

**Bulletin No. 2005-11**

**May 6, 2005**

**Re: GROUP PROPERTY/CASUALTY INSURANCE POLICIES**

Historically, New York law prohibited unaffiliated entities from purchasing property/casualty insurance as a group. Over time, there have been some exceptions carved out of this blanket prohibition. For example, in Bulletin No. 2005-05 ELANY offered a detailed explanation about the Federal Liability Risk Retention Act and how to comply with New York Insurance Law Article 59 and the New York regulation pertaining thereto, 12 NYCRR 301 (Regulation 134), when placing a purchasing group in the E&S market.

**While this federal law preempts certain state insurance law, do not be misled, the excess line law applies to nonadmitted purchasing group placements.**

In order to be sure any group property/casualty policy you may wish to place complies with New York law, a prudent approach would be to determine first which, if any, exceptions apply to the general prohibition on placing group property/casualty policies.

In addition to the exceptions created by the Federal Liability Risk Retention Act noted above, you have the following possibilities:

1. New York Insurance Law §3435 and Insurance Regulation 5 NYCRR 153 (Regulation 135) essentially permit not-for-profit/tax exempt entities and public entities to form a group to purchase insurance.

The purpose under this section was to allow governmental entities, schools, hospitals and the like, to pool their commercial risk exposures. Among other requirements, each entity must have separate limits of liability. When a group has an aggregate limit the coverage could be rendered illusory to one member by another member's exhaustion of limits.



2. New York Insurance Law §3445 enacted in 1998, with support from ELANY and a coalition of other supporters, authorized the sale of employer sponsored group personal excess insurance. This type of coverage can be placed in the excess line market subject to the diligent search requirements.

Attached are a New York State Insurance Department [Circular Letter #6 of 2005](#) and an [Office of General Counsel Opinion dated January 21, 2004](#), both of which address this type of coverage. Succinctly, the Insurance Department noted that the mere “labeling” of a policy as this type of coverage is insufficient to meet the legal requirements of the law. In the situation described by the Insurance Department, the policy was not provided by an employer and not provided to employees. Other problems with the placement were also noted.

3. New York Insurance Law 3446 enacted in 1999 permitted the sale of “product and system group insurance” for the sale of coverage to end users of certain products. For example, anti-theft devices which fail resulting in a loss to the end user would be covered under this type of insurance.

As the attached [Office of General Counsel Opinion dated October 13, 2004](#) asserts, this coverage can only be provided by **authorized** insurers and not excess line insurers.

4. New York Insurance Law also permits, under certain circumstances, group policies sold under credit card, debit card and checking account programs (§3442), and also under certain mass merchandising programs which are generally irrelevant to the E&S market.

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