205, amends Section 1763 of the California Insurance Code effective January 1, 1993. As amended, Section 1763 of the Insurance Code permits surplus line brokers to solicit and place insurance with nonadmitted insurers only if the insurance cannot be obtained from insurers that are licensed and actually writing that particular type of insurance in this state. The law requires each surplus line broker to be responsible to ensure that a diligent search is made among insurers that are admitted to transact and are actually writing the particular type of insurance in this state before procuring the insurance from a nonadmitted insurer.

Report of Placement - Department Form SL-1 (1 2/92)

The law requires each surplus line broker to file with the Commissioner or his or her designee a written report regarding each surplus line placement. The report of placement must be filed with the Commissioner or his designee within 60 days of any placement made with a nonadmitted insurer on or after January 1, 1993. The attached Department form, SL-1 (1 2/92), entitled "Report of Placement" has been developed for this purpose. The Commissioner has designated The Surplus Line Association of California as his designee for purposes of receiving this report.

The Report of Placement must be accompanied by a copy of the Declaration page of the policy or a copy of the Surplus Line Broker's certificate or binder evidencing the placement of insurance.

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Diligent Search Report

In addition, CDI Form SL-2 (12/92) entitled, "Diligent Search Report" must also be attached to each Report of Placement filed with The Surplus Line Association of California. The SL-2 must set forth the

diligent efforts to place coverage with admitted insurers and the results of those efforts. The form must be signed by a person licensed under the Insurance Code who made the diligent search or supervised an unlicensed person or persons who actually conducted the search. A copy of CDI form SL-2 (12/92) is attached to this Bulletin.

Lower Rate Filings

Section 1763 of the Insurance Code continues to prohibit the placement of insurance with a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate that will be accepted by any admitted insurer. It shall be conclusively presumed that insurance is placed in violation of this section if the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest premium that could be obtained from an admitted insurer unless, at the time the insurance attaches, the surplus line broker files with the Commissioner a statement describing the insurance, specifying the rate and nearest rates procurable from admitted insurers. The statement must explain the reasons that the insurance must be placed with a nonadmitted insurer even though it is available from an admitted insurer. This statement must be filed with the Insurance Commissioner at the following address:

State of California
Department of Insurance
45 Fremont Street
San Francisco, CA 94105
Attention: Surplus Line Enforcement Unit

The Insurance Commissioner has five days from receipt of the statement within which to notify the licensee that the placement is in violation of Section 1763 and to order the broker to effect termination of that insurance. Failure to effect that termination is grounds for disciplinary action against the licensee.

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SB1145

Senate Bill Number 1145, Chapter 397, amends Section 1764.1 of the California Insurance Code effective January 1, 1993. As amended, 1764.1 requires every policy issued by a nonadmitted insurer to contain a required disclosure statement in bold face, 16-point type on the front page of the policy. A copy of the required disclosure statement is attached. Additionally, Section 1764.1 requires every surplus line broker to be responsible to ensure that at the time of accepting an application for any insurance policy to be issued by a nonadmitted insurer that the signature of the applicant is obtained on a free-standing disclosure statement. The disclosure statement shall be in bold face 16 point type and contain the same mandatory disclosure language as is required on the front page of the policy issued by the nonadmitted insurer. The free-standing disclosure statement must be signed by the applicant and is not subject to any limited power of attorney agreement between the applicant and an agent or broker or surplus line broker.

Industrial Insured

Section 1764.1 provides limited exemptions from these disclosure requirements for industrial insureds and for transactions involving commercial insurance coverages. Specifically, if the applicant qualifies as a industrial insured, then the applicant's signature is not required on the free-standing disclosure statement. However, the mandatory disclosure statement is still required to be contained on the policy, confirmation of insurance or certificate of placement, whichever is first provided to the insured.

An industrial insured is identified as an insured which employs at least 25 employees on the average during the prior twelve months and which has aggregate annual premiums for all insurance other than workers compensation and health coverage totaling not less than \$25,000; or which obtains the insurance through the services of a full-time employee acting as insurance manager or a continuously retained insurance consultant. Please note that a continuously retained insurance consultant does not include any agent or broker through whom the insurance is placed, any sub-agent or sub-producer involved in the transaction, or any agent or broker which employs or contracts with an agent, broker, sub-agent or sub-producer involved in the transaction.

