

## **Opinion No. 57-257**

October 10, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

**TO:** Mr. R. F. Apodaca, Superintendent of Insurance, State Corporation Commission, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

1. In qualifying as an admitted insurance company to write surplus line insurance in this State, must a foreign insurance company comply with the financial requirements of § 58-18-24, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement?
2. If so, to what extent?

#### CONCLUSIONS

1. Yes.
2. See opinion.

### **OPINION**

#### ANALYSIS

It is our understanding that the Storebrand Insurance Company, Ltd., of Kirkegaten 24, Oslo, Norway, has made inquiry with respect to the possibility of qualifying as an admitted insurance company to write surplus line insurance. We are informed that this company has not qualified to write insurance in any other state, but seeks admittance to do business in the United States through the State of New Mexico. It is our further understanding that a surplus line insurer is one who writes insurance on risks that the ordinary insurance company will not insure against. Such insurance may be any one or more of the several classes defined in § 58-7-1, N.M.S.A., 1953 Compilation.

With the above facts in mind, § 58-5-5, N.M.S.A., 1953 Compilation, becomes material to our inquiry. It reads as follows:

"No foreign insurance company organized under the laws of any country other than the United States, or any political subdivision thereof, shall be licensed to transact business in the state of New Mexico until, besides complying with the insurance laws of this state, it has made a deposit with the department of insurance of some state in the United

States of a sum not less than the minimum capital and surplus required of domestic and foreign companies licensed in the state. Such deposit must be made for the benefit and security of all of the company's policyholders and creditors in the United States."

The above statute would require a foreign insurance company organized under the laws of any country other than the United States, desirous of becoming licensed to transact business in this State, to deposit with the Department of Insurance of either this State, or some other state in the United States, a sum not less than the minimum capital and surplus required of domestic and foreign companies licensed in this State.

Inasmuch as the facts involved in this particular inquiry reveal that Storebrand Insurance Company, Ltd., has not been licensed to write surplus line insurance in any other state in the United States, it follows that if it seeks admittance to the United States through the State of New Mexico, the deposit referred to in § 58-5-5, N.M.S.A., 1953 Compilation, must be made with the Department of Insurance of the State of New Mexico.

The minimum capital and surplus required of domestic and foreign companies licensed in this State is set forth in § 58-18-24, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement. This statute contains a table which sets out the minimum capital, surplus and deposit requirements for each of the several classes of insurance that may be written in this State, such as life and/or accident and health, casualty, fidelity and surety, fire and marine, etc.

It is our opinion that an insurance company organized under the laws of a country other than the United States and seeking admittance to the United States through the State of New Mexico to write surplus line insurance must comply with the capital, surplus and deposit requirements for each particular class of insurance that it intends to write. This statement is made in view of the fact that a surplus line company, by its very nature, will write several classes of insurance.