State of North Dakota

# Office of the Commissioner of Insurance

*J. O. Wigen, Commissioner*

State Capitol Building

Bismarck, North Dakota 58505

Phone: (701)-224-2440

Memorandum To: Licensed Surplus Lines Brokers

Date : April 15, 1981 Bulletin 81-3

It is becoming increasingly evident that the Surplus Lines Broker's License is being used in a manner not originally intended by the legislature. Insurance is not to be written in a surplus lines company if it would be acceptable to an admitted carrier; the insured must have made a diligent search before resorting to the surplus lines market. Apparently, the law is being abused or overlooked in some instances.

This department, therefore, feels an obligation to point out some of the important features of the law as outlined in the North Dakota Century Code 26-09.2:

1. The affidavit is, according to the code, to be filed before the insurance is effective. (This is discussed later in this memo.)

2. The insured must have made a diligent search to procure the coverage from a company authorized to do business in North Dakota.

3. Every policy shall be endorsed "...issued in an unauthorized company, under agent's license No.____," which endorsement shall be properly filled in and signed by the agent.

4. If any surplus lines broker shall falsify the affidavit referred to in Section 26-09.2-04, the surplus lines license of such broker shall be immediately revoked by the commissioner.

5. A surplus lines insurance broker shall not knowingly place "surplus line" insurance with insurers financially unsound. The surplus lines insurance broker shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith.

We are at this time pointing out the above provisions of the surplus lines laws to emphasize that there are serious responsibilities placed upon the surplus lines broker in exchange for the privileges allowed.

The surplus lines market is definitely not to be used to compete with the admitted carriers nor to secure a lower premium than would be accepted by an authorized insurer. In fact, high or low premium is not the yardstick to use. If it is available in an admitted carrier, it should not be written in a surplus lines company, at any price.

In regard to item no. 1 above, the filing of affidavits, the following rules will apply effective May 1, 1981:

1. Affidavits are to be filed with this department no later than ten (10) days before the coverage involved is effective.

2. This department will review all affidavits filed to determine compliance with the North Dakota Century Code.

It is hoped that this memorandum answers some questions and conveys this department's concern over the surplus lines operations in North Dakota.

In order to answer any further questions you may have and to discuss this subject in general, I call upon all North Dakota licensed surplus lines agents and other interested persons to attend a meeting in Bismarck. The date will be Friday, May 15, 1981, at 1:30 p.m. in the Large Hearing Room in the State Capitol Building. I urge you to attend this very important meeting.

J. O. Wigen
Insurance Commissioner

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Please direct all inquiries concerning this bulletin to:

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