

The E&S Empire Express



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Federal/National Proposals Gain Momentum to Change the E&S Market

As discussed in two of ELANY's recent past publications, several proposals at the federal/congressional level and on the national scene have gained significant momentum (See ELANY Annual Report 2005, etc.).

Several bills and laws on the federal level such as TRIA, or proposals such as those which address national catastrophe funding, would impact the E&S market. However, four other proposed pieces of legislation could change the E&S industry tremendously. Depending on one's point of view as to each proposal, the implications could be very good or very bad.

The Optional Federal Charter aka The National Insurance Act of 2006 (Senate 2509)

The OFC legislation, if passed, would set up a parallel universe of insurers chartered as federally licensed insurers instead of insurers licensed state by state. At first glance, it certainly has an appeal since it suggests one license only, one regulator only and one set of rules. On closer examination, the real intent of the legislation comes sharply into focus. This legislation would:

- 1.) Create a new large federal bureaucracy, the funding for which will come from insureds, insurers and producers.
- 2.) Establish one additional regulator plus 50, not instead of 50 state regulators.
- 3.) Propose complete freedom of rate and form for all federally chartered insurers, preempting all state based consumer protection provisions and overriding the expectations of coverage on the parts of claimants and insureds.
- 4.) Provide no benefits to the E&S industry.
- 5.) Require insureds and claimants to vet complaints with a new Federal Division of Consumer Affairs, not local state insurance departments.

As drafted, it is hard to imagine how the federal charter would truly work. States are supposed to be able to continue to tax these insurers, which raises the question of how can that happen unless these insurers report to the states. Also, how will insurance requirements set forth in state laws

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The Nonadmitted and Reinsurance Reform Act of 2006 (HR 5637)

Many ELANY members were somewhat familiar with the so called "SMART" Act. This ambitious piece of legislation covered 17 areas of insurance law, which Congressmen Mike Oxley and Richard Baker felt were in need of reform. The concept was that Congress would set uniform or consistent standards, which each state would have to meet. The bill was so broad in scope that many legislators were reluctant to support it, and it was never formally introduced.

It came as a surprise, therefore, when several Congressmen, led by Representative Virginia Brown-Waite, essentially took the SMART Act provisions related to surplus lines and reinsurance and introduced them as a separate piece of legislation (known in some circles as "Son of Smart").

This bill, first introduced on June 19th, cleared markup in the House Subcommittee on Capital Markets and a second markup in the House Financial Services Committee and most recently was passed by the House in record time. No companion bill was introduced in the Senate

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On the National Scene...

A cooperative project among most of the state stamping offices, NAPSLO and AAMGA has been advancing. The project involves the creation of an interstate compact to create a tax clearing house and to ensure only one filing will be required for any single multi-state risk. In essence, this project's concept was incorporated in the SMART Act and subsequently in HR5637.

A meeting was attended by regulators from ten states, most state stamping offices, brokers from offices large and small as well as state tax officials and a legislator. The summit took place on September 8th in St. Louis, MO and focused on how to create a state-based solution to address the difficulties with compliance and tax payments on multi-state risks. Great input was received from the attendees. A draft of the

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The Optional Federal Charter

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other than state insurance laws (such as financial responsibility laws) be dealt with if federally chartered insurers are exempt? Frankly, this may not matter because the chances are Congress will not pass a law with absolute freedom of rate and form. The bill is not likely to move forward without a substantial rewrite.

Even if passed in its current form, the law prohibits the federal regulator from proscribing forms, not from rejecting forms, which could create a very interesting process.

The president of Fireman's Fund Insurance Company was quoted as saying "...with a vastly expanded universe of differentiated products and services, agents will have the opportunity to add value for customers like never before." Typical retail agents, however, facing the prospect that no two BOP policies will be the same do not see this as empowerment. In fact, Len Brevik, CEO of PIA National said S2509 is "...special interest legislation of the worst kind...their [the bill's supporters] goal is to free themselves from meaningful supervision...as a means to expand market share at the expense of other participants in our industry."

A meaningful portion of the industry is rallying against this bill. ELANY has joined the Coalition Opposed to a Federal Insurance Regulator (COFIR) to fight this legislation.

The Nonadmitted and Reinsurance Reform Act of 2006 (HR 5637)

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this session, however supporters believe 2007 could see the bill become law.

This bill includes many concepts supported by ELANY. The bill mandates a one-state-filing approach for multi-state risks and provides that an interstate compact is one of the vehicles which the states could adopt to share taxes on multi-state risks. The legislation also provides for insureds meeting the definition of an "exempt commercial purchaser" to opt out of the states' declination process. Though ELANY supports most of the bill's concepts, it is the Association's intent to lobby Congress for changes to the bill.

