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The Nonadmitted and Reinsurance Reform Act of 2009 (NRRA)

HOW WILL IT IMPACT THE INDUSTRY

The Nonadmitted and Reinsurance Reform Act of 2009 (NRRA) has passed both Houses of Congress as part of the broader financial services reform legislation. Once the House and Senate bills are reconciled, the President is expected to sign this legislation into law. This begs the question: How will it impact the industry?

- The Act becomes effective 12 months from the date of enactment with limited exceptions, including a special provision applicable to the adoption of tax-sharing procedures among the states.
- The "Home state of the insured" is the "sole" regulator of any nonadmitted transaction(s). All other states are preempted from applying their surplus lines laws to such transaction. The surplus lines broker need only be licensed in the home state of the insured, and only the home state may "require any premium tax payment".
- The home state of a commercial insured is the state in which the insured maintains its principal place of business unless 100% of the insured risk is located outside that state in which case it is the state with the greatest percentage of taxable premium; or if the insured is an affiliated group of entities, then it is the principal place of business of the group member with the greatest percentage of premium attributable to it.

The foregoing provisions will eliminate the exposure an insured, a surplus lines broker and nonadmitted transaction have to being caught between the competing interests of two or more states. This historically murky issue is now made crystal clear. Duplicative compliance procedures and multiple state filings for a single transaction are avoided.

- The NRRA defines a class of insureds as "exempt commercial purchasers". For insureds who meet the definition, the surplus lines broker need not make a diligent search of the admitted market prior to procuring nonadmitted coverage provided that the broker discloses to the insured that the coverage may be available in the admitted market and the insured requests in writing that coverage be procured from a nonadmitted insurer.

This provision will remove barriers to placement of coverage with nonadmitted insurers where such risks, for a variety of reasons, usually require freedom of form and rate, capacity limits or manuscripted policies. This should result in improved "speed to market" and "contract certainty".

- The legislation limits the rights of states to impose eligibility requirements upon surplus line insurers unless nationwide uniform requirements, forms and procedures are developed. An Alien insurer will be eligible automatically if it is listed on the NAIC Quarterly Listing of Alien Insurers. Insurers domiciled in any U.S. jurisdiction will need to meet two substantive requirements under the NAIC Non-Admitted Insurance Model Act, namely maintaining a minimum of \$15,000,000 of policyholders' surplus* and must be "authorized to write in its domiciliary jurisdiction".

*Exceptions may apply.

The impact of these provisions should make eligibility easier to obtain for insurers. The possibility exists that new financial standards could be imposed to meet the uniform criteria for U.S. domiciled insurers and imposed on alien insurers by amendment to NAIC Quarterly Listing requirements, which are set forth in the International Insurance Department Plan of Operations. A uniform approach should reduce the burdens on insurers in obtaining and maintaining eligibility.

- Two years from the date of enactment of this legislation a state will be prohibited from collecting fees related to licensing surplus lines brokers unless the state has laws or regulations requiring the state to participate in a national insurance producer database.

This could help streamline surplus line producer licensing at some point in the future.

- Congress intends that each state adopt nationwide uniform

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requirements, forms, and procedures, such as an interstate compact that provides for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance.

The impact of this provision will ultimately depend upon what the states choose to do. Congress is expressly empowering the states to act but not mandating them to act. If the states take no action to adopt a compact or other uniform process, it is likely that the home state will collect and retain tax on 100% of the premium and collect nothing when an insured has operations in the state but is home stated elsewhere. More likely, however, given the express intent of Congress for the states to act and the potential loss of material tax revenues, the states will pursue some collection and allocation process. If the compact coauthored by ELANY, SLIMPACT, is enacted, surplus lines brokers will be provided access to an electronic clearinghouse, one stop shopping for allocation and payment of taxes on multi-state risks.

- As to the bill's reinsurance provisions, only a ceding insurer's domiciliary state will determine the cedent's right to credit for reinsurance as long as the state is NAIC accredited or has financial solvency requirements substantially similar to those of the NAIC. Only the reinsurer's state of domicile shall regulate the reinsurer for financial solvency if the state is NAIC accredited or has financial responsibility requirements substantially similar to the NAIC. It also prohibits a state from requiring a reinsurer to provide financial information other than that required to be filed with its NAIC compliant domiciliary state.

