

## FALL 2012 SURPLUS LINES LAW GROUP MEETING

### BEAU REVAGE RESORT

Biloxi, Mississippi

*September 28, 2012*

*Friday, 8 a.m. – Noon*

**Hosted and Sponsored by:  
Mississippi Surplus Lines Association**

### *Agenda*

8:00           Welcome: Peggy Dronet, MSLA

                  Antitrust Admonition (handout): Mike Koziol

8:05-9:00    STATE ISSUES:

#### ARIZONA

AZ Bulletin 2012-02: SB 1123 broker reporting requirements

AZ SB 1124: 5/29/12: Transportation contract bids and financial responsibility

#### ARKANSAS

-Duty of wholesaler to apply underwriting guidelines of insurer in transaction with retail brokers.

-Proposed Rule 101: Eff. 1/1/13: Prohibition of use of discretionary clauses in disability income policies and hearing (10/30/12) notice.

#### CALIFORNIA: Ben McKay, Joy Erven, SLA of CA

-AB 2084 no longer amends the definition of “industrial insured”

-AB 2303: Modifies 1765.1 (mainly (c) & (d)) which effectively eliminates eligibility filing

-AB 2453 time to petition for a redetermination of a tax deficiency

-SB392 financial responsibility for contractors, language proposed to allow coverage from an eligible surplus lines insurer.

-SB1171: Ch. 162, Technical bill.

-SB 1172: amended to delete that SL brokers receive/ hold certain funds in fiduciary capacity.

-Verification of Home state is required by modifications to 1763(a). SL-1 has not yet been modified but the SLA indicated to put the home state information on the coversheet.

#### CONNECTICUT

-Public act 12-145: Substitute HB 5011 cancelation/non-renewal provisions a condition of eligibility

-Bulletin SL-3: New Procedures for Filing SL Taxes and Affidavits. Electronic filing of tax returns, payments, affidavits

#### **DELAWARE**

-Surplus Lines Bulletin No. 12: new quarterly SL-1925-Q reporting form,  
-Domestic/Foreign Insurers Bulletin 50: Homeowners' Ins. Rate Survey some surplus lines carriers listed as must file. The regulation seems to indicate this would not apply to surplus lines

#### **FLORIDA: Gary Pullen, Fred Karlinsky, Jack Dearie, Erin Bagley**

-Zota and imposition of attorney fees on surplus lines insurers per specific reference to surplus lines insurers in 626.9373

-Clearinghouse Bulletin 2012-CH-01 guidance: multi-state business in a NIMA state.

-FSLSO Bulletin 2012-02 filing of multi-state policies after Clearinghouse operational

-FSLSO Bulletin 2012-03: Multi-state Risks Bearing Non-US Premium

-Surplus Lines – Federally Authorized

-HB 1101, SB 1620 revises disclosure signed by insured, “fix” for the Brown v. Edenfield case

-*Lemy v. Direct General Finance Co.*: consequences if a placement fails to comply with all of the regulatory requirements: policy violating a section of the insurance code remains valid unless the code explicitly states that violating the section voids the policy.

#### **GEORGIA: Jessica Pardi, Morris, Manning & Martin**

-ACT: 746: SB385 applies the GA tax rate unless the state in a compact

-Bulletin 12-EX-1: Multi-state tax rate changes

-In re International Management Associates, conditional binder for surplus lines not valid beyond the issuance of the policy. Policy had been issued when the insurer sent it to the broker.

#### **HAWAII:**

-SB 2168: SLIMPACT: DEAD

-SB 2768 (companion HB 2506) Eliminates some underlying producer license requirements for surplus lines license;

-Withdraws from NIMA

-MEMO 2012-4E, clarifies tax,

-SL Broker Licensing FAQ not required to hold a Producer license.

#### **ILLINOIS: David Ocasek, SLA of IL**

-HB1577 PUBLIC ACT 097-0955: contains the NIRA provisions

-Proposed Amendments to Medical Professional Liability Database. Applies to all “other entities” which by definition includes surplus lines insurers.

-SLA: General Bulletin #38: all IL SL producer renewals/applications will be through NIPR.

## **KENTUCKY:**

Local government tax: Application: single state policies versus multistate policies.

## **LOUISIANA:** Ronnie Johnson, McGlinchey Stafford, PLLC

-HB442: Did not pass. rental dealers contingent auto liability: admitted carrier or, upon a finding after a public hearing there are none, an approved nonadmitted company, A.M. Best A or better.

-HB 1074 did not pass. Similar to HB442 but B+ rating or better

-H 766. Act 802: Reduces time pay patient comp fund from 45 to 30 days from receipt by broker.

