

January 9, 1991

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 3 (1991)

TO: ALL LICENSED EXCESS LINE BROKERS EXCESS LINE ASSOCIATION OF NEW YORK

RE: FORMS REQUIRED BY SECTION 2118 AND REGULATION 41

Section 2118 of the Insurance Law has been amended several times in the last few years. These amendments result in changes in the procedures that excess line brokers must follow when placing insurance with unauthorized insurers.

This Circular Letter summarizes key statutory changes as they bear upon required forms, and supersedes: Circular Letter (unnumbered) dated November 26, 1956; Circular Letter No. 12 (1966) dated May 2, 1966; Circular Letter No. 5 (1967) dated October 11, 1967; Circular Letter No. 5 (1981) dated February 23, 1981; Circular Letter No. 7 (1981) dated February 26, 1981; Circular Letter No. 16 (1986) dated September 29, 1986; and Circular Letter No. 21 (1988) dated October 11, 1988. The detailed provisions of Section -2118, as amended, and Regulations 41 and 134 should be reviewed by every excess line broker. -

Attached are copies of newly revised affidavit forms ELANY 768(89)A Rev. 11/90 and ELANY 768(89)C Rev. 11/90 and, in addition, the currently used ELANY 768(89)B, which has not been revised. Parts A and C have been revised to ascertain if the risk has exposures both within and without New York. The revised affidavit forms are to be used for all new or renewal business placed on or after January 1, 1991. Also attached are Forms EL-1 and EL-3. Form EL-2 has been eliminated.

## I. AFFIDAVITS

Pursuant to Part 27 of 11 NYCRR (Regulation 41), these forms, consisting of Part A - affidavit by excess line broker, Part B - affidavit by insured, and Part C - affidavit by broker (where applicable), must be completed and executed by the respective parties in connection with any policy or policy renewal procured pursuant to Section 2118. With respect to placement of a purchasing group or purchasing group member, the same requirements exist, except that a single affidavit by excess line broker, Part A, and (when required) a single affidavit by broker, Part C, may be filed on behalf of more than one member of the purchasing group so long as the insurance for such member was procured during the pre 30 days., Part C is required whenever a broker (non-excess line broker) other than, or in addition to, the excess line broker submits the risk to authorized insurers, which declined the risk.

The completed affidavits, which are to be consecutively pre-numbered, together with the declarations page or cover note must be filed for recording and stamping with the Excess Line Association of New York (ELANY) at 195 Broadway, Suite 2003, New York, New York 10007 within 45 days after a policy is procured by the excess line broker.

## II. FORM EL-1

This form, required under Regulation 41, must be completed by the unauthorized insurer and filed in duplicate with

the New York State Insurance Department, Property and Casualty Insurance Bureau, Excess Line Unit, 160 West Broadway, New York, New York 10013, by March 15 of each year, indicating the premium volume for the prior calendar year. A New York risk may not be placed with an unauthorized insurer, unless the Form EL-1 has been filed by that insurer. Instructions for completing EL-1 accompany the form.

### III. FORM EL-2

Even though this form has been eliminated, the broker or excess line broker must maintain information documenting the requisite declinations by authorized insurers.

### IV. FORM EL-3

Pursuant to Regulation 41, this form, entitled Tax Allocation Report, must be completed and attached to the excess line broker's affidavit where a placement or renewal of excess line insurance, effective on or after July 1, 1990, covers property or risks located for resident both in and out of this State. This form shall be used to compute the tax payable to the Superintendent pursuant to Sections 2118 and 9102 on that portion of the policy premium attributable to property or risks resident in this State, as determined by reference to an allocation schedule now contained in Regulation 41.

If the allocation schedule does not identify a classification appropriate to the property or risk insured, then the excess line broker can pay the tax pursuant to an alternative equitable method of allocation. In that event, as indicated in the footnotes to Form EL-3, an explanatory memorandum must be attached, describing the property or risk and supporting the alternative equitable method of allocation used. ELANY has its own version of Form EL-3, which has been incorporated into affidavits Part A and Part C. ELANY's version of the Form EL-3 may be used in lieu of the Department form. Forms EL-1 and EL-3 should be reproduced as needed.

### V. PREMIUM TAX STATEMENT

Pursuant to Regulation 41, the premium tax statement must be executed and filed by the excess line broker, in duplicate, with the Insurance Department's Bureau of Taxes and Accounts located in Albany, annually by March 15 on a form prescribed by the Superintendent and available at the Insurance Department's Albany and New York City offices. Fire premiums must be allocated by city, village, fire district or fire protection district. The premiums reported are based on premiums written, as opposed to premiums received. Premium taxes at the rate of 3.6% are based on gross premiums charged to insureds, less the amount of return premiums.

The tax obligation is imposed on the excess line broker and not on the insured, pursuant to Section 2118 of the Insurance Law. Therefore, if an excess line broker wishes to collect the amount of the tax from the insured, a written memorandum pursuant to Section 2119 of the Insurance Law, signed by the party to be charged, must be secured which clearly specifies the amount and purpose.

Any questions concerning this Circular Letter should be directed to Stephen R. Solomon (212-602-0270), Principal Insurance Examiner, in the Property & Casualty Insurance Bureau.

Very truly yours,

[SIGNATURE]

SALVATORE R. CURIALE

SUPERINTENDENT OF INSURANCE