Essentially, the bill substantially limits regulators, other than the domicile state of a ceding insurer or the domicile state of reinsurer, from imposing additional terms, provisions or requirements on the respective insurers and reinsurers and forces greater reliance on their respective domiciliary state regulators.

HOW WILL PASSAGE OF THE NRRRA IMPACT STATE STAMPING OFFICES AND STATE REGULATORS REGARDING E&S BUSINESS?

In a nutshell, the NRRRA will ease certain compliance burdens on licensed insurance producers and excess line insurers by clarifying existing law, limiting its scope and by forcing some efficiencies into the regulatory system. As to state stamping offices and state regulators, the palpable impact on E&S regulation is unlikely to be significant except for the regulation of multi-state risks. The NRRRA calls upon the states to create a tax collection, allocation and distribution process for multi-state risks. The multi-state risk tax issue aside, stamping offices will continue to receive and review transactions for compliance, educate brokers on specific compliance issues, continue to enhance electronic and program-

matic filing and supply the state with granular data about risks written in the E&S Marketplace.

While the impact on the producer community and E&S market should be significant and positive, the NRRRA will have some relatively insignificant impacts on stamping offices and regulators beyond the multi-state risk/tax conundrum. The number of risks submitted to each state may fall to the extent that some brokers today file multi-state risks in all states where there are risk exposures. Filings in more than one state will not be necessary when the NRRRA becomes effective. This will affect less than .5% of the total filings in New York.

EXEMPT COMMERCIAL PURCHASERS

Transactions which involve "exempt commercial purchasers"(ECP's) will be exempt from the "diligent effort" requirement. States which have export lists will treat ECP's as an additional category of the export list in all likelihood. These transactions will still have to be reported in the home state of the insured. Only the diligent effort requirement is waived. The foregoing provisions are not likely to cause significant changes to stamping office operations nor to state regulators, whether or not the particular state has a stamping office.

NATIONAL PRODUCER DATABASE

The requirement that a state must participate in a national Producer Database (PDB) in order to collect licensing fees will have no material impact on stamping offices. Most states already participate in the NAIC PDB. States that do not fully participate today will probably have to make operational changes to participate.

E&S INSURER ELIGIBILITY REQUIREMENTS

The NRRRA empowers the states to create uniform national requirements, forms and procedures for insurer eligibility for U.S. domiciled insurers. If the states fail to act on this, the NRRRA sets default standards which the states must accept. This will have an impact on all states and stamping offices whether the states adopt uniform standards or default. The intent of the NRRRA is to create a more uniform, efficient approach to insurer eligibility applications and review. It will be up to the states to agree upon uniform standards for insurer financial strength and solvency or accept the default standards.

UNIFORM/NATIONAL SYSTEM FOR TAX ALLOCATION AND DISTRIBUTION

The greatest challenge created by the NRRRA and the one which, by far, will greatly impact every state and every stamping office, is the legislation's empowerment and encouragement for the states to enter into a compact or other method to create national or uniform standards regarding the collections, allocation and distribution of taxes among the states involving multi-state surplus line risks.

Once again, every state regulator and stamping office will be substantially impacted by what choice the states collectively make. If the states choose to do nothing, it is likely that each state will retain 100% of the tax on risks home stated in such state but lose all tax revenues which relate to

insured risk exposures in that state where the insured is home stated elsewhere.

ELANY has co-authored an interstate compact known as SLIMPACT, to implement the NRRRA. SLIMPACT would create a clearinghouse and database for multi-state risks and would impose uniform tax allocation formulas so every state would get its fair share of taxes on multi-state risks; and the brokers would have an efficient electronic system for “one stop shopping” to implement the NRRRA.

Though Congress clearly states in the NRRRA that it intends that the states enter into a compact or other procedures for sharing tax revenues or multi-state risks, it will ultimately be up to the states, their legislatures and/or regulators to determine what will or will not happen.

SLIMPACT— TO BE OR NOT TO BE

Once the NRRRA is signed into law (which is likely to occur by July 31), the states are empowered to adopt a compact or other uniform or national system for collection, allocation and distribution of taxes related to multi-state surplus lines risk.