Commercial Coverages

With respect to commercial insurance coverage for an insured other than an industrial insured, the law permits the applicant's signature on the disclosure form to be transmitted by the applicant to the agent or broker via facsimile or comparable electronic transmittal if the insurance transaction is not conducted in an in-person, face-to-face meeting. Additionally, if the applicant requires that insurance coverage be bound immediately because the applicant is required to

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because the applicant is required to have coverage in place within two business days and the applicant cannot meet in person with the agent or broker to sign the disclosure form, then the agent or broker may obtain the signature of the applicant within five days of binding coverage. However, the applicant may cancel the insurance within five days of receiving the disclosure form from the agent or broker. The cancellation shall be on a pro-rata basis and the applicant shall be entitled to the recession or return of any broker fees charged for the placement.

CONCLUSION

These regulatory and legislative changes are intended to safeguard the public's interest when purchasing insurance from nonadmitted insurers. The CDI will aggressively enforce the provisions of these new laws and regulation to ensure compliance and adequate consumer protection.

Therefore, it is imperative that each licensee, who is or intends to become involved in surplus line transactions, carefully review the provisions of these new laws and regulation and take steps to achieve voluntary compliance. Any questions concerning this bulletin should be addressed to the following:

State of California

Department of Insurance
45 Fremont Street
San Francisco, CA 94105
Attention: Surplus Line Enforcement Unit

JOHN GARAMENDI
Insurance Commissioner

NOTE: The forms attached to this Bulletin may be photocopied for your use.

CONFIDENTIAL
REPORT OF SURPLUS LINE PLACEMENT

PLEASE REFER TO THE INSTRUCTIONS ON THE BACK OF THIS FORM. THIS FORM MUST BE ACCOMPANIED BY A DILIGENT SEARCH REPORT AND A COPY OF THE DECLARATIONS PAGE OR CERTIFICATE OR BINDER. (CALIFORNIA INSURANCE CODE § 1763(A).)

1. _____ hereby submits that he/she is:

(A) A duly licensed surplus line broker, license number _____.

or (B) that he/she is a transactor on the surplus line license of

(Name of Organization)

license number _____.

and (C) that he/she or said organizational licensee was engaged by the insured, or the insured's broker, named herein to obtain insurance against certain risk as described in this report.

2. (A) Name of Insured

(B) Address of Insured

(Street and Number)

(City) (State) (Zip Code)

(C) Description of the Risk _____

(D) Location of the Risk _____

(Street and Number)

(City) (State) (Zip Code)

(E) Name of Nonadmitted Insurer(s) With Whom the Risk Was Placed (Include an attachment if additional space is needed)

Name Premium Charged Type of Insurance Placed*

*Enter appropriate code number for type of insurance placed. See Codes attached.

SIGNATURE OF PERSON NAMED ON LINE 1 DATE

SL-1(12/92)

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INSTRUCTIONS

Line 2(E): This section must be completed in its entirety. Do not simply refer to attached declaration pages or certificate.

WHAT MUST ACCOMPANY THE REPORT: This report must be accompanied by a copy of the declarations page or certificate or binder, and a diligent search report Form SL.-2. Note: The surplus line broker submitting this form is responsible to ensure that a diligent search is made among admitted insurers and that the risk meets the conditions for surplus line exportation.

(California. Insurance Code § 1763(a).)

WHEN TO FILE: This report must be filed by the surplus line broker within 60 days of placing the insurance with a nonadmitted insurer. (California Insurance Code (1763(a).)

WHERE TO FILE: This report must be submitted to The Surplus Line Association of California as designee for the California Insurance Commissioner.

LOWER RATE FILINGS: This report may not be used to file a risk placed with a nonadmitted insurer when such insurance is procured at a lower rate of premium or lower premium than the lowest rate or premium available from an admitted insurer. Please contact the Department of Insurance or The Surplus Line Association of California for information regarding the procedures applicable to such "lower rate" filings.

