

June 24, 1981

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 8 (1981)

TO: All Licensed Excess Line Brokers

RE: Affidavit Required By Regulation # 41

Attached please find a copy of the revised affidavit required pursuant to Regulation # 41. The Regulation requires that affidavits must be consecutively pre-numbered. The material in the affidavit will be computerized so it is very important that the format and instructions be followed carefully.

Your attention is called specifically to item (7) on the affidavit regarding the licensees' responsibility to inform brokers who are involved in the placing of a particular risk of the EL-2 requirement.

This affidavit is to be used commencing no later than July 1, 1981 for all risks with a 1981 effective date. Affidavits covering risks with a 1981 effective date previously filed with this Department will be returned to the executing licensees for re-submission on the correct affidavit form. There will be no penalty for late filings resulting from this revision in form. All corrected affidavits must be re-submitted by September 1, 1981.

Very truly yours,

ALBERT B. LEWIS

Superintendent of Insurance

AFFIDAVIT # _____

PART A

AFFIDAVIT BY EXCESS LINE BROKER

STATE OF NEW YORK

County of _____)

)

City of _____)

_____ being duly sworn, deposes and says he/she is:

AUTHORIZED COMPANIES DECLINING THE RISK

| | | | | | | |
|---------|------|-----|---------|-------|----|-----------|
| | | | | Lic. | | |
| | | | | as | | Submitted |
| | | | | Spec. | | Purs. |
| | | | | Risk | | to Sec. |
| | NAIC | | Insurer | | | 168-d |
| Company | Code | Yes | No | Yes | No | |
| | # | | | | | |

- CODES: 1 = Company's capacity reached
 2= Does not write this class of risk
 3= Specific underwriting reason
 4= Other

AUTHORIZED COMPANIES DECLINING THE RISK

| | | | | | | |
|---------|-----|----|------|-------------|-------------|-----------|
| | | | | | Reason | |
| | | | | Application | for | Date |
| | | | | to Supt. | Declination | of |
| | | | | Sec. 185 | (Use | Rejection |
| | | | | (3) | Code *) | |
| | | | | Name | | |
| | | | | of | | |
| Company | Yes | No | Rep. | | | |

(A)
 (B)
 (C)
 (D)
 (E)

- CODES: 1 = Company's capacity reached
 2 = Does not write this class of risk
 3 = Specific underwriting reason
 4 = Other

Have EL-2 forms been property submitted in support of the above declinations?

 Yes No

(5) If submitted pursuant to Section 168-d, list below the special risk insurers which indicated a willingness to accept such risk, in whole or in part, for insured's declination:

SPECIAL RISK INSURERS ACCEPTING PART OF WHOLE DECLINATION

| Name of Company | NAIC Code # | % of Total Acceptable | Reason for Insured & Declination* |
|-----------------|-------------|-----------------------|-----------------------------------|
| A) | | | |
| B) | | | * Use these codes: |
| C) | | | 1 = Company |
| D) | | | 2 = Cost |
| | | | 3 = Other |

(6) Was such risk submitted by a broker or brokers other than the undersigned licensee to companies authorized to transact business in New York State which write coverages of the kind requested in the regular course of business and was it declined by such companies?

YES

NO

(7) If "Yes", annex an affidavit from each such broker or brokers setting forth the information, and in the same format as this affidavit, requested in (2), (3), (4) and (5) above. (As required by Regulation 41, the affidavits of the licensee and other brokers must indicate a total of at least five declinations of such risk by authorized companies. [A> EACH DECLINATION MUST BE SUPPORTED BY THE APPROPRIATE EL-2 (DECLINATION) FORM WHICH IS TO BE RETAINED IN SUCH BROKER'S FILE FOR A PERIOD OF FIVE YEARS.] <A]

(8) (A) It applicable, the undersigned states that after diligent effort to place such insurance, he/she/it advised the above-named insured personally or by informing the insured's broker that (a part), (none) of the required insurance would be written by companies authorized to transact business in the State of New York which write coverages of the kind requested in the regular course of business.