Since Congress does not mandate that the states act, if they do not you will not hear any complaints from the E&S broker community. If the brokers are required to do nothing more than pay the home state of the insured tax on 100% of the premium at the home state’s tax rate, the broker community will be quite satisfied. Brokers would not be concerned if the states found a way to share that tax revenue among themselves since it would not impose any material burdens upon the brokers. Similarly, if each state chooses to keep 100% of those taxes paid to it on multi-state risks and give up the tax revenues currently received on multi-state risks that are homesteaded elsewhere, brokers are not adversely impacted.

Should the states choose to act, the broker community needs to be concerned with whether the states will create an efficient and user-friendly approach to allocation and payment. Would the broker community be better off proposing an efficient approach and not leave to chance the development of a process that may not fulfill the promise of efficiencies intended by the enactment of the NRRRA?

ELANY, NAPSLO, state stamping offices and other organizations drafted an interstate compact, so that an electronic state-of-the-art system for the brokers could be delivered, while guaranteeing states a fair share of tax revenues

on multi-state E&S risks. This might allow the marketplace to be the master of its own destiny.

SLIMPACT, if enacted, will create a contract among all states which enact the compact legislation and create a governing commission with one vote per state.

The commission will:

- create a clearinghouse and electronic reporting system for receiving, storing and reporting tax allocation data;
- provide one countrywide portal where brokers can go to create a tax billing sheet for each multi-state insured and use the same data to enable the correct share of taxes to be reported and paid to each state;
- adopt uniform tax allocation formulae across all states, so fair allocation is assured to the states, and a uniform approach will ease the burdens on brokers;
- adopt four, uniform tax payment dates. States can elect to use any one, two or all four dates for tax remittance;
- permit each state to charge its own tax rate to any risk allocated to that state; and
- charge a fee on a per transaction basis for operating the clearinghouse at no cost to the states.

In addition to the foregoing, amendments to SLIMPACT are under consideration which will:

- allow a state to contract with the clearinghouse and share its benefits as a nonvoting associate member if the state does not want to adopt the whole interstate compact legislation; and
- create a mechanism allowing brokers to deposit funds with the clearinghouse to distribute to the states as an agent for the brokers.

It is hard to conceive any structure, other than an interstate compact, to legally permit states to collect and share tax revenue among them.

NEW YORK EXPORT LIST

RECENTLY EXPANDED EXPORT LIST IS UNDERUTILIZED

On September 2, 2009, ELANY announced the expansion of the “export list” with the promulgation of the 11th Amendment to Regulation 41.

The “export list” sets forth types of insurance coverages that the New York Superintendent of Insurance has determined are generally not available from licensed insurers, and therefore, three declinations are not necessary pursuant to the requirements of Sec. 2118(b)(4) of the NY Insurance Law.



ELANY recently reviewed export list transactions data submitted for the period January 1, 2010 through April 30, 2010. The review indicated that excess line brokers and producing brokers are not yet fully taking advantage of new export list coverages. The following are substantially underutilized:

- Construction Contractors Primary or Excess Liability Coverage (All Classes)
- Commercial Excess and Umbrella Liability (excess of \$10M of underlying policy limits or SIR)
- Contract Frustration
- Special Events Primary or Excess Liability

The review also indicated that a substantial number of transactions involving Environmental Impairment/Pollution Liability/Cleanup Expense coverage were being submitted to ELANY with diligent search declinations even though these type coverages are on the export list.

ELANY realizes that it takes time for licensees to become familiar with new export list coverages. However, we are once again urging member excess line brokers, their staff, and their retail producers to become familiar with the “export list” coverages and, more importantly, to utilize the “export list”. Use of the export list streamlines the declination requirement process making it easier to file excess line documents with ELANY and, thereby, saving brokers time and money.

It is important to remember that use of the “export list” only exempts the broker from the diligent search effort requirement. The filing of affidavits and related documentation is still required.

