



ORDER NUMBER R 14-03

March 26, 2014

**ORDER AUTHORIZING PLACEMENT OF WORKERS'
COMPENSATION COVERAGE WITH A NONADMITTED INSURER**

Background:

1. Alaska Statute 21.34.030 states that workers' compensation coverage may be placed in and written by a nonadmitted insurer if
 - a. the director considers it in the best interest of the public and issues an order to that effect;
 - b. the insurance is written in accordance with AS 21.34;
 - c. the conditions for writing workers' compensation in the nonadmitted market receive compliance;
 - d. the rates and rating plans have been filed by the surplus lines broker as may be required by AS 21.39;
 - e. the surplus lines broker's activities related to placement of the insurance with a nonadmitted insurer comply with AS 21.34; and
 - f. the nonadmitted insurer has minimum capital and surplus that is two times that required by AS 21.34.040(c)(1).
2. The surplus lines broker, Richard Kink of Brown & Brown of Washington, Inc., provided documentation showing that a diligent search had been conducted and that the required coverage, stand-alone maritime employer's liability limits of \$1,000,000, was not available in the admitted market.
3. The insured, Enviro-Tech Diving, previously had obtained \$500,000 of Maritime Employers Liability coverage from the workers' compensation assigned risk plan and then obtained coverage through the American Diving Contractors Workers' Compensation program underwritten by Commerce and Industry Insurance Company where a \$1,000,000 limit was available. For this policy period, the assigned risk plan is only able to offer \$100,000 and the policy no longer meets the underwriting requirements

for the Commerce and Industry Insurance Company American Diving Contractors program. Additional declinations were also obtained from other insurers.

4. James River Insurance Company is willing to provide a stand-alone maritime employer's liability policy with \$1,000,000 limits.
5. The Division of Insurance notified the surplus lines broker that in order to place maritime employer's liability in the surplus lines market, the broker would need to file the rates for this policy in accordance with the filing requirements of AS 21.39. James River Insurance Company told the surplus lines broker that it will not provide the information necessary for the surplus lines broker to make the necessary filing under AS 21.39.
6. Alaska Statute (AS) 21.39.040(f) allows the director by order to suspend or modify the requirements of AS 21.39 on a kind of insurance, subdivision or combination of them, or on classes of risks, for which rates cannot practicably be filed before they are used or the filing and approval of which, in the director's opinion, are not desirable or necessary for the protection of the public.
7. James River Insurance Company has at least \$30,000,000 in capital and surplus.

The Director of the Division of Insurance finds:

- A. Workers' compensation insurance, including maritime employer's liability, is best purchased in the admitted market for the protection of the insured employer and their employees, including the availability of protection from the Alaska Insurance Guaranty Association.
- B. The \$100,000 limit available through the assigned risk plan may not provide the employer with adequate coverage for the employer's exposure to potential claims under the maritime employer's coverage.
- C. Requiring rates to be filed for the Enviro-Tech Diving maritime employer's liability coverage is not necessary for the protection of the public and suspending the rate filing requirement allows the insured to obtain adequate insurance protection for the employer and its employees.
- D. The Division compared pricing with other stand-alone coverage and the rates for the James River policy with a \$1,000,000 maritime employer's liability limit do not appear to be excessive, inadequate or unfairly discriminatory and do not appear to be out of line with coverage that is available from the assigned risk and voluntary market.
- E. James River Insurance Company has minimum and capital amounts that comply with two times the amount required in AS 21.34.030(c)(1).

The Director of the Division of Insurance Hereby Orders:

1. Under the authority of AS 21.34.030, the director authorizes Brown & Brown of Washington, Inc. to place Maritime Employer's Liability coverage for Enviro-Tech Diving with James River Insurance Company for the period from March 26, 2014 to February 15, 2015 only.
2. Under the authority of AS 21.39.040(f), the director suspends the rate filing requirements for \$1,000,000 and higher limits of stand-alone maritime employers' liability written by a surplus lines insurer.
3. The surplus lines broker will comply with all reporting requirements, notification requirements, evidence of insurance requirements, tax and fee collection and payment requirements and other applicable provisions of AS 21.34 relating to the placement of this coverage with a nonadmitted insurer.
4. The surplus lines broker must keep records to be used to show that the premium complies with AS 21.39, including the expense provision (commission, other acquisition costs, general expenses, taxes, profit), loss and loss adjustment experience, exposure, and any other items necessary to calculate the rate and to demonstrate that the rates and rating plan result in rates that are neither excessive, inadequate nor unfairly discriminatory as required by AS 21.39.030(a)(1).

This order is effective March 26, 2014



Lori K. Wing-Heier
Director