



COMPLIANCE ADVISOR

Limitations on Which Types of Coverage Can Be Placed by Excess Line Licensees

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THE EXCESS LINE ASSOCIATION OF NEW YORK

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Limitations on Which Types of Coverage Can Be Placed by Excess Line Licensees

This Compliance Advisor distinguishes those types of insurance coverage that an excess line broker is permitted to place with excess line insurers versus those which cannot be placed with excess line insurers.

Within this document, is the list of coverages, where the coverages are defined in the New York Insurance law, specifically the section of the insurance law which prohibits or permits these kinds of insurance to be placed in the excess line market and a comments section.

Keep in mind the policy must provide coverage as defined. An inaccurate label identifying a policy as a permissible type of coverage is not sufficient if the coverage provided fails to meet the coverage definition.

<u>Coverages Authorized for Placement by Excess Line Brokers</u>			
<i>Coverage Type</i>	<i>Legal Definition</i>	<i>Excess Line Broker Authority</i>	<i>Comments</i>
Fire	§ 1113(a)(4)	§ 2105(a)	These policies must incorporate the terms of the standard fire policy in §3404. (OGC opinion of April 19, 2002)
Miscellaneous Property	§ 1113(a)(5)	§ 2105(a)	This includes flood insurance and storm surge.
Water Damage	§ 1113(a)(6)	§ 2105(a)	
Burglary & Theft	§ 1113(a)(7)	§ 2105(a)	This includes kidnap and ransom coverage.
Glass	§ 1113(a)(8)	§ 2105(a)	
Boilery & Machinery	§ 1113(a)(9)	§ 2105(a)	
Elevator	§ 1113(a)(10)	§ 2105(a)	
Animal	§ 1113(a)(11)	§ 2105(a)	
Collision	§ 1113(a)(12)	§ 2105(a)	
Personal Injury Liability	§ 1113(a)(13)	§ 2105(a)	This includes all types of third-party legal liability for death or injury, but it also includes economic damages caused by negligence such as errors and omissions coverages. Consult §3420 for certain minimum standards for liability insurance coverage. Liability policies must provide coverage for defense. Both defense costs and claims must also be paid on behalf of the insured not reimbursed. The lone exception to this is directors and officers liability insurance. (11CRR-NY Part 72)
Property Damage Liability	§ 1113(a)(14)	§ 2105(a)	
Fidelity & Surety	§ 1113(a)(16)	§ 2105(a)	
Credit	§ 1113(a)(17)	§ 2105(a)	This includes coverage for expenses incurred by adoptive parents on behalf of a surrogate mother carrying a child for those adoptive parents. It also includes “contract frustration” coverage for athletes, entertainers and executives who cannot perform a contract due to death, injury or disability. Contract Frustration coverage can be purchased by either party to the contract. It can only apply to damages suffered for non-performance of a contract.
Motor Vehicle & aircraft physical damage	§ 1113(a)(19)	§ 2105(a)	
Marine & Inland Marine	§ 1113(a)(20)	§ 2105(a)	Certain ocean, marine and other risks are exempt from the excess line laws under §2117.
Residual Value	§ 1113(a)(22)	§ 2105(a)	
Prize Indemnification	§ 1113(a)(27)	§ 2105(a)	
Service Contract Reimbursement	§ 1113(a)(28)	§ 2105(a)	This coverage primarily supports the obligations of vendors who provide extended warranty contracts on the sale of certain goods.