First, the bill would essentially eliminate any real oversight regarding the financial strength and character of eligible insurers or applicants for eligibility. In the name of a national standard, this provision will allow insurers in marginal financial condition to compete aggressively with insurers who are quite financially secure. In the long run, this will hurt consumers, claimants, insurers and producers, if or when insolvencies ensue. Other than this one substantive issue, ELANY hopes to improve the language of the bill to clarify provisions, which are somewhat ambiguous, and to broaden the terms of the bill so that the interstate compact currently in drafting (See On the National Scene...) dovetails with HR 5637.

On the National Scene...

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first E&S Interstate Tax Compact is on the way. It is the collective intent of the group to have a first draft by December this year.

A number of state regulators offered valuable input. In fact, one concept floated by the regulators was to have the tax clearinghouse handle not only the data to allocate taxes under new simplified and uniform tax allocation formulas, but to also create one uniform set of requirements for multi-state risk filings. In essence, the clearing house would examine all multistate transactions similar to stamping offices and that would be the only filing and set of rules applicable to each multi-state risk.

By carving out multi-state risks for review and filing in one separate system, no individual state filings would be required and state regulators would be satisfied that the one set of rules protected the citizens and insureds of their respective states. Regulators viewed this as a better approach than conceding all authority on each multistate risk to some other state (the "Home State" approach).

*no individual state filings
would be required*

It appeared that the 60+ attendees at the St. Louis summit believe that creating this solution is a viable approach, which could be adopted state by state. If not adopted state by state, perhaps this compact can become the compact implemented under HR 5637 should Congress enact this legislation.

Note: The U.S. House of Representatives passed HR 5637 by a vote of 417-0 on September 27, 2006.

Electronic Document Return Arrives

The first step toward electronic filing began in February 2006. ELANY began returning stamped documents electronically in March. Electronic returns reached 97% in the first month. This technology allows members to access stamped documents via a secure link to ELANY's on-line affidavit and documentation creation system and reduces return time by an average of two days.

Electronic return is linked to the Affidavit and Documentation Creation System, which you need a password and ID to access. Excess line brokers use the same system to create affidavits and documents, so can your retail producers. There are currently 183 ELANY members using the on-line system as of August.

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We invite you to use the on-line affidavit creation software, once you have obtained your ID and password. Access the instruction module on the ELANY website at www.elany.org, click on Hyperlinks; Part A and C Affidavit Training Demos. We recommend wholesale brokers encourage their retail broker-clients to sign up and reduce the headaches created in processing Part C affidavits manually. To register for electronic filing and create your password account contact helpdesk@elany.org or 646-292-5500.

PIWA 2006 Annual Convention

Don't miss the Professional Insurance Wholesalers Association (PIWA) 2006 Annual Convention, November 1-2, 2006 at the New York Marriott Financial Center, Manhattan.

The keynote speaker on Wednesday evening at the Abe Snyder Memorial dinner will be Gregory D. Wren, executive director, Coalition Opposed to a Federal Insurance Regulator (COFIR). Mr. Wren is a State Representative, who served in the Alabama House of Representatives for eight years from 1994-2002, and is returning to the House of Representatives this year. In addition to his distinguished legislative career, he was Lawmaker of the Year for the Independent Insurance Agents Association of Alabama.

In addition to all the incredible networking opportunities, Thursday's activities open with a perennial event favorite, the **legislative and regulatory update**. Everyone wants to know what is happening in the political arena and how it relates to the excess and surplus lines industry. Are you informed? Attend this session to stay up to date.

The drama of a court case is a nightmare none of us wants to experience, unless it's just that—a drama. Take your seat in the gallery and watch Dennis Kelleher, vice president and regional sales director, The Guardian Life Insurance Co.; Jonathan Kline, Esq., Herrick Feinstein LLP; Julius A. Rousseau III, Esq., Herrick Feinstein LLP; Milton Thurm, Esq., Lewis Johs Avallone Aviles, LLP; and Kevin Reynolds, a vice president of The Guardian Life Insurance Co.; some of New York's leading litigators re-enact a couple of court proceedings involving alleged errors and omissions by agents and brokers. As you watch an **E&O mock court** unfold, explore questions like: What are the exposures? What procedures should be implemented to avoid the allegations and lawsuits in the first place? Learn to be proactive from the experiences of those who were not.

For additional information and to register contact PIWA's Education & Conference Department at 800-424-4244 or email conferences@piaonline.org.

