

# The E&S Empire Express

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## New Officers Elected

ELANY's Annual Meeting was held on May 9, 2018 at Yankee Stadium. In addition, officers were elected at the Board's May meeting in Albany and are serving a one-year term until the 2019 May Board Meeting:

	<b>Lance Becker</b>	<i>Chairman</i>	Arthur J. Gallagher & Co.
	<b>James Richardson</b>	<i>Vice Chairman</i>	General Star Management Company
	<b>John A. Buckley</b>	<i>Treasurer</i>	NIF Services of New York, Inc.
	<b>Eric Keller</b>	<i>Secretary</i>	H.R. Keller & Co., Inc.

## Excess Line Broker Entity License Renewals Due Next Month

New York excess line licensees should note that all current excess line broker business entity licenses (corporation, LLC, or partnership) expire on October 31, 2018. Individual excess line broker licenses expire on the licensee's birthday in even numbered years for individuals born in even numbered years, and in odd numbered years for those born in odd numbered years. For more on how to renew a license and stay in compliance, see ELANY's **Bulletin No. 2018-28**.

Excess line brokers should note that the New York State legislature has passed **legislation** that would change the license renewal date to June 30<sup>th</sup> of odd number years. The effective date of the Act would be July 1, 2019. Therefore, June 30, 2021 would be the first time the new

deadline would apply in place of October 31<sup>st</sup>, 2021. As such, brokers would renew on October 31, 2018 and the next renewal would be June 30, 2021 so in effect, that one renewal would be for 2 years and 8 months. The bill has yet to be acted upon by Governor Cuomo. ELANY will keep its members informed of developments.

## ELANY to Host Surplus Lines Law Group Meeting

ELANY will host the fall meeting of the Surplus Lines Law Group (SLLG) in New York City on October 11-12. The SLLG is an informal group of more than 100 E&S legal and compliance professionals that meets twice every year to discuss critical issues impacting the E&S market. Many stamping offices are represented and the state-by-state overview of key statutory, regulatory, judicial and business activity is a highlight. We look forward to welcoming the E&S legal and compliance community to New York!

## DFS Cybersecurity Regulation September 3<sup>rd</sup> Compliance Date

September 3<sup>rd</sup> was the deadline for compliance with several New York Department of Financial Services (DFS) cybersecurity regulation requirements:

- Audit Trail (Section 500.06)
- Application Security (Section 500.08)
- Limitations on Data Retention (Section 500.13)
- Monitoring (Section 500.14(a))
- Encryption of Nonpublic Information (Section 500.15)

See **Bulletin No. 2018-27** for more information. Exempt licensees need only comply with the Limitations on Data Retention section. Full compliance with these requirements as applicable will be necessary for filing a Certificate of Compliance with the DFS between January 1 and February 15, 2019.

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## ELANY teams with Spot on Insurance to Bring Members Cybersecurity Regulation Compliance Podcast

We were pleased to partner with Spot on Insurance to bring E&S brokers a **podcast** on complying with the September 3<sup>rd</sup> New York Department of Financial Services (DFS) cybersecurity regulation requirements. The podcast features Ted Augustinos, a partner with Locke Lord, and David Burgeson, COO of Renaissance Systems Inc. offering practical legal and IT advice on how to approach compliance. These requirements must be fully met, as applicable, to certify compliance with the DFS early in 2019. For those brokers looking to build on their compliance efforts, the podcast offers valuable insights to help them better understand the meaning of the regulatory language, necessary steps and options, and how to implement realistic solutions.



*Ted Augustinos*



*David Burgeson*

## Export List Proposed Additions Hearing Requested

ELANY, along with the Professional Insurance Agents of New York, Professional Insurance Wholesalers Association of New York and Big I New York, sent a joint letter last month to New York Department of Financial Services Executive Deputy Superintendent of Insurance Laura Evangelista requesting that the DFS convene a hearing to consider export list additions. Similar letters were sent by ELANY in 2013 and 2016. The DFS has not yet scheduled a hearing. We are hopeful that time will be made in the near future. We have recommended the following for export list consideration:

