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134

PROPOSED AMENDMENT TO SB 134

SB 134, line 21-24 should be modified to read as follows:

21.33.180 (a) "A surplus line broker shall ascertain the financial condition of an insurer before placing insurance with the insurer. A broker may not place or renew surplus line insurance with an insurer which the broker knows or should with due diligence, determine to be financially unsound,...[Emphasis on language recommended to be added-other language as per amendment proposed by SB 134]."

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 134 Date on Bill: 2/22/83
 Title: An Act relating to surety bond and financial requirements for insurers
 Sponsor: Mulcahy or surplus lines.
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital		0	0	0
Operating		0	0	0
Total		0	0	0

b. Revenues:

Revenue		0	0	0
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Kenneth C. Moore, Director Phone: 465-2515
 Division: Insurance Date: 3/9/83
 Approved by Commissioner: Richard A. Lyon Date: 3/9/83
 Department: Commerce and Economic Development

5. Distribution:

Original to Legislative Finance
 Copy to OMB
 Copy to Sponsor
 Copy to Requestor

2/15/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 134 Date on Bill: 2/22/83
 Title: An Act relating to surety bond and financial requirements for insurers of surplus li.
 Sponsor: Mulcahy
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures: -0-

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue				

2. Source of funds to offset fiscal impact of bill:

N/A

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the GMB in the Office of the Governor.

Prepared By: John Haywood Phone: 465-2180
 Division: Risk Management Date: 3/4/83
 Approved by Commissioner: Lisa Rudd Date: 2/15/83
 Department: Administration

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/8/8

Article 2. Surplus Lines.

Section

- 160. Filing surety bond as a condition to license
- 180. Financial requirements for insurers of surplus lines
- 310. Exemptions from surplus line law

Editor's notes. — The article head set out above applies to AS 21.33.080 — 21.33.330 in the original pamphlet.

Sec. 21.33.160. Filing surety bond as a condition to license. Before receiving a license the applicant shall file with the department a surety bond in favor of the state in the penal sum of \$25,000. The bond shall be issued by an authorized corporate surety approved by the department. The bond shall be conditioned on the conduct of business under the license in conformity with the provisions of AS 21.03.010 — 21.90.110, including the payment of all taxes required to be paid by AS 21.03.010 — 21.90.110. The applicant shall keep the bond in effect during the period of the license. The surety may terminate the bond by giving at least 30 days written notice to the department. (§ 1 ch 120 SLA 1966; am § 1 ch 34 SLA 1970)

Effect of amendments. — The 1970 amendment inserted "with the department" in the first sentence, substituted "25,000" for "5,000 with the department" in that sentence, substituted "including" for "and" in the third sentence, and substi-

tuted "days" for "days'" in the last sentence. Legislative history reports. — For report on ch. 34, SLA 1970 (HB 596 am), see 1970 House Journal, p. 476.

Sec. 21.33.180. Financial requirements for insurers of surplus lines. (a) A surplus line broker shall ascertain the financial condition of an insurer before placing insurance with him. A broker may not place surplus line insurance with an insurer which he knows to be financially unsound, nor may the broker place surplus line insurance with an insurer which has capital and surplus of less than \$600,000 unless there is on file with the department a copy of a trust agreement, certified by the trustee, evidencing an existing trust of at least \$450,000 which is deposited by the insurer in a United States bank or a United States trust company and held for the protection of the insurer's United States policyholders. The department may waive the financial requirements in this subsection in circumstances in which insurance on risks located in this state cannot be procured under the requirements.

(b) A surplus line broker who violates (a) of this section is punishable by a fine of not less than \$50 or more than \$250 for each offense. The department shall also revoke his license and may not license him as a surplus line broker for a period of two years thereafter. (§ 1 ch 120 SLA 1966; am § 2 ch 34 SLA 1970)

Effect of amendments. — The 1970 amendment rewrote subsection (a) and inserted "also" in the second sentence of subsection (b).

Legislative history reports. — For report on ch. 34, SLA 1970 (HB 596 am), see 1970 House Journal, p. 476.

Sec. 21.33.310. Exemptions from surplus line law. The provisions of this surplus line insurance law controlling the placing of insurance with unauthorized insurers do not apply to reinsurance or to the following insurances when placed by licensed insurance agents of this state:

- (1) wet marine and transportation insurance, except insurance covering risk or exposure of a marine vessel engaged in commercial fishing or fish processing in the state for a period of 30 or more consecutive days in a year;
- (2) 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;
- (3) insurance on property or operations of railroads engaged in interstate commerce;
- (4) insurance of aircraft operated in scheduled interstate flight, or cargo of such aircraft, or insurance against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of the aircraft. (§ 1 ch 120 SLA 1966; am § 2 ch 156 SLA 1970; am § 8 ch 206 SLA 1976; am § 60 ch 94 SLA 1980)

Effect of amendments. — The 1970 amendment substituted the language following "transportation" for "insurances" in paragraph (1). The 1976 amendment deleted "owned or operated by manufacturers of aircraft, or

aircraft" following "insurance of aircraft" near the beginning of paragraph (4). The 1980 amendment substituted "workers' compensation" for "workmen's compensation."

Chapter 36. Trade Practices and Frauds.

Section

- 10. Purpose
- 30. Misrepresentation and false advertising of insurance policies
- 60. False financial statements
- 70. Defamation
- 90. Unfair discrimination
- 122. Premium financing
- 126. Unfair claim settlement practices

Section

- 130. Stock operations and advisory board contracts
- 140. [Repealed]
- 165. Favored agent or insurer; coercion of debtors
- 190. Fictitious groups
- 210. Limits on cancellation
- 220. Notice of cancellation

1 134 TITLE & SPONSOR SUMMARY 16:13 6/04/84 1 OF 3

ENDED TITLE: CSSB 134(L&C)
 ACT RELATING TO SURETY BOND AND FINANCIAL REQUIREMENTS
 OF INSURERS OF SURPLUS LINES
 TIME SPONSOR: MULCAHY.

3-SPONSORS:
 CURRENT STATUS: 2/22/84 CHAPTER 0009 SLA 84

2 134 SENATE ACTION 16:13 6/04/84 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
2/22/83	01	0231	FIRST READING -- COMMITTEE REPORTS
4/18/83	02	0726	L&C -- CS04
4/18/83	03	0726	L&C F/NOTE EQUALS ZERO
5/09/83	04	0926	RLS -- L&C CS05, OTHER05 TAKEN UP IMMEDIATELY
5/09/83	05	0927	POSTPONED UNTIL 05/10/83 BY UNAN CONSENT
5/10/83	06	0938	SECOND READING
5/10/83	07	0938	L&C CS ADOPTED BY UNAN CONSENT
5/10/83	08	0939	ADVANCED TO 3RD READING BY UNAN CONSENT
5/10/83	09	0939	THIRD READING
5/10/83	10	0939	PASSED BY DIV 18-00-02
2/09/84	19	2028	TRANSMITTED TO GOVERNOR
2/22/84	20	2152	SIGNED BY GOVERNOR-CH0009, EFF 05/22/84

3 134 HOUSE ACTION 16:13 6/04/84 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
5/11/83	11	1277	FIRST READING -- COMMITTEE REPORTS
5/25/83	12	1525	L&C -- DP06
2/06/84	13	2473	SECOND READING
2/06/84	14	2473	ADVANCED TO 3RD READING BY UNAN CONSENT
2/06/84	15	2473	THIRD READING
2/06/84	16	2473	PASSED BY DIV 33-01-03
2/06/84	17	2474	NOTICE OF RECONSIDERATION GIVEN
2/08/84	18	2499	PASSED ON RECONSIDERATION BY DIV 33-00-07

COMMITTEE REPORT

SENATE

2/22/33

FURTHER:

Date: 2/14/33

Mr. President:

The Committee on Labor & Commerce has had SB 27

An Act relating to surety bond and financial requirements for insurers of surplus lines.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 134 same title
 new title
- and recommends to pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

POSITION PAPER

SB 134: An act relating to surety bond and financial requirements for insurers of surplus lines.

The Administration favors the passage of SB 134. This bill is admittedly a "band-aid" approach to resolving the shortcomings of the surplus lines law in the insurance code. It does allow time to effect a more thorough review of the surplus lines law by correcting some of the more glaring deficiencies in the law.

The bond requirements for a surplus lines broker was last revised in 1970. The purpose of such a bond is to prequalify the license holder. If the bond is of sufficient size, this is accomplished as the surety providing bond does a more thorough job of checking the person to be bonded. If the bond is not large enough, the surety may tend to be lax in its efforts. The bond should also be sufficient to provide some protection for the State and the public. Recent occurrences suggest that a \$25,000 bond may no longer be adequate. A \$50,000 bond is a reasonable step up until the issue is considered as part of a broader action.

The current minimum for an admitted multiple line property and casualty insurance company is \$1,500,000. The surplus lines law which is unchanged in this regard since 1970 requires only \$600,000. This is woefully inadequate, particularly since that market is basically not subject to State regulation except, perhaps, in its domiciliary state. An increase to a level that is required of an admitted company or one newly forming in this State is a reasonable step.

This is a good bill and we would urge its passage.



4/13/83

Richard A. Lyon, Commissioner



Alaska National INSURANCE COMPANY

A policy of service and protection

LEGISLATIVE POSITION PAPER:

LEGISLATION:

Senate Bill No. 134

PURPOSE:

An act relating to surety bond and financial requirements for insurers of surplus lines.

SUBSTANCE:

This measure would increase the bonding requirements for surplus line brokers and would increase the surplus requirements for surplus line insurers permitted for use in this State by surplus line brokers.

POSITION:

Not opposed.

ACTION:

No action is necessary, however, if asked you might suggest certain improvement amendments.

BACKGROUND:

In order to do business in the State of Alaska, an insurer must be authorized by the Division of Insurance to transact insurance in this State. As a condition of issuing the Certificate of Authority to an insurer, the Division requires that the insurer comply with the rating and form requirements imposed upon all insurers. Often times risks require coverages which a carrier cannot provide within the framework of approved rates and forms; and, thus, goes outside the State of Alaska to procure the insurance from carriers which are not authorized to write business in this State. Surplus line brokers are those brokers who are specially licensed to procure insurance outside the State of Alaska from carriers not authorized to write in this State for risks in this State that cannot otherwise acquire those coverages. Examples would be aviation liability or hull insurance, insurance on special properties located in remote areas and other hard to place risks.

This business is referred to as surplus lines or excess insurance.

Though the Division of Insurance has no jurisdiction over these unauthorized insurers, it does have jurisdiction over the surplus line brokers which procure the insurance and it attempts to protect the buying public by limiting the actions of the surplus line broker. This is, since the insurers are not regulated, only brokers with special experience are permitted to access these otherwise unauthorized insurers. It is appropriate that the bond be increased and it is appropriate that the surplus requirements for those unauthorized insurers which the surplus line brokers uses, be increased.

One of the difficulties with the existing law is that it does not require the surplus line broker to maintain any kind of surveillance over the financial condition of the unauthorized insurers; and only requires that at the time the insurance is placed, the broker have no knowledge of the insurers financial unsoundness.

I would argue that the broker has an ongoing responsibility to review the financial condition of the unauthorized insurers which it uses, and I would suggest that the language be modified to read as follows:

21.33.180 (a) "A surplus line broker shall ascertain the financial condition of an insurer before placing insurance with the insurer. A broker may not place or continue surplus line insurance with an insurer which the broker knows or should with due diligence, determine to be financially unsound, ... [Emphasis on language recommended to be added--other language as per amendment proposed by SB 134]".

SB 134, Line 21 to 24.

MSG 83-00004974 PRTY 1 04/01/83 10:45:10 ORIG: LA01 IN= 0001 OUT= 0015
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SURJ: POM

4/1/83, SHIRLEE ANC LIO, 4974

TO: SENATORS ELIASON, MULCAHY, BENNETT, RODEY AND SACKETT
FROM: BOB NESTEL, P. O. BOX 1753, EAGLE RIVER 99577
694-4372
RE: SENATE BILL 134, SURETY BOND, REQUIREMENTS/SURPLUS LINE

LINE 11-12, 14, 19 "DEPARTMENT" SHOULD BE CHANGED TO "DIVISION OF INSURANCE." THE SURETY BOND DOES NOT PROVIDE PAYMENT TO THE STATE ONLY. SENATOR HALFORD'S OFFICE HAS THE MODEL SURPLUS LINE BILL. DIRECTOR KEN MOORE HAD ADOPTED BY THE COMMITTEE ON SURPLUS LINE OF THE NATIONAL ASSN. OF INS. COMM. PERHAPS SB 134 SHOULD BE COMBINED WITH THE MODEL BILL.

Connie (Sen Halford's office) will send model bill.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

JAY S. HAMMOND, GOVERNOR

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2515

BULLETIN 82-6

TO: ALL SURPLUS LINE BROKERS, RESIDENT AND NONRESIDENT,
LICENSED IN THE STATE OF ALASKA

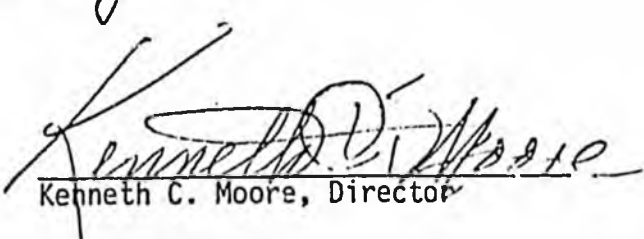
RE: ELIGIBLE UNAUTHORIZED INSURERS IN THE STATE OF ALASKA

The division has found the following nonadmitted insurers to have met the minimum trust or capital and surplus requirements. Pursuant to AS 21.33.180, we have no information which would indicate that the insurer is financially unsound.

All surplus line brokers are reminded that, pursuant to AS 21.33.180(a), surplus line brokers shall ascertain the financial condition of an insurer before placing insurance with them. The surplus line brokers shall be held strictly accountable for the solvency and the operating standard of the companies used.

The furnishing of this eligible list does not place any liability on the Division of Insurance, State of Alaska. The director of the Division of Insurance reserve the right to remove a listing, acting on his own initiative.

Done this 10th day of August, 1982, at
Juneau, Alaska.


Kenneth C. Moore, Director

Attachments

A.A. MUTUAL INTERNATIONAL INSURANCE COMPANY, LIMITED
ADMIRAL INSURANCE COMPANY
AGRICULTURAL EXCESS AND SURPLUS INSURANCE CO. (AESIC)
ALLIANCE INSURANCE COMPANY, INC.
ALLIANZ INTERNATIONAL INSURANCE COMPANY, LIMITED
ALLIANZ UNDERWRITERS, INC.
AMBASSADOR INSURANCE COMPANY
AMERICAN EXCESS INSURANCE COMPANY
AMERICAN SOUTHERN INSURANCE COMPANY
AMERICAN SPECIAL RISK INS. CO.
AMERICAS INSURANCE COMPANY
ANCON INSURANCE COMPANY, (U.K) LIMITED
ANDREW WIER INSURANCE COMPANY, LIMITED
ANGELINA CASUALTY COMPANY
APPALACHIAN INSURANCE COMPANY
ARCADIA INSURANCE COMPANY
ASSOCIATED ELECTRIC AND GAS INSURANCE SERVICES, LIMITED
ASSOCIATED INTERNATIONAL INSURANCE COMPANY
ASSURANCE GENERALES DE FRANCES - IART
ATLAS ASSURANCE COMPANY, LIMITED
AVIATION AND GENERAL INSURANCE COMPANY, LIMITED
BELLEFONTE RE INSURANCE COMPANY
BELLEFONTE UNDERWRITERS INSURANCE COMPANY
BENEFICIAL AMERICAN INSURANCE COMPANY LIMITED
BERMUDA FIRE & MARINE INS. CO., LTD.

