

January 9, 1991

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 4 (1991)

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

RE: PLACEMENT OF COVERAGE WITH UNAUTHORIZED INSURERS WHEN COVERAGE IS AVAILABLE IN A RESIDUAL MARKET

Prior to placing any policy with an unauthorized insurer, a New York licensed excess line broker must make a diligent effort, including obtaining three declinations from licensed insurers, to procure insurance in the authorized market, pursuant to Section 2118 of the Insurance Law.

As stated in Circular Letters No. 7 (1970), dated May 7, 1970, No. 6 (1975), dated July 14, 1975, and No. 25 (1982), dated November 8, 1982, coverage available in a residual market in this State cannot be placed in the unauthorized market, in the "exercise of due care and diligence" required by Section 21.18 on the part of an excess line broker. This proposition is restated in this Circular Letter, which, therefore, supersedes the aforementioned Circular Letters. Placement with an unauthorized insurer, if and to the extent that the desired coverage is available directly from an authorized insurer or through the residual market, would violate Section 2118 and Regulation 41. To date, the following residual markets have been mandated by the Legislature:

A. New York Automobile Insurance Plan (NYAIP) -

Established under Article 53 of the Insurance Law, NYAIP provides bodily injury liability, property damage liability, medical payments, personal injury protection and physical damage coverages to New York motorists unable to find coverage in the voluntary market.

The types of risks and vehicles eligible to be placed in the NYAIP as well as the extent of coverages available are detailed in the NYAIP manual. For example, both comprehensive and collision coverages are available for private passenger vehicles up to \$ 25,000 actual cash value, subject to optional deductibles of not less than \$ 100.

B. New York Property Insurance Underwriting Association (NYPIUA)

Established under Article 54 of the Insurance Law, NYPIUA provides fire insurance, extended coverage, and coverage for additional perils to any person, with an insurable interest in insurable property, unable to obtain such coverage in the voluntary market. By statute, the amounts of coverage shall not be in excess of \$ 1.5 million for insurable real property or the tangible personal property thereon.

Pursuant to Section 5412, under appropriate circumstances, the Superintendent may also activate NYPIUA to provide commercial risk, public entity and professional liability insurance types of coverages but, thus far, has not activated minimum for any such coverage.

C. Medical Malpractice Insurance Association MMIAI

Established under Article 55 of the Insurance Law, MM1A provides medical malpractice insurance coverage for hospitals, physicians, surgeons and other health professionals and facilities as specified in Section 5501(b)8c(c) of the Insurance Law, where such coverage is not available in the voluntary market.

Generally, MMIA coverage is available for up to \$ 1 million per claimant and \$ 3 million for all claimants under one policy in any' one year.

An excess line broker may place with an unauthorized insurer any portion of insurance beyond the levels that can be placed in the authorized voluntary and residual markets. However, the fact that higher deductibles are obtainable from unauthorized insurers or premium rates are lower does not furnish a proper basis for placement of coverage with unauthorized insurers.

Very truly yours,

[SIGNATURE]

SALVATORE R. CURIALE

SUPERINTENDENT OF INSURANCE