- Vacant Property Risks Multi-Peril (Package)–Commercial Lines
- Vacant Property Risks Multi-Peril (Package)–Personal Lines
- Expand Pollution to include Contractors Pollution Legal Liability
- Commercial Cyber Liability Insurance
- Trade Credit Insurance Coverage with Non-Cancellable Limits
- Representations & Warranties
- Tax Liability
- Successor Liability
- General Liability Coverage for Guiding & Outfitting

- Professional Liability Coverage for Outdoor Education
- Primary Flood Insurance (Real Property) where insured is NFIP eligible
- Primary Flood Insurance (Personal Property) where insured is NFIP eligible
- Stand-alone Commercial Physical Damage for Black Cars
- Wind Deductible Buyback Coverage (Commercial Lines)
- Wind Deductible Buyback Coverage (Personal Lines)
- Snow Plow/Snow Removal Risks–Liability Auto Coverage
- Pest Control Companies/Applicators–Liability
- Public Swimming Pools–Liability
- General Contractors
- Commercial Lines Multi-Peril Policies for Check Cashing Stores
- Commercial Lines Multi-Peril Policies for Pawn Brokerage Stores
- General Liability for Chemical Manufacturers

## ELANY Extender Bill Passes Legislature

We are pleased to report that the New York State legislature has passed legislation (**S7626/A10584**) that will extend ELANY's existence through 2024. As a statutorily authorized organization, we must go to the legislature every five years and ask them to pass legislation extending ELANY for an additional five years. A silver lining to this process is that it affords us a great opportunity to explain ELANY, the E&S market and the needs of our broker members to state legislators. We thank Senator James Seward (R) and Assemblyman Daniel Rosenthal (D) for sponsoring our "extender" bill and shepherding it through their respective legislative chambers. The legislation is awaiting transmittal to Governor Cuomo for what we hope will be his signature.



*Senator James Seward*

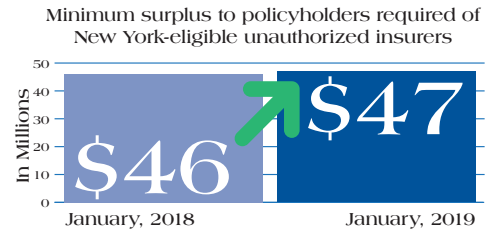


*Assemblyman Daniel Rosenthal*

On a related note, it was our pleasure to host Assemblyman Rosenthal and his Chief of Staff, Tim Thomas, on July 26<sup>th</sup> in ELANY's offices. The Assemblyman was introduced to the ELANY staff and we had the opportunity to discuss various matters of interest to ELANY, as well as provide an overview of the organization and the E&S market. Assemblyman Rosenthal is a member of the Assembly Insurance Committee and is interested in how the E&S market helps drive the New York economy as well as serving the state's residents. We look forward to continuing our work with him in future legislative sessions.

## New York Foreign E&S Insurer Surplus Requirement Slated For 2019 Increase

January 1, 2019 will see the minimum surplus to policyholders required of New York-eligible unauthorized insurers increase from \$46 Million to \$47 Million. Under **Regulation 41** Section 27.13(b)(3), the minimum surplus to policyholders increases by \$1M every three years. The \$46M requirement has been in place since January 1, 2016. New York maintains the most stringent requirement of any state.



## Revised Financial Summaries on ELANY website

We have revised the foreign insurer financial summary **snapshots** on our website to make them more helpful and user-friendly. These snapshots offer a convenient overview of vital financial information pertaining to each foreign E&S insurer. Included are items such as combined ratio, top lines of business written and income/loss trends. We encourage the E&S community to avail themselves of this valuable tool.

## Follow ELANY on **LinkedIn**

We invite you to **follow ELANY** on for useful information, updates and announcements. Don't be the last to know.

## ELANY Cybersecurity Awareness Training Offer

As announced in **Bulletin No. 2018-14**, we have extended our cybersecurity awareness training offer through December 31, 2018 for new enrollees. The training is open to all active ELANY member firms who have filed an insurance policy with us for stamping since January 1, 2015. We will pay the full cost for up to 417 trainees. In addition, we are funding the cost of a one-year renewal for any firm that initially enrolled for the training no later than February 28, 2018. The renewal will extend training for any such member for one full year following the expiration of the initial enrollment. Cybersecurity awareness training is required for all personnel of any non-exempt licensee under the New York Department of Financial Services cybersecurity regulation. However, we urge exempt licensees as well to take full advantage of this training as a critical business practice.