THE BISHOPGATE INSURANCE ~~COMPANY~~^{Public} LIMITED *company*
BLUE RIDGE INSURANCE COMPANY
BRITISH AVIATION INSURANCE COMPANY, LIMITED
BRITISH LAW INSURANCE COMPANY, LIMITED
BRITISH NATIONAL INSURANCE COMPANY, *Limited*
BRYANSTON INSURANCE COMPANY, LTD.
BUFFALO REINSURANCE COMPANY
CALIFORNIA UNION INSURANCE COMPANY
CANADIAN UNIVERSAL INSURANCE COMPANY, INCORPORATED
CANAL INDEMNITY COMPANY
CAPITOL FIRE & MARINE INSURANCE COMPANY
CITY INSURANCE COMPANY (U.K.) LIMITED
CNA REINSURANCE OF LONDON, LIMITED
COLONY INSURANCE COMPANY
COLUMBIA CASUALTY COMPANY
COMMONWEALTH INSURANCE COMPANY
COMPAGNIE D'ASSURANCES MARITIMES, AERIENNES ET TERRESTRES (C.A.M.A.T.)
CUMSTOCK INSURANCE COMPANY
CONSTITUTION STATE INSURANCE COMPANY
CONSUMER INSURANCE COMPANY
COPENHAGEN REINSURANCE COMPANY (U.K.) LIMITED
CORNHILL INSURANCE COMPANY, LIMITED
COVENANT MUTUAL INSURANCE COMPANY
DANISH MARINE INSURANCE COMPANY, LIMITED
DART & KRAFT INSURANCE COMPANY, LIMITED

DOMINION INSURANCE COMPANY, LIMITED
DOWA INSURANCE COMPANY (U.K.), LIMITED
DRAKE INSURANCE COMPANY, LIMITED
ECONOMIC INSURANCE COMPANY, LIMITED
ELITE INSURANCE COMPANY
EL PASO INSURANCE COMPANY, LIMITED
EMPIRE INDEMNITY INSURANCE COMPANY
EMPLOYERS NATIONAL INSURANCE CORPORATION
ENGLISH AND AMERICAN INSURANCE COMPANY, LIMITED
ENNIA INSURANCE COMPANY (U.K.), LIMITED
ENSIGN INSURANCE COMPANY OF DELAWARE
EQUITABLE GENERAL INSURANCE COMPANY OF OKLAHOMA
EQUITY GENERAL INSURANCE COMPANY
EVANSTON INSURANCE COMPANY
EXCESS INSURANCE COMPANY, LIMITED
FALCON INSURANCE COMPANY
FIRST STATE INSURANCE COMPANY
FOLKSAM INTERNATIONAL INSURANCE COMPANY (U.K.), LIMITED
FUJI FIRE AND MARINE INSURANCE COMPANY (U.K.), LIMITED
GAN INCENDIE ACCIDENTS
GENERAL AGENTS INSURANCE COMPANY OF AMERICA, INC.
GENERALI ASSICURAZIONI GENERALI S.P.A.
GIBRALTAR CASUALTY COMPANY
GREAT AMERICAN SURPLUS LINES INSURANCE COMPANY
GREAT ATLANTIC INSURANCE OF DELAWARE

GREAT FALLS INSURANCE COMPANY
GREAT SOUTHWEST FIRE INSURANCE COMPANY OF MESA, ARIZONA
GUARANTY NATIONAL INSURANCE COMPANY
GUARDINA ROYAL EXCHANGE ASSURANCE, LIMITED
GUILDHALL INSURANCE COMPANY, LIMITED
HEDDINGTON INSURANCE (U.K.) LTD.
HOLLAND-AMERICAN INSURANCE COMPANY
HOME INSURANCE COMPANY OF ILLINOIS
HULSON INSURANCE COMPANY
ILLINOIS EMPLOYERS INSURANCE OF WAUSAU
ILLINOIS INSURANCE EXCHANGE
INDUSTRIAL INSURANCE COMPANY OF HAWAII, LTD.
JNSCO, LIMITED
INSURANCE COMPANY OF NORTH AMERICA (U.K.) LIMITED
INSURANCE CORPORATION OF IRELAND, LIMITED
INTEGON GENERAL INSURANCE CORPORATION
INTERNATIONAL SURPLUS LINES INSURANCE COMPANY
INTERSTATE FIRE AND CASUALTY COMPANY
KEMPER REINSURANCE LONDON, LTD. (Formerly Tower Hill Ins. Co. Ltd.)
LA CONCORDE COMPAGNIE D'ASSURANCES SA
LANDMARK INSURANCE COMPANY
LA REUNION FRANCAISE, S.A. D'ASSURANCES ET DE REASSURANCES
LEXINGTON INSURANCE COMPANY
LINCOLN INSURANCE COMPANY
LLOYD'S UNDERWRITERS AT LONDON

Elizabethan *P. I. C.*
LOMBARD₁ INSURANCE COMPANY, ~~INCORPORATED~~
LONDON AND HULL MARITIME INSURANCE COMPANY, LIMITED
LOUISVILLE INSURANCE COMPANY, LTD.
MAINE BONDING AND CASUALTY COMPANY
MENTOR INSURANCE COMPANY (U.K.), LIMITED
MENTOR INSURANCE, LIMITED
MIDLAND PROPERTY AND CASUALTY INSURANCE COMPANY
MINISTER INSURANCE COMPANY, LIMITED
MONTICELLU INSURANCE COMPANY
MT. HAWLEY INSURANCE COMPANY
MOUNT VERNON FIRE INSURANCE COMPANY
MUTUAL FIRE, MARINE AND INLAND INSURANCE COMPANY
MUTUAL REINSURANCE COMPANY LIMITED
NATIONAL FIRE AND MARINE INSURANCE COMPANY OF OMAHA
NATIONAL SECURITY FIRE & CASUALTY COMPANY
NEW YORK INSURANCE EXCHANGE, INC.
NEW YORK MARINE & GENERAL INSURANCE COMPANY
NIPPON FIRE & MARINE INSURANCE COMPANY (U.K.), LIMITED
NORTH ATLANTIC INSURANCE CO., LTD. .
NORTHBROOK EXCESS AND SURPLUS INSURANCE COMPANY
NORTH EAST INSURANCE COMPANY
NORTHERN MARITIME INSURANCE COMPANY, LIMITED
NORTHFIELD INSURANCE COMPANY
NORTHUMBERLAND GENERAL INSURANCE COMPANY LIMITED
NORTH STAR EXCESS REINSURANCE CORPORATION

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED (NUFIS)
NRG LONDON REINSURANCE COMPANY, LIMITED
NUTMEG INSURANCE COMPANY
~~OCEANUS MUTUAL UNDERWRITING ASSOCIATION (BERMUDA), LIMITED - OFF~~
OPTIMUM INSURANCE COMPANY OF ILLINOIS
ORION INSURANCE COMPANY, P.L.C.
PACIFIC INSURANCE COMPANY
PACIFIC INSURANCE COMPANY LIMITED
PACIFIC REINSURANCE CORPORATION
PEARL ASSURANCE PUBLIC LIMITED COMPANY
PENN-AMERICA INSURANCE COMPANY
PHOENIX ASSURANCE PUBLIC LIMITED COMPANY
PINE TOP INSURANCE COMPANY
PINE TOP INSURANCE COMPANY, LIMITED
PLANET ASSURANCE COMPANY, LIMITED
POHJOLA INSURANCE COMPANY (U.K.), LIMITED
POLAR-NORSKE ASSURANCE A/S
PROGRESSIVE AMERICAN INSURANCE COMPANY
PROVINCIAL INSURANCE COMPANY, LIMITED
PRUDENTIAL ASSURANCE COMPANY, LIMITED
PURITAN EXCESS AND SURPLUS LINES INSURANCE COMPANY
RELIANCE INSURANCE COMPANY OF ILLINOIS
RIUNIONE ADRIATICA DE SICURAT (ADRIATIC INSURANCE COMPANY)
RIVER PLATE REINSURANCE COMPANY, LIMITED
RIVER THAMES INSURANCE COMPANY, LIMITED

ROAD TRANSPORT AND GENERAL INSURANCE COMPANY, LIMITED
~~ROYAL INSURANCE COMPANY, LIMITED~~ *U O F P*
ROYALE BELGE INCENDIE-REASSURANCE
S AND H INSURANCE COMPANY
SAFETY MUTUAL CASUALTY COMPANY
ST. KATHERINE INSURANCE COMPANY PLC
ST. PAUL SURPLUS LINES INSURANCE COMPANY
SAMPO MUTUAL INSURANCE COMPANY
SCAN RE INSURANCE COMPANY, LIMITED
SCOTTISH LION INSURANCE COMPANY, LIMITED
SIMCOE & ERIE GENERAL INSURANCE COMPANY
SKANDIA INSURANCE COMPANY, LIMITED
SOUTHAMPTON INSURANCE COMPANY LIMITED
SOUTH BRITISH INSURANCE COMPANY LIMITED (U.S. BRANCH)
SOUTHERN AMERICAN INSURANCE COMPANY
SOVEREIGN MARINE AND GENERAL INSURANCE COMPANY
SPHERE INSURANCE COMPANY, LIMITED
STANDARD FIRE INSURANCE COMPANY OF ALABAMA
STOREBRAND INSURANCE COMPANY (U.K.), LIMITED
STRONGHOLD INSURANCE COMPANY, LIMITED
SUMITOMO MARINE AND FIRE INSURANCE COMPANY (EUROPE), LIMITED
SWITZERLAND GENERAL INSURANCE CORPORATION OF NEW YORK
TAISHO MARINE AND FIRE INSURANCE COMPANY (U.K.), LIMITED
TERRA NOVA INSURANCE COMPANY, LIMITED
TEXAS FIRE & CASUALTY COMPANY

T.H.E. INSURANCE COMPANY

THREADNEEDLE INSURANCE COMPANY, LIMITED

TOKIO MARINE AND FIRE INSURANCE COMPANY (U.K.), LIMITED

TOP INTERNATIONAL INSURANCE COMPANY, LTD.

~~TRIDENT GENERAL INSURANCE COMPANY, LIMITED - B F I~~

TUDOR INSURANCE COMPANY

TUREGUM INSURANCE COMPANY

UNIGARD INDEMNITY COMPANY

UNIONAMERICAN INSURANCE COMPANY, LIMITED

UNION INTERNATIONAL INSURANCE COMPANY, LIMITED (U.S. BRANCH)

UNIONE ITALIANA REINSURANCE COMPANY OF AMERICA, INC.

UNITED AMERICAS INSURANCE COMPANY

UNITED NATIONAL INSURANCE COMPANY

UNIVERSAL SECURITY INSURANCE COMPANY

WALBROOK INSURANCE COMPANY, LIMITED

WESTERN PREFERRED CASUALTY COMPANY

WESTERN WORLD INSURANCE COMPANY, INC.

WILSHIRE INSURANCE COMPANY

WURTEMBERISCHE FEUERVERSICHERUNG AG

YASUDA FIRE & MARINE INS. CO. (U.K.) LTD.

~~YORKTOWN INDEMNITY COMPANY - I F F~~

ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS

ZURICH INTERNATIONAL LIMITED

February 28, 1983

REPORT NO. 6

INTRODUCTION OF BILLS (Senate)

Alaska
Statutes
(corrective
amendments)

SENATE BILL NO. 133, by the Rules Committee by request of the Legislative Council. Makes technical corrective amendments to various portions of the Alaska statutes.

Introduced February 21 and referred to Judiciary.

See appendix, page 231 for sectional analysis that accompanied the bill.

Insurers of
Surplus Lines
(surety bonds/
financial
requirements)

SENATE BILL NO. 134, by Senator Mulcahy. Relates to surety bond and financial requirements for insurers of surplus lines. Raises the amount of the surety bond required to be filed ". . . in favor of the state and insureds in the penal sum of \$50,000." (underlined language added--the surety bond requirement is currently \$25,000).

Also amends AS 21.33.180(a) (Financial requirements for insurers of surplus lines) providing: ". . . A broker may not place surplus line insurance with an insurer which the broker [HE] knows to be financially unsound, nor may the broker place surplus line insurance with an insurer which has capital and surplus of less than \$1,500,000 [\$600,000] unless there is on file with the department a copy of a trust agreement, certified by the trustee, evidencing an existing trust of at least \$1,500,000 [\$450,000] which is deposited by the insurer in a United States bank or a United States trust company and held for the protection of the insurer's United States policyholders. . . ." (underlined language added, bracketed language deleted).

Does not provide for an effective date (becomes law 90 days after approval by the Governor).

Introduced February 22 and referred to Labor & Commerce.

Nick Begich
Scholarship
(establishing)

SENATE BILL NO. 135, by Senators Kerttula, Ray and Rodey. Would establish the Nick Begich memorial scholarship in the Memorial Scholarship Revolving Loan Fund (AS 14.43.250--provides: "The legislature may pay tribute to the memory of Alaskans who, by the example of their lives, or by their distinguished contribution and service to this state, their community or their profession, exemplified the best that is the challenge of 'The Great Land' by the creation of memorial scholarships as a part of a general memorial scholarship revolving loan fund. . ."). The scholarship would perpetuate the memory of Nicholas John "Nick" Begich, U.S. Congressman from Alaska whose tragic loss on an airplane flight October 16, 1972, cut short a distinguished career as an educator and public official.

NAIC MODEL SURPLUS LINES LAW

Section 1. Surplus Lines Insurance Act - Short Title.

This Act shall be known and may be cited as "The Surplus Lines Law".

Section 2. Purposes - Necessity for Regulation.

This Act shall be liberally construed and applied to promote its underlying purposes which include:

- (A) Protecting persons seeking insurance in this state;
- (B) Permitting surplus lines insurance to be placed with reputable and financially sound non-admitted insurers and exported from this state pursuant to this Act;
- (C) Establishing a system of regulation which will permit orderly access to surplus lines insurance in this state encourage admitted insurers to provide new and innovative types of insurance available to consumers in this state; and
- (D) Protecting revenues of this state.

Section 3. Definitions.

As used in this Act

- (A) "Admitted insurer" means an insurer licensed to do an insurance business in this state.
- (B) "Capital" as used in the financial requirements of Section 5, means funds paid in for stock or other evidence of ownership.
- (C) ("Commissioner") means the (Commissioner) of Insurance of this state.
- (D) "Eligible surplus lines insurer" means a non-admitted insurer with which a surplus lines licensee may place surplus lines insurance under Section 5 of this Act.
- (E) "Export" means to place surplus lines insurance with a non-admitted insurer.
- (F) "Kind of insurance" means one of the types of insurance required to be reported upon in the annual statement which must be filed with the (Commissioner) by licensed insurers.