SL-1(12/92)

CODE TYPE OF INSURANCE

050 Auto Liability-Private

051 Auto Liability-Commercial

100 Auto Physical Damage-Private

101 Auto Physical Damage-Commercial

150 Crime

151 Crime-Kidnap & Ransom

200 Combined Auto Liability & P.D. - Private
201 Combined Auto Liab. & P.D. - Commercial
300 Excess Liability (Incl. Umb.)
350 Fidelity, Surety & Bonds - Bonds
351 Fidelity, Surety & Bonds - Fidelity
400 Fire - Sgl. Farm Dwelling, Duplex
401 Fire - Commercial
402 Fire - Homeowners
403 Fire - Homeowners Multiple Peril
404 Fire - Farm owners Multiple Peril
450 Inland Marine
500 General Liability
501 Gen. Liability - Pollution Legal Liability
502 General Liability - Product Tampering ...
510 Aviation
550 Errors & Omissions - AR others
551 Errors & Omissions - Dir. & Off.
600 Malpractice - AU Other
606 Malpractice - Hospitals
650 Miscellaneous
651 Miscellaneous - Glass
652 Miscellaneous - Boiler & Machinery
653 Miscellaneous - Nuclear Risks
655 Miscellaneous - Political Risks
700 Accident
701 Accident - Disability Income
702 Accident - Group Health Insurance
703 Accident - Individual Health Insurance
800 Garage Liability (May Include GKLL)
980 Excess Workers Compensation
990 Commercial Property - all Risk
994 Commercial Property - Sp. M. Peril
996 Commercial Property - DIC
997 Commercial Property - Earthquake

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INSTRUCTIONS

Line 1(A) and 1(B): If you are licensed and authorized to act in two or more capacities (e.g. as a broker and a surplus line broker), then please circle the one that describes the capacity in which you are acting in this transaction.

Line 7(A): Please provide a complete response. Note: the Insurance Commissioner or his designee may

require the surplus line broker to conduct a further or additional search among admitted insurers for similar placements in the future. (California Insurance Code Section 1763(b)) An incomplete response on line 7(A) may unnecessarily result in a request for a further search to be conducted.

IMPORTANT: Persons who are licensed only as an agent may only submit a risk to admitted insurers that have appointed them as their agent. Agents are not authorized to offer a risk to admitted insurers for which they are not appointed agents. A search which is limited to only those companies that have appointed the agent may not necessarily constitute a diligent search of the admitted market.

WHAT TO FILE: This report must be filed as an attachment to the Report of Placement. (CDI Form SL-1).

WHERE TO FILE: The SL-1 and this report are to be filed by the surplus line broker with The Surplus Line Association of California within 60 days of placement of coverage with nonadmitted insurer(s).

MULTIPLE LICENSEES CONDUCTING SEARCH: If two or more licensees conduct a diligent search of admitted insurers, then each licensee must complete a diligent search report (CDI Form SL-2). All such reports should be attached to the SL-1.

SL-2 (12/92)

DILIGENT SEARCH REPORT

Please Refer to the Instructions on Page 4 of This Form.

1. _____ hereby submits that he/she is:

(A) Duly licensed and authorized to act as (agent, broker, surplus line broker), license (Circle One)

number _____;

or (B) that he/she is an endorsee on the organizational license of _____

(Name of Organization)

and is duly licensed and authorized to act as (agent, broker, surplus line broker), license number _____ (Circle One)

and (C) that he/she or said organizational licensee was engaged by the insured, or the insured's broker, named herein to obtain insurance against certain risk as described in this report.

2. (A) Name of Insured

_____.

(B) Address of Insured

(Street and Number)

(City) (State) (Zip Code)

(C) Description of the Risk _____

(D) Location of the Risk _____

(Street and Number)

(City) (State) (Zip Code)

3. Type of Insurance coverage _____ (See Codes Attached)
(Enter Appropriate Code Number)

4. If Private Passenger Automobile liability Insurance is identified on line 3, does the insured qualify as a 'Good Driver' under Section 1861.025 of the California Insurance Code? Check one.
(Yes) (No) (Not Applicable)

5. If Health Insurance is identified on line 3, does the insured qualify as a "Small Employer" under Section 10700(x) of the California Insurance Code? Check one.
(Yes) (No) (Not Applicable)

SL-2 (12/92)

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6. (A) Was this insurance placed pursuant to Section 125 et. seq. of the California Insurance Code governing transactions with risk purchasing groups authorized by the Federal Liability Risk Retention Act of 1986 - _____
(Yes) (No)

(B) If the answer to 6(A) is yes, give the name and address of the purchasing group of which the insured is a member _____

7. (A) Describe the diligent efforts made to place this coverage with admitted insurers (include an attachment if additional space is needed)

(B) Did you determine that fewer than 3 admitted insurers actually write this particular type of insurance?