To date, ELANY has funded the training of 7,300 individuals from almost 160 firms. In addition, we are in the process of a second round of training for 5,800 individuals from 93 firms.



## ELANY and IFNY Host Surplus Lines and Reinsurance Forum

ELANY joined with the Insurance Federation of New York (IFNY), the Tort and Insurance Practice Section of the American Bar Association, and Baker McKenzie to present the inaugural "Surplus Lines and Reinsurance Forum." Held on April 16, 2018 at the Union League Club in New York City, three panels discussed excess and surplus lines, reinsurance, and former regulators' perspectives. The excess and surplus lines panel featured ELANY's own Board Chair Janet Pane and Executive Director Dan Maher. Topics included insurtech, diligent search requirements,



From (L) to (R) Alan Levin (Locke Lord), Dan Maher (ELANY), Janet Pane (Willis Towers Watson), Hank Watkins (Lloyd's America)

the regulatory environment and the role of brokers. More than 80 professionals participated in the half-day program and networking event that followed. Both continuing education and continuing legal education credits were awarded. Look for information on our 2019 program in the coming months.

## Two New "ELANY Elaborates" Published

Two new *ELANY Elaborates* have been published to date in 2018. **The first** discusses broker duty of care in light of recent court decisions. The paper focuses on when a "special relationship" is formed between a broker and its client, creating an elevated duty of care. It is critical for brokers to understand the duty of care they owe a client since broker liability is directly tied to the standard. **The second** delves into a recent New York

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State Court of Appeals decision that calls into question whether insurers, brokers and policyholders can count on the plain meaning of insurance policies. The court interpreted the phrase "issued and delivered" in a manner that is totally inconsistent with its widely accepted meaning in the industry. In addition, the decision creates uncertainty regarding whether New York courts will honor overseas arbitrations going forward, such as those that are convened pursuant to a dispute under a Bermuda Form.

## Calendar

2018	
SEPTEMBER	
Sunday–Wednesday September 23–26	<b>National Association of Mutual Insurance Companies (NAMIC)</b> Annual Convention The Henry B. Gonzalez Convention Center San Antonio, TX
Sunday–Wednesday September 23–26	<b>Wholesale &amp; Specialty Insurance Association (WSIA)</b> <b>Annual Marketplace</b> Atlanta Marriott Marquis Atlanta, GA
OCTOBER	
Thursday–Friday October 11–12	<b>Surplus Lines Law Group (SLLG)</b> Fall Meeting New York Athletic Club (NYAC) New York, NY
Wednesday October 24	<b>Professional Insurance Agents of New York (PIANY)</b> HV RAP 2018 Crowne Plaza Suffern, NY
NOVEMBER	
Thursday–Sunday November 15–18	<b>National Association of Insurance Commissioners (NAIC)</b> <b>Fall Meeting</b> Hilton San Francisco Union Square San Francisco, CA

DECEMBER	
Wednesday–Saturday December 5–8	<b>The National Conference of Insurance Legislators (NCOIL)</b> <b>Annual Meeting</b> Renaissance Oklahoma City Convention Hotel & Spa Oklahoma City, OK
Wednesday December 12	<b>Insurance Industry Charitable Foundation (IICF)</b> Benefit Dinner Sheraton New York Times Square Hotel New York, NY
2019	
January	
Wednesday–Saturday January 9–12	<b>Independent Insurance Agents and Brokers of America (IIABA)</b> Big "I" Winter Meeting Hyatt Regency St. Louis at the Arch St. Louis, MO
FEBRUARY, 2019	
Tuesday February 5	<b>Surplus Line Association of California (SLA)</b> Annual Meeting–San Francisco, CA TBD San Francisco, CA
Thursday February 7	<b>Surplus Line Association of California (SLA)</b> Annual Meeting–Los Angeles, CA TBD Los Angeles, CA
Sunday–Wednesday February 24–27	<b>WHOLESALE &amp; SPECIALTY INSURANCE ASSOCIATION (WSIA)</b> Underwriting & Leadership Summit National Harbor, MD Gaylord National on the Potomac



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