- (G) "Non-admitted insurer" means an insurer not licensed to do an insurance business in this state. This definition shall include insurance exchanges as authorized under the laws of various states.
- (H) "Producing broker" means the individual broker or agent dealing directly with the party seeking insurance.
- (I) "Surplus" as used in the financial requirements of Section 5, means funds over and above liabilities and capital of the company for the protection of policyholders.
- (J) "Surplus lines insurance" means any insurance in this state of risks resident, located or to be performed in this state, permitted to be placed through a surplus lines licensee with a non-admitted insurer eligible to accept such insurance, other than reinsurance, wet marine and transportation insurance, insurance independently procured and life and health insurance and annuities.
- (K) "Surplus lines licensee" means an individual (firm or corporation) licensed under Section 15 of this Act to place insurance on risks resident, located or to be performed in this state with non-admitted insurers eligible to accept such insurance.
- (L) "Wet marine and transportation insurance" means
- (1) Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;
 - (2) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;
 - (3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and
 - (4) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment, or reshipment incident thereto

Section 4. Placement of Surplus Lines Insurance.

Insurance may be procured through a surplus lines licensee from non-admitted insurers if:

- (A) Each insurer is an eligible surplus lines insurer;
- (B) The full amount or kind of insurance cannot be obtained from insurers who are admitted to do business in this state. Such full amount or kind of insurance may be procured from eligible surplus lines insurers provided a diligent search is made among the insurers who are admitted to transact and are actually writing the particular kind and class of insurance in this state; and
- (C) All other requirements of this Act are met.

Section 5. Eligible Surplus Lines Insurers Required.

No surplus lines licensee shall place any coverage with a non-admitted insurer, unless at the time of placement, such non-admitted insurer:

- (A) Has established satisfactory evidence of good repute and financial integrity; and
- (B) Qualifies under one of the following paragraphs:
 - (1) has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals
 - (a) this state's minimum capital and surplus requirements under the laws of this state, or
 - (b) \$1,500,000 one year after enactment, and \$2,500,000 three years after enactment, and \$3,500,000 five years after enactment, and \$5,000,000 six years after enactment, whichever is greater.

After six years from enactment, the requirements of this paragraph may be satisfied by an insurer possessing less than \$5 million in capital and surplus upon an affirmative finding of acceptability by the (Commissioner). The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, and company record and reputation within the industry. In no event shall the (Commissioner) make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$3.5 million.

DRAFTING NOTE: The following subsection is for use by those states which desire to adopt a "white list" for determining the eligibility of non-admitted insurers to write surplus lines insurance.

- (D) In addition to meeting the requirements in paragraphs (A) to (C), an insurer shall be an eligible surplus lines insurer if it appears on the most recent list of eligible surplus lines insurers published by the (Commissioner) from time to time but at least semi-annually. Nothing in this section shall require the (Commissioner) to place or maintain the name of any non-admitted insurer on the list of eligible surplus lines insurers.

Section 6. Other Non-admitted Insurers.

DRAFTING NOTE: This section is necessary only in states which have adopted Section 5 (D).

Only that portion of any risk eligible for export for which the full amount of coverage is not procurable from eligible surplus lines insurers may be placed with any other non-admitted insurer which does not appear on the list of eligible surplus lines insurers published by the (Commissioner) pursuant to Section 5 (D) but nonetheless meets the requirements set forth in Section 5 (A) to (C) and any regulations of the (Commissioner). The surplus lines licensee seeking to provide coverage through an unlisted non-admitted insurer shall make a filing specifying the amount(s) and percentage(s) of such risk to be placed, and naming the non-admitted insurer(s) with which placement is intended. Within _____ days after placing the coverage, the surplus lines licensee shall also send written notice to the insured or the producing broker that the insurance, or a portion thereof, has been placed with such non-admitted insurer.

Section 7. Withdrawal of Eligibility, Surplus Lines Insurer.

If at any time the (Commissioner) has reason to believe that an eligible surplus lines insurer

- (A) is in unsound financial condition,
- (B) is no longer eligible under Section 5,
- (C) has willfully violated the laws of this state, or
- (D) does not make reasonably prompt payment of just losses and claims in this state or elsewhere,

the (Commissioner) may declare it ineligible. The (Commissioner) shall promptly mail notice of all such declarations to each surplus lines licensee.

In addition, an alien insurer qualifies under this paragraph if it maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than \$1,500,000 for the protection of all of its policyholders in the United States and such trust fund consists of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state. Such trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiry date which at no time shall be less than five years; or

- (2) in the case of any Lloyd's or other similar unincorporated group of alien individual insurers, maintains a trust fund of not less than \$50 million as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in par. (1) for alien insurers; and
 - (3) in the case of an "Insurance Exchange" created by the laws of individual states, maintain capital and surplus, or the substantial equivalent thereof, of not less than \$15,000,000 in the aggregate. For Insurance Exchanges which maintain funds for the protection of all Insurance Exchange policyholders, each individual syndicate shall maintain ~~minimum~~ capital and surplus, or the substantial equivalent thereof, of not less than \$1,500,000. In the event the Insurance Exchange does not maintain funds for the protection of all Insurance Exchange policy holders, each individual syndicate shall meet the ~~minimum~~ capital and surplus requirements of Section 5 (B) (1).
- (C) Has caused to be provided to the (Commissioner) a copy of its current annual statement certified by such insurer; such statement to be provided no more than (6) six months after the close of the period reported upon and which is either
- (1) filed with and approved by the regulatory authority in the domicile of the non-admitted insurer; or
 - (2) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile;
 - (3) in the case of an Insurance Exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported upon.

Section 8. Admitted Insurers - Waiver of Rate and Form Regulations.

An admitted insurer may issue, through any agent, broker or other representative, in the manner permitted under the insurance law for other policies of the same kind, insurance covering the particular insured for the amount of kind of insurance which exportable under Section 4, without regard to rate and form requirements otherwise applicable, if the agent, broker or other representative placing such insurance complies with the filing requirements of Section 9(A). Such insurance shall be subject to the premium tax applicable to such admitted insurer.

Section 9. Evidence of Insurance and Affidavits, Duty to File.

Within _____ days after the placing of any surplus lines insurance, each producing broker shall execute and each surplus lines licensee shall file:

- (A) a written report, which shall be kept confidential, regarding the insurance with the (Commissioner) including the following:
 - (1) the name and address of the insured;
 - (2) the identity of the insurer or insurers;
 - (3) a description of the subject and location of the risk;
 - (4) the amount of premium charged for the insurance; and
 - (5) such other pertinent information as the (Commissioner) may reasonably require; and
- (B) an affidavit on a standardized form furnished by the (Commissioner), as to the diligent efforts to place the coverage with admitted insurers and the results thereof. Such affidavit shall be open to public inspection.

Section 10. Surplus Lines Advisory Organizations.

- (A) Advisory surplus lines organization of surplus lines licensees may be formed to:
 - (1) facilitate and encourage compliance by its members with the laws of this State and the rules and regulations of the (Commissioner) relative to surplus lines insurance,
 - (2) provide means for the examination, which shall remain confidential, of all surplus lines coverages written by its members to determine whether such coverages comply with such laws and regulations.

- (3) communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market, and
 - (4) receive and disseminate to its members information relative to surplus lines coverages.
- (B) Every such advisory organization shall file with the (Commissioner)
- (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation.
 - (2) a copy of its by-laws, rules and regulations governing its activities,
 - (3) a current list of its members,
 - (4) a resident of this state upon whom notices or orders of the (Commissioner) or processes issued at his direction may be served, and
 - (5) an agreement that the (Commissioner) may examine such advisory organization in accordance with the provisions of this Section.
- (C) The (Commissioner) shall, at least once in (insert number) years, make or cause to be made and examination of each such advisory organization. The reasonable cost of any such examination shall be paid by the advisory organization upon presentation to it by the (Commissioner) of a detailed account of each cost. The officers, managers, agents and employees of such advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The (Commissioner) shall furnish two copies of the examination report to the advisory organization examined and shall notify such organization that it may, within 20 days thereof, request a hearing on the report or on any facts or recommendations therein. If the (Commissioner) finds such advisory organization or any member thereof to be in violation of th's Act, he may issue an order requiring the discontinuance of such violation.
- (D) By order of the (Commissioner) a surplus lines licensee may be compelled to join an advisory organization as a condition of continued licensure under this Act.

DRAFTING NOTE: Paragraph (D) should be included only if it is in accord with the existing law and public policy of the state.

Section 11. Evidence of the Insurance—Changes--Penalty.

- (A) Upon placing surplus lines insurance, the surplus lines licensee shall promptly deliver to the insured or the producing broker the policy, or if such policy is not then available, a certificate as described in subsection 4, cover note, binder or other evidence of insurance. The certificate, as described in subsection 4, cover note, binder or other evidence of insurance shall be executed by the surplus lines licensee and shall show the description and location of the subject of the insurance, coverages including any material limitations other than those in standard forms, a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, and the name and address of the insured and surplus lines insurer or insurers and proportion of the entire risk assumed by each, and the name of the surplus lines licensee and the licensee's license number.
- (B) No surplus lines licensee shall issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any eligible surplus lines insurer, or a non-admitted insurer pursuant to Section 6, unless he has authority from the insurer to cause the risk to be insured, or has received information from the insurer in the regular course of business that such insurance has been granted.
- (C) If, after delivery of any such evidence of insurance there is any change in the identity of the insurers, or the proportion of the risk assumed by any insurer, or any other material change in coverage as stated in the surplus lines licensee's original evidence of insurance, or in any other material as to the insurance coverage so evidenced, the surplus lines licensee shall promptly issue and deliver to the insured or the original producing broker an appropriate substitute for, or endorsement of the original document, accurately showing the current status of the coverage and the insurers responsible thereunder.
- (D) As soon as reasonable possible after the placement of any such insurance, the surplus lines licensee shall deliver a copy of the policy or, if not available, a certificate of insurance to the insured or producing broker to replace any evidence of insurance theretofore issued. Each certificate or policy of insurance shall contain or have attached thereto a complete record of all policy insuring agreements, conditions, exclusions, clauses, endorsements or any other material facts that would regularly be included in the policy.

(E) Any surplus lines licensee who fails to comply with the requirements of this section shall be subject to the penalties hereinafter provided.

(F) Every evidence of insurance negotiated, placed or procured under the provisions of this Act issued by the surplus lines licensee shall bear the name of the licensee and the following legend in 10 point type: "This is evidence of insurance procured and developed under the (insert state) Surplus Lines Laws. It is NOT covered by the (insert citation of guaranty fund statute)."

Section 12. Licensee's Duty to Notify Insured.

No contract of insurance placed by a surplus lines licensee under this Act shall be binding upon the insured and no premium charged therefore shall be due and payable until the surplus lines licensee shall have notified the insured in writing, a copy of which shall be maintained by the licensee with the records of the contract, available for possible examination, that

(A) the insurer with which the licensee places the insurance is not licensed by this state and is not subject to its supervision and

(B) in the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

Nothing herein contained shall nullify any agreement by any insurer to provide insurance."

Section 13. Surplus Lines Insurance Valid.

Insurance contracts procured under this Act shall be valid and enforceable as to all parties.

Section 14. Effect of Payment to Surplus Lines Licensee.

A payment of premium to a surplus lines licensee acting for a person other than himself in negotiating, continuing, or reviewing any policy of insurance under this Act shall be deemed to be payment to the insurer, whatever conditions or stipulations may be inserted in the policy or contract notwithstanding.

Section 15. Licensing of Surplus Lines Licensee.

(A) No agent or broker licensed by the state shall procure any contract of surplus lines insurance with any non-admitted insurer, unless he possesses a current surplus lines license issued by the (Commissicner).

(E) The (Commissioner) shall issue a surplus lines license to any qualified holder of a current property and casualty broker's or general agent's license but only when the broker or agent has:

- (1) Remitted the \$_____ annual fee to the (Commissioner);
- (2) Submitted a completed license application on a form supplied by the (Commissioner), and the application has been approved by the (Commissioner);
- (3) Passed a qualifying examination approved by the (Commissioner), except that all holders of a license prior to the effective date of this Act shall be deemed to have passed such an examination; and
- (4) Filed with the (Commissioner), and maintains during the term of the license, in force and unimpaired a bond in favor of this state in the penal sum of _____ dollars, aggregate liability, with corporate sureties approved by the (Commissioner). The bond shall be conditioned that the surplus lines licensee will conduct business in accordance with the provisions of this Act and will promptly remit the taxes as provided by law. No bond shall be terminated unless at least 30 days prior written notice is given to the licensee and (Commissioner). If the (Commissioner) determines that a surplus lines licensee of a sister state is competent and trustworthy then he may, in his discretion, issue a non-resident surplus lines agent's license. A non-resident licensee shall be limited in his authority to servicing of business negotiated elsewhere and filing any appropriate taxes. A non-resident licensee shall not have authority to solicit business.

(C) Corporations, including foreign corporations, shall be eligible to be resident surplus lines licensees. upon the following conditions:

- (1) the corporate license shall list individuals within the corporation who have satisfied all requirements of this Act to become surplus lines licensees; and
- (2) only those individuals listed on the corporate license shall transact surplus lines business.

- (D) Each surplus lines license shall expire on December 31st of each year and shall be renewed before December 2nd of each year upon payment of the annual fee, and compliance with other provisions of this Section. Any surplus lines licensee who fails to apply for renewal of the license before December 2nd shall pay a penalty of _____ dollars and subject to such other penalties as provided by law before his license will be renewed.

Section 16. Surplus Lines Licensees May Accept Business From Other Agents or Brokers.

A surplus lines licensee may originate surplus lines insurance or accept such insurance from any other agent or broker duly licensed as to the kind or kinds of insurance involved, and the surplus lines licensee may compensate such agent or broker therefor.

Section 17. Records of Surplus Lines Licensee.

Each surplus lines licensee shall keep in his office in this state a full and true record of each surplus lines insurance contract placed by or through him, including a copy of the policy, certificate, cover note, or other evidence of insurance showing such of the following items as may be applicable:

- (A) Amount of the insurance and perils insured;
- (B) Brief description of property insured and its location;
- (C) Gross premium charged;
- (D) Any return premium paid;
- (E) Rate of premium charged upon the several items of property;
- (F) Effective date of the contract, and the terms thereof;
- (G) Name and address of the insured;
- (H) Name and address of the insurer;
- (I) Amount of tax and other sums to be collected from the insured; and
- (J) Identity of the producing broker, any confirming correspondence from the insurer or its representative and the application.

The record of each contract shall be kept open at all reasonable times to examination by the (Commissioner) without notice for a period not less than 5 years following termination of the contract. In lieu of maintaining offices in this state, each non-resident surplus lines licensee shall make available to the (Commissioner) any and all records that he deems necessary for examination.

