

The E&S Empire Express

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Congress' Insurance Agenda

The insurance industry is anxiously awaiting Congressional action on a number of important bills. Now that modifications to the National Flood Insurance Plan (NFIP) have been adopted and signed into law, a TRIA extension is the highest insurance legislation priority.

On June 3rd, the Senate Banking Committee passed S.2244 out of the Committee very quickly. The Senate bill extends TRIA for seven years and phases in a higher industry copay moving from 15% to 20% over a five-year period. A number of proposed amendments were offered at the Committee Hearing but all were rejected. The Senate bill is likely to pass the full Senate fairly quickly, which will set up interesting political dynamics.

In the House, the Financial Services Committee is led by conservative Jeb Hensarling of Texas. His TRIA proposal, circulated in outline not bill form, would extend TRIA for a three- to five- year period over which time the federal back stop would phase out leaving federal protection primarily for Nuclear, Biological, Chemical or Radiation (NBCR) terrorist attacks with a 25% industry copay.

As a result, the normally free market oriented insurance industry, which tends to support a conservative ideology, is much more likely to side with the Democrats in the Senate on this bill.

In the meantime, a high priority bill long supported by ELANY, the NARAB II bill, is sidelined for now. The supporters of the NARAB II bill, which will streamline non-resident insurance producer licensing, have been in search of a must pass bill to use as a vehicle to get a vote. If NARAB II can hitch a ride by getting attached to a must pass piece of legislation such as TRIA, it will be in position to pass. This procedure needs to be blessed by Congressional leaders and bill sponsors to work.

The full Senate passed S.2270 on June 3rd, legislation which will amend the Dodd-Frank Act if enacted. This bill will permit the Federal Reserve to set different capital standards for insurers from the bank centric capital models currently in place for insurance group's designated Systematically Important Financial Institutions (SIFIs).



PIWA Sponsored Legislation

Senate Bill (S7551)

Senate Insurance Committee Chairman Jim Seward introduced legislation sheparded by PIWA and the law firm of Rosen and Pastel this session to amend the Insurance Law in regard to the duties of excess line brokers.

The bill will create a method in the statute by which excess line brokers can meet the requirement to use "due care" in the selection of a financially secure insurer. It permits excess line brokers to rely on the financial analysis and insurer reviews conducted by the Excess Line Association of New York ("ELANY") by providing a presumption that the excess line broker has used "due care" in selecting a financially secure insurer when the insurer is listed by ELANY. This will not prohibit or impede any placement with an insurer who is eligible by virtue of the NRRRA. However, it provides excess line brokers a level of protection when relying on ELANY's professional financial analysis.

The bill removes unnecessary reporting data elements requirements. Currently, brokers must provide 21 data elements as part of the diligent search requirement. No other state requires these elements. This legislation would streamline the reporting requirements, removing some of them from the affidavit, but would require information to be held by the broker. These data elements must be recorded and set forth in an affidavit in most excess line transactions today. This is time consuming and inefficient, and the data is not analyzed or used. Eliminating the requirement to report this information in an affidavit and permitting it to be maintained in a broker file will save substantial time and reduce broker operating costs.

The legislation also provides that a diligent search of the admitted market is valid for a new policy and two consecutive renewals. Markets often change slowly, and there are already built in incentives to keep business in the admitted market. The changes in the legislation would help streamline the process, remove unnecessary burdens on the

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insurance broker and excess line broker, and improve the business climate in New York.

ELANY wishes to express our gratitude to PIWA for pursuing this legislation and to Senator Seward for introducing the bill.

Celebrating ELANY's 25th Anniversary

ELANY celebrated its 25th year of industry service at its Annual Members' meeting this year.

Outgoing Chairman of the Board Joe Caligiuri offered some heartfelt comments to the 100 or so members, friends, colleagues and attendees who gathered together. Joe noted the pride he has felt as both Chairman and a long standing Board member in bringing positive change to an industry he loves driven by the wonderful relationships he has had the pleasure of making during his career.

Keynote speaker Dr. Terry Madonna really got the audience going. Dr. Madonna, a noted pollster who is both a Professor of Public Affairs and Director of the Center for Politics and Public Affairs at Franklin and Marshall College in Lancaster, Pennsylvania, showed the audience statistically what we are likely to see in the upcoming November mid-term elections. Dr. Madonna was careful not to bring his personal opinions into the mix.

Consistently the sixth year of a president's term, the midpoint of a second term of office, is difficult. Voters approval ratings are usually at bottom because of promises unkept, miscues, poor decisions and a lack of a strong second term agenda. What is bad for the President appears to be much worse for members of the President's political party in the mid-term election year. While the power of incumbency in Congress and state houses results in a re-election success rate of 75% or greater, the second midterm election invariably results in a loss of some seats in Congress, the state houses and in races to elect governors.

Statistically speaking, Democrats are likely to lose seats in November, which means the Republican's majority in the House should increase and that the Republicans could conceivably pick up enough seats to take the majority in the Senate. Among other things, the demographics for the turnout of voters in the mid-term election will favor republicans.

Not all the news was bad for the Democrats. The two most popular politicians in America right now? Bill and Hillary Clinton.