(B) The undersigned states that he/she/it advised the insured's broker and/or the above named insured that the required insurance (was) (was not) offered to special risk insurers licensed pursuant to Section 168-d.

(C) If offered to special risk insurers, the undersigned states that he/she/it advised the insured's broker and/or the named insured personally that (a part), (none) of the required insurance could be written by special risk insurers pursuant to Section 168-d.

(9) If, as indicated in (8) above, less than the full amount of insurance required to cover the risk has been placed in one or more [A> AUTHORIZED <A] companies or group, state below the name [A> OF EACH <A] authorized company or group accepting part of such risk; the amount of insurance accepted; the percent of the total risk this amount represents; the inception date of the policy and the manual premium and the premium under Section 185(3) (if any).

AUTHORIZED COMPANIES ACCEPTING PART OF THE RISK

[See table inprinted version.]

(10) If all or part of such risk has been placed in one or more unauthorized insurers, state below the name of each [A> UNAUTHORIZED <A] insurer or group thereof accepting part of the risk; the amount of insurance accepted; the percent of the total risk this amount represents; the inception date of the policy or policies; the term of the policy or policies; the manual premium and the excess line premium (if any).

UNAUTHORIZED INSURERS ACCEPTING PART OR ALL OF THE RISK

[See table inprinted version.]

* For alien companies not having an NAIC code number, country of origin should be substituted.

(11) The undersigned states that he/she (it) placed the insurance shown above with the unauthorized insurers named in (10) above and that such insurance is only the excess over the amounts so procurable from authorized companies.

(12) The undersigned certifies that:

(A) Every policy or contract of insurance covering the above-mentioned risk which was procured by him/her (it) from the foregoing unauthorized insurer or insurers contains a service of process clause in the manner prescribed by Section 27.6(b) of Regulation 41;

(B) At the time of placement of such insurance, each such unauthorized insurer was not restricted by its domiciliary state or country in respect to the exportation of money to such extent as would interfere with its prompt payment of claims under the policy or contract of insurance;

(C) He/she (it) has made diligent investigation and has satisfied, himself/herself (itself) as to the following matters with respect to each unauthorized insurer:

(I) That each unauthorized insurer is authorized in its domiciliary jurisdiction to underwrite the type of risk placed with it by said licensee and has been so authorized to write such business in its domiciliary jurisdiction for a period of at least three full years preceding the placement of such risk by licensee;

(II) That the claim practices of each such unauthorized insurer and loss payments under policies or contracts of insurance issued by it have been and are being satisfactorily handled;

(III) That each such unauthorized insurer is trustworthy and competently managed;

(IV) That each such insurer has financial capacity adequate to its business and has a surplus to policyholders in the amount required by Section 27.5 of Regulation 41.

(D) He/she (it) has in his/her (its) possession the latest financial statement of each such unauthorized insurer and has advised the insured that such statements are available for inspection upon request by the insured;

(E) Where the policy or contract of insurance is issued by unauthorized foreign or alien insurers, the requisite trust fund or trust funds for the benefit of policyholders as prescribed by Section 27.5 of

Regulation 41 has been deposited and are being maintained;

(F) Where policy placed with unauthorized company contains assessment provisions subjecting the insured to possible liability for assessment, the undersigned has notified the insured of such possible liability for assessment;

(G) He/she/it has obtained a statement from the unauthorized insurer stating said unauthorized insurer is subject to Section 121 of the New York State Insurance Law, and Sections 27.6(c) and 27.6(d) of Regulation 41.

(13) Attach statement of deviations, if any, from declarations of Section (12) above.

Affidavit must be signed here in full by one member of the partnership or by one of the officers or directors of the corporation, who is a sub-licensee.