Section 18. Quarterly Reports--Summary of Exported Business.

On or before the end of each month following each calendar quarter, each surplus lines licensee shall file with the (Commissioner), on forms prescribed by the (Commissioner), a verified report in duplicate of all surplus lines insurance transacted during the preceding calendar quarter, showing:

- (A) Aggregate gross premiums written;
- (B) Aggregate return premiums; and
- (C) Amount of aggregate tax remitted.

DRAFTING NOTE: States desiring to have taxes remitted annually may call for monthly detailed listing of business.

Section 19. Surplus Lines Tax.

- (A) Gross premiums charged, less any return premiums, for surplus lines insurance are subject to a premium receipts tax of _____%, which shall be collected by the surplus lines licensee as specified by the (Commissioner), in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance having been credited by the State to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any. The surplus lines licensee is prohibited from absorbing such tax and from rebating for any reason, any part of such tax.
- (B) At the time of filing his quarterly report as set forth in Section 18, each surplus lines licensee shall pay the premium receipts tax due for the period covered by the report.
- (C) If a surplus lines policy procured through a surplus lines licensee covers risks or exposures only partially located or to be performed in this state, the tax payable shall be computed on the portions of the premium properly attributable to the risks or exposures located or to be performed in this state, as follows:

- (1) If the risk insured is real or personal property, the percentage of the entire tax that is due to this state is the same as the percentage of the entire risk that is located in this state, computed on the same basis as was employed to calculate the insurable value of the risk.
 - (2) If the risk insured is business operations, general liability, or employee benefits, the percentage of the entire tax that is due to this state is the same as the percentage of the insured business operations or employees that are located in this state.
- (D) This Section shall not apply to insurance of risks of the State Government, its political subdivisions or of any agency thereof.
- (E) If a multistate risk has a portion of that risk located within this state, the surplus lines licensee will remit payment of taxes collected to this state in accordance with the provisions of Subsection (C) (1) and (2).

Section 20. Collection of Tax.

If the tax collectible by a surplus lines licensee under this Act has been collected and is not paid within the time prescribed, the same shall be recoverable in a suit brought by the (Commissioner) against the surplus lines licensee and the surety on the bond filed under Section 15.

Section 21. Suspension, Revocation or Non-Renewal of Surplus Lines Licensee's License.

The (Commissioner) may suspend, revoke or refuse to renew the license of a surplus lines licensee after notice and hearing as provided under the applicable provision of this state's laws upon any one or more of the following grounds:

- (A) Removal of the resident surplus lines licensee's office from this state;
- (B) Removal of the resident surplus lines licensee's accounts and records from this state during the period within which such accounts and records are required to be maintained under Section 17 of this Act;
- (C) Closing of the surplus lines licensee's office for a period of more than 30 business days, unless permission is granted by the (Commissioner);
- (D) Failure to make and file required reports;
- (E) Failure to transmit required tax on surplus lines premiums;
- (F) Failure to maintain required bond;

- (G) Violation of any provision of this Act; or
- (H) For any other cause for which an insurance license could be denied, revoked, suspended or renewal refused under Sections (insert applicable citation).

Section 22. Actions Against Surplus Lines Insurer -- Service of Process.

- (A) A surplus lines insurer may be sued upon any cause of action arising in this state under any surplus lines insurance contract made by it or evidence of insurance issued or delivered by the surplus lines licensee pursuant to the procedure provided in Section (insert applicable section containing Uniform Unauthorized Insurance Process Act). Any such policy issued by the surplus lines licensee shall contain a provision stating the substance of this Section and designating the person to whom the (Commissioner) shall mail process.
- (B) Each surplus lines insurer assuming a surplus lines insurance shall be deemed thereby to have subjected itself to this Act.
- (C) The remedies provided in this Section are in addition to any other methods provided by law for service of process upon insurers.

Section 23. Penalties.

- (A) Any surplus lines licensee who in this state represents or aids a non-admitted insurer in violation of this Act may be found guilty of a misdemeanor and subject to a fine not in excess of \$1,000.00 Dollars.
- (B) In addition to any other penalty provided for herein or otherwise provided by law, including any suspension, revocation or refusal to renew a license, any person, firm, association or corporation violating any provision of this Act shall be liable to a penalty not exceeding \$1,000 for the first offense, and not exceeding \$2,000 for each succeeding offense.
- (C) The above penalties are not exclusive remedies. Penalties may also be assessed under the ("Trade Practices and Fraud") statute of the insurance code of this state.

Section 24. Separability of Provisions.

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 25. Effective Date.

This Act shall take effect (insert appropriate date).

AS. Sec 21.33
From Hartford

NAIC MODEL NON-ADMITTED INSURANCE ACT

Section 1. Non-Admitted Insurance Act - Short Title.

This act may be cited as "The Non-Admitted Insurance Act".

Section 2. Purposes -- Necessity for Regulation.

* Insurance transactions with non-admitted insurers are so affected with a public interest as to require regulation, taxation, supervision and control of such transactions and matters relating thereto, as provided in this Act, in order to -

- (A) protect the insureds and claimants of this state in transactions involving the purchase of insurance from insurers not authorized to transact business in this state;
- (B) provide for the public, to the extent that insurance is not procurable from admitted insurers, or from eligible surplus lines insurers through licensed surplus lines licensees;
- (C) protect the revenues of this state;
- (D) protect regulated, admitted insurers from unregulated and unfair competition by non-admitted insurers;
- (E) regulate and supervise the effectuation of non-admitted insurance in accordance with the laws of this state and Public Law 15, known as the McCarran Act; and
- (F) maintain reliable insurance markets.

Section 3. Definitions.

As used in this Act:

- (A) "Admitted insurer" means an insurer licensed to do an insurance business in this state.
- (B) "(Commissioner)" means the (Commissioner) of Insurance of this state.

- (C) "Eligible surplus lines insurer" means a non-admitted insurer with which a surplus lines licensee may place surplus lines insurance under Section 5 of the Surplus Lines Insurance Law.
- (D) "Export" means to place surplus lines insurance with a non-admitted insurer.
- (E) "Non-admitted insurer" means an insurer not licensed to do an insurance business in this state. This definition shall include insurance exchanges as authorized under the laws of various states.
- (F) "Producing broker" means the individual broker or agent dealing directly with the party seeking insurance.
- (G) "Surplus lines insurance" means any insurance in this state of risks resident, located or to be performed in this state, permitted to be placed through a surplus lines licensee with a non-admitted insurer eligible to accept such insurance, other than reinsurance, wet marine and transportation insurance, insurance independently procured and life and health insurance and annuities.
- (H) "Surplus lines licensee" means an individual (firm or corporation) licensed under Section 15 of the Surplus Lines Insurance Law to place insurance of risks resident, located or to be performed in this state with non-admitted insurers eligible to accept such insurance.
- (I) "Wet marine and transportation insurance" means
- (1) Insurance upon vessels, crafts, gulls and of interests therein or with relation thereto;
 - (2) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;
 - (3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and
 - (4) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coast-wise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or perils navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment, or reshipment incident thereto.

Section 4. Acting for or Aiding Non-Admitted Insurers Prohibited
- Exceptions.

- (A) No person shall in this state directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any non-admitted insurer in the solicitation, negotiation, procurement or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such insurer in the transaction of insurance.
- (B) This section does not apply to:
- (1) Matters authorized to be done by the (Commissioner) under the Unauthorized Insurers Process Act (cite statutory sections);
 - (2) Surplus lines insurance if it is effected and written under the Surplus Lines Law of this state;
 - (3) Transactions for which a certificate of authority to do business is not required of an insurer under the insurance laws of this state;
 - (4) Reinsurance;
 - (5) The property and operations of railroads or aircraft engaged in interstate or foreign commerce, insurance of vessels, crafts or hulls, cargoes, marine builder's risks, marine protection and indemnity or other risks including strikes and war risks commonly insured under ocean or wet marine forms of policy;
 - (6) Life insurance, health insurance and annuities when solicited solely by mail or when not solicited, negotiated or procured in this state;
 - (7) Transactions subsequent to issuance of a policy not covering domestic risks at time of issuance, and lawfully solicited, written or delivered outside this state.
- (C) Any person who represents or aids a non-admitted insurer in violation of this Section shall be subject to the penalties hereinafter provided. No insurance contract entered into in violation of this Section shall preclude the insured from enforcing his rights thereunder in accordance with the terms and provisions of said contract of insurance.

- (D) If the unauthorized insurer fails to pay a claim or loss within the provisions of the insurance contract, a person who assisted or in any manner aided directly or indirectly in the procurement of the insurance contract, shall be liable to the insured for the full amount under the provisions of the insurance.

Section 5. Suits by Non-Admitted Insurers.

No non-admitted insurer may commence or maintain any action in law or equity in this state to enforce any right arising out of any insurance transaction in this state except with respect to:

- (A) Claims under policies lawfully written in this state;
- (B) Liquidation of assets and liabilities of the insurer (other than collection of new premium), resulting from its former authorized operations in this state;
- (C) Transactions subsequent to issuance of a policy not covering domestic risks at time of issuance, and lawfully solicited, written or delivered outside this state;
- (D) Surplus lines coverages exported in accordance with the Surplus Lines Law of this state;
- (E) Reinsurance;
- (F) The continuation and servicing of life insurance, health insurance policies or annuity contracts remaining in force as to residents of this state where the insurer has withdrawn from the state and is not transacting new insurance therein;
- (G) Servicing of policies written by an admitted insurer in a state to which the insured has moved but in which the company is not licensed until the term thereof expires;
- (H) Claims under policies covering wet marine and transportation insurance.

Section 6. Insurance Independently Procured -- Duty to Report and Pay Tax.

- (A) Each insured who in this state procures or continues or renews insurance with a non-admitted insurer on a risk located or to be performed in whole or in part in this state, other than insurance procured through a surplus lines licensee pursuant to The Surplus Lines Law, or exempted from tax under Section _____ of (cite to surplus lines law), shall, within _____ days after the date such insurance was so procured, continued, or renewed,

file a written report of the same with the (Commissioner), upon forms prescribed by him, showing the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the (Commissioner).

- (B) Gross premiums charged for such insurance, less any return premiums, are subject to a tax at the rate of ____%. At the time of filing the report required in the first paragraph of this Section, the insured shall pay the tax to the (Commissioner), who shall transmit the same for distribution as provided in Section ____ (of the surplus lines law).
- (C) If an independently procured policy covers risks or exposures only partially located or to be performed in this state, the tax payable shall be computed on the portion of the premium properly attributable to the risks or exposures located or to be performed in this state, as set forth in subsections (C) and (E) of Section 19 of the Surplus Lines Law.
- (D) Delinquent taxes hereunder shall bear interest at the rate of ____% per annum.
- (E) This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify, any provision of Sections 4 or 5 or any other provision of this Act.
- (F) This Section does not apply to life insurance, health insurance or annuities.

Section 7. Investigation — Production of Policies and Documents.

- (A) Every insured by or as to whom insurance is procured or placed in a non-admitted insurer, upon the (Commissioner's) order shall disclose to the (Commissioner) the net amount of premiums paid for the insurance. In case of a failure of any person to comply with the (Commissioner's) order, the (insert proper title) Court, on application of the (Commissioner), may issue an order requiring the production of the records and information sought by the (Commissioner). Any person failing to obey the court's order may be punished by the courts as for a contempt.
- (B) This section does not apply to life insurance, health insurance or annuities.

Section 8. Penalties.

- (A) Any person other than an insured who in this state represents or aids a non-admitted insurer in violation of Section 4 of this Act may be found guilty of a misdemeanor, and be subject to a fine not in excess of One Thousand Dollars (\$1,000), in addition to other penalties prescribed in Section 4.
- (B) In addition to any other penalty provided for herein or otherwise provided by law, including any suspension, revocation or refusal to renew a license, any person, firm, association or corporation violating any provision of this Act shall be liable to a penalty not exceeding \$1,000 for the first offense, and not exceeding \$2,000 for each succeeding offense, in addition to other penalties prescribed in Section 4.

Section 9. Separability of Provisions.

If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 10. Effective Date.

This Act shall take effect (insert appropriate date).

Bill Fact Sheet

Date Received 2/22/83

Bill Number SB134 Title Surety bond reg/insurers-surplus line

Fiscal Note - Date Requested 2/24/83 Date Received 3/14/83

- Of Whom Katherine Wallen

Dept. Position Paper - Date Requested 2/24 Date Received 3/14/83

- Of Whom Katherine Wallen

Resource People

Initial Hearing - Date 4/14/83
People Contacted

- Dick Block - 248-2642 - 4/8
- Joe McClean - 6-3210 - 4/8
- Steve Silver/Mike Thomas - 6-3340 4/8
- Wes Coynes - 4/8

Follow-up Hearing - Date _____

Final Action passed CS Date 4/14/83

Forum

Section of Insurance, Negligence and Compensation Law
American Bar Association Vol. XIV, No. 1

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limitations of state government also apply to the federal government—perhaps to an even greater degree. Instead, the public would be better served if the state and federal regulators and legislators forgot about the jurisdictional issue and focused more on why government, irrespective of its location, can no longer approach problems as it has in the past.

If I am correct in my assessment of future trends, both regulators and the industry will have to do a lot of things differently ten years from now than they do today. While change is painful—and this is especially so for regulators—it is also exciting and challenging. It is also a certainty, so we all had better start learning to cope with it.

the utilization and regulation of the surplus lines markets in the state of alaska

richard l. block

the surplus lines markets are important to alaska

Terry, a personal friend of mine, earns his living in Alaska as a commercial fisherman. He owns a 38-foot vessel, the "Lady of the Night," which represents about a \$40,000 investment. Terry has a now precious limited entry permit which authorizes him to fish, utilizing a gillnet during the very short gillnetting, one day a week, season in the salt waters of the Inside Passage in Southeastern Alaska. Terry's principal catch is the pink and chum salmon, which are the "bread and butter" of the commercial salmon fishing fleet.

The "Lady of the Night" is one of 11,000 vessels which participate in the fishing industry in the State of Alaska, and, while Alaska's fleet pales by comparison with the Japanese, Russian, and Korean fleets which also ply the near-Alaska waters, and may even pale by comparison with the tuna fleets of San Diego, the shrimp fleets in Louisiana, or bottomfisheries fleets off the Eastern Seaboard, it represents a most significant part of Alaska's economy, as well as of its culture and heritage.

It becomes, therefore, a very serious concern when the 11,000 vessels and over 200 fish processing plants, both land based and floating, find it difficult to obtain necessary hull and liability and property coverages, workmen's compensation, where appropriate, or other liability coverages for the vessel employees and other necessary and proper insurance coverages for the owners and operators of the fishing fleet.

The unique characteristics of Alaska's fishing fleet indicate why there is difficulty in obtaining insurance in admitted markets.

First the fishing fleet is large by number, but the unit size is

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small. The Alaska fishing fleet does not universally boast very large vessels staffed by tens of hundreds of shipboard workers, utilizing the most modern techniques in fish harvesting. In this regard it differs from the seiners of San Diego, and the larger multi-gearred vessels of Russia, Korea and Japan.