-SB 208 Act 317 Adds representative of the La. SLA to the Property and Casualty Commission.

-SB263, Act No. 544 Provides for secretary of state's service of process on unauthorized insurer. –Bulletin No. 2012-02 SL TAXES. Applies where LA is the home state and for which there is premium allocated to at least one other state or territory,

## **MARYLAND:** Jason Fetterman, Niles Barton & Wilmer

-Bulletin 12-14 Claims Handling Practices

-Bulletin 12-15 Proposed Reg. 31.08.13 Percentage Deductible: Hurricane or Other Storm

-Bulletin 12-16 Homeowners' Limitation on Number of Claims Made-Notice (HB1068)

## **MICHIGAN**

-OIR FAQs similar to other states.

-Eligibility, NIRA requirements and an application be filed for foreign and alien

-Payment of SL Taxes – NAIC OPTins

-Bulletin 2012-09-INS: Annual Licensee Fee: CPI adjustment for costs, without application to the Commissioner, is \$57.00.

## **MINNESOTA** Nicolas Schroeder, SLA of MN

-SB 2060, Chapter 187, language changes relating to eligible insurers.

## **MISSISSIPPI:** Peggy Dronet, MS SLA

-Bulletin 2012-2: SB 2626: Nonadmitted policy fee (Windpool fee) reduced from 5% to 3%.

-Bulletin 2012-3: Mississippi withdraws from NIMA.

-Bulletin 2012-4: SB2628: Eliminates affidavit filing, but broker must maintain for inspection by the DOI upon request.

-HB 1348 Exempts from the SL premium tax property insurance purchased by Dept of Finance and Administration for the state. Eff. until 7/1/13

-MSLA Bulletin 2012-02, FAQ's: complying: eligible nonadmitted insurance form, SB2628.

## **NORTH DAKOTA**

-New surplus lines rule 45-09-01: resident licenses, ECP exemption from diligent search, "report of placement" rather than affidavit, revises export list, repeals inconsistent provisions.

## **NEW JERSEY: Parimah Hassouri, Drinker Biddle & Reath LLP**

ADOPTED RULE: N.J.A.C. 11:1-28.4A: adheres to NRRA eligibility provisions, amended procurement procedures, new provisions regarding the new domestic SL insurer law, deletes allocation of premium taxes.

## **NEVADA: Lynn Twaddle, NV SLA**

-Bulletin 12-005: withdraws from NIMA  
-Proposed new regulations: R034-12 NRRA related.  
-SLA: quarterly invoices for filings in lieu of monthly, available online from the SLA after the close of each calendar quarter.

## **NEW YORK: Dan Maher, ELANY**

-S 6552: addresses declination, diligent effort, coverages eligible for export,  
-SB 6808. Domestic excess line insurers  
-Extension of Emergency Rule: Reg. 41 (amendment of part 27): to conform the NRRA.  
-Filing Requirements and Calculation of Tax for Unauthorized Insurance Corporations  
-Proposed rule amending various provisions of free trade zone  
-ELANY Bulletin 2012-21 Business Entity License Renewals.  
-ELANY Bulletin 2012-19 Broker Fees should be properly labeled.  
-ELANY Bulletin 2012-18 New Affidavit part C reminder:

## **OKLAHOMA**

-H 2458: adds some additional NRRA definitions. The 2011 legislation added some NRRA and some NIMA definitions.  
-S1617: Clarifies that the broker pays the taxes (rather than insurer).

## **PENNSYLVANIA Ken Rudert, PA SLA**

-SLA, Bulletin B-2012-7-12 Eff. 8/1/12, 1609-PR Affidavit forms will be returned if missing and/or invalid declining carriers.  
-SLA, Bulletin B-2012-6-12, Exclusions to the Miscellaneous Errors & Omissions or Professional Liability 1604-E (Export) filing type  
-Export List: effective May 12, 2012.  
-SLA Bulletin B-2012-5-21: Agency License Report. Business entities meeting additional criteria, that are licensed as PA producers shall be eligible to be SL licensees

## **RHODE ISLAND: David Kodama, PCI**

-RI law requiring provision of loss reserves information upon request on open and closed claims.

-Bulletin 2012-2: 2012 legislative summary: Portable Electronics Insurance, Loss Information

### **SOUTH CAROLINA**

-S. 1419 NRRA legislation Contains many NRRA terms. Defines “broker’s premium tax rate” as 6% blended tax and municipal rate (4% +2%)

### **SOUTH DAKOTA**

-Bulletin 12-03: Guidance: Filing multi-state surplus lines policies where SD is the Home State.

-New DOI webpage. Surplus lines information and information regarding NIMA.

