

**NEW YORK STATE
INSURANCE DEPARTMENT**

**ELEVENTH AMENDMENT TO REGULATION 41
11 NYCRR 27**

**Excess Line Placements
Governing Standards**

I, Kermit J. Brooks, Acting Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2130, 3103, 9102 and Article 59 of the Insurance Law do hereby promulgate the following Eleventh Amendment to Part 27 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Regulation No. 41), to take effect upon publication in the State Register, to read as follows:

(New Matter Underscored, Matter In Brackets Deleted)

Section 27.3 (a) is hereby amended to read as follows:

(a) [No] Except as provided in subsection (g), no excess line broker shall place coverage for a risk with any unauthorized insurer, unless the risk has been declined by at least three authorized insurers, each of which is authorized in this State to write insurance of the kind requested and is an insurer that the excess line broker has reason to believe might consider writing the type of coverage or class of insurance involved. An excess line broker shall be considered to have reason to believe that an authorized insurer might consider writing the type of coverage or class of insurance if the decision to offer the risk to such authorized insurer was based on any of the following:

Section 27.3 (g) is hereby amended to read as follows:

(g)(1)(i) Pursuant to the provisions of Section 2118(b)(4) of the Insurance Law, the superintendent has determined that an excess line [brokers] broker shall not be required to comply with the provisions of subdivisions (a), (b) and (c) of this section with regard to the placement of any of the following coverages:

Coverage

Amusement Parks and Carnivals

Property and/or liability coverage for the owners/operators of amusement parks, theme parks and carnivals.

Amusement Rides and Devices

Property and/or liability coverage for the owners/operators of amusement rides and devices including bumper cars, go-carts and go-cart[s] tracks, giant slides, skateboard tracks, roller-blade tracks, etc.

Animal Mortality

Coverage against the death of any domesticated or wild animal from any cause.

Armored Car, Couriers or Check Cashing Operations

Crime coverage for armored car services, couriers transporting valuable documents and securities, and check cashing operations.

Auto Racing and Automobile Race Track Liability

Coverage for claims of spectators, participants or other third parties in connection with the operation of an automobile race track or drag strip, or the staging or conduct of an automobile race.

Automobile Personal Injury Protection (PIP) Excess of \$150,000

First party, New York No-Fault PIP benefits, excess of \$150,000.

Blood Banks; Blood and Organ Facilities Liability

Liability coverage for facilities that primarily deal with the collection, storage and distribution of blood, blood products and human organs.

Boats and Yachts

1. High Speed Boats - Property and liability coverage for the owners and operators of boats capable of attaining speeds in excess of 40 miles per hour[; or].
2. Boat Rentals - Property and liability coverage for the owners and operators of boat rental facilities.

Commercial Excess and Umbrella Liability

1. Coverage for commercial excess liability where the underlying policy limits or self insured retention is at least \$10,000,000 per occurrence.
2. Coverage for commercial umbrella liability where the underlying automobile and general liability policies or self-insured retentions contain limits of at least \$10,000,000 per occurrence.

Commercial Property

1. Coverage for commercial excess property insurance where the policy provides in excess of \$50,000,000 in underlying coverage.
2. Primary or excess property insurance coverage for property used for business purposes when the total insured values exceed \$200,000,000.

Contract Frustration

Coverage as defined in section 1113 (a)(17)(E) of the Insurance Law.

Employed Lawyers Liability

Employed lawyer's liability insurance for lawyers who are employed as lawyers by a business entity and not a law firm.

Environmental Impairment/Pollution Liability

Liability coverage and/or pollution clean-up expense [coverage] risks or coverages for the following:

- Asbestos Abatement Contractors;
- General Pollution Liability;
- Environmental Impairment;
- Lead Abatement Contractors;
- Hazardous Waste Disposal Sites;
- Hazardous Waste Haulers and Shippers;
- Hazardous Waste Site Mitigation Contractors;
- Radon Mitigation Contractors;
- Radon Testing Firms;
- Underground Storage Tanks – Marketers; and
- Underground Storage Tanks - Non-Marketers.

Explosives, Munitions or Fireworks - Manufacturing or Display

Property and/or liability coverage for the manufacturer of explosives, munitions or fireworks and firms [which] that produce fireworks displays and exhibitions.

Fine Arts Dealers

All-risk or named perils coverage for property held for sale by fine arts dealers.

Flood Insurance

1. Flood Insurance Excess of Maximum Limits available from the Federal Flood Program[; or].
2. Primary Coverage on Property not eligible for Federal Flood Program.