For the complete list of all coverages included on the “export list”, please log onto our website www.elany.org, click on “Lexicon/FAQ Topics” and search for “Export List”. Should you have any export list questions, please contact Gene Nunziata, Education/Communications Director, by e-mail enunziata@elany.org or by telephone **(646) 292-5584**.

PROPOSED CHANGES TO THE EXPORT LIST

The last “export list” public hearing was conducted by the New York State Insurance Department (NYSID) on June 13, 2008. Seventeen witnesses testified in support of the expansion of the “export list”. All of the producer organizations in New York (PIWA, PIA, CIBGNY, IBANY, and IIBANY), as well as NAPSLO and AAMGA, supported this effort.

As a result of the hearing, the “export list” was expanded with the promulgation of the 11th Amendment to Regulation 41 on September 2, 2009.

Since then, ELANY has heard from members who have requested that additional coverages be added to the export list due to market conditions. Over the last few months, ELANY has had discussions with the NYSID regarding further expansion of the “export list”.

On May 28, 2010, ELANY sent a letter to the NYSID, requesting the Superintendent consider adding the following coverages to the export list:

- Auto Physical Damage
For commercial trucks, black cars, limousines and other commercial passenger transportation vehicles.
- Excess Salary Protection (Disability) Insurance
High excess disability coverage and/or disability coverage
- Recreational Liability Insurance
Parachuting, Bungee jumping, Hunting clubs, Fishing clubs, Camp grounds, Children’s camps, Gymnastics, Spas, Athletic teams, Dance schools and other clubs, camps and recreational business operations.
- Builders Risk Insurance
Coverage for construction projects where the total insured values exceed \$10,000,000.
- Primary and/or Excess “Liability” Insurance for Vacant or Unoccupied Buildings
- Excess Professional/Errors & Omissions Liability—All Classes
Excess liability coverage where the underlying policy limits and/or self insured retention is at least \$10,000,000 per occurrence.

ELANY is hopeful that the NYSID will consider adding these coverages to the export list. We will keep our membership informed.

NY EXCESS LINE LAW MODERNIZATION

ELANY is pleased to announce that legislation advocating several reforms to modernize New York’s excess line law has been introduced in both the Senate (S7219-Breslin) and the Assembly (A11244-Morelle).

New York State insurance producer groups (PIWA, PIA, CIBGNY, IBANY, and IIBANY) have collectively advocated these reforms to modernize the excess line law. The reforms sought are intended to ease the burdens and costs of extensive reporting requirements which are currently part of the New York regulatory compliance regime without, in any manner, diminishing consumer protection or consumer rights.

If passed, the proposed legislation would amend Section 2118 of the New York Insurance Law as follows:

- No diligent search effort would be required where a sophisticated insured meets the definition of an “exempt commercial purchaser”.
- Waiver of the diligent search requirement where an excess line policy is renewed with the same eligible excess line insurer for a second or third one-year consecutive term.
- The Superintendent’s authority to place coverages on the export list would be expanded.

LICENSING DO’S and DON’TS



Do Remember To Renew Your Excess Line Broker Licenses.

All current excess line broker **business entity licenses** (corporation, LLC, or partnership) expire on October 31, 2010.

Please note that **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.



Don’t use your Individual Excess Line Broker License to place business when an entity is selling, soliciting or negotiating insurance contracts, gets paid commissions and holds premium trust funds in its name. The entity must be licensed to be in compliance with New York law.

If the incorporated entity that employs you fails to obtain a business entity license and instead operates under your individual excess line broker’s license, you have violated the law because it is illegal to pay commission to an unlicensed person or entity. The licensee must hold the premiums received in a premium trust account in its name and under its control.

The NYS Insurance Department has recently fined an individually licensed excess line broker \$1,000 for acting as an insurance producer in the name of the corporation which was not licensed under any section of the NY Insurance Law.

Please contact Eugene Nunziata, Education/Communications Director, by e-mail enunziata@elany.org or by telephone **(646) 292-5584** should you have any questions.

ELANY’S ANNUAL MEMBERS’ MEETING



Top: From Left to Right: Gene Nunziata, Dan Maher, James Wrynn, Marty Schwartzman, Mike Moriarty. Middle: From L to R James Wrynn, John George, Kevin McGill, Ed Valente, Bob Shapiro.