INDIVIDUAL LICENSE

(Signature of individual licensee)

PARTNERSHIP LICENSEE

(Name of Partnership Licensee)

BY:

(Signature of Member in full)

CORPORATE LICENSEE

(Name of Corporate Licensee)

BY:

(Signature of Officer or Director in full)

Subscribed and sworn to before me this _____ day of _____ 19 _____

Notary Public-Commissioner of Deeds

(Give date commission expires)

AFFIDAVIT BY INSURED

STATE OF NEW YORK

County of _____)

) ss.:

City of _____)

_____ (Name) being duly sworn, deposes and says that he/she resides or has a place of business at _____ (Street and Number) _____ (City or Village) _____ (State) _____ (Zip Code) and is hereinafter called the insured or is a member of the firm of _____ a partnership having its principal place of business at _____ (Street and Number) _____ (City or Village) _____ (State) _____ (Zip Code) hereinafter called the insured or is an officer, to wit, of _____ a corporation having its principal place of business at _____ (Street and Number) _____ (City or Village) _____ (State) _____ (Zip Code) hereinafter called the insured.

On _____, 19____ the insured directed _____ (Name of Broker) to obtain insurance in the amount of \$ _____ covering certain risk of the insured as set forth on the reverse side of this affidavit. Said broker advised insured that (only part of) or (no part of) the full amount of insurance required to cover the risk could be placed with or written by insurance companies authorized to transact business in the State of New York and that after diligent effort to procure such insurance, such insurance has been declined by such insurers except to the extent of a part thereof, to wit.

\$ _____
(Amount)

which as been accepted as follows:

| | |
|------------------------------|-----------------------|
| _____ | _____ |
| (Name of Authorized Company) | (Amount of Insurance) |
| _____ | _____ |
| (Name of Authorized Company) | (Amount of Insurance) |
| _____ | _____ |
| (Name of Authorized Company) | (Amount of Insurance) |

On being informed by said broker that such part of the desired insurance as has not been accepted by authorized insurers might be obtained from insurers not authorized to transact business in the State of New York, the insured directed said broker to attempt to obtain such insurance from unauthorized insurers.

THE INSURED WAS ADVISED BY SAID BROKER THAT THE INSURER (OR INSURERS) ACCEPTING OR ISSUING THE POLICY OR POLICIES TO THE INSURED COVERING THE AFORESAID RISK(S) IS (ARE) NOT AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF NEW YORK AND IS (ARE) NOT SUBJECT TO THE SUPERVISION OR REGULATION OF THE NEW YORK STATE DEPARTMENT OF INSURANCE. THE INSURED WAS ALSO ADVISED THAT, IN THE EVENT OF THE INSOLVENCY OF THE INSURER, THE

INSURANCE EVIDENCED BY SUCH POLICY OR POLICIES IS NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS.

The insured was advised that said broker has no right to receive or collect from insured, in connection with said broker's procurement or attempt to procure such insurance from one or more unauthorized insurers, any greater sum than the premiums fixed therefore by such insurer or insurers; unless, pursuant to Section 129 of the Insurance Law, said broker shall have obtained a written memorandum signed by the insured, specifying or clearly defining the amount or extent of such compensation. Insured was also advised that this does not affect the right of said broker to deduct from the amount of any premium payable to such unauthorized insurer or insurers, commissions payable to said broker by such unauthorized insurer or insurers. Insured was also advised that said broker is required to pay a tax of 3.6% on all gross premiums charged for insurance procured by him/her/it from unauthorized insurers.

Where the policy contains an assessment provision insured was informed that the policy issued or to be issued by the unauthorized insurer contains assessment provisions subjecting the insured to possible liability for assessment pursuant to the terms of the policy.

Have you been informed that this risk has been offered to companies licensed under Section 168-d (FREE TRADE ZONE)?

Yes No
(Circle One)

Risks sought to be insured:

| Description of Property | Location | Type of Insurance | Amount of Insurance |
|-------------------------|----------|-------------------|---------------------|
|-------------------------|----------|-------------------|---------------------|

(Signature of Insured)

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ day of _____ 19_____

(Notary Public-Commissioner of Deeds)

Form 768 (80)

(Give date Commission expires)