General Liability, Owners, Landlords and Tenants and/or Manufacturers and Contractors

1. Primary or excess liability coverage for general contractors, subcontractors, and all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure.
2. Owners Contractors Protective - primary or excess liability coverage purchased by a contractor to protect the interests of the property owner relating to a specific construction project.

Golf Driving Range Liability

Personal injury or property damage liability coverage associated with the operation of a driving range, *e.g.*, flying golf balls, improperly wielded golf clubs, etc.

Horseback Riding Establishments

Coverage for riding academies and pony rides.

House Movers and Building Demolition Contractors

Coverage for liability arising out of the moving of a house or the demolition of a building. For example, injury caused by falling brick, flying debris, etc., and structural or other damage to a house being moved.

Lead Liability Insurance

Coverage for personal injury resulting from the ingestion or inhalation of lead or lead dust.

Liquor Law Liability Coverage

Monoline liquor law liability coverage for taverns and restaurants only where liquor sales exceed 75% of total sales revenue.

Prize Indemnification

Coverage as defined in section 1113 (a)(27) of the Insurance Law.

Product Liability Insurance

Product Liability Coverage for the following classes of [risk] risks or coverages only:

- Aircraft Parts Manufacturers;
- Automobile Parts Manufacturers;
- Bioengineered Products;
- Farm Equipment Parts Manufacturers;
- Firearms Manufacturers;
- Helmet Manufacturers; and
- Pharmaceutical Products Manufacturers.

Product Recapture or Recall Insurance

Coverage for damages associated with the withdrawal, inspection, repair, replacement or loss of use of the insured's products or work, if such products, work or property are withdrawn from the market or use due to known or suspected defect or deficiency.

Recreational Guide Services

Coverage for outfitters and guides for camping, hiking, rafting and similar recreational activities.

Security Guards - Armed and/or Using Dogs

Professional Liability coverage for security guard firms which provide guards using firearms or dogs.

Skating Rinks

Liability coverage for injury to participants and spectators in ice and roller skating rinks.

Ski Area Liability

Liability coverage for owners and operators of ski resorts, ski lifts, ski equipment sales and rental, ski lessons, ski trail maintenance, snow-making operations, etc.

Special Events

Primary or excess liability coverage for unique exposures of limited duration, which require varied and specialized terms, conditions and coverages generally issued to sponsors, organizers, performers and participants of trade shows, parades, flea markets, concerts, fairs and other similar events.

Special Multi Peril Coverage

Primary or excess liability coverage for general contractors, subcontractors, and all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure when the coverage is packaged along with property coverage.

Tractor Pulls/Mud Bogs

Liability coverage for claims of spectators, participants or other third parties in connection with the operation of organized exhibitions, races or demonstrations primarily involving “Monster” trucks, tractors and similar off-road vehicles.

Vacant Commercial Property

Primary or excess property insurance for vacant or unoccupied buildings used for commercial purposes.

Warehouseman’s Liability

Coverage for the liability of a warehouse owner [and/or] or operator for loss or damage to the lawful goods of others in [their] owner’s or operator’s care, custody or control.

(ii) Pursuant to the provisions of Section 2118(b)(4) of the Insurance Law, the superintendent has determined that an excess line broker need only obtain two declinations from authorized insurers for the following risks or exposures:

Primary or excess Errors and Omissions/Miscellaneous Professional Liability Coverage (other than Medical Malpractice Insurance as described in

subsection (e)(1)(ii) of this section), including general liability coverage (if included in the same policy) with respect to the following risks or coverages:

Alcohol and/or drug rehabilitation centers;

Alcohol and/or drug rehabilitation programs;

Residential facilities including convalescent centers, nursing homes, and assisted care facilities;

Day care centers for adults, children or the physically or mentally disabled;

Group homes for adults, children or the physically or mentally disabled;

Halfway houses for adults, children and/or the physically or mentally disabled;

Hospices care service providers;

Social services agencies;

Foster care service providers; and

Home health care providers.

I, Kermitt J. Brooks, Acting Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Eleventh Amendment to Part 27 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 41), entitled "Excess Line Placements Governing Standards", promulgated by me on August 17, 2009 pursuant to the authority granted by Sections 201, 301, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2130, 3103, 9102 and Article 59 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on June 17, 2009. No other publication or prior notice is required by statute.

Kermitt J. Brooks
Acting Superintendent of Insurance

August 17, 2009