Export List

One of ELANY's major goals for 2006 is to expand the current Export List. The Export List identifies those classes of coverage where the Superintendent of Insurance has determined there is not a sufficient admitted market writing particular classes of business. The Superintendent then exempts the class from the requirement that a

Upcoming Calendar of Events

The Excess Line Association of New York announces its fall 2006 continuing education schedule. All of the following events are sponsored by the IABNY. **Basics of the E&S Marketplace** is an intermediate level course which has been approved for 2 CE credits (BR, C3, PC, PA).

This half-day program is designed to help agents and brokers understand and place business in compliance with the Excess Lines law of New York State. You'll learn about basic compliance requirements for E&S placements, accessing the E&S market, and important policy distinctions between admitted insurance and E&S insurance policies.

October 5	1:30-3:30 p.m.	IABNY 5784 Widewaters Pkwy. Syracuse, NY
October 11	1:30-3:30 p.m.	Brookwood Inn 800 Pittsford Victor Rd. Rochester, NY
October 12	1:30-3:30 p.m.	Canisius Center 300 Corporate Pkwy. Buffalo, NY
November 9	1:30-3:30 p.m.	Holiday Inn 369 Old Country Rd. Carle Place, NY
November 10	1:30-3:30 p.m.	Alexander Wall Corp. 60 Raynor Ave. Ronkonkoma, NY

For additional information contact 800-962-7950 or visit www.iabny.org. Please note registrations are only accepted on the website.

diligent search be made when placing such risks. With the support of the Professional Insurance Wholesalers Association (PIWA), the Independent Insurance Agents and Brokers Association (Big I), the Professional Insurance Association (PIA) and others, our ad hoc group has created a proposed expanded export list. We have met with Superintendent Mills and senior members of his staff, and we are hopeful that the New

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Website—New & Improved

ELANY launched the latest version of its website in June 2006. Highlights of some of the key changes are as follows:

- * A search feature has been added
- * Hot News (recent Bulletins and Calendar of Events), Eligible E&S Insurers, ELANY Statistical/Coverage Codes sections now have a “pull out” or “drop down” menu
- * The content has been updated to reflect recent changes in procedures for document submission and return (see *Bulletins No. 2006-01, 2006-05, and 2006-06*).

* Compliance Advisor “Excess Line Broker/The Most Important Document” and the Total Cost Form have been updated to reflect changes in procedures and others required by the Insurance Department. These changes have also been made to the on-line affidavit documentation creation system.

Many member suggestions have been included in the site’s new design. The Lexicon continues to have answers to your most frequently asked questions. We encourage you to visit www.elany.org.

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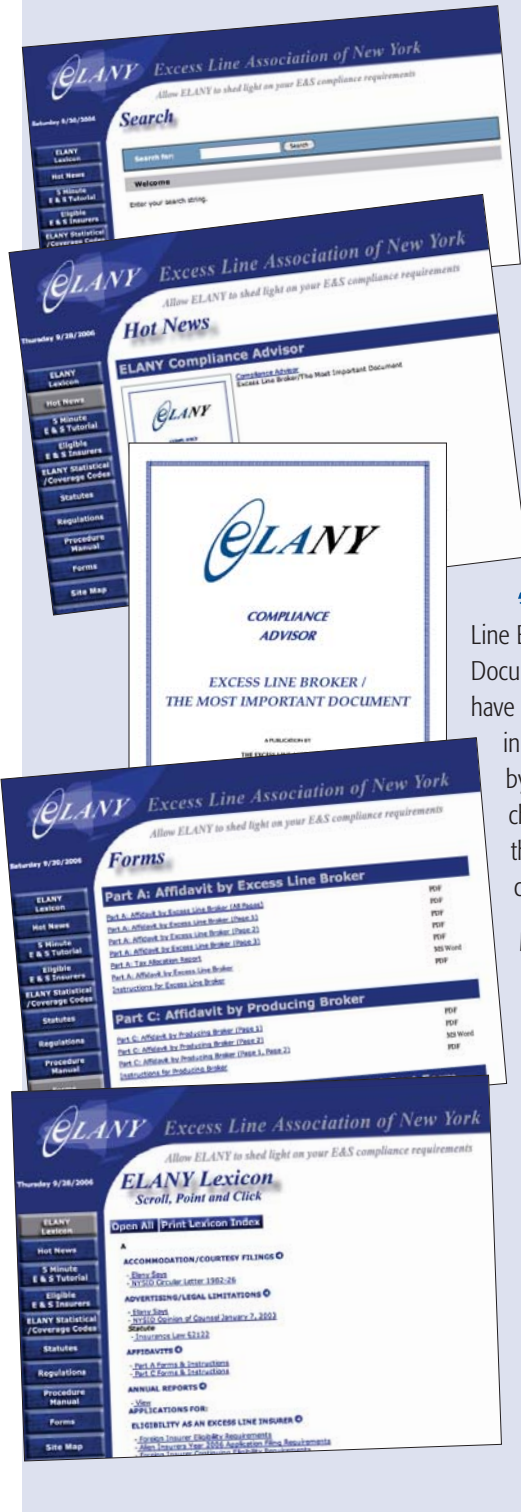
York State Insurance Department will soon call a hearing to review the proposed list and add contractors, all trades and other difficult classes to the export list.

