

October 21, 1981

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 21 (1981)

October 21, 1981

TO: ALL LICENSED EXCESS LINE BROKERS

RE: AFFIDAVIT BY EXCESS LINE BROKER [Form 768 (80)]

It has come to our attention that there is doubt as to what is meant by the word "kind" as used in Question # 3 of the Affidavit By Excess Line Broker [Form 768 (80)], which question reads as follows:

"Was the risk described in (2) above submitted by you to at least five unaffiliated 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 insurers?"

It is this Department's position that the use of the word "kind" in this connection is not intended to refer to the "kinds of insurance" enumerated in Section 46 of the Insurance Law but rather to refer to the "kind of insurance" needed by the applicant for insurance, so as to carry out the intent of subdivision 6 of Section 122 of the New York Insurance Law.

Said subdivision requires that an excess line broker make a diligent effort to procure, from any authorized insurer(s) the full amount of insurance required to protect the interest of the insured.

Furthermore, subdivision (a), Section 27.3 of Regulation 41 states, in pertinent part:

"An excess line broker may not procure insurance for a risk from any unauthorized insurer, unless such risk has been rejected by at least five unaffiliated authorized insurers as defined by Sections 4 (2) and 69-a (1)(b) of the New York State Insurance Law each of which writes coverages of the kind requested in the regular course of business in this State."

As an example, if a company does not write fire insurance for restaurants, although it writes fire insurance for other classes of risks, and the coverage sought by the insured is fire insurance an a restaurant, a submission to such company does not satisfy the requirement that an excess line broker make a diligent effort to procure the full amount of insurance from an authorized insurer.

Please acknowledge receipt of this letter to Stewart Keir, Principal Insurance Examiner, Insurance Exchange and Excess Line Bureau.

[SIGNATURE]

ALBERT B. LEWIS

Superintendent of Insurance