In many respects the Alaska fishing fleet represents the heritage of the State where individual entrepreneurs singlehandedly man their vessels, including many older boats in the open or only partially enclosed waters of the State, garnering what is, today, considered to be generally a good living but working by their wits and with the aid of their equipment and vessels in which they have singly invested.

There is attached to the paper an Exhibit I which shows the size and limited growth of the fishing fleet since 1969. It is interesting to note from these statistics that, while the number of employees, the number of fish processing plants, and the number of vessels engaged in the commercial fishing activity in this State have not increased markedly through 1976, there has been a tremendous increase in the last year in the wholesale value of the fish harvest.

The Alaska fishing harvest is centered mainly around shellfish and salmon with a growing interest in halibut. There is, however, a growing interest in other bottomfish such as cod, pollock and flounder. It is anticipated that the demand in this new fishery will significantly expand the fishing harvest and, thus, increase the interest in fishing. It is doubtful that this will materially increase the number of vessels in the fleet because of the limited entry program which restricts the number of fishing licenses by type of fishing gear, but it will significantly increase the value of vessels, the size of vessels, and the size of catch.¹

1. *The Alaska Economy*, Vol. 0 (1977), published by the State of Alaska, Department of Commerce & Economic Development, p. 14.

While the Alaska fishing fleet may not be characteristic of fishing fleets around the world, the matters which distinguish it from other fishing fleets is what makes it particularly characteristic of other Alaskan industries and, furthermore, exemplify the characteristics which make insurance placement so difficult.

Consider the concern of the Fergusons who live in Kobuk, Alaska. Kobuk is located about 150 miles east and slightly north of Kotzebue, and Kotzebue is located along the Kotzebue Sound off the Bering Strait in Northwestern Alaska.

Kobuk is the home for about 50 families who have earned their living and support their settlement by fishing, trapping, subsistence hunting and, occasionally, additional income generated by working on the Alaska pipeline. The Fergusons obtained their house, furniture and other large items by the most circuitous transportation route. These items, generally ordered by catalogue, from Seattle, are shipped by barge which arrives in a barge fleet during the short ice-free period in Kotzebue Sound. Generally, the barges are too large to come within Kotzebue harbor and thus, goods are lited in in smaller barges. These items are then carried by small boats up the Kobuk River.

Smaller items may be flown into Kotzebue by the single commercial airline. No commercial airlines fly to Kobuk so the only access is by river during the summer or by light plane which lands at the small airport several hundred yards away from the Fergusons' new home.

Transportation for individuals is only by air.

The Fergusons' life-style in Kobuk exemplifies the life-style of Natives and Caucasians who live in the remote villages and bush communities of Alaska and who represent approximately 20 percent of the population. It is fair to say that many of the communities in Alaska outside of Anchorage, Fairbanks, and the principal cities served by Alaska Airlines in Southeastern Alaska are served by ferry, barge, and light plane in much the same way as the village at Kobuk.

It, thus, becomes apparent that the air taxi fleet in Alaska is one of the vital life links for a large segment of our population and is, thus, an extremely important industry.

Like the fishing fleet, the Alaska air taxi fleet is composed of individual entrepreneurs who own one to ten light and medium sized aircraft. It is not unusual for an air taxi operator to own a Cessna 185 on floats or skis as the sole asset in his air carrier business. Exhibit II to this paper shows the distribution of the air carrier fleet and highlights the extreme difficulty in defining the air carrier industry.

Unfortunately, the air carrier industry has suffered major losses. The Federal Aviation Administration will tell you that Alaska represents one of the worst records for air safety of all of the United States and, while the statistics appear bad, given the terrain, weather and other conditions in this State, the air taxi fleet in this State represents a generally safe and reliable mode of transportation and communication within much of the State.

These two groups, the fishing fleet and the air taxi fleet, represent two significant parts of our economy. Perhaps the most disturbing fact, and the most interesting fact from the standpoint of this presentation, is that the fishing fleet can obtain only limited insurance from the admitted markets, and the air taxi industry can obtain none.

It is this fact that has caused me to devote a great deal of time and attention to study of the surplus lines markets as they exist in the State of Alaska.

While I believe that programs for both industries could possibly be written in the admitted market and that premiums will grow considerably in the next few years for both industries as there is more growth in the State, it is doubtful that the business will flow to the admitted market from the surplus lines market in the next few years. This is particularly true with respect to the air taxi fleet because of the substantially erratic loss results.

I have attached as Exhibit III a showing of the relative size of the surplus lines market to the admitted market in total property-casualty premium writings in the State of Alaska.

While I have introduced this topic by explaining about our fishing and our air taxi fleet, it should be noted that substantial other kinds of risks find their way into the surplus lines market, and, in this regard, there are probably some parallels with the developments in other states.

Exhibit IV shows the substantial volume of property insurance which has found its way into the surplus lines market in the last several years.

This shows one of the interesting characteristics of the surplus lines market which is perhaps true in any state but which is exaggerated and exemplified in a state like Alaska.

It is said that one of the prime functions of the surplus lines market is to absorb the unavailability problems in the admitted market and, indeed as there were adverse results in the personal lines, homeowners and fire insurance, or at least a perceived problem in these areas, more business gravitated to the surplus lines market which was able to absorb the capacity restrictions of the American insurers.

This alone, however, does not tell the full story and my more thorough examination into the Alaska surplus lines market has revealed many additional factors which bear on the question of the degree to which the surplus lines market should be regulated.

the surplus lines market has an important part in the history of alaska

The history of the distribution of insurance for property and casualty between the admitted and nonadmitted markets is as interesting as the history of Alaska itself.

Remember that, while the study of statehood for continental states is a matter of "ancient" history requiring a certain amount of dedicated attention during review of American history in our grammar school class days then to be forgotten, Alaska became a state only 20 years ago.

Until January 3, 1959, Alaska was a territory owned by the United States but looked upon by many in the "lower 48" as somewhat of a foreign country. Our isolation and somewhat remote and perceived hostile environment gave those in the "lower 48" both a feeling of romance and adventure when coming to or thinking of Alaska, but also generated great concern about the unknown quantities when being considered by underwriters as an insurance risk.

Because of the limited population and very limited economic potential for the State in those early days, there was little to recommend Alaska as a place to make an investment for insurance company operations. Accordingly, insurance was really marketed by agents and brokers who, through dedication and hard work, scrounged for markets in order to see that there was at least minimum protection for such business and personal risks as sought to be covered in the State.

American insurance underwriters traditionally doing business through either their local service offices that know and understand the local environment and could underwrite it locally found that Alaska could not be successfully underwritten using their traditional techniques.

First, no insurance company had established an office in the State and, thus, any underwriting by American companies was done by their closest offices which were in Seattle.

Take a look at a map and you will see that Seattle is as far from Anchorage or Juneau as it is from Chicago, Illinois, and to try to underwrite risk in the traditional way in Alaska from a Seattle service office would be as absurd and as catastrophic in terms of

underwriting risks as trying to determine the propriety of risks in Chicago from the Seattle service office.

There was the beginning of a general agency in Alaska in those days and, in fact, a substantial amount of business was underwritten profitably by the GA's of the day.

By and large, however, agents and brokers found it necessary to place their risks with those underwriters who knew and understood remote class underwriting, and that was, typically, the nonadmitted surplus lines market and, within that, typically, Lloyd's of London.

It is not hard to understand, therefore, why a substantial amount of insurance was written in the surplus lines market, particularly, property and workmen's compensation.

After 1959, statehood created a modicum of interest among the American writers, and brokers in Seattle were able to establish some safety groups particularly for workmen's compensation, and have them successfully placed with American writers.

One such group, written originally through D. K. McDonald & Co., which later was absorbed by Marsh and McClennan, was the Alaska Loggers Association, which was written for both liability and workmen's compensation on a safety group basis and placed at various times in the Argonaut and the Fireman's Fund. This program was successful as an American risk because it was written with the cooperation of the members of the Alaska Loggers Association, all of whom agreed to participate in the program with a substantial retrospective penalty or credit depending on underwriting results, almost guaranteeing a profit to the underwriter. It is interesting to note that this program became the nucleus of business for the first domestic property and casualty stock insurer in the State of Alaska which was chartered in 1969.

As population grew and the economics of the State improved, there was of course a gravitation towards the admitted markets as admitted markets experimented with granting underwriting authority to agents and taking larger shares of coverage in particular lines of insurance.

Remember that from a national perspective, during the period 1959 to 1970 or '71 there was little that could be done that could materially hurt an insurance company.

This was a period of substantial and continued growth allowing for increases in capacity to write insurance, a fair amount of competition, a lack of severe regulation by State regulators and generally a period in which companies could make a profit, or, if they did incur a loss, would be willing to carry the loss forward into more profitable subsequent years.

For this reason it is not hard to understand why there was a certain amount of natural growth of the admitted market in the State. However, it is fair to state that it was not the result of an aggressive marketing posture by the American writers or by any deliberate attempt by American insurers to make major inroads into the State.

The mid '70s, however, saw some marked changes in the way insurance was marketed across the country.

Insurers were to a larger degree being managed by senior executives who reflected the general business ethic of return on investment by quarter and the impact of earnings on the value of the stocks traded on securities exchanges rather than long-term trends of profitability as was the rule during the period when insurance companies were managed exclusively by insurance oriented executives.

Further, there were serious adverse developments in the state of the American economy—rampant inflation, the impact of wage-price controls and invasion of the value of the dollar against foreign currencies tended to rapidly deplete the values of securities owned by insurance companies as investments and, thus, impair the surpluses against which insurance companies were, at that time, aggressively writing.

For this reason, there was a national, "capacity crunch" and insurance companies were making wholesale cuts in the kinds of insurance they were writing and the locations in which they were writing it.

It is not hard to understand, therefore, why companies that had never really sought out Alaska as an insurance market would urge their service offices in which Alaska was included as a territory to cut off Alaska as not being a cost-effective market for the companies.

Immediately, there was a resurgence of interest in the surplus lines markets.

This general background partially explains why there was a substantial increase in the percentage of property and casualty market flowing to the surplus line markets between 1974 and 1975; however, there were other factors which should be borne in mind.

competitive forces have an impact on the surplus lines markets

The business in Alaska probably, as in other states, moves from market to market generally at the direction of the producer.

Whatever may be said about competition among insurance

carriers, if the competition is not carried through the producers to the consumers, then the producers will have a natural tendency to move the business to the markets that produce the better level of compensation for them.

This is a matter upon which one can only speculate because the comparison of commission levels between American and surplus line markets is not clear; however, I believe that the level of commission is larger on the surplus lines market given the cost to produce the business than it would be for the American market and often times larger than the commission which is generated through the residual market mechanisms such as the assigned risk pools.

For this reason it is believed that agents and brokers have utilized the surplus lines market not because the business could not have been written in admitted markets but because it was the line of least resistance. Business was accepted in the surplus line market, whereas to place it in the admitted market a substantial amount of work effort by the agents and brokers which to them was not considered cost effective given the only moderate levels of commissions to be earned.

surplus lines insurance may be studied in four categories

There are four identifiable classifications of nonadmitted insurance, all of which have some relevance to the State of Alaska, and, perhaps, relevance in any surplus line market.

alien nonadmitted

Those companies and syndicates which are not licensed or chartered in any state of the United States but licensed or chartered originally and, perhaps, exclusively in a foreign country are the alien nonadmitted market.

Historically the British, French, German, Italian, Norwegian, Russian and Japanese insurers have provided substantial additional levels of insuring capacity; and, when utilized through the very experienced London brokers, have provided underwriting flexibility not heretofore available through the admitted market.

Attached Exhibit V shows the percentage of surplus line markets in Alaska that flow to the alien nonadmitted market.

The alien nonadmitted market may again be subdivided into two subcategories, the Lloyd's Syndicates and the alien companies.

The Lloyd's Syndicates represent a very significant share of the alien nonadmitted market, but must be looked upon from a regula-

tory point of view somewhat differently than the foreign companies.

The alien companies operate very similarly to the American companies in that, while they may share with Lloyd's in accepting portions of risk, by and large, they may be found writing in very much the same way as American companies are found to write.

The regulatory implications are also different.

English alien insurance companies are regulated by the Department of Trade and Industry in England, whereas, the degree of regulation of the Lloyd's Syndicate's is essentially found in the history of self-regulation and self-discipline in the Lloyd's marketplace.

foreign nonadmitted

There is a growing number of insurance companies that are finding, for a variety of reasons, that they can write business in an affiliate or subsidiary company which is domiciled in one state and not admitted to do business in any of the other states of the union. Insurance Company of North America utilizes the California union, Allstate utilizes the Northbrook and numerous other companies utilize subsidiaries in substantially the same way.

These companies are nonadmitted in the state of Alaska, but from a regulatory viewpoint, must be looked upon separately from the alien nonadmitted markets since they are heavily regulated in the American tradition by the state of domicile for each of the separate companies, and, further, are regulated by many states to a more or less degree because they are wholly-owned subsidiaries of insurance conglomerates which are regulated by almost all states of the Union.

captive carriers

There is a growing utilization of captive insurers, insurers which write insurance almost exclusively for their parent company.²

A recent decision to settle an internal revenue investigation questioning the propriety of deducting premiums to a captive insurer will rekindle interest in the utilization of captives by large multinational corporations seeking to reduce their risk management expense.

The utilization of captives, however, is not limited, unfortunately, to writing only for a corporation.

² "Captives—The Future Is Limitless," Barillo, A. J. C.P.C.U., *Risk Management*, Vol. 25, No. 6, June, 1970, p. 22.

For example, some brokers are utilizing the captive vehicle to write industry group programs. They are marketing these as captive insurers and I will discuss later whether they truly are captives. However they should be looked upon as a separate class of nonadmitted writer with different regulatory characteristics.

industry mutuals

One of the more interesting studies that I have been required to make in the last year or so has been the role of the Protection and Indemnity clubs, generally found on the off-shore islands and managed by British brokers, that provide protection and indemnity cover to the fleet of ships carrying cargo around the world.

These companies that seek protection and indemnity coverage for their vessels for liability to others and for protection of the cargos have seen fit to band together in clubs which are essentially self-regulating vehicles for the mutual exchange of indemnities backed by the net worth of the shippers themselves.

My interest in these clubs grew out of the recently adopted tanker legislation in the State of Alaska which required that the ships hauling North Slope oil from Valdez to the "lower 48" meet certain financial responsibility requirements imposed by State law.³

Although there appears to be some doubt as to the constitutionality of such a law, it is inappropriate here to go at any length into a discussion of the constitutionality question. The federal district court in Alaska is wrestling with this problem⁴ as has the U.S. Supreme Court with respect to similar legislation from the State of Washington.⁵

Notwithstanding the possible unconstitutionality of the statute, it is true that the shippers of oil flowing through the new Alaska pipeline did seek the cooperation of the Division of Insurance in qualifying the protection and indemnity clubs under our white list in order to meet the regulations promulgated by the Alaska Department of Environmental Conservation.⁶ In the course of reviewing the nature of P & I clubs it became apparent that they present yet a different regulatory concern.