Report on Examination Received

ELANY recently received a Report on Examination by the New York State Insurance Department. One of the concerns raised by the department was where notice of excess line placement dates or policy inception dates preceded one or more declination dates. The Department asserts that if declinations are acquired after an excess line placement is made, the placement may violate the excess line law. While such date issues may be only an administrative error, brokers would be wise to review internal procedures and avoid the negative inferences drawn.

A second issue included affidavits which contained pre-printed declination information. Thirdly, individual brokers who repeatedly use the same licensed companies in the declinations portion of affidavits were also highlighted by the Department. Brokers should be aware that the Department focuses on the legitimacy of the declinations set forth in affidavits. Whether you agree or disagree with the Department’s legal interpretations, ELANY recommends brokers review their procedures for documenting declinations so you will be in a good position should the Department choose to audit your procedures and records.

Finally, as many of you are aware, Section 2118 of the insurance law requires the filing of affidavits within 45 days of policy inception. The industry average for late filings is on a downward trend. Currently over 92% of all filings are on time in New York. The recent examination of ELANY’s records once again focused on late filings. Keeping an eye on late filings is important. There are a number of steps that you can take to file timely and avoid the \$25 per item late filing fee. For example, use of a Confirmation of Coverage will initiate the filing process pending receipt of a formal binder or policy. Use of ELANY’s on-line affidavit creation software may also help. If you are not already registered for electronic filing, please contact helpdesk@elany.org or 646-292-5500.



ELANY Volume

ELANY's recorded volume through the first six months of 2006 was \$1,679,276,145 and \$1,355,600,000 in gross and net taxable premium totals through June 30, 2006. Transactions processed once again set a record at 107,041 through the first 6 months of 2006.

Salary Protection/Excess Disability Insurance Legislation Enacted

ELANY is pleased to announce that Governor Pataki signed legislation (A11129-A/S 7158) into law on August 16, 2006. The bill enacted as Chapter 626 of the Laws of 2006 will allow excess line brokers to place salary protection coverage, essentially excess disability insurance, in the excess line market.

ELANY's Executive Director, **Daniel Maher**, (right) expressed his gratitude for the support this legislation received from Lloyd's and the Professional Insurance Wholesalers Association (PIWA) in promoting the passage of this legislation. Moreover, the actions and efforts of Senator Seward, Assemblyman George Latimer, Governor Pataki, the legislative staffs and the Governor's Counsel in moving this legislation forward are sincerely appreciated.

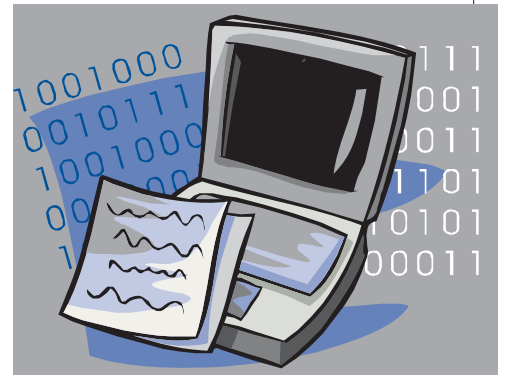


For more details regarding the coverage see ELANY Bulletin No. 2006-14 dated August 23, 2006.

More System Enhancements Coming

ELANY is in the process of replacing its legacy technology with a new application designed to implement a fully electronic filing system. The new state-of-the-art system will use current web-based technologies, the baseline in the insurance industry. Provided approval is obtained from the New York State Insurance Department, brokers will be able to submit transactions electronically across platforms by feeding data into ELANY's system using XML or ASCII formatted data. Implementation will occur in stages. The user acceptance testing (UAT) phase is scheduled to begin in late 2006. Once UAT has been completed, the data conversion and data testing phase will begin. The final phase will include a test site for brokers to get familiar with the new system before it goes live. Processing transactions completely electronically end-to-end is anticipated for 2007. Watch future *ELANY Bulletins* for information, requests and more updates about the changes.

Once completed, members will have the choice of mailing paper transactions to ELANY or submitting documents electronically. Electronic filers will have the benefit of a quicker turnaround time.



ALL current excess line licenses expire on October 31 in 2006.

*If you recently obtained a license
please note it may be about to expire—
don't forget to renew it now.*

For more details see Bulletin No. 2006-15 dated October 3, 2006.