

September 29, 1986

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 16 (1986)

TO: All Licensed Excess Line Brokers and All Property and Casualty Insurance Companies

RE: Affidavit Forms Required By Regulation 41 and related forms EL-1 and EL-2

Pursuant to Section 2118 of the Insurance Law, as amended by Chapter 220 of the Laws of 1986, attached please find a copy of the simplified Affidavit by Excess Line Broker, Affidavit by Insured, and Affidavit by Broker as required pursuant to Regulation 41. These affidavit forms supersede the affidavits disseminated in Circular Letter No. 8 (1981). Regulation 41 requires that affidavits be consecutively pre-numbered. The material in the affidavits will be computerized so it is very important that the format and instructions be followed carefully.

Your attention is called specifically to item (4) on the broker's and excess line broker's affidavits regarding the responsibility to maintain information documenting the declinations by the authorized insurers.

Form EL-2 has been eliminated. The broker and/or excess line broker must maintain files supporting declinations by authorized insurers. An authorized insurer need not maintain underwriting submissions or other records with respect to any declination, i.e., EL-2, unless the Superintendent, after a hearing, finds substantial abuses of the declination process.

The above mentioned affidavits, copies of which are attached hereto, are to be used commencing October 1, 1986. These forms should be reproduced as needed, but without any change.

Form EL-1 as promulgated on November 25, 1980 has not been changed and is to be used in accordance with the instructions contained in Circular Letter No. 5 (1981) dated February 23, 1981.

Very truly yours,

[SIGNATURE]

JAMES P. CORCORAN

Superintendent of Insurance

PART A

AFFIDAVIT BY EXCESS LINE BROKER

(1) hereby affirms as true under the penalties of perjury that he/she is:

(A) A duly licensed excess line broker, license number 122- under Section 2105 of the Insurance Law, having his/her

principal place of business at:

(Street and Number) (City or Village) (State) (Zip Code)

(B) that he/she is the sub-licensee of which is a duly licensed excess line broker, license number 122- , with principal place of business at:

(Street and Number) (City or Village)

DELETE (A) OR (B) ABOVE, WHICHEVER IS INAPPLICABLE!

and that he/she or said partnership or corporation licensee was engaged by the insured named herein to obtain insurance against a certain risk described in (2) of this affidavit.

(2) (A) Name of insured

(B) Description of property

(C) Location of risk

(Street and Number)

(City) (State) (Zip Code)

(D) Type of insurance Code (Use appropriate Code from Form EL-1)

(3) Was' the risk described in (2) above submitted by you to unaffiliated companies each authorized in New York State to write coverages of the kind requested and was it declined by such insurers?

Yes No

(4) If "Yes", state below the name of each authorized company to which the risk described in (2) above was submitted, the name of the representative of such company by whom such risk was declined, and the reason for the declination.

PART B

AFFIDAVIT BY INSURED

hereby affirms as true under the penalties of perjury 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 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 covering certain risk(s) 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.

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) AS (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 above-mentioned risk which was procured by him/her/it from the foregoing unauthorized insurer or insurers was procured in full compliance with all applicable provisions of the New York Insurance Law and all applicable provisions of Title 11 of the New York Code of Rules and Regulations.

(11) Attach statement of deviations, if any, from declarations of Section (10) above.

Affidavit must be signed below in full and affirmed as true under the penalties of perjury by the individual licensee, or by one member of the partnership, or by one of the officers or directors of the corporation, who is a sub-licensee.

INDIVIDUAL LICENSEE

(Signature of Individual Licensee)

PARTNERSHIP LICENSEE

(Name of Partnership Licensee)

(Signature of Member)

(Name of Corporate Licensee)

(Signature of Officer or Director)

PART C

AFFIDAVIT BY BROKER

(I) hereby affirms as true under the penalties of perjury that he/she is:

(A) A duly licensed excess line broker, license number 119- under Section 2104 of the Insurance Law, having his/her principal place of business at:

(Street and No.) (City or Village) (State) (Zip Code)

(B) that he/she is the sub-licensee of which is a duly licensed excess line broker, license number 122- , with principal place of business at:

(Street and No.) (City or Village) (State) (Zip Code)

DELETE (A) OR (B) ABOVE, WHICHEVER IS INAPPLICABLE!

and that he/she or said partnership or corporation licensee was engaged by the insured named herein to obtain insurance against a certain risk(s) described in (2) of this affidavit.

