BIG I | CONNECTICUT

DATE: February 15th, 2024

TO: Andrew Mais, Commissioner of Insurance
Jared Kosky, Deputy Commissioner of Insurance
Jim Carson, Director of Legislative Affairs

FROM: Scott Hobson, AVP of Government Relations, Big I Connecticut

RE: Enhancing Excess Lines Processes

Big I Connecticut respectfully requests the Department's support for the addition of cyber liability insurance to the Export List, and for streamlining the excess lines due diligence process. Excess Lines insurance is a vital part of Connecticut's market and is essential for ensuring customers can obtain the best coverage to fit their needs. The importance of the excess market has only grown in recent years as the market has hardened significantly. It is in the best interest of consumers that Connecticut take steps to streamline the process for securing coverage in the excess market. We thank the department for its support of recent legislation, signed into law in 2023, eliminating the requirement for wholesalers to file declination forms with the department quarterly, and look forward to continuing to enhance the excess lines coverage process.

Cyber Liability Coverage Should be Added to the Export List:

When considering whether a coverage should be placed on the Export List, the Department should consider not only if a coverage is available in the admitted market, but if that coverage is *adequately* available in the admitted market. We believe there is ample evidence that cyber liability coverage is not adequately available in the admitted market, and thus belongs on the Export List.

The landscape of cyber risks is dynamic, with new threats emerging regularly, and the severity of incidents escalating rapidly. In such a scenario, a rigid process of obtaining multiple declinations from admitted carriers could significantly delay a company's ability to secure essential cyber liability coverage. Excluding cyber liability insurance from the diligent effort requirement acknowledges the need for timely responses and allows insurance brokers to navigate the evolving cyber landscape efficiently.

Moreover, cyber insurance is a relatively specialized field, and many admitted carriers may not have the expertise or capacity to underwrite these risks comprehensively. Allowing brokers to access the excess market without the diligent effort prerequisite ensures that businesses can access the most suitable and responsive coverage tailored to the unique nature of cyber threats. The addition of this coverage to the export list reflects the distinctive characteristics of cyber liability insurance and supports a more agile and effective approach to risk management in the digital age.

Our members have advised us of frustrating situations where admitted coverage is available, but the excess offerings are superior for the customer's needs. For example, consider when an admitted carrier's data breach costs are inside the policy limit which erode the aggregate limit as opposed to the less expensive non-admitted option that has the data breach costs outside the policy limit. In this situation the same carrier's admitted product is inferior and more expensive than the non-admitted.

The Department has recognized similar situations with other coverages, and subsequently added them to the export list. The most notable examples are Employment Practices Liability Insurance and Directors and Officers' coverage. These coverages have similar availability in the admitted market to Cyber Liability, i.e. they are available, but the availability is generally inadequate to serve customers' needs fully.

Six states currently include cyber liability coverage on their export list[1]. Florida (for commercial lines), Louisiana and Virginia eliminated the diligent effort requirement during the past 15 years. All three of those states experienced **decreases** in the excess line market's total share of premium in most of the years following the elimination of the diligent effort requirement. Their experience demonstrates that diligent effort requirements are not determinative of whether risks flow to the admitted market or the excess market, and that repeal of the diligent effort requirement has not led brokers to place more business in the excess line market.

It is important to note that there are already strong protections in place for coverages on the export list. All excess lines policies must bear a bold face notice stating that the coverage is not subject to the protection of the guaranty fund or review by the CT DOI, and the insured must sign the SL-8 form acknowledging their understanding. A producer who misleads or fails to disclose this information can be penalized by the Department and sued by their customer. And there is a powerful financial incentive to first make every effort to place coverage in the admitted market, as going to the excess market means the commission is split with the wholesaler.

The Excess Lines Affidavit Should be Streamlined:

Currently, Connecticut requires producers to provide the specific reason for declination, the date declined, and the name and title of the insurance company's underwriter declining the coverage. In practice, this information can be challenging or impossible to obtain. For example, many submissions to insurers are now made through web portals which generate either a quote or a declination of the risk. A web portal declination does not contain the name of an individual or their affiliation (company employee, agent, other), nor necessarily a reason for the declination, placing brokers in an untenable situation.

We propose streamlining the due diligence process remove the requirement to obtain the name and title of the company representative. This information is not vital and often impossible to obtain, and can be eliminated with no impact on consumer protection. Notably, this exact change was made in New York in 2022. It is a reasonable approach to simplifying the due diligence process in CT.

The excess market is of vital importance to Connecticut consumers and is necessary to ensure that they can obtain the best coverage to fit their needs. These proposals would streamline the process for placing coverage in the excess market, to the benefit of customers and their agents alike. We thank you for your consideration in these matters.

[1] Alaska, Arizona, Montana, New Mexico, Texas, and Utah