3. Alaska Oil Discharge Prevention and Pollution Control Act, 1970, SLA Chap. 266, AS 30.25.050.

4. Sohio Pipeline Co. v. Hammond, A 78-147, Civil U.S. District Court, District of Alaska; Chevron v. Hammond, A 77-195, Civil U.S. District Court, District of Alaska.

5. Ray v. Arco, 40 U.S. LW. 4200, Mar. 8, 1970.

6. 18 AAC 20.000.

there are five areas in which this business is regulated

There are essentially five areas of regulation that, in my opinion, either do or could conceivably impact on the surplus lines markets.

jurisdiction

All states for the most part have adopted some statutory authority for establishing jurisdiction over unauthorized insurers doing business in their state.⁷

The general thrust of these laws is to the effect that any insurance company, though not admitted or authorized to do business in this state which allows a policy to be sold covering risks in the state has, by virtue of that fact, submitted to the jurisdiction of the state. The principal consequences of course is that Service of Process on the Director of Insurance or some other State officer constitutes service upon the unauthorized insurer giving a plaintiff in any litigation against the insurer in personam jurisdiction over the unauthorized insurer. Second, it establishes a tax liability under the surplus lines tax law. Generally, where the transaction involves an unauthorized insurer but does not involve a surplus lines broker, the tax may be collected directly from the insured.

The history of the development of the jurisdictional law in the State of Alaska I find to be most interesting.

When the insurance law was first codified, essentially from the Washington law in 1966,⁸ there was adopted the old NAIC Model Unauthorized Insurers Act.⁹

That law essentially adopted the philosophical viewpoint that an unauthorized insurer was not prohibited from insuring in the state but must, by virtue of covering risks in the state of Alaska, recognize that it had created sufficient nexus of activity in the state to enable service of process in any litigation to be achieved by service of process on a statutory officer.

The statutory officer was designated as the Director of the Division of Insurance and the more sale of insurance, whether within the State or from without the state, covering a risk located within the state, created the authority to establish in personam jurisdiction over the unauthorized insurer.¹⁰ The 1966 law also

7. For a complete review of the surplus lines laws of all states, see *Non-Resident and Surplus Lines Laws*, rev. 1970, Published by National Underwriters.

8. Alaska Stat. § 21.33.

9. Vol. II, *Official N.A.I.C. Model Insurance Laws Regulations and Guidelines*, p. 060-1.

10. Model Unauthorized Insurers Process Act, Sec 2(a), Vol. II, *Official N.A.I.C. Model Insurance Laws, Regulations and Guidelines*, p. 060-1.

recognized that such business could be conducted through surplus line brokers.¹¹ Surplus line brokers were licensed as persons doing business within the state and by virtue of the conditions that could be imposed upon the performance of surplus line brokers, jurisdiction could be obtained on the unauthorized insurers utilized by those brokers.¹²

In 1968 the Alaska Legislature totally repealed the unauthorized insurers act,¹³ but kept intact the surplus line brokers provisions and replaced the model unauthorized insurers act with segments of the 1969 version of the NAIC Unauthorized Insurers Model Statute.¹⁴

It should be noted that in 1968 the Legislature adopted an act which did not become an NAIC model until 1969. It should be further noted that much of the language of the model was known in 1968 because of the deliberations then going forward in the several NAIC subcommittees.

A most interesting history of the development of the unauthorized insurers law may be found in the NAIC proceedings.¹⁵ Here may be found the first report of the NAIC Industry Advisory Committee on Unauthorized Insurers which includes, as a supplement, an outline of a report prepared by George Cline, Insurance Research Analyst for the New York Insurance Department, prepared in 1949, together with a summary of NAIC actions with respect to unauthorized insurers from the period 1949 to 1967.

These two summaries, which comprise the addenda to the first report given in 1968, provide an excellent review of the history of the jurisdictional issues surrounding the unauthorized insurer problem.

It should be noted that the NAIC's primary concern in 1968 and apparently in much of the preceding history dealt with mail order disability and life insurance and the consumer abuses that were attendant with that kind of insurance.

As a matter of fact, however, when the law was adopted in Alaska, much of the NAIC model, and particularly that portion dealing with reciprocity of judgments, was not included in the Alaska version. What was included, however, was some language that did not find its way into the model act.

Consider, for example, the following language which is set forth as the purpose of the new provisions:

11. *Alaska Stat.* § 21.33.080, *et seq.*

12. *Alaska Stat.* § 21.33.300.

13. 1968 SLA Chap. 234.

14. Vol. II, *Official N.A.I.C. Model Insurance Laws, Regulations and Guidelines*, p. 050-1

15. *Proceedings of the National Association of Insurance Commissioners*, Vol. II (1968) p. 515.

The Legislature declares that it is a subject of concern, that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to these residents the often insuperable obstacle of asserting their legal rights under these policies in forums foreign to them under laws and rules of practice with which they are not familiar. The Legislature declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers, which are subject to strict regulations from unfair competition by unauthorized persons and insurers and by protecting against the evasion of the insurance regulatory laws of this state. [Emphasis indicates portion included in Alaska law, but not found in the model law]¹⁶

The comparison of purposes suggests that a somewhat different emphasis was considered by the Alaska Legislature than was considered by the insurance commissioners when adopting the model. The difference in emphasis would indicate that there was concern not with respect, necessarily, to life and health business sold by mail order, but the substantial amount of all lines of business that was already sold in the state, which must necessarily refer to the substantial volume of property and casualty insurance business and market and claim handling problems which were occurring at that time. It is also clear that the legislative concern dealt with collection of premium taxes that apparently were escaping because of the inadequacies of the 1966 version of the law.

There are other differences between the Alaska version and the model version, which do not deal with jurisdiction, but do indicate the fact that a substantial amount of business in Alaska would necessarily be written in the unauthorized insurance market and thus, would enjoy statutory recognition and protection.

The new version provides that any transaction of the business of insurance in the state of Alaska, and the term "transaction" of insurance is broadly defined, constitutes sufficient nexus in the state to permit service on the director to be service on the authorized insurer.

solvency

The second area of concern deals with assuring some minimum levels of protection for insureds against the insolvency of an unauthorized insurer. The solvency standards for the nonadmitted market, however, are materially different than those imposed upon the admitted market.

16. Model Law, Section 1, *Alaska Stat.* § 21.33.011.

Today, the minimum capital and surplus required of admitted carriers has been raised so that there are much more rigid surplus and capital requirements;¹⁷ however, the capital and surplus requirements at least in Alaska imposed upon surplus lines securities has really not been recently addressed and, thus, remain at levels established very early in the history of development of the insurance code.¹⁸

For example, today, a property and casualty writer must have a minimum of \$1,500,000 in capital and surplus in order to receive a Certificate of Authority. Under our surplus lines law, however, only \$600,000 in capital and surplus is required and if the company does not have \$600,000 in capital and surplus it may meet the requirement by having a deposit in respect of all policyholders in the United States deposited somewhere in the United States in the amount of \$450,000.

There is, of course, a conflict here. On the one hand it is apparent that the Legislature intended that there be minimum capital and surplus requirements to protect policyholders; on the other hand the minimums are set, at least when compared with that required of admitted carriers, so low as to not provide the protection which is regarded as appropriate. The code provides:

A surplus line broker shall ascertain the financial condition of an insurer before placing insurance with him. A broker may not place surplus line insurance with an insurer which he knows to be financially unsound, nor may the broker place surplus line insurance with an insurer which has capital and surplus of less than \$600,000 unless there is, on file with the department, a copy of a trust agreement, certified by the trustee, evidencing an existing trust of at least \$450,000 which is deposited by the insurer in a United States bank or United States trust company and held for the protection of the insurer's United States policyholders.

It is clear that the broker has some responsibility to determine the financial propriety of the securities which he uses but it is also apparent that it is unclear to what extent the broker has the responsibility of actively determining the financial strength of the company.

Because of the division's concern with this matter, in 1976 the division promulgated a proposed revision of the surplus lines law requiring the broker to exercise an affirmative responsibility of checking securities. The early statutory proposals would have required the broker to obtain very recent financial information and assure that the security met, at least, the requirements imposed

17. Alaska Stat. § 21.00.070.
18. Alaska Stat. § 21.33.100.

upon an admitted carrier and, further, would have imposed upon the broker the responsibility for paying claims should he err in the judgment about the financial condition of the company.

Clearly this goes farther than any regulatory scheme I am aware of in any other state, but it may be a very necessary adjunct of proper assurance to policyholders in the State that the securities which they are using are financially adequate to meet the needs of the policies.

Obviously, such legislation requires a great deal of thought, and, for that reason, the proposals have not yet been submitted to the Legislature.

Among the matters which came to the division's attention that would make such legislation impractical is the fact that brokers very rarely have access to meaningful financial information.

I enjoy the privilege of sitting on the NAIC Ex 2 Regulatory Information Subcommittee, which has, as its primary consideration, the matter of reviewing securities utilized by surplus line brokers throughout the country.

Among the lessons learned from participation on this committee is the fact that alien insurers maintain their books in accordance with the accounting standards of the country of their origin, and, thus, reviewing financial information of surplus lines securities involves the problem of understanding the difference between the accounting methods of the foreign country and our own accounting systems, the ability to translate statements in a foreign language into English and the conversion of the currencies in which their statements are stated into American dollars.

The division has taken several different approaches to this matter, all on a somewhat informal basis.

The first is the one used typically in many states which is the creation of a "white list."¹⁹ On Alaska's "white list" are listed all those securities which have submitted information for review by the division, and are found to have the minimum capital and surplus or the minimum trust balance.

While we believe it is somewhat of an extension of the literal interpretation of the statute, we have insisted that an alien insurer, even one which meets the surplus requirements, have an American deposit in the minimum amount.

The brokers have been advised not to use companies unless they are on the "white list," however, we are cognizant of the fact that, when rounding out a line slip placement, the London brokers

19. State of Alaska, Division of Insurance, Bulletin 70-1.

will utilize securities not knowing that they are not on our "white list."

There are several matters which concern the division with the "white list" approach. First, the division does not believe that it is any more capable of reviewing foreign or alien financial statements than are the brokers. We have received some valuable information from the newly created NAIC office in Milwaukee, which has undertaken a more professional approach to reviewing alien financial statements; and this, together with information received from other surplus lines associations around the country, enables us to do at least an adequate job of white listing.

The second difficulty, of course, is that white listing removes the primary responsibility of this determination from the brokers where, in my opinion, the ultimate responsibility should rest.

The third difficulty is that there is no adequate enforcement provisions in our law should a broker utilize an unlisted security or should a listed or unlisted security become financially impaired and unable to pay a claim. For the State of Alaska, the matter of rigidity in allowable securities is complicated by the necessity of maintaining available markets.

The legislative concern in this regard is found in the following statutory provision:

The department may waive the financial requirements in this subsection if circumstances in which insurance on risks located in this state cannot be procured under the requirements.

It appears the legislative intent that if securities with adequate financial ability to honor claims cannot be found who will write a particular risk then a person may utilize a loss than adequate security to obtain insurance.

The division has not found it necessary to authorize such insurers in order to assure availability but the possibility exists that the statutory concerns for availability of markets may someday become a reality.

One of the more interesting problems which the Alaska division faced in this connection was whether to list P & I clubs.

Under the regulation promulgated by the Department of Environmental Conservation for the State of Alaska, ship owners hauling oil from Valdez to the "lower 48" were required to show their financial responsibility by posting up to \$20 million of liability insurance for oil pollution exposure.

The ship owners utilize the protection and indemnity clubs located essentially on the offshore islands.

The regulation provided further that the insurance must be by a

company authorized to do business, by the Division of Insurance, or listed on the division's "white list."

The representatives of the P & I clubs earnestly sought to be listed so that they could provide coverage and cause the ship owner members to comply with Alaska law. The division took the position that it would be happy to list the P & I clubs but insisted that they comply with the same provisions as any other company listed on our "white list," which meant that they must post a deposit, submit to the jurisdiction by service of process on the Division of Insurance and provide us with their financial statements.

P & I clubs consider themselves as standing significantly apart from all other insurance mechanisms, and manifestly refused to show us financial statements, to post deposit or to submit to the jurisdiction of the Division of Insurance.

For this reason, even though the P & I clubs probably were more than adequately financed to meet any obligation that could be imposed upon it and certainly provided the financial responsibility which the Department of Environmental Conservation was looking for, the division found that they could not be listed.

The interesting anomaly is that the oil companies owning and shipping the oil being transported, or by indemnity, the ship owners, qualified as self-insurers and have, thus, posted no insurance; but standing behind their self-insured obligations are the P & I clubs which the division would not list.

tax

It is clear that the surplus lines business is intended to be taxed at least as much as if the business were written in the admitted market.²⁰

I suppose the rationale for the surplus lines tax is essentially the same as that for a use or in lieu tax imposed upon the sale of products in those states having a sales tax. Thus, the importation of goods should not be allowed as a means of evading a State tax on the sale of domestic goods. Likewise, persons should not be utilizing the surplus lines market as a vehicle for escaping the tax normally imposed on insurance proposed through the admitted market.

It is the law in the State of Alaska, and probably typical in most states, that the tax is the same as imposed on the writing of insurance by foreign admitted companies plus an additional one-half percent fee to cover the administration of the surplus lines law.²¹

The division's concern here has been to audit surplus line brokers to determine that the proper tax has been paid.

²⁰ Alaska Stat. § 21.33.055, Alaska Stat. § 21.33.230.

²¹ Alaska Stat. § 21.33.220.

The division has really taken no direct action in this regard for several years, however, this summer, the division has started to audit surplus line brokers and has determined that there is a great disparity between the taxes paid and the taxes believed due.

Unfortunately, lack of auditing by the division has permitted laxity among surplus line brokers and it is believed that the brokers' accounting systems have not adequately kept track of the tax obligations. We believe that this will be an area of increased concern by the division.

market conduct and competition

This has hitherto not really been addressed in my opinion by the regulators of the several states; however, it has been necessary for the Alaska Division of Insurance to take a somewhat larger interest in this area of the law.

It is, for example, a requirement that no insurance be placed in the surplus lines market if that insurance can be placed in the admitted market. These laws which may be regarded as statutory preference for the admitted market have effectively precluded the surplus lines market from being utilized as a rate competitor.

In those states which have a prior approval law as does the State of Alaska, it is assumed that rates cannot be charged by any one admitted carrier lower than the approved filings by that admitted carrier. The historical development of rate regulation is born out of the concern that unregulated rates would mean untrammelled price competition jeopardizing the solvency of the admitted market. While I personally question that, today, as a valuable motive for rate regulation, to the extent that there is validity to the argument, it must be said that the surplus lines market ought not to be utilized to undercut the rates in the admitted market and, thus, defeat the purpose of rate regulation. Accordingly, surplus lines securities are not permitted to charge rates lower than that permitted by the admitted markets.

Furthermore, there are ministerial requirements for demonstrating that the risk had been submitted to the admitted markets and rejected before the surplus line markets may be utilized. I discovered very early on in the development of regulations of the surplus line market that that is one of the most difficult areas to effectively enforce.

