

**Bulletin No. 2005-05**

March 9, 2005

**Re: Purchasing Group Insurance & the Excess Line Market**

**For those excess line brokers who place purchasing group “PG” business in the excess line market, let the following instructions guide you to error free submissions.**

**History**

During the 1980’s when product liability insurance was difficult to obtain and expensive when available, a law was enacted at the federal level, the *Product Liability Risk Retention Act of 1981*. The law preempted a number of state insurance laws by allowing unrelated businesses to form into groups for the sole purpose of buying product liability insurance. The law was amended in 1986 to allow these purchasing groups or PGs to purchase any type of liability insurance. The new law is known as the *Federal Liability Risk Retention Act*. The law provided insureds two distinct approaches to risk transfer. These insureds could form a “risk retention group” whereby members contribute capital and create their own vehicle to assume the risks of the members, or form a “purchasing group” or “PG” to purchase insurance through traditional insurers and hopefully obtain a group discount. This bulletin is concerned with the latter, PG business.

**Purpose**

The *Federal Liability Risk Retention Act* supersedes insurance laws in a number of states which prohibited unrelated businesses from forming a group for the primary or sole purpose of purchasing liability insurance on a group basis. A number of insurance statutes and insurance laws in New York and other states are “preempted” by this federal law. The relationship between the federal law and the New York insurance law is set forth in *Article 59 of the New York Insurance Law* and in *Regulation 134 (11NYCRR 301)*.



### **PG Prerequisite**

A PG must be legally formed by incorporation or other legal formation in one of the United States. Each PG must register with the New York State Insurance Department before any New York members can be insured as a member of that PG.

### **Admitted Insurers –vs- E&S Insurers**

PGs can be insured in the E&S market but, just as with any other placement, the admitted market must be offered the risk first. Only after three licensed insurers have declined to write the PG, (licensed insurers whom you have reason to believe write the particular type of insurance or class of coverage sought), can the PG be placed with an eligible excess line insurer. The declinations obtained are applicable to the New York members of the PG and are not declinations for each individual insured.

ELANY recommends you carefully review [\*Regulation 134\*](#), particularly with regard to the prohibition of soliciting new members to a PG when it is insured in the excess line market.

### **Policy Dec Pages, Binders or Other Evidence of Coverage**

All of the rules which apply to policy documentation for excess line policies also apply to PG risks, plus a few more. For the rules regarding documenting an excess line transaction, see ELANY's Compliance Advisor entitled [\*"The Most Important Document"\*](#). In addition to the advice set forth therein, the following is essential with regards to PG business.

- Since each insured will receive evidence of coverage, each New York member of the PG must receive evidence of coverage stamped by ELANY. To deliver evidence of E&S coverage in New York without the ELANY stamp violates the law.
- Original, not photostat, policy documents are still required.
- Each such document must also be stamped by the excess line broker with the red 10 point bold disclaimer language, set forth in *Regulation 41*.
- Each insured must also receive a Notice of Excess Line Placement and the excess line broker must file a copy of such notice with ELANY for each insured.
- If you are charging the insured stamping fees, excess line taxes or a broker fee, you must obtain a signed total cost form from each PG member.

- **MOST IMPORTANT** – Each policy document or other evidence of insurance must identify the named insured as a member of the particular PG/insured. Without reference to the named insured as a member of the specific PG, there would be no evidence that the insured is in fact a member/insured of the particular PG.

### **Affidavits and PG Business**

The good news here is that only one Part A Affidavit by the excess line broker is required for all New York insured members of the PG at the time of the initial placement. The Part A Affidavit requires specific information regarding the PG's identity and address. Also the insurance code must contain the prefix PG.

If any New York insureds are subsequently added to the PG, the excess line broker can add these insureds at the end of each month by submitting an amended Part A Affidavit setting forth the additional information required for the new insureds along with the coverage documents to be stamped and a Notice of Excess Line Placement for each insured. The amended Part A or a Part C must specify three declinations from admitted insurers for each new additional insured.

### **The following sequence of affidavit numbering should be followed:**

1. The affidavit by excess line broker should have a distinctive numerical sequence apart from the non purchasing group affidavit numbering sequence used by the excess line broker.
2. For example, the initial purchasing group affidavit by an excess line broker should be numbered PG 1. Subsequent monthly affidavits by an excess line broker for the same purchasing group should be numbered PG 1A, PG 1B, PG 1C, etc.
3. For additional purchasing groups placed by the same excess line broker, the affidavit by an excess line broker should be numbered PG 2, PG 2A, PG 2B, etc.; PG 3, PG 3A, PG 3B, etc.

### **Must I Submit One or More Part C Affidavits too?**

The answer to this question is “it depends”.

Regulation 41 notes that a producing broker must submit a Part C Affidavit if the producing broker has obtained any declination(s), or provided the Notice of Excess Line Placement to the insured. Under either of these circumstances the broker must submit a Part C for each member/insured. If the Notice of Excess Line Placement shows it was sent by a producing broker, then the ELANY examiner will look for a Part C for that particular insured.

**Tax Allocation**

As with any other insured in the excess line market, for any/each New York insured in the PG with risk locations within and outside New York State, a tax allocation schedule must be completed and set forth along with the Part A Affidavit.

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