



# LEGISLATIVE POSITION

Professional Insurance Agents of New York State Inc.

25 Chamberlain St.  
P.O. Box 997  
Glenmont, NY  
12077-0997  
(518) 434-3111

**LEGISLATIVE  
REPRESENTATIVES**  
Patricia Lynch  
Allison Lee

**ASSISTANT  
EXECUTIVE DIRECTOR**  
*for Government/Industry  
Affairs*  
Ellen D. Kiehl, Ph.D.

**GOVERNMENT AFFAIRS  
COUNSEL**  
Matthew F. Guilbault, Esq.

**EXECUTIVE  
DIRECTOR**  
Diane Fowler, CAE

**Statement re: In support of the proposed expansion of the export list**

**To:** New York State Insurance Department

**By:** Professional Insurance Agents of New York State Inc.  
Dan Corbin, CPCU, CIC, LUTC  
Director of Research

**On:** June 13, 2008  
Fifth Floor, Neil Levin Hearing Room  
25 Beaver St.  
New York, N.Y. 10004

My name is Dan Corbin and I am speaking today on behalf of the Professional Insurance Agents of New York State Inc., where I serve on staff as the director of research.

I appreciate the opportunity to testify on behalf of retail agents and brokers. The Professional Insurance Agents of New York State Inc. is a trade association for professional insurance agents and brokers throughout the state. It is a state affiliate of the National Association of Professional Insurance Agents.

PIANY currently represents the interests of about 2,000 members, who collectively employ over 20,000 employees. Our New York members serve the insurance needs of more than 2 million households and 750,000 businesses throughout the state.

## **Motivation**

As you know, the excess line broker is the statutory gatekeeper for placing policies in the excess line market. When a retail producer is unable to secure coverage from an authorized insurance company, the retail producer turns to an excess line broker. The marketing problems our members have range from being unable to identify **any** authorized insurer that will truly entertain the types of risks proposed to be added to the export list to matching a specific risk with the **well-communicated** restrictive underwriting criteria of an authorized insurer. Rarely is the retail producer in doubt about the underwriting appetite of authorized insurers for these risks.

We actively inform our members of the requirements of Regulation 41, which prohibits placement with an unauthorized insurance company when coverage can be obtained from an authorized insurance company. We understand that the department is hesitant about expanding the list of risks that can be exported without obtaining bona fide

-more-

Statement re: In support of the proposed expansion of the export list

June 13, 2008

Page 2

declinations. However, due to an acute lack of availability of coverage for certain risks, even in this extremely “soft” market, we are appearing today to speak on behalf of our members in favor of the proposed expansion of the export list.

**Retail producers have no incentive to place policies in the excess line market if it is available elsewhere.** Allow me to cite some of the reasons our members relayed to me in my conversations with them.

First of all, many of the members I have spoken to are very concerned about their lack of control over servicing the policy account when they have no direct access to the underwriter.

Also, since forms and endorsements are not likely to be standard in the excess line market, the retail producer must take more care and time to read each one.

The retail producer is not comfortable selling policies that are excluded from the safety net of the Property/Casualty Insurance Security Fund. This could make the producer more vulnerable in the event of insolvency of the insurance company.

There also are the time and expense of meeting the regulatory requirements for excess line placements. One of our members says the process adds 21 separate pieces of information for every placement. There also are the time and expense of operating outside of the agency’s mainstream procedures and relationships with contracted insurance companies.

And, of course, we can’t overlook the fact that the retail producer shares commissions with the wholesale broker. Does the producer really want to get paid 6 to 7 percent of the premium when he could get paid 15 percent of the premium?

Whether motivated by the policyholder’s interests or their own, retail producers are going to **prefer** the authorized market, regardless of the dictates of regulation.

### **Market causes**

I understand the reluctance of regulators in reacting too quickly to some market disruptions—for example, market cycles. However, the availability problem with the risks proposed to be added to the export list is not a **temporary** problem.

PIANY has been tracking the problems with contractors and coastal property risks, in particular, for a number of years by means of surveys. We are in the competitive end of the current market cycle and these risks are still hard to place. They can only get worse as the market hardens on the other end. This is because the underlying cause for insurance unavailability is not tied to the market, but is dependent on factors beyond the market’s control—for example, weather, risk concentration, problematic statutes, troublesome case law and inherent hazards.

-more-

Statement re: In support of the proposed expansion of the export list

June 13, 2008

Page 3

I have personally spoken with PIANY members during the past few weeks about their experience with two specific categories of risk. I spoke with five members who write homeowners located in Nassau County and Suffolk County and I spoke with 11 members who write contractors throughout the state. Some of these have provided written testimony that I am submitting to you this morning.

### **Coastal homeowners**

Two members stated they have been unable to obtain contracts with authorized insurance companies for homeowners policies in Nassau and Suffolk counties.

Clearly, proximity to the shore is a major underwriting factor with authorized insurers. Another common criterion is the property value. It is easier to place high-valued homes with very high deductibles and shutter protection, which leaves the low-to-middle-valued homes underserved. It is generally recognized that many homes close to the water are considered ineligible by the insurance companies' underwriting guidelines.

In our last coastal market survey of June 2007, it was reported that 86 percent of our members placing homeowners policies in Nassau County were using the excess line market—a significant increase over the prior year. It also was reported that 82 percent were using the excess line market in Suffolk County. In addition, we found that about half the agents in Suffolk County (49 percent) and Nassau County (55 percent) say they can “never” place coastal homeowners risks with their regular companies.

In an earlier survey conducted last year, we asked members to weigh in on various steps that could be taken to improve their market access. Two thirds (67 percent) of Nassau and Suffolk County members said “yes” to adding coastal homeowners to the export list.

### **Contractors**

The members I spoke with about contractors typically contracted with two authorized insurance companies that would entertain such risks. However, these companies had very restrictive underwriting guidelines. While there was some variation in the restrictions cited by our members, nearly all found it impossible to place contractors who subcontract a significant amount of the work, who had carpentry classifications, and who did not meet certain thresholds for the amount of premium, payroll or receipts. Members also reported restrictions on locations, such as New York City, Long Island and airports. One member reported a five-employee limitation. Electricians and plumbers seemed to get the most favorable treatment.

In short, our members have access to very few authorized insurance companies for construction risks. These companies are very selective and have clearly communicated to the producers their acceptable underwriting criteria. Getting declinations under these circumstances is nothing more than a nuisance to everyone involved and it contributes nothing to the objectives envisioned under the excess line law.

- more -

Statement re: In support of the proposed expansion of the export list

June 13, 2008

Page 4

**Regulatory flexibility**

In closing, I would like to note that the superintendent has authority under Section 2118 to review its export list determination at least annually. If it appears that markets for these risks have changed, or that placing any of these risks on the export list has shifted the market significantly, then their inclusion on the export list can easily be reversed. It is not necessarily a permanent determination and, in fact, the statutory basis for this list suggests that it is meant to be fluid with market developments.

This concludes PIANY's statement. I will be glad to answer any questions you may have.