Generally, these regulations are framed in terms of the surplus line broker submitting to the Division of Insurance an affidavit to the effect that he has attempted to place the risk with admitted carriers in his own office and those carriers have refused. This is a patently self-serving document and any attempt to audit the

propriety of these statements would be fruitless. I have found that it is very easy for a surplus line broker wishing to place the business in the surplus lines market to get the admitted carrier/underwriter to agree to reject the risk and then present the risk to the surplus line market even though some other admitted carrier elsewhere in the State may be quite prepared to accept the risk.

In an effort to correct this problem, the division attempted a regulation by which the surplus line broker was required to obtain from executive officers of admitted carriers two rejections before placing the risk with the surplus lines market.²²

This idea was abandoned²³ when it was pointed out that the surplus line brokers were obtaining blank rejection slips from the admitted carrier executives and storing them in their offices to be utilized whenever they needed to place the risk with a surplus lines market.

Probably one of the most interesting examples of the difficulty of regulating the market conduct and competition aspect of the surplus lines market may be found in the problems which the division has been observing in the placing aviation workmen's compensation insurance.

The air taxi fleet has, from time to time, been insured in the State by one or more of three markets: Lloyds of London through syndicates led by a key aviation syndicate; USAIG, a syndicate of American admitted insurers; and the Workmen's Compensation Assigned Risk Pool.

USAIG was writing air taxis for a period of time, however, in 1976, elected to withdraw from the market because of substantially high losses and an inability to foresee how to profitably write the business without rates that were incredibly excessive.

The Assigned Risk Pool was becoming overloaded with air carrier risks and jeopardizing the general workmen's compensation markets because admitted carriers were fearful that substantial increases in general workmen's compensation writings would expose them to a higher percentage share of the aviation losses in the pool.

For that reason the division dramatically increased the surcharges to air carriers in the Workmen's Compensation Assigned Risk Pool, thus forcing a substantial amount of that business to the last remaining market, Lloyd's of London.

A significant problem with Workmen's Compensation Aviation

22. State of Alaska, Division of Insurance, Bulletin 76-5, February 19, 1973.

23. State of Alaska, Division of Insurance, Bulletin 76-6, March 31, 1976, Bulletin 76-8, October 1, 1976.

was the inability to obtain adequate statistics concerning the history of losses. One of the characteristics of the surplus line market is that there are no statistics on losses maintained anywhere which are accessible to the Division of Insurance.

Essentially the workmen's compensation rate, in early 1976, which nominally is established by the National Council on Compensation Insurance, was arrived at arbitrarily by the Division of Insurance after some discussion with surplus line brokers as to what rate the London markets felt it had to have in order to accept the risk.

By establishing the negotiated rate, and then surcharging the pool above that amount, an effective accommodation with London was reached and a substantial amount of the Workmen's Compensation Aviation business moved to the London markets:

In order to permit this to occur in an orderly fashion and in order to start building statistics for future use, the division promulgated some regulations stipulating the conditions under which the aviation business could go to the workmen's compensation market in London.²⁴

This took place about the same time the division, together with the air carriers association and others in the State, moved vigorously to obtain some changes in the Workmen's Compensation Law in order to normalize benefits and reduce the cost, particularly to the air carriers.

Upon the adoption of the meaningful reform legislation which was effective September 1, 1977,²⁵ the air carriers association began looking to establish some form of safety incentive program in combination with a group workmen's compensation insurance program, and has been substantially frustrated because of either the inability or the unwillingness of forces in the London market to accommodate to such a safety program.

In reviewing the situation the division came to the realization that, because of the structure of the London markets, the London market had a virtual monopoly on the business and that, while there was substantial competition among brokers within the State of Alaska to obtain aviation accounts, all the brokers were utilizing the same London syndicate as a lead for their workmen's compensation aviation programs.

It must be observed, therefore, that, while the surplus line markets provide needed markets where the admitted market fails to respond and where the statutory residual market such as the Assigned Risk Pool is an undesirable market alternative, regulators

must face up to the fact that dependence upon Lloyds carries with it some substantial drawback akin to the kinds of drawbacks that may be found where there are domestic monopolies of market availability.

regulation of brokers

The most effective form of regulation of the surplus lines market comes through the regulation of the surplus line broker.

The statute recognizes that, notwithstanding the general proposition that no business may be placed by a broker except with a carrier authorized to do business in the State, there is a general recognition that the surplus lines business has a place in the insurance marketplace provided it is performed by persons with more than the usual level of expertise in marketing insurance.

Surplus line brokers are generally required to have bonds, additional experience as a broker, and other criteria for their higher level of expertise.

Because the surplus line securities are, by definition, not admitted, they are also, by definition, incapable of being regulated directly. Any regulation of the surplus line market, therefore, must be by virtue of regulation of the surplus line broker.

An interesting example of the need for public protection in the surplus market was in connection with the fishing fleet program.

A broker had developed a concept by which those vessel owners who agreed to participate in a safety program initiated and administered through the University of Alaska could be insured through nonadmitted carriers which, in turn, would be reinsured by a Bermuda captive administered by the broker but "owned" by the participating fishermen.

The immediate response to this program was highly favorable among the fishing fleet and when the brochure that the broker was circulating was reviewed by our division, we could see why.

Our law, as does the law of most states, exempts marine insurance from the purview of the surplus lines law. Alaska law, however, regulates insurance covering risk or exposure of a marine vessel engaged in commercial fishing or fish processing in the state for a period of 30 or more consecutive days in a year.²⁶

We certainly had no jurisdiction over the proposed captive.

The division took the view that the proposal was really not for the creation of a captive since the entity would be insuring risks for other than a single owning entity. We further took the view that soliciting participation in such a program constituted soliciting for

24. State of Alaska, Division of Insurance, Bulletin 70-4, February 17, 1970.

25. Alaska Stat. § 21.33.310(f).

investment in an insurer which is subject to the requirement of a solicitation permit.²⁷

Accordingly, we urged the broker to modify substantially the contents of the brochure to keep it from being misleading. That program is providing coverage at competitive rates but the so-called captive has yet to be formed.

A further example of achieving a better result for the consumer by regulation of the broker may be found in our rural property placement program.

Owners of bush dwellings were finding it particularly difficult to obtain coverage in the admitted markets. The division created a voluntary admitted market for these risks but, in order to achieve high utilization of this program, prohibited brokers from using the surplus lines market for these risks without adequate evidence that the admitted alternatives have been approached.²⁸ Our Bulletin 73-3 details the background and details of the plan.

conclusion

It may be seen from the exhibits which are attached to this report that surplus lines markets in the State of Alaska play an extremely important role in Alaska. Terry, the fisherman, has good coverage for "Lady of the Night" and the Fergusons of Kobuk insure their home at more reasonable rates and the air taxis have workmen's compensation coverage at more realistic rates. Nothing ought to be done that would in any way limit the ready availability of the surplus lines markets to solve insurance needs in the State. By the same token, the surplus lines market needs to be monitored for solvency and discharge of statutory obligations which are imposed on admitted markets other than the statutory obligations for maintaining rigidity in rates and policy forms, in order that the surplus line markets not be utilized as a means of circumventing legitimate statutory requirements and, thus, jeopardizing the need for growth in the admitted markets in the State.

This regulation comes through effective statutory and regulatory provisions and effective administrative implementation.

I believe that in Alaska we have moved considerably forward in achieving this balance, but continued effort needs to be exerted and we will probably find the proper balance of regulation and regulatory freedom in a manner different than will be found in any other state because of the unique situations which are faced in the Alaska insurance marketplace.

27. Alaska Stat. § 21.60.060.

28. State of Alaska, Division of Insurance, Bulletin 78-2, April 20, 1978, Bulletin 78-3 April 26, 1978.

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Exhibit I

**State of Alaska
Alaska Fishing Industry**

Year	No. of Licensed Commercial Fishing Vessels	No. of Alaska Fish Processing Plants	No. of Employees In Fish Processing	Wholesale Value of Fish Products
1969	9,972	208	8,584	\$144,200
1970	10,877	219	11,223	213,932
1971	10,710	192	8,502	198,660
1972	10,791	223	8,391	202,951
1973	11,777	227	10,546	307,587
1974	11,338	239	8,842	254,366
1975	11,630	221	9,947	293,192
1976	11,813	N/A	N/A	452,267

Source: "Alaska Catch and Production," Commercial Fisheries Statistics (for each year), published by State of Alaska, Department of Fish and Game.
"The Alaska Economy," Vol. 6 (1977), published by State of Alaska, Department of Commerce and Economic Development, Division of Economic Enterprise

Exhibit II

State of Alaska
Aircraft Registry with
Alaska Transportation Commission*

	1975	1976	1977
Rotary Wing			
Gross Take-Off Weight			
Less Than— 4,000	222	188	194
8,000	2	7	2
12,500	30	26	26
27,000	5	7	7
50,000	1	0	0
75,000	0	0	0
Over 75,000	0	0	0
Total—Rotary Wing	260	228	229
Fixed Wing			
Gross Take-Off Weight			
Less Than— 4,000	643	662	638
8,000	156	131	147
12,500	105	91	98
27,000	13	11	12
50,000	18	16	11
75,000	2	2	2
Over 75,000	39	41	36
Total—Fixed Wing	976	954	944

*Includes Scheduled Airline Aircraft
Source: Annual Reports, Alaska Transportation Commission

Exhibit III

State of Alaska
Property & Casualty Premiums Admitted and
Surplus Lines Premiums Written
1968-1977*

Year	Surplus Lines Premium	Admitted Property & Casualty Premium	Total	Admitted	Nonadmitted
1968	\$3,301,858	\$39,469,711	\$42,771,569	92.29%	7.72%
1969	3,653,923	46,145,012	49,798,935	92.66%	7.34%
1970	5,637,539	52,712,620	58,350,159	90.33%	9.66%
1971	7,621,022	62,896,053	70,517,075	89.19%	10.87%
1972	8,872,382	70,583,526	79,455,908	88.83%	11.16%
1973	7,347,470	76,501,223	83,848,693	91.23%	8.76%
1974	5,120,386	83,751,479	88,871,865	94.23%	5.76%
1975	12,774,972	97,526,155	110,301,127	88.41%	11.58%
1976	14,810,796	142,196,498	157,727,294	90.60%	9.39%
1977	29,844,544	269,800,813	299,735,357	90.04%	9.96%

*Figures taken from Division of Insurance, State of Alaska, Annual Reports

Exhibit II

State of Alaska
Aircraft Registry with
Alaska Transportation Commission*

	1975	1976	1977
Rotary Wing			
Gross Take-Off Weight	222	188	194
Less Than—			
4,000	2	7	2
8,000	30	26	26
12,500	5	7	7
27,000	1	0	0
50,000	0	0	0
75,000	0	0	0
Over 75,000	0	0	0
Total—Rotary Wing	260	228	229
Fixed Wing			
Gross Take-Off Weight	643	662	638
Less Than—			
4,000	156	131	147
8,000	105	91	98
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1974	5,120,386	83,751,479	88,871,865	94.23%	5.76%
1975	12,774,572	97,526,155	110,301,127	88.41%	11.58%
1976	14,810,796	142,196,498	157,007,294	90.60%	9.39%
1977	29,844,544	269,890,813	299,735,357	90.04%	9.96%

*Figures taken from Division of Insurance, State of Alaska, Annual Reports

**Exhibit IV
State of Alaska
Fire & Homeowners Premiums**

	<i>Total (Admitted and Surplus)</i>	<i>Surplus Lines</i>	<i>Surplus As % of Total</i>
1972	\$ 8,817,563	\$ 976,882	11.1%
1973	8,521,343	648,959	7.6
1974	9,523,474	965,537	10.1
1975	10,639,320	2,865,449	26.9
1976	13,796,608	4,552,479	32.8
1977	15,540,928	6,206,282	39.9
Total	\$66,839,236	\$16,185,588	24.2%

Source: Annual Reports, Division of Insurance, State of Alaska

**Exhibit V
State of Alaska**

The Division of Insurance has one hundred twenty-seven (127) companies on their eligible unauthorized insurer's list. The total premiums written by these companies through surplus lines brokers are:

I. Alien Companies			
a. This includes policies underwritten 100% Lloyds'	\$ 2,394,637.14		
Policies underwritten Lloyds' and Companies	\$10,887,615.62		
Policies underwritten by Several Aliens	\$ 2,526,420.85		
Policies underwritten 100% by One Alien	\$ 1,873,657.64	\$17,682,331.58	
b. Foreign Companies (American)			11,289,465.26
c. Alien companies not on Alaska's list of eligible unauthorized insurers			872,748.00

a defense of meaningful pre-trial discovery

stanley j. levy

All too frequently in our efforts to streamline the judicial system, we tend to lose sight of the fact that the primary purpose of the system and its major reason for existing is to ensure that all disputes are fairly and justly decided and that justice is achieved for the litigants. We have sometimes become overly concerned by the statistical numbers game played by court administrators who are often more concerned with how much it costs to run the system than they are by whether the rights of the parties are protected. And all too often, we permit the primary objective of the system, justice for the parties, to be submerged by judicial pressure to "move the cases."

Since promulgation of the Federal Rules in 1938, with their liberal pre-trial discovery, it has generally been accepted that properly directed pre-trial discovery makes a substantial contribution toward turning trials into a search for truth and justice rather than a game of skill and chance. Document discovery, interrogatories, depositions, and other formal discovery devices, when properly used by a skilled lawyer, are valuable tools in the lawyer's workshop. No one would seriously suggest that we abandon the progress of forty years and return to the prehistoric technical, legalistic battleground that existed before the Federal Rules went into effect.

But the Rules are being attacked, and unfortunately, the current assault in large part represents exactly the type of alleged reform which will unnecessarily sacrifice the rights of the litigants under the guise of "streamlining" the system. There have been abuses in the use of pre-trial discovery procedures in some cases, and to the extent the discovery rules have been abused, complaint about the litigation system may be justified. However, before we tinkered with the Federal Rules, we should be certain that it is the language of the Rules, and not how they have been administered, that is the problem, that the proposed changes in fact are necessary, and that they will not sacrifice existing benefits and rights. Unfortunately the proposed amendments not only fail to satisfy any of the



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

Marine Insurance:

- 1) Broker goes to underwriters
- 2) Underwriters are first set of risk takers; they in turn spread the risk among re-insurers;
- 3) Reputable re-insurers in Europe have begun to drop out; (heavy loss
- 4) Underwriters are spreading the risk among unreliable foreign and domestic re-insurers
- 5) When a claim is made, payments begin at the lowest level of the pyramid; Some companies are not more than "store fronts",

INSIDE INSURANCE

Big losses raise question of 'moral hazards'

'Most people are not in a position to make money off of sinking their vessel'

by Robert Mann

Millions of dollars worth of fishing vessel losses in 1982 have broken over Seattle's marine insurance community like a rogue wave at sea. The result, according to brokers and underwriters, could be that fishermen will be paying higher deductibles and premiums in the very near future.

Although the Coast Guard does not keep track of the total number of fishing vessels and processors lost in a given year, some worried underwriters are drawing up lists of their own. The 1982 numbers look pretty grim to companies that are insuring Alaskan fishing vessels.

