Blades, Crout & Proulx LLC

Risk Management Consultants - Established 1926

New Jersey Surplus Lines Insurance Taxes & Fees

Introduction

As the commercial insurance marketplace continues to evolve, one trend that has become more common, particularly in the surplus lines marketplace, is the proliferation of fees being imposed by wholesale and retail agents and brokers. Considering this, we decided to take a closer look at these fees, what they represent, and how the State of New Jersey regulates them. While each state has its own regulations for how it enforces its own insurance policy taxes or fees, state regulations regarding wholesale and retail agent fees also vary. We believe this discussion will provide you with a reference point for gathering more information about the specific taxes and fees allowed in your state.

Background

Insurance companies are regulated by each state and classified as either: i) admitted (licensed); or ii) non-admitted (excess and surplus lines). Both have state regulations regarding taxes or fees they are required to pay the state to conduct business there. How they compile their tax or fee obligation is regulated on a state-by-state basis.

In New Jersey, admitted insurers are required to become members of the New Jersey Property-Liability Insurance Guaranty Association (NJPLIGA). A condition of membership is they must contribute 0.6% of their written premium to the NJPLIGA, which provides a backstop for policyholders and claimants of insolvent insurance companies. The most accepted method for admitted carriers to contribute to the NJPLIGA is by collecting a .6% premium surcharge from the buyer, which they then pass through directly to the organization.

In New Jersey, non-admitted insurers are required to pay a 5% tax on their written premium to the New Jersey Commissioner of Banking and Insurance (NJCBI). In addition to the tax, wholesale and retail agents and brokers who sell insurance often charge the buyer a fee. Our discussion will focus on these taxes and fees for commercial property and casualty insurance, as well as provide some suggestions on how to manage the fees and taxes being charged.

Surplus Lines Tax

The most commonly accepted method for New Jersey non-admitted insurers to pay the 5% tax referenced above, is by collecting the tax as a separate line item on the buyer's policy or invoice, which is then passed through directly to the New Jersey Commissioner of Banking and Insurance (NJCBI). Surplus lines tax cannot be assessed on any fees charged by the wholesale or retail agent or broker. We recommend the buyer be vigilant in checking the tax calculation on every surplus lines policy to ensure compliance with this rule.

In addition to the 5% tax, the New Jersey Surplus Lines Insurance Guaranty Fund (NJSLIGF), provides the same carrier insolvency backstop as the NJPLIGA on admitted insurers. The NJSLIGF requires each surplus lines insurer to make a one-time payment to the fund of $25,000. Since 2002 the fund has been limited to medical malpractice liability insurance and owner-occupied property insurance of less than four units. Buyers should not see a surcharge for the NJSLIGF on their policy even if their policy benefits from the fund.

Surplus Lines Fees

Fees (policy fee or broker fee) charged by wholesale agents or brokers to the buyer, in addition to the premium and surplus lines tax, are a common occurrence in the marketplace. While some of these fees are for ancillary services discussed below, the most common purpose of the fee is to provide the wholesale agent or broker with an additional source of revenue, on top of any commissions they earn on the policy premium. The fee provides no additional benefit to the buyer. All the protection provided to the buyer by the policy is contemplated in the premium charged for the exposure. The amount of the fee or fees being charged varies and, despite what wholesale agents and brokers may suggest, does not have any actual correlation to the type of risk being insured.

The New Jersey Department of Banking and Insurance (NJDOBI) does provide protection for the buyer and limit the amount a wholesale or retail agent or broker may charge. Per the NJDOBI:

> "*For commercial lines policies, a fee equal to the greater of two percent of the premium for the applicable policy period or $100.00, but in no event exceeding $250.00.*"

We have been successful in having the policy fees reduced or waived, but unless there is a direct relationship between the buyer and the wholesale agent or broker, it can be an uphill negotiation.

A practice becoming more and more prevalent is retail agents and brokers charging a fee on top of commissions they earn on the policy premium, and in addition to fees charged by the wholesale agent or broker. The NJDOBI does not have a rule against more than one agent or broker charging a fee for the same policy. As noted in the prior paragraph, the NJDOBI rule only applies to the amount for each fee, and typically the retail agent or broker fee is less than the wholesaler fee. We have also had success in having these fees waived, or reduced, due to the direct relationship between the buyer and the retail agent or broker.

Policy fees are not the only type of fee an agent or broker may charge to the buyer. Per the NJDOBI:

> *"A surplus lines producer may charge a fee for the actual cost incurred for any services performed by a person that is not associated with the surplus lines producer, such as inspection services."*

The NJDOBI does not have a rule limiting the amount that can be charged, other than it be "*the actual cost incurred*" for the service. Contrary to the policy fee discussed in the prior paragraphs, these fees typically have a direct correlation to the underwriting of the insurance being provided, but that does not guarantee the service(s) will occur even with the fee paid at the time of binding. We suggest the buyer negotiate to have the inspection or audit scheduled and confirmed in advance of paying the fees.

Conclusion

Insurance policy fees and taxes are regulated on a state by state basis for both admitted and non-admitted insurers. We encourage the buyer to do the research to make sure that where there are taxes being collected, they are applied correctly. Our objective in this discussion was to clear away some of the uncertainty surrounding insurance policy taxes and fees, to draw attention to the increasing use of fees on surplus lines insurance policies, and to put the buyer in a better position when negotiating their insurance policies. Some of the key takeaways from this discussion include:

- The current New Jersey Surplus Lines Tax rate is 5% of the total policy premium and cannot be charged on any fees charged by the wholesale or retail agent or broker.
- In New Jersey, policy fees charged by the agent or broker are limited, "*to the greater of two percent of the premium for the applicable policy period or $100.00, but in no event exceeding $250.00*."
- New Jersey does not have a rule against more than one agent or broker charging a policy fee for the same policy.
- The surplus lines producer can charge a fee to the buyer for, "*any services performed by a person that is not associated with the surplus lines producer, such as inspection services.*"

Authors note: reference sources include the New Jersey Department of Banking and Insurance (NJDOBI), New Jersey Property-Liability Insurance Guaranty Association (NJPLIGA) and International Risk Management Institute (IRMI).