ELANY Welcomes New Board Member Jim Richardson



ELANY wishes to congratulate Jim Richardson on his recent election to our Board of Directors.

Jim is a long standing and well known insurance industry executive with over 30 years of experience. Jim has worked at General Star for the past 22 years and is currently Vice President; National Underwriting Manager of Surplus Lines Casualty Programs at their Stamford Connecticut office. Jim will bring a good and fresh perspective to ELANY's Board.

PIWA's Summer Symposium 2014

The Professional Insurance Wholesalers of New York State, Inc. (PIWA) will be holding its 2014 Summer Symposium June 19-20 at the Foxwoods Resort Casino in Mashantucket, Connecticut. This is a great opportunity to join your friends and colleagues for a round of golf (optional) and two days of networking, dining, educational sessions, and if time permits, you may wish to try your hand at a game of chance or two.



This year's educational session is entitled "**New York Labor Law-Do you understand it?**" and will be presented by Mr. Marc Pillinger, Esq. who gives an in depth look at the coverage and contractual implications of this Law. He will explain how you can protect your clients and avoid common, but costly, misconceptions of key concepts within the law including: "absolute liability," "grave injury," "horizontal vs. vertical exhaustion" and "contractual indemnification". Don't miss it.

For more details on the event and hotel reservation information, please visit PIWA's website at www.piwa.org.



Don't delay, sign up today.

IICF Women in Insurance Regional Forum



IICF Women in Insurance
CONFERENCE SERIES

The Insurance Industry Charitable Foundation (IICF) will be holding its Women in Insurance Conference Series Regional Forum in New York City on Tuesday, June 17, 2014 at the New York Hilton Midtown located at 1335 Avenue of the Americas, New York, New York.

This is a great opportunity to join your industry friends and colleagues for an interesting and enlightening day of frank discussion on women's leadership and gender diversity in and around the insurance business, along with excellent professional development and networking opportunities. The line-up of featured speakers will discuss the past, present and future of what has traditionally been a male dominated industry and will provide great insight and new ideas.

For more details on the program agenda, event registration and hotel reservation information, please visit the IICF website at www.iicf.org, click on "Events" and scroll down to "Northeast Regional Women's Forum."

Fire Following a Terrorist Act

A broker called to ask whether a client, whose home state is New York, can purchase a non-admitted manuscript policy to cover a fire loss caused by a terrorist act?

The short answer in New York is: "No". The New York State Department of Financial Services (DFS) takes the position that the New York Standard Fire Policy, set forth in Insurance Law § 3404, mandates a minimum level of coverage. While fire resulting from such acts as invasion, insurrection and civil war can be excluded under the statute, there is no such provision for excluding fire following a terrorist act. The DFS asserts that § 3404 applies to excess line policies.

While there are circumstances noted below where such a policy would fulfill a legitimate need, in New York the policy would have to cover the peril of fire as broadly as the statute requires and not just fire following terrorism.

The following scenario raises an interesting question. Suppose an insured whose home state is a state other than New York ***which permits*** insurers to exclude fire losses for fires following an act of terrorism and that insured buys such coverage and declines TRIA protection. Also suppose the insured has some property in New York covered under that policy. The insured wants to buy fire following a terrorist act coverage for the New York locations only making New York the home state for that policy but the insured does not buy the coverage because it is unavailable. If a fire loss occurred on the New York property as a result of an act of terrorism, would a court enforce the exclusion in the policy purchased or would a public policy analysis applying New York law in favor of New York's statute be used to broaden the coverage?

Hopefully, no one will ever need to answer this question.

Electronic Signature Added to ELANY'S Online Electronic Part C Affidavit Module

ELANY recently enhanced its online electronic Part C Affidavit module for use by producing brokers. This electronic system allows producing brokers to create affidavits and other documents efficiently saving them time and money. The system helps prevent errors and incomplete or incorrect documentation and permits the producing broker to sign an affidavit electronically (.jpeg signature) and email it to their wholesale excess line broker without printing.

Completing a Part C affidavit is very simple when you use the ELANY online electronic system. To begin using the system, all you need to do is register. Just download and complete the registration and authorization forms identifying your company name and license number. Once the

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licensee or sublicensee agrees to use the .JPEG signature for signing affidavits, mail the original signed agreement to ELANY at One Exchange Plaza/55 Broadway, 29th floor, New York, NY 10006 to the attention of the Help Desk.

For a more comprehensive explanation on how to use the Online Electronic Part C Affidavit Module, please visit our website at www.elany.org and view the ELANY Education/Training Video titled “Producing Brokers-Using the e-filing Affidavit System (Part C)—a training video”.

Using the ELANY Online Electronic Part C Affidavit System will save you time and money and ease the burden of compliance when placing excess line risks.

Enhancements and Revisions to ELANY’s Website

In October, 2013, ELANY added financial summaries for each foreign insurer listed under the Eligible E&S Insurers navigational bar on our website. The summaries contain helpful information for New York excess lines brokers in meeting their non-delegable duty to use “due care” in the selection of a financially-secure excess line insurer. ELANY’s

summaries provide a snapshot of critical data for each eligible foreign insurer over the prior three years.