(2) (A) Name of insured

(B) Description of property

(C) Location of risk

(Street and Number)

(City) (State) (Zip Code)

(D). Type of Insurance Code (Use appropriate Code from Form. EL-1)

(3) Was the risk described in (2) above submitted by you to unaffiliated companies each authorized in New York State to write coverages of the kind requested and was it declined by such insurers?

Yes No

(4) If "Yes", state below the name of each authorized company to which the risk described in (2) above was submitted, the name of the representative of such company by whom such risk was declined, and the reason for the declination.

(NOTE: Section 2118 of the New York Insurance Law provides that the number of declinations constituting diligent effort shall be three unless the Superintendent, after a hearing, determines that another number of declinations is appropriate in regard to particular coverages.)

	Name of Company	NAIC CODE	Name of Representative*	Dec. Code**	Month & Year of Dec.
1					
2					
3					

* Include affiliation of representative if other than company (agent etc.)

** CODES: 1 = Company's capacity reached

2 = Does not write this class of risk

3 = Specific underwriting reason

4 = Other

Affidavit must be signed below in full and affirmed as true under the penalties of perjury by the individual licensee, or by one member of the partnership, or by one of the officers or directors of the corporation, who is a sub-licensee.

INDIVIDUAL LICENSEE

(Signature of individual licensee)

PARTNERSHIP LICENSEE

(Name of Partnership Licensee)

By:

(Signature of Member)

CORPORATE LICENSEE

(Name of Corporate Licensee)

By:

(Signature of Officer or Director) (NOTE: Section 2118 of the New York Insurance Law provides that the number of declinations constituting diligent effort shall be three unless the Superintendent, after a hearing, determines that another number of declinations is appropriate. in regard to particular coverages.)

Name of Company	NAIC CODE	Name of Representative*	Dec. Code**	Month & Year of Dec.
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1

2

3

Include affiliation of representative if other than company (agent etc.)

CODES: 1 = Company's capacity reached

2. Does not write, this class of risk

3 Specific underwriting reason

4 Other

(5) Was such risk submitted by a broker or brokers other than the undersigned licensee to unaffiliated companies each authorized in New York State to write

coverages of the kind requested, and was it declined by such companies?

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Yes

No

(6) if Yes, annex an affidavit from each such broker or brokers using Part C - Affidavit by Broker. [Form 768(86)C]

(7) (A) If 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 in New York write coverages-of the kind requested.

(8)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.

(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 Article 63.

(8)If, as indicated in (7)(A) above, less than the full amount of insurance required to cover the risk has been placed in one or more authorized companies or groups. state below the name of each 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 term in months.

AUTHORIZED COMPANIES ACCEPTING PART OF THE RISK IF PLACED BY AFFIRMING EXCESS LINE BROKER

Name of Company	NAIC Code	Amount of Insurance Accepted	Percent of total Accepted	Inception Date of Policy	Policy Term in Months
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(9) If all or part of such risk has been placed in one or more unauthorized insurers, state below the name of each unauthorized 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; and the excess line premium (if any).

UNAUTHORIZED INSURERS ACCEPTING PART OR ALL OF THE RISK

Name of Company	NAIC Code	Amount of Insurance Accepted	Percent of total Accepted	Inception Date of Policy	Term in Mos	Excess Line Premium
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For alien companies not having an NAIC code number, country of origin should be substituted.

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 therefor by such insurer or insurers; unless, pursuant to Section 2119 'of the Insurance Law, said broker shall have obtained a written memorandum signed by the insured, specifying or clearly defining the amount or extent off such compensation. Insured was also advised that this does not affect the right of said compensation. 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 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.

Risks sought to be insured:

(A) Description of Property:

(B) Location of Risk

(Street and Number)

(City) (State) (Zip Code)

(C) Type of Insurance

(D) Amount of insurance

[ILLEGIBLE TEXT] UNDER THE PENALTIES OF PERJURY

(Signature of Insured)