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Salary Protection Insurance	§ 1113(a)(31)	§ 2105(a)	This coverage is for a loss of earned income in excess of disability insurance where applicable. It differs from disability insurance because it is tied to a loss of earnings.
Donor Medical Expense	§ 1113(a)(32)	§ 2105(a)	This is coverage for unintended medical expenses incurred for the donor of gametes or embryos.
Excess Business disability	§ 1113(a)(33)	§ 2105(a)	This is coverage akin to key man disability insurance to protect a business entity for expenses incurred or the funding of a buy/sell agreement caused by the disability.
Business Interruption	§ 1113(a)(34)	§ 2105(a)	This provides a statutory definition which includes traditional business interruption criteria but adds coverage for workplace violence where no physical damage to property is required if the assailant is on the premises.
Parametric	§ 1113(a)(34)	§ 2105	Parametric coverage is defined narrowly, §3416(b) requires excess line brokers to provide a special notice to insureds.
Automobile Liability	§ 1113(a)(13)	§ 2105(a)	Auto liability insurance can be written for limits in excess of the financial responsibility requirements which must be insured by a licensed insurer. Primary Auto liability coverage can be provided for garage liability and named non owner policies. Coverage for Transportation Network Companies (§3455) and Peer to Peer car sharing (§3458) can be placed but such placements are subject to extensive additional regulation.
Medical Malpractice	§ 1113(a)(13)	§ 2105(a)	Primary Medical Malpractice insurance for doctors, dentists and general hospitals can only be written by excess line insurers if the residual market “Medical Malpractice Insurance Pool, (MMIP) declines to insure the risk. Excess medical malpractice and other non-hospital risks such as nursing homes, convalescent centers, testing labs, and diagnostics facilities can be placed without a declination from MMIP. (See 11CRR-NY23.7 (Reg. 41) for a certain required notice.
Risk Purchasing Groups	§ 5902(m) § 1113(a)(13) & (14)	§ 2105(a)	A group of similar businesses can form a group to purchase liability insurance. Such coverage can be acquired in the excess line market when unavailable from admitted insurers.
Employer Sponsored Group Personal Excess	§ 3453	§ 3453	This is a form of liability insurance under §1113(a) 13 and 14.

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Representations & Warranties	§ 1113(a) various	§ 2105(a)	This is coverage for breach of warranties and representations made in merger and acquisition contracts. The coverages fall under various definitions in §1113(a) depending upon the particular representation or warranty. It can be purchased by the seller or purchaser in the contract.
Patent Infringement Liability	§ 1113(a)(14)	§ 2105(a)	

<u>Coverages Prohibited from Placement in the Excess Line Market</u>			
<i>Coverage Type</i>	<i>Legal Definition</i>	<i>Excess line Market Prohibition</i>	<i>Comments</i>
Life & Annuities	§ 1113(a)(1) & (2)	§ 2105(a)	
Accidental & Health	§ 1113(a)(3)	§ 2105(a)	
Workers Compensation	§ 1113(a)(15)	§ 2105(a)	USL&H coverage is similar to workers compensation and not permitted in the excess line market. For the same reason owner-operator (Truckers) occupational accident insurance is barred. Jones Act liability insurance is not barred.
Title	§ 1113(a)(18)	§ 2105(a)	
Mortgage Guaranty	§ 1113(a)(23)	§ 2105(a)	
Credit Unemployment	§ 1113(a)(24)	§ 2105(a)	This prohibition also extends to Group Credit Unemployment coverage under §3436.
Financial Guaranty	§ 1113(a)(25)	§ 2105(a)	
GAP	§ 1113(a)(26)	§ 2105(a)	
Legal Services Insurance	§ 1113(a)(29)	§ 2105(a)	This is the only defined coverage whereby the costs of an attorney to defend the insured can be sold independent of liability insurance. Since it is not available in the excess lines market, similar coverages such as litigation cost protection, legal expense insurance and stand-alone patent defense insurance, are prohibited.
Involuntary Unemployment	§ 1113(a)(30)	§ 2105(a)	
Credit card, debit card & checking account group coverage	§ 3442	§ 3442(j)	
Product or System Group Coverage	§ 3446	§ 3446(c)	
Identity Theft Group Coverage	§ 3451	§ 3451(a)(2)	There are two § 3451's resulting from a legislative error.

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Group Property Travel Coverage	§ 3452	§ 3452(a)(2)	
Group Policy for Service providers listed in a commercial directory	§ 3453	§ 3453(h)	There are three § 3453's resulting from legislative error.
Self Service Storage Company group coverage	§ 3453	§ 3453(h)	There are three § 3453's in the insurance laws resulting from error by the legislature.
Sponsored group personal coverage	§ 3454	§ 3453(f)	Sponsor means an association, organization, labor union, federation, fraternal club or similar entity which meets certain additional criteria.

Certain coverages are prohibited from placement in the excess line market (and the admitted market in many cases) based on public policy and other concerns as set forth in 11CRR-NY Part 27 § 27.11 "Prohibited Activities". Based on interpretation by DFS, those coverages include:

<u>Insurance Type</u>	<u>Comments</u>
Punitive Damages	See OGC Opinion No. 08-08-09
Contractual Bonuses	
Patent Infringement Abatement Insurance	
Impermissible Group Coverage	OGC Opinion of January 21, 2004, and Circular letter No. 6 (2005)

New types of coverages are under development and emerging all the time. In New York, you are well advised to verify the coverage provided falls into a legal category of insurance before selling it in New York on an excess line basis. Some coverages which are permissible in other states are not permitted in New York.



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