(Yes) (No)

(C) If yes, please describe how you made this determination.

SL-2 (12/92)

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8. (A) Was the risk described on line 2 submitted by you or by someone under your supervision to at least three (3) insurers that are admitted in California and actually writing that particular type of insurance?

(Yes) (No)

(B) If yes, complete the following:

ADMITTED COMPANIES DECLINING THE RISK

Name of Company

Name of Company

Representative*
and Telephone

Number

Declination Code**

Mo. and Year of
Declination

*Identify whether the representative is an employee or agent.

** Codes:

- 1 - Company's capacity reached
- 2 - underwriting reason
- 3 - refused to state
- 4 - other

The undersigned licensee hereby certifies that this report is true and correct and that this risk is not being placed with a nonadmitted insurer for the sole purpose of securing a rate or premium lower than the lowest rate or premium available from an admitted insurer.

Signature of Licensee Who Performed or Supervised the Search Date

SL-2 (12/92)

CODE TYPE OF INSURANCE

050 Auto Liability-Private
051 Auto Liability-Commercial
100 Auto Physical Damage-Private
101 Auto Physical Damage-Commercial
150 Crime
151 Crime-Kidnap & Ransom
200 Combined Auto Liability & P.D. - Private
201 Combined Auto Liab. & P.D. - Commercial
300 Excess Liability (Incl. Umb.)
350 Fidelity, Surety & Bonds - Bonds
351 Fidelity, Surety & Bonds - Fidelity
400 Fire - Sgl. Fam. Dwelling, Duplex
401 Fire - Commercial
402 Fire - Homeowners
403 Fire - Homeowners Multiple Peril
404 Fire - Farm owners Multiple Peril
450 Inland Marine
500 General Liability
501 Gen. Liability - Pollution Legal Liability
502 General Liability - Product Tampering
510 Aviation
550 Errors & Omissions - All others
551 Errors & Omissions - Dir. & Off.
600 Malpractice - AR Other
606 Malpractice - Hospitals
650 Miscellaneous
651 Miscellaneous - Glass
652 Miscellaneous - Boiler & Machinery
653 Miscellaneous - Nuclear Risks
655 Miscellaneous - Political Risks
700 Accident
701 Accident - Disability Income
702 Accident - Group Health Insurance
703 Accident - Individual Health Insurance
800 Garage Liability (May Include GKLL)
980 Excess Workers Compensation
990 Commercial Property - all Risk
994 Commercial Property - Sp. M. Peril
996 Commercial Property - DIC

997 Commercial Property - Earthquake

EXHIBIT A

NOTICE:

1. THE INSURANCE POLICY THAT YOU ARE APPLYING TO PURCHASE IS BEING ISSUED BY AN INSURANCE COMPANY THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS -LINES' INSURERS.
2. THE INSURANCE COMPANY IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED COMPANIES.
3. THE INSURANCE COMPANY DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURANCE COMPANY BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.
4. FOR ADDITIONAL INFORMATION ABOUT THE INSURANCE COMPANY YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINES" BROKER OR YOU MAY CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE.

DATE

INSURED

SLA FORM D-1 9/92

EXHIBIT B

NOTICE:

1. THE INSURANCE POLICY THAT YOU HAVE PURCHASED IS BEING ISSUED BY AN INSURANCE COMPANY THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINES" INSURERS.
2. THE INSURANCE COMPANY IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED COMPANIES.
3. THE INSURANCE COMPANY DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURANCE COMPANY BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. FOR ADDITIONAL INFORMATION ABOUT THE INSURANCE COMPANY YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINES" BROKER OR YOU MAY CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE.

SLA Form D-2 9/92