According to one list, there have been over \$48 million worth of total losses of crabbers, seiners, draggers, processors and gillnetters through November of 1982. Five processors, three of which burned and sank within a six week period,

accounted for \$29 million worth of the total; the *Al Ind-Esk-A-Sea*, which burned and sank off Everett on October 22, was perhaps the most spectacular of the losses. Another underwriter said over \$22 million worth of crabbers sunk, burned, or ran aground this year.

Bad times seem to bring an increase in the number of reports of vessel owners burning or deliberately sinking their boats to collect the insurance money so they can get out of the business. The fact is, though, that not much is usually gained from that kind of act, according to several underwriters.

"When people are going broke, it seems that the friction of the mortgage against one's wallet seems to heat up the back of the boat, and away she goes," quipped John Adams. Adams manages Pacific General Agency, Inc., a company that insures millions of dollars worth of fishing vessels throughout the U.S.

Adds Adams: "It really does a fisherman no good to file a claim or

have a convenient loss, if he is going to lose his ability to make a living. Most people are not in a position to make money off of sinking their vessel. At best, they usually get the mortgage paid off."

Maurice Oaksmith, an insurance broker, agrees with Adams for different reasons. "I really don't think that 'moral hazards' (intentional sinkings and burnings) are a factor right now, even with the depressed state of some of the fisheries. I've got great faith in human nature, particularly in the fishing industry."

Others in the insurance business, however, do not share Oaksmith's "faith" in human nature in the fishing fleets. One president of an insurance company here instructed his underwriters not to carry any more lines on converted processors, which he labeled, "floating fire hazards." Another marine insurance underwriting firm, Mathews & Livingston, Inc., bailed out of the fish vessel business in 1981 because "it is a volatile market and we were

looking at doubling our rates from our London connection," says a company spokesperson.

"My friends at Lloyd's say the Northwest and Alaska losses have just about destroyed their marine underwriting syndicate," says a former British underwriter who has worked in the U.S. marine insurance industry for two years.

Lloyd's and other western European companies that assume part of the risk on American fishing vessels are quoting prices that many U.S. brokers and underwriters are finding hard to sell to customers. An understanding of why the European insurers are shying away from the fishing vessel business requires a brief explanation of how marine insurance works.

Imagine a pyramid with the broker or underwriter sitting at the top. The fisherman comes into the office, and tells the broker or underwriter what kind of policies he wants and what he is willing to pay. (Most fishermen are covered for losses or damage to the hull and

machinery. A fisherman, no matter what his past record, can usually find someone to insure him.) The broker then goes to his underwriters—the first set of risk-takers, who usually carry only a small percentage of risk themselves. The risk on expensive fishing vessels is always spread out among re-insurers.

The most reliable re-insurers are in London at Lloyd's or the Institute of London Underwriters and other western European countries. Those companies, though, may spread the risk even further down the pyramid. At the bottom of the pyramid, you might find that a company you never heard of in Latin America might be assuming a fraction of a percentage of the total risk on an Alaskan fishing vessel. When claims are made, payment starts at the pyramid's bottom and works its way up.

According to Adams and others, North Pacific fishing vessels have a bad reputation in the European re-insurance market, hence the doubling and tripling of rates in the last two or three months. As a result of the increases, some smaller companies have been forced to seek reinsurance with unproven foreign security firms.

"The London and Western European reinsurance markets have just dried up," says Adams. "It's imprudent for a company like ours to hold all the risk on a crabber with a high degree of hazard. We have to have re-insurers and as these re-insurers drop out, there goes the market."

In the competitive marine insurance business, some companies are so hungry for premium dollars they are re-insuring through companies in South Africa, the Bahamas, and Hong Kong. "You have to realize that there are over 600 companies based in Hong Kong alone, and most of them are only a name in the phone book," said Adams, who adds that many claims go unpaid. "Many of the foreign securities firms will disappear before the claims can get in."

Says Maurice Oaksmith, "Insurance companies and syndicates make money from underwriting and investment income. Now that interest rates are lower on short-term money, the competition for insurance premium dollars is getting even heavier. Some people want to make a quick killing by buying their reinsurance as cheaply as possible so that they can keep most of the premium. They tend to stray into left field re-insurers."

Oaksmith says that "If underwriters are selective, and properly re-insured, they can make money writing fish boats at or near the level of where premiums are today."

John Adams knocks on his desk and says his firm has made money. "We have tried to be cautious with those people that we suspect." But Adams feels that most marine insurance underwriters and brokers today do not know their market. "In the past few years we've seen the inundation of the marine insurance market with inexperienced people with all kinds of capacity. There have been more and more companies coming in and diving right out again after a few hard licks."

He says there are a few "damn good salesmen who are very gullible because they don't want to know the truth about the security they're representing. If it's an undesirable risk, it will usually end up with what we consider to be the less inquisitive underwriters who fail to ask the questions they should ask."

Adams maintains that there are very few underwriters who truly understand the fishing business well enough to know when to ask if a person is a "known troublemaker with a poor record in the past. Some people, though, are not crooked, they're just doggone unlucky," says Adams.

Adams feels most underwriters insuring fish boats should know how machinery operates so that they can know if a claim is legitimate or not. "Most underwriters don't know anything about claims. Unfortunately, the claims people think the underwriters know everything," says Adams.

Although Adams has worked around fishing boats a long time, he says he's often too busy to get the chance to visit the docks to inspect fishing vessels he insures, although he says he tries to as often as possible. Like others, he relies on marine surveyors, the eyes and ears of every underwriter or broker. (See accompanying story.)

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However, other surveyors say they are rarely pressured into inflating vessel values. John Adams, for instance, says "Sometimes the vessel owner wants surveyors to deflate the value because he doesn't want to pay the money on high insurance premiums on boats that are fully paid for."

"Most surveyors know what they're doing," says one claims investigator, "but some have great gaps in their experience and training. Some surveyors specialize in cargo only, others in tug boats, others in yachts, and some in crab boats. Frequently their expertise is limited to their specialty class of vessels, and they're not able to adapt well to new classes."

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Whether an underwriter or vessel owner decides to hire, fire or believe a surveyor does not diminish the importance of their C & V surveys. When claims are paid, they are the most important records available, because foul play is almost impossible to prove. Underwriters rarely go to the bother and expense of trying to prove arson or intentional sinking; they simply pay the claims based on a vessel's surveyed value. Raising the vessel and re-surveying it is the only way to change the surveyed value.

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"It's easy to say that when the mortgage is high and the values are dropping beneath the mortgage, it

becomes advantageous to have an accident. But that's only part of the story," says Adams.

"The other part is that people are working harder and pushing their crews harder and harder trying to make a profit. Everybody gets tired."

Maurice Oaksmith, who grew up on Alaskan fishing boats, says, "I think fishing vessels in many ways are a better risk today than they were four years ago. There are many more alarms, detection devices, and better navigational equipment. But one thing you've got to guard against, as technology advances, is complacency."

Adams blames accidents involving some crabbers on "electronic creature comforts" along with drug use by younger crew members who doze during their wheel watch.

In some cases, though, he says accidents are not due to overwork, drugs, or high-tech instruments. "In Bristol Bay we never have a total loss prior to the season unless it's truly accidental. It always seems to happen just before the end of the season, and "Oh, my god, the fire started," or "I hit a rock." There aren't very many rocks in Bristol Bay, so they either swamp or burn.

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Adams admits that he is speaking somewhat facetiously; he knows that Bristol Bay permits can cost up to \$100,000. Yet he sincerely feels that 'moral hazards'— "sinking the damn boat"— are higher these days,



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and the way to prevent them is to make sure the owner starts accepting some of the risk.

He looks back to the 1930's during the Great Depression when there were a lot of similar vessel losses occurring. According to Adams, an underwriter would co-insure the vessel, assuming only part of the risk in case of partial losses; the owner would pick up the rest. The other alternative he sees is charging very high deductibles.

Adams thinks strict Coast Guard enforcement of safety regulations helps reduce risk, too. Under Section 46, Parts 24 through 26 of the Code of Federal Regulations, the Coast Guard can board uninspected fishing vessels and check for safety and fire fighting equipment violations. But Coast Guard spokespeople say they do not have the manpower to check fishing vessels unless they receive a specific See **BOAT INSURANCE** page 45

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Maurice Oaksmith, one of the founders of the National Council of Fishing Vessel Safety and Insurance, says the "industry ought to consider self-regulation. The principal reason for forming this national group was that insurance costs were high, and the only way to bring them down was to decrease the severity and frequency of accidents. I would say that about 90% of all accidents and fatalities are avoidable. Usually they result from somebody doing something they shouldn't do."

There is a general consensus among marine surveyors, underwriters, and claims investigators

that human error, due to lack of adequate training, is responsible for many legitimate accidents. In the case of converted floating processors, however, there are other dangers.

During the conversion process, bulkheads and cofferdams are usually removed to make more room for processing equipment, forklifts, and elevators. "They cut out watertight bulkheads so it's easier to move cargo down to the freezing holds and along the processing leek," explains surveyor Jim Goldade.

"In the case of one processor," says another surveyor, "all three holds had been cut through all the way back to the engine room. You can pump such a vessel full of water,

but you've got no way to pump it out again. There are no subdivisions to control flooding or fire in these vessels."

Highly flammable polyurethane foam is also an acknowledged fire hazard aboard such processors.

"We've glossed over these problems in the last few years because of a very competitive insurance market, due to excess capacity and underwriters seeking premiums at any cost," says one concerned claims investigator. "Now that interest rates are declining and losses are continuing to accelerate, the conditions are set for a scarcity of insurance and possibly a recognition that standards will be necessary if losses are to be controlled." □

INSIDE INSURANCE

Big losses raise question of 'moral hazards'

'Most people are not in a position to make money off of sinking their vessel'

by Robert Mann

Millions of dollars worth of fishing vessel losses in 1982 have broken over Seattle's marine insurance community like a rogue wave at sea. The result, according to brokers and underwriters, could be that fishermen will be paying higher deductibles and premiums in the very near future.

Although the Coast Guard does not keep track of the total number of fishing vessels and processors lost in a given year, some worried underwriters are drawing up lists of their own. The 1982 numbers look pretty grim to companies that are insuring Alaskan fishing vessels.

According to one list, there have been over \$48 million worth of total losses of crabbers, seiners, draggers, processors and gillnetters through November of 1982. Five processors, three of which burned and sank within a six week period,

accounted for \$29 million worth of the total; the *Al-Ind-Esk-A-Sea*, which burned and sank off Everett on October 22, was perhaps the most spectacular of the losses. Another underwriter said over \$22 million worth of crabbers sunk, burned, or ran aground this year.

Bad times seem to bring an increase in the number of reports of vessel owners burning or deliberately sinking their boats to collect the insurance money so they can get out of the business. The fact is, though, that not much is usually gained from that kind of act, according to several underwriters.

"When people are going broke, it seems that the friction of the mortgage against one's wallet seems to heat up the back of the boat, and away she goes," quipped John Adams. Adams manages Pacific General Agency, Inc., a company that insures millions of dollars worth of fishing vessels throughout the U.S.

Adds Adams: "It really does a fisherman no good to file a claim or

have a convenient loss, if he is going to lose his ability to make a living. Most people are not in a position to make money off of sinking their vessel. At best, they usually get the mortgage paid off."

Maurice Oaksmith, an insurance broker, agrees with Adams for different reasons. "I really don't think that 'moral hazards' (intentional sinkings and burnings) are a factor right now, even with the depressed state of some of the fisheries. I've got great faith in human nature, particularly in the fishing industry."

Others in the insurance business, however, do not share Oaksmith's "faith" in human nature in the fishing fleets. One president of an insurance company here instructed his underwriters not to carry any more lines on converted processors, which he labeled, "floating fire hazards." Another marine insurance underwriting firm, Mathews & Livingston, Inc., bailed out of the fish vessel business in 1981 because "it is a volatile market and we were

looking at doubling our rates from our London connection," says a company spokesperson.

"My friends at Lloyd's say the Northwest and Alaska losses have just about destroyed their marine underwriting syndicate," says a former British underwriter who has worked in the U.S. marine insurance industry for two years.

Lloyd's and other western European companies that assume part of the risk on American fishing vessels are quoting prices that many U.S. brokers and underwriters are finding hard to sell to customers. An understanding of why the European insurers are shying away from the fishing vessel business requires a brief explanation of how marine insurance works.

Imagine a pyramid with the broker or underwriter sitting at the top. The fisherman comes into the office, and tells the broker or underwriter what kind of policies he wants and what he is willing to pay. (Most fishermen are covered for losses or damage to the hull and

machinery. A fisherman, no matter what his past record, can usually find someone to insure him.) The broker then goes to his underwriters—the first set of risk-takers, who usually carry only a small percentage of risk themselves. The risk on expensive fishing vessels is always spread out among re-insurers.

The most reliable re-insurers are in London at Lloyd's or the Institute of London Underwriters and other western European countries. Those companies, though, may spread the risk even further down the pyramid. At the bottom of the pyramid, you might find that a company you never heard of in Latin America might be assuming a fraction of a percentage of the total risk on an Alaskan fishing vessel. When claims are made, payment starts at the pyramid's bottom and works its way up.

According to Adams and others, North Pacific fishing vessels have a bad reputation in the European re-insurance market, hence the doubling and tripling of rates in the last two or three months. As a result of the increases, some smaller companies have been forced to seek reinsurance with unproven foreign security firms.

"The London and Western European reinsurance markets have just dried up," says Adams. "It's imprudent for a company like ours to hold all the risk on a crabber with a high degree of hazard. We have to have re-insurers and as these re-insurers drop out, there goes the market."

In the competitive marine insurance business, some companies are so hungry for premium dollars they are re-insuring through companies in South Africa, the Bahamas, and Hong Kong. "You have to realize that there are over 600 companies based in Hong Kong alone, and most of them are only a name in the phone book," said Adams, who adds that many claims go unpaid. "Many of the foreign securities firms will disappear before the claims can get in."

Says Maurice Oaksmith, "Insurance companies and syndicates make money from underwriting and investment income. Now that interest rates are lower on short-term money, the competition for insurance premium dollars is getting even heavier. Some people want to make a quick killing by buying their reinsurance as cheaply as possible so that they can keep most of the premium. They tend to stray into left field re-insurers."

Oaksmith says that "If underwriters are selective, and properly re-insured, they can make money writing fish boats at or near the level of where premiums are today."

John Adams knocks on his desk and says his firm has made money. "We have tried to be cautious with those people that we suspect." But Adams feels that most marine insurance underwriters and brokers today do not know their market. "In the past few years we've seen the inundation of the marine insurance market with inexperienced people with all kinds of capacity. There have been more and more companies coming in and diving right out again after a few hard licks."

He says there are quite a few "can good salesmen who are very gullible because they don't want to know the truth about the security they're representing. If it's an undesirable risk, it will usually end up with what we consider to be the less inquisitive underwriters who fail to ask the questions they should ask."

Adams maintains that there are very few underwriters who truly understand the fishing business well enough to know when to ask if a person is a "known troublemaker with a poor record in the past. Some people, though, are not crooked, they're just doggone unlucky," says Adams.

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