

# TECHNICAL ADVISORY

**TA 341**

**December 11, 2019**

**SUBJECT:** Review of Progressive Surplus Lines Referral Agreement

**BACKGROUND:** Progressive Insurance Company recently introduced a new surplus lines commercial automobile insurance product in Louisiana and Mississippi through a subsidiary, Blue Hill Specialty Insurance Company. IIABL received inquiries from member agencies about the new product and engaged Progressive executives to find out more about the new product. Following is information about the new (Progressive) Blue Hill surplus lines product.

For a copy of the Blue Hill Surplus Lines Referral Agreement please click [HERE](#).

**MAIN POINTS:** Progressive introduced the new Blue Hill surplus lines product in Louisiana and Mississippi to provide more flexibility in policy forms and particularly pricing of commercial automobile business during this difficult "hard" market. Progressive will expand this product into other states as appropriate over time.

When the Blue Hill surplus lines product was originally introduced, agents were concerned that there was no "ownership of expirations" language in the agreement. Progressive immediately responded that this was an oversight on their part and reissued a revised Surplus Lines Referral Agreement that included appropriate ownership of expirations language protecting the agent.

Agents also wanted to know why a separate contract was needed and why policies would be written through Progressive Commercial Advantage Agency, Inc. Progressive responded that since this is a surplus lines product, coverage must be written through a licensed surplus lines broker...Progressive Commercial Advantage Agency. Retail independent agents cannot bind coverage but must bind through this Progressive surplus lines broker. Because of these substantial differences from the normal Progressive business, Progressive created an entirely new Surplus Lines Referral Agreement.

Agents also expressed concern about the payment of a "Referral Fee" instead of commissions. Progressive assured IIABL that normal commercial automobile commissions would be paid to agents on new and renewal policies. The difference in name is to distinguish surplus lines "Referral Fees" from regular Progressive commercial auto "Commissions" when they are both shown

on one unified Progressive commission statement to agents. It is a difference in name only.

To help agents evaluate this new (Progressive) Blue Hill Surplus Lines Referral Agreement, IIABL asked the IIABA legal team to review this agreement and provide guidance. Following is their review.



**Independent Insurance Agents  
& Brokers of America, Inc.**

## **OFFICE OF THE GENERAL COUNSEL**

---

**Blue Hill Specialty Insurance Company, Inc.  
(a Progressive company approved for Surplus Lines)**

### **SURPLUS LINES REFERRAL AGREEMENT**

**with Progressive Commercial Advantage Agency, Inc.  
(a Progressive-owned company)**

**Updated Version for LA and MS (November 2019)**

Reviewed December 2019

This contract review includes only general information and comments and is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely for use as a guide, is not a substitute for Producers' independent evaluation of any provision in a contract and is not a recommendation that the contract be signed or rejected. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.

**PLEASE BE ADVISED THAT THIS REVIEW FOCUSES ON ISSUES RELATING TO THE INSURANCE INDUSTRY, AND NOT GENERAL CONTRACT ISSUES.**

### **KEY PROVISIONS**

- The revised version of this Agreement states that the Producer owns all rights in the expiration information (Art. V.A.). The Producer, however, must affirmatively notify the Company if it does not want the Company, in its discretion, to offer to renew policies and renewals (Art. V.C.).
- The Agreement refers to compensation as a "referral fee" instead of a "commission" (Art. IV.). The Company has stated that referral fee payments under the Agreement will be the same as the commission rate under an admitted policy, but they will be stated separately on the monthly statement. The intent is to more clearly articulate the Producer's role and

limited authority under a surplus lines agreement. Note that referral fee schedules may be changed by the Company upon 30 days' written notice (or 90 days' written notice for renewals).

- Although the Company must provide at least 90 days' advance written notice to terminate the Agreement (Art. VI.V.), the Company may immediately upon written notice suspend the Producer's ability to refer business to the Company or restrict or modify the Producer's abilities (which may include authority) under the Agreement (Art. II.E.). A prolonged suspension or severe restriction could be comparable to a termination of the Agreement from the Producer's standpoint.
- The Producer may not bind coverage under the surplus lines agreement. Coverage is bound through Progressive Commercial Advantage Agency, which is authorized to bind coverage. (Art. II.B.)
- The Producer is required to provide applicants and insured all informational materials supplied by the Company that the Company asks the Producer to provide, without restricting it to materials that relate to the products that the applicant is seeking, or the insured has purchased. (Art. III.6.b.)
- The Producer is required to report to the Company any inquiry concerning a claim or loss the Producer receives, even if the insured has not made a decision on whether to file a claim. (Art. III.10.)
- After termination of the Agreement, the Company: (i) may immediately notify any insured that the Agreement has terminated (Art. VII.A.2.); and (ii) will only provide the Producer with requested copies of policy and renewal contracts and related declaration pages to the extent deemed appropriate by the Company (Art. VII.B.2.).

### **OTHER PROVISIONS**

- The Agreement prohibits the Producer, without the Company's consent, from using the Company's trademarks, logos, slogans, tag lines, etc. for promotions and marketing. Note that violations could result in a substantial monthly monetary penalty. (Art. II.D.4.)
- The felony conviction reporting obligation with respect to producers goes beyond what is required by the federal Violent Crime Control and Law Enforcement Act of 1994, which concerns felonies that involve a breach of trust or dishonesty. (Art. III.5.)
- The Company's in-person audit right of the Producer does not require the Company to provide advance notice, which could result in unexpected substantial disruption of the Producer's business. (Art. III.12.)

---

### **NECESSARY**

**ACTION:** Review this information as part of your due diligence related to conducting business with the new (Progressive) Blue Hill Surplus Lines Referral Agreement.

### **IIABL Disclaimer**

Information provided in this publication is intended for educational and informational purposes only. IIABL does not make any warranty or

representation, express or implied, with respect to the accuracy, completeness or usefulness of the information provided. This information should not be relied upon as legal advice. Please consult a qualified attorney for legal advice. Information provided in this publication represents the views of one or more experienced professionals but is not a recommendation that a particular course of action be followed. IIABL is not liable for any liability or damage which may result from the use of this information.