-DOI Summer Newsletter: DOI working to have all SL filings processed thru the Clearinghouse.

### **TEXAS: Phil Ballinger, SLSOT; Peter Nolan, Winstead PC**

-Franchise tax: does it apply to surplus lines insurers? Atlantic Casualty Insurance Co. V. Combs

-SLSOT: Comptroller Limited Tax Amnesty Program: Update

-HB 3410: Creation of “Managing Underwriter” as a legal entity in the Insurance Code and implications for tax payments.

### **VERMONT**

-HB 782 Passes House and Senate. Increases the existing fire tax on surplus lines

-Bulletin 169, supplement to Bulletin 163: Clarification of tax payment until

SLIMPACT is operational: pay VT at the rate where the exposure is located or to be performed

### **WASHINGTON Bob Hope, SLA of WA**

-RULE 164 WAC 458-20-164: Dept Revenue Rule Change: Taxability of amounts (received) earned by insurance (agents, brokers, or solicitors) producers, title insurance agents, and surplus line brokers

-WAC 284-12-080 new: separate premium account may not be used as a personal asset; premium taxes must be deposited into the account and cannot be withdrawn, except for payment to the State or refund of unearned taxes

-SLA: stamping language has been revised

### **WYOMING**

-MEMORANDUM: 02-2012: Filing Changes on Multistate Risk Policies for SL Clearinghouse:

9:00-9:45

**PANEL: State Implementation of the NRRA Eligibility: Mike Koziol, Jan Shemanske, W.R.Berkley Corporation, David Kodama PCI, Ernie Taylor, Century Surety**

NOTE: Related materials covered in state summaries or in NAIC materials.

9:45-10:30 **PANEL: Certificates of Insurance (as evidence of insurance to third parties)**

**Bissett, Steve Stephan, Penelope S. Hopper, Aon Service Corporation, Wes Bellemore Group**

Implications to surplus lines companies, brokers. NCOIL actions, state actions.

10:30-10:45 **Break**

10:45-11:30 **TOPICAL Issues**

**COMMODITY FUTURES TRADING COMMISSION (CFTC), SEC:**

**Steve Stephan**

**Further Definition of "Swap,"** exclude non-admitted/surplus lines insurance from the definition (including alien surplus line insurance) in such a way as to prevent misuse of such terms to avoid application of the definitions.

**Federal Insurance Office (FIO): Steve Stephan**

**NARAB II S 2342, HR1112, Steve Stephan**

**FORCED PLACED INSURANCE: Bernie Heinze, AAMGA**

**-Fannie Mae,** postponed implementation date

**-BUREAU OF CONSUMER FINANCIAL PROTECTION (CFPB)**

**-not permitted to charge borrower for force-placed insurance unless the servicer: has reasonable basis to believe borrower has failed to maintain hazard insurance and provided required notices.**

**-NAIC and forced placed.**

**-FL: OIR's Denial of QBE Force-Placed Rate Proposal**

**-ID: August 2012 Consumer alert from DOI on forced placed.**

**NAIC, Keri Kish, NAPSLO**

**-National Treatment/Surplus Lines Task Force:**

Subgroup to examine best practices for approval process for surplus lines insurers: CA, NJ, DE, NY, NV, IN. survey of the eligibility requirements of the states

**-NIPR**

**-Producer Licensing (EX) Working Group** - A draft proposal for revisions to Chapter 10 Surplus Lines Producer Licenses covers changes related to NRRA.

**-IID Quarterly Listing**

**NIMA/CLEARINGHOUSE: Gary Pullen FLSLSO**

**NRRA "HOME STATE": Mike Koziol:**

What is the home state of insured's under a group policy when they are not affiliated. If the group is a risk purchasing group, does the answer change?

**PORTABLE ELECTRONICS INSURANCE: Steve Stephan**  
-State activity: AZ, GA, HI, MD, MN, OH, RI, VT, WA

**PPACA: (Patient Protection and Affordable Care Act)**  
-Stop loss coverage to avoid mandates?

**Disability, accident coverage, state prohibitions, pre and post  
NRRA:**

**Tom Petersen, Petersen International Underwriters**  
-states: AR Proposed Rule 101, IA bill failed, NE, VA, WY.

11:30– 12:00 **Group Discussion (Or open forum) (Time permitting):**  
**Defining “Surplus Lines” in terms of not “doing business” in a  
state.** Steve Stephan Moderator, Sanford Kingsley SNR Denton, other TBD.  
Impact on companies and brokers.

OTHER BUSINESS

NEXT MEETING: Spring 2013: Host: Dan Maher, Executive Director  
Excess Line Association of New York

ADJOURN

NOON: LUNCH