

Bulletin 328

Placement of Insurance in Surplus Lines Market

When licensed insurance producers are unable to place coverage with an admitted carrier after a diligent search, the Surplus Lines chapter of the Maine Insurance Code allows the coverage to be placed with certain nonadmitted carriers, as long as some specific requirements are observed. These provisions are found at 24-A M.R.S.A. §§ 2001 – 2020.

The Bureau of Insurance has issued two previous Bulletins on this subject: Bulletin 106 in 1972, and Bulletin 185 in 1991. Although a number of general principles remain valid, changes in the law have rendered various sections of those Bulletins outdated. This restatement updates those provisions, and supersedes the prior Bulletins.

The basic rule is found at Section 2004 of the Code:

If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

1. The insurance must be procured through a licensed producer with surplus lines authority.
2. The desired coverage is necessary for the adequate protection of a risk in the State.
3. It may be written under the laws of this State by an authorized insurer.
4. The insurance is not available after diligent effort has been made to place the coverage with authorized insurers.

As indicated, only producers with surplus lines authority on their licenses may procure this coverage. If a producer without this authority needs such coverage, that producer must work with a licensee who has surplus lines authority. Section 2014 allows the producer with surplus lines authority to accept and place surplus line business for any insurance producer licensed in this State for the kind of insurance involved, and to compensate the producer for the business.

Surplus lines coverage is intended to be the exception rather than the rule. It is therefore important to note the "diligent effort" requirement, listed above. This means that surplus lines coverage is not an option if coverage for the risk in the admitted market is available to the producer.

Two examples of inquiries to the Bureau help to illustrate this point. Although surplus lines coverage is often more expensive than coverage in the admitted market, at times a surplus lines insurer might offer a lower premium to the insured, compared to similar coverage terms from an authorized insurer. Since the law specifies that the surplus lines market may only be used if the insurance is not available after diligent effort to place the coverage with authorized insurers, the lower premium is not sufficient to allow use of the surplus lines market.

In addition, a producer's loss of an appointment with an insurer does not render the coverage unavailable, if the company is willing, or as in the case of personal property and casualty coverage, required to retain the insured. Therefore it would not be appropriate to place the insured in the surplus lines market solely for this reason.

Some types of coverage may not ever be placed in surplus lines. Section 2002-A(1) lists these lines: life insurance, health insurance, and employee benefit excess insurance. Also, the workers' compensation laws require such coverage to be through authorized insurers. Therefore, surplus lines is essentially a property and casualty insurance concept, other than workers' compensation.

Conversely, certain coverages may be placed in surplus lines as needed, without adhering to the procedures specified in §2004 requiring a diligent search in the admitted market. Section 2002-A(3)

lists these: A. Wet marine and transportation insurance; B. Insurance on subjects located, resident or to be performed wholly outside of this State, or on vehicles or aircraft owned and principally garaged outside this State; C. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations; or D. Insurance on aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight, or cargo of such aircraft, or against liability other than workers' compensation and employer's liability arising out of the ownership, maintenance or use of such aircraft. Under Chapter 72-A of the Code, liability insurance purchased through a risk purchasing group is also exempt from the diligent search requirement.

In addition, if the Superintendent of Insurance determines that there is not a reasonable or adequate market for certain lines, the Superintendent may issue an order which would also exempt those lines from the diligent search requirement.

Although surplus lines insurers are, by definition, not licensed in this State, they do need to be eligible under the surplus lines laws. The Superintendent publishes a periodic list of eligible surplus lines insurers, under §2007. The status of eligibility is not a license; presence on this list only indicates that the insurer appears to be sound financially and to have satisfactory claims practices, and that the superintendent has no credible evidence to the contrary. A producer may not knowingly place surplus lines insurance with an insurer that is unsound financially or that is ineligible. The list of eligible surplus lines carriers, which changes from time to time, is accessible from the Bureau's website, under "Insurance Company Services:" <http://www.maine.gov/pfr/insurance/company/index.htm>

Upon placing surplus lines coverage, the producer is required to promptly issue and deliver to the insured evidence of the insurance, consisting either of the policy as issued by the insurer, or, if such policy is not then available, the surplus lines producer's certificate. Section 2008 specifies the detailed information such certificate must contain, and should be consulted directly for specific cases.

Surplus lines coverage provides insureds with less protection, and regulators with less recourse, in matters such as the surplus lines carrier's financial stability and accountability for claims practices, as compared to licensed insurers. Therefore the law requires the following notice to be displayed on each such contract: "This insurance contract is issued pursuant to the Maine Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Maine Bureau of Insurance." The contract must also bear the name of the producer with surplus lines authority who procured it.

Previous versions of the law required surplus lines producers to file monthly reports of their activity with the Superintendent. Presently, under §§2015 and 2016, surplus lines producers must keep full and true ongoing reports of each transaction, as well as a monthly report. These reports, however, are kept in the producer's office, and are to be provided upon the Superintendent's request.

Surplus lines premiums are subject to a 3% premium tax. The surplus lines producer is responsible for remitting this tax to Maine Revenue Services. More information regarding this tax and the applicable procedures and forms is available directly from Maine Revenue Services. <http://www.maine.gov/revenue/>

Addendum: The Surplus Lines chapter in the Maine Insurance Code is available on the internet: <http://legislature.maine.gov/legis/statutes/24-A/title24-Asec2012.html>

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