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**BULLETIN NO. 2010-01**

**TO:** Alabama licensed insurance producers and surplus line brokers

**FROM:** Jim L. Ridling  
Commissioner of Insurance *JLR*

**DATE:** March 18, 2010

**RE:** Surplus lines – diligent effort requirement on wind and hail coverage in portions of Baldwin and Mobile Counties

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This Bulletin addresses how the Department of Insurance will interpret and apply the “diligent effort” requirement in the Surplus Line Insurance Law in the context of property insurance coverage against damage or destruction by wind and hail in certain areas of Baldwin and Mobile Counties:

1. Alabama public policy requires that insurance coverage for Alabama consumers and commercial interests be written through an insurance company properly authorized to transact the business of insurance in the State. *E.g.*, Ala.Code § 27-3-1. Use of an unauthorized insurer is an exception to this public policy and is limited by existing law. By statute [Ala. Code § 27-10-20], surplus lines coverage may only be procured through an unauthorized insurer if:

(a) the insurance is procured through an Alabama-licensed surplus lines broker;

(b) the full amount of the desired insurance is not procurable, “after diligent effort has been made to do so,” from among insurers authorized to transact and actually transacting that kind and class of insurance in Alabama or the insurance has been procured to the full extent an authorized insurer is willing to insure; and

(c) the insurance is not procured for the purpose of securing advantages as to a lower premium rate than would be accepted by an authorized insurer.

2. Information has come to the attention of the Commissioner that a “diligent effort” to procure property coverage against damage from wind or hail in some coastal areas of Alabama through authorized insurers may effectively be futile because such coverage is not readily obtainable through authorized insurers.

3. **Effective this date**, the Commissioner determines that the “diligent effort” requirement of Ala. Code § 27-10-20(1)b is satisfied in those circumstances meeting both of the following criteria without the need for contacting or obtaining declinations from authorized insurers:

(a) The prospective insured requires personal or commercial property insurance coverage against destruction of, or damage to, property caused by wind or wind events and hail; and

(b) The property to be insured is located within an area in Baldwin County or Mobile County south of the southern right-of-way line of Interstate 10.

4. In instances meeting both criteria in section (3) above, a producer or surplus line broker is not required to contact authorized insurers or document such efforts in the form of three (3) declinations or otherwise, and the coverage may be bound through an unauthorized insurer if the other requirements in Ala. Code § 27-10-20(1) are satisfied. Surplus lines coverage cannot be procured for the purpose of obtaining a lower premium rate than would be charged by an authorized insurer. Ala. Code § 27-10-20(1)c.

5. The producer or surplus line broker is expected to verify that a proposed risk satisfies both criteria in section (3) and to be able to document the existence of both criteria in the event of inquiry or an examination by the Department. A surplus line broker is authorized to accept and rely on a referring producer’s certification that the criteria described in section (3) are satisfied.

6. This Bulletin does not otherwise modify statutory requirements applicable to placement of insurance on a surplus lines basis.

7. This Bulletin is intended to be TEMPORARY in effect until such time as the Department is able to address the issue by regulation, and shall remain in effect until further notice. This Bulletin is subject to rescission or modification upon final adoption of a regulation, a change in market conditions, or for other reasons deemed acceptable to the Commissioner.