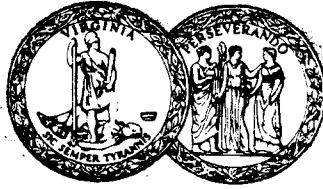


JAMES W. NEWMAN, JR.  
COMMISSIONER OF INSURANCE

W. G. FLOURNOY  
FIRST DEPUTY COMMISSIONER

COMMONWEALTH OF VIRGINIA



BOX 1157  
RICHMOND, VA. 23209  
TELEPHONE (804) 786 - 3

STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE

August 18, 1981

**Administrative Letter 1981-11**

TO: All Surplus Lines Brokers Licensed in Virginia

The Bureau of Insurance has noticed a growing number of cases where affidavits filed with the Bureau are not in compliance with the Surplus Lines Insurance Law.

Section 38.1-327.52 of the Code of Virginia requires that affidavits must be filed with the Bureau, executed by the surplus lines broker and the insured, stating that the surplus lines broker and the insured were unable, after diligent effort, to procure the insurance from insurers licensed to transact and actually writing insurance business in this State in the full amount of insurance of that kind and type of insurance. Further, the affidavit must state that such surplus lines insurance was not procured for the purpose of securing advantages as to premium rate nor as to terms of the insurance contract. The affidavit must be filed with the Commission no more than 15 days after the insurance is procured and at least 15 days before any premium has been remitted by the surplus lines broker.

For this purpose, the term "procured" is interpreted to mean the date the insurance was actually obtained from the insurance company, the inception date of the coverage as indicated on the affidavit, or the date the insured signs the affidavit, whichever date is earliest. The 15-day filing requirement commences from the earliest such date.

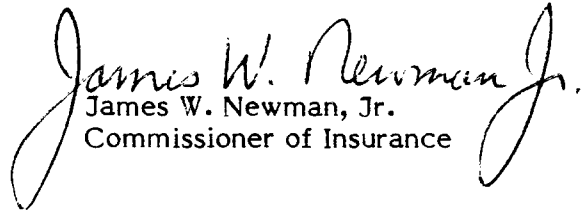
An increasing number of affidavits are being received well past 15 days after the insurance is procured; in fact, a number are being received months after the insurance was procured.

The Bureau has also noticed that several brokers are using pre-printed forms where the names of the companies declining the risk and of the company underwriters rejecting the risk are pre-printed on the form. The pre-printing of such names does not indicate a good faith, diligent search on behalf of the insured. It presents a potential exposure to charges of false swearing on an affidavit if the underwriter who is shown on the form actually did not specifically decline the individual risk, or if, in fact, the declining company shown on the form does not actually write in Virginia that kind and type of insurance or type of risk.

Further, it appears that several brokers are using the surplus lines market to obtain a competitive advantage as to premium rates or as to terms of the insurance contract. An example of this is the writing of an umbrella contract in the surplus lines market when the coverage is readily available in the commercial primary market but at a higher price. This also appears to be in violation of the Surplus Lines Insurance Law.

Please be advised that the Bureau of Insurance intends to enforce fully each of the provisions of the Surplus Lines Insurance Law. Surplus lines brokers and their employees should familiarize themselves with the correct procedures to follow in placing surplus lines business so as to avoid penalties for violation of the Surplus Lines Insurance Law.

Sincerely,

  
James W. Newman, Jr.  
Commissioner of Insurance

JWNjr:dj