ELANY is currently in the process of enhancing, revising and updating our website. We have recently added four new topics to our Lexicon/FAQ Topics section:

- Independent Procurement
- Broker Service Fees
- Inspection Fees
- Policy Fees, Installment Fees and Reinstatement Fees

We have also updated two existing topics:

- Accommodation/Courtesy Filings
- Advertising/Legal Limitations

We also plan on adding a statistics section to our website in the near future.

ELANY continually strives to publish and maintain the most extensive E&S website in the country.



2013 PREMIUM STATISTICS BY AM BEST RATING

CURRENT ELIGIBLE INSURERS

AMB Rating 5/23/2014	Number of Foreign Insurers	NY Premium Foreign Insurers (\$000)	Number of Alien Insurers	NY Premium Alien Insurers (\$000)	Total Number of Insurers	Total New York Premium (\$000)	Distribution of Total No. of Insurers by Rating	Distribution of Total NY Premium by Rating
A++	14	\$241,774	1	\$1,495	15	\$243,269	10.60%	8.60%
A+	29	\$763,266	7	\$84,017	36	\$847,283	25.50%	29.90%
A	47	\$1,066,814	20	\$524,975	67	\$1,591,790	47.50%	56.10%
A-	9	\$69,030	3	\$24,798	12	\$93,829	8.50%	3.30%
B++	4	\$15,463	1	\$1	5	\$15,465	3.50%	0.50%
NR	0	\$0	6	\$44,644	6	\$44,644	4.30%	1.60%
TOTAL	103	2,156,349	38	\$679,932	141	\$2,836,281	100.00%	100.00%

94.6% of NY premiums in 2013 were written by carriers that had an “A” rating or better from AM Best.

83.6% of the current eligible carriers in New York have an “A” rating or better from AM Best.

Insurers not rated by AM Best comprised 1.6% of total 2013 premiums and 4.3% of the current eligible carriers. However, all six of these insurers had a financial strength rating of “A” or better from S&P: 1 “A++” insurer; 1 “AA-” insurer; 2 “A+” insurers; 2 “A” insurers.

Calendar

2014

June

Sunday–Tuesday June 8–June 10	PIANY/PIANJ Joint Annual Conference Trump Taj Mahal Atlantic City, New Jersey
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Tuesday June 17	Insurance Industry Charitable Foundation (IICF) IICF Women in Insurance Regional Forum New York Hilton New York, New York
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Thursday–Friday June 19–June 20	Professional Insurance Wholesalers Association of New York (PIWA) Summer Symposium Foxwoods Resort Casino Mashantucket, Connecticut
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July

Thursday–Sunday July 10–July 13	The National Conference of Insurance Legislators (NCOIL) Summer Meeting Boston Park Plaza Boston, Massachusetts
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August

Saturday–Tuesday August 16–August 19	National Association of Insurance Commissioners (NAIC) Summer Meeting Louisville Marriott, Hyatt Regency Louisville and Kentucky International Convention Center Louisville, Kentucky
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September

Sunday–Wednesday September 14–September 17	Association of Insurance Compliance Professionals (AICP) National Conference Marriott Desert Ridge Phoenix, Arizona November
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Monday–Thursday November 17–November 20	National Association of Insurance Commissioners (NAIC) Fall Meeting Washington Marriott Wardman Park Washington, DC
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Thursday–Sunday November 20–November 23	The National Conference of Insurance Legislators (NCOIL) Annual Meeting Grand Hyatt in Union Square San Francisco, California
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December

Wednesday December 10	Insurance Industry Charitable Foundation (IICF) Northeast Division Annual Benefit Dinner Waldorf Astoria Hotel New York, New York
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2015

March

Friday–Sunday March 6–March 8	The National Conference of Insurance Legislators (NCOIL) Spring Meeting Location–TBD
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Saturday–Tuesday March 28–March 31	National Association of Insurance Commissioners (NAIC) Spring Meeting Sheraton Phoenix Downtown and Hyatt Regency & Convention Center Phoenix, Arizona
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May

Sunday–Wednesday May 17–May 20	American Association of Managing General Agents (AAMGA) Annual Meeting Gaylord National Resort National Harbor, Maryland
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July

Thursday–Sunday July 16–July 19	The National Conference of Insurance Legislators (NCOIL) Summer Meeting Location–TBD
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August

Friday–Monday August 14–August 17	National Association of Insurance Commissioners (NAIC) Summer Meeting Hyatt Regency Chicago Chicago, Illinois
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November

Thursday–Sunday November 19–November 22	National Association of Insurance Commissioners (NAIC) Fall Meeting Gaylord National Hotel and Convention Center Washington, DC
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Thursday–Sunday November 19–November 22	The National Conference of Insurance Legislators (NCOIL) Annual Meeting Paris Hotel–Las Vegas Las Vegas, Nevada
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May

Sunday–Wednesday May 22–May 25	American Association of Managing General Agents (AAMGA) Annual Meeting J.W. Marriott Desert Ridge Resort Scottsdale, Arizona
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