



**THE SURPLUS LINE ASSOCIATION
OF CALIFORNIA**

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June 5, 1996

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BULLETIN #764

**RE: NOTICE OF INVESTIGATORY HEARING REGARDING THE CREATION OF
AN EXPORT LIST**

On February 20, 1996, SLA Bulletin #756 notified all Members of the passage of Assembly Bill 842 ("AB 842"), effective January 1, 1996. AB 842 established the creation of an Export List that will allow certain coverages placed in the nonadmitted market to be exempt from the diligent search requirement.

In Bulletin #756, we requested that Members participate in the creation of the Export List by sending the SLA their opinions and reasons as to why certain coverages should be placed on the List. We thank all those who responded, and advise you by this Bulletin that you have another opportunity to voice your opinions. This time, at a formal investigative hearing held by the California Department of Insurance ("DOI").

Attached is a copy of the above referenced Notice, issued by the DOI on May 31, 1996. The Investigatory Hearing is scheduled for July 9, 1996 at 10:00 a.m. in San Francisco (the Notice specifies the location). **Please read this Notice in its entirety.** This forum is open to all interested individuals, and the SLA urges that, if at all possible, your firm be physically represented. Should you wish to testify at the hearing, you may submit a written request to the DOI contact, Ms. Carol Fistler, Senior Staff Counsel, DOI, 45 Fremont Street, 21st Floor, San Francisco, CA, 94105, by July 1, 1995.

We urge that your firm testify or attend even if you have already contacted us. Personal participation means more. If your firm cannot attend, submit written testimony or comment by 5:00 p.m. on July 9, 1996. These documents must be sent to the DOI contact in triplicate (an original and two copies), and a copy to the SLA. Also, if you would like to send the SLA any statements by letter or fax, please do so, to the attention of myself, Ilona Bovee or Nadine Watso at 388 Market Street, 11th Floor, San Francisco, CA, 94105, fax number 415-434-3716.

Again, your input is very important! Please feel free to contact the SLA at 415-434-4900 with any questions or concerns. Thank you.

Edgar S. Clark
Executive Director

ESC
Attachment

**NOTICE OF INVESTIGATORY HEARING
REGARDING THE CREATION OF AN EXPORT LIST**

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

July 9, 1996
10:00 a.m.

Department of Insurance
Sixth Floor Hearing Room
425 Market Street
San Francisco, CA 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 JULY 1 SO ARRANGEMENTS CAN BE MADE.

As of January 1, 1996, Section 1763.1 was added to the Insurance Code. This section provides that 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.

The commissioner will place risks or coverages on the export list after making a determination that there is not a reasonable or adequate market among admitted insurers for those risks or coverages. The commissioner is in the process of collecting information based upon which he can make such a determination. We invite 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.

The following are some points you may want to consider before preparing testimony or written comments to the commissioner:

1) LACK OF AN ADEQUATE MARKET-The evidence may consist of an explanation of searches performed in the admitted market for a particular risk or coverage. Please be aware of the need to explain the details of the search such as who, what, where, when and how it was performed. Providing information on computerized searches may also be helpful. Brokerage firms which have in-house committees on the lack

of an "adequate or reasonable" admitted market for a particular risk or coverage may also be want to submit information. Industry data on the availability of a particular or coverage risk may also be introduced.

2) LISTING-Simply presenting a listing of products desired to be on the export list is not sufficient. Similarly, stating that there is no adequate market for a risk or coverage in and of itself is not sufficient. The commissioner must make determinations based on evidence about the admitted market. The evidence must demonstrate that a particular product or risk does not have a reasonable or adequate admitted market.

3) CURRENT-The commissioner's determination of "adequate and reasonable" will be based on the current market. Some risks may have started being written in the surplus lines market long ago when an item was not THEN available. If the market has changed, the item may NOW have an adequate and reasonable market amongst admitted carriers and therefore not be eligible for the export list.

4) CALIFORNIA-Please make your information pertinent to the California market. Although export lists in other states may be of interest, ultimately the commissioner is charged with determining the availability of the risk or coverage in the CALIFORNIA admitted market. Therefore just because a risk or coverage is automatically exportable in other states, it may not be included on the California export list if there is an "adequate and reasonable" California admitted market.

5) CAPACITY- Also do not overlook the "capacity" aspect in the explanation of "reasonable and adequate" market. For example, a product may exist in the admitted market but not be available in the limits at which it is available in the nonadmitted market.

After this hearing, the Department will propose an export list and again have a public hearing before any list is formally adopted.

The Department has already worked with some industry representatives to gather exportability lists that appear in other states. We also have worked with the Surplus Line Association of California to determine the types of risks and coverages most commonly filed by surplus line brokers. Now we need your input.

Remember that the issue of whether or not there is an adequate or reasonable admitted market for risk or coverage is framed within the context of the State as a whole. The issue is not framed within the context of any one particular broker and the markets

accessible to him/her. For example, if a surplus line broker also has an agent's license and he only has appointments with two carriers and neither of those carriers write a particular type of coverage that coverage is not eligible for the export list if other admitted carriers for whom that agent does not have appointments write the coverage.

As stated above the nature of the hearing is investigatory. As time permits, interested members of the public may testify on the subjects addressed the hearing. 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 to speak in advance, submit your written request to the contact person listed below by **July 1, 1996**. The Department reserves the right to limit oral testimony and anyone may submit such testimony.

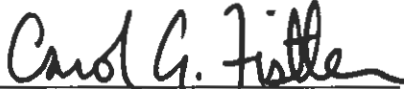
All written testimony, comments, or documents must be sent to the Department of Insurance in triplicate (original and two copies) and received by the Department of Insurance at the address given below no later than 5:00 p.m. on July 9, 1996. All written testimony received by July 9, 1995 at 5p.m. will 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 questions regarding this Notice of Investigatory Hearing, opportunities to testify, and written submissions for the record, to:

Carol Fistler
Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
(415) 904-5674

Dated: May 31, 1996

CHUCK QUACKENBUSH
Insurance Commissioner

By 
Carol A. Fistler
Senior Staff Counsel