The ELANY 2010 Annual Members’ Meeting was held on May 5, 2010 at the Battery Gardens Restaurant located inside Battery Park in lower Manhattan. New York State Insurance Department Superintendent James J. Wrynn was the featured speaker for the evening event. His topics of discussion included the return of the New York Insurance Exchange, Producer Compensation Regulation, the

Nonadmitted and Reinsurance Reform Act, NARAB II, and the proposed NY Excess Line Law Modernization Bill.

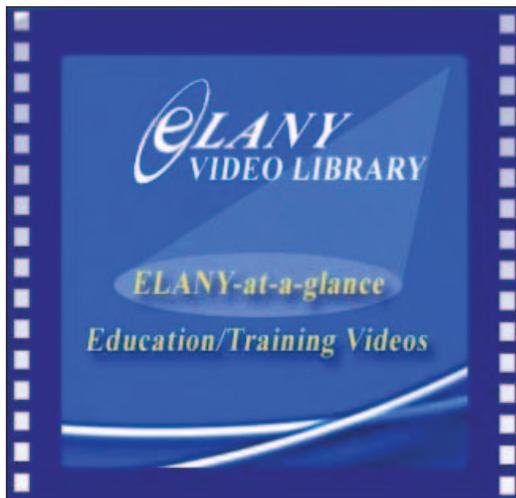
Approximately 100 members, insurer representatives, attorneys in the industry and others came out to hear the Superintendent's views on many current issues. It was refreshing to hear the Superintendent speak of the need to improve and modernize regulation and his earnest request to engage in a dialogue with the industry to reach the right balance by maintaining consumer protection but not to carry forward regulations and processes of a bygone era.

ELANY WEBSITE UPDATE

ELANY has recently added a Video Library to its Website. The ELANY Video Library currently contains nine Education/Training videos on the following topics:

- *A Five Minute Overview of the Excess Line Market* (5 minutes)
- *Diligent Search and the Reason to Believe Standard* (6 minutes)
- *How to Complete and File an Excess Line Premium Tax Statement* (6 minutes)
- *Fees Which Can be Charged on NY Excess Line Transactions* (3 minutes)
- *Excess Line Broker Licensing Requirements* (5 minutes)
- *Taxes and Assessments on Excess Line and Other Non-admitted Transactions* (8 minutes)
- *Signing Up to Use ELANY's Electronic Filing System* (4 minutes)
- *Using the E-filing Affidavit System—a Training Video* (13 minutes)
- *ELANY at a Glance* (7 minutes)

DON'T MISS THIS VIDEO!



ELANY is also in the process of updating and adding new topics to its LEXICON/FAQ section of the Website. We encourage you to visit our website www.elany.org

LICENSING MODERNIZATION TASK FORCE

In early March 2010, the New York State Insurance Department (NYSID) enlisted members of its staff and invited select industry representatives (individual producers, business entity producers, licensing services providers, appointing carriers, ELANY, and CE providers) to help determine how it could improve its licensing processes by identifying areas of concern and creating a list of improvements that would benefit NYSID's constituents. This group (Licensing Task Force Team) was requested to compile a list of recommended enhancements in a report by the end of May 2010.

In order to accomplish this directive, the Licensing Task Force Team held a series of meetings and conference calls at which time problem areas were indicated and solutions were identified, among other specific proposals.

ELANY recommended to the Task Force that there be only one producer application form with appropriate check off boxes. A licensee would then

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2010 CALENDAR OF UPCOMING TRADE ASSOCIATION EVENTS

July

Wednesday–Sunday July 7–July 11	National Conference of Insurance Legislators (NCOIL) Summer Meeting, Boston Park Plaza Hotel & Towers, Boston, MA
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Wednesday–Saturday July 21–July 24	Western States Surplus Lines Conference (WSSLC) Hyatt Gainey Ranch Resort & Spa, Whistler, BC
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August

Saturday–Tuesday August 14–August 17	National Association of Insurance Commissioners (NAIC) Summer National Meeting, Sheraton Seattle & Washington State Convention & Trade Center, Seattle, WA
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September

Thursday–Friday September 30–October 1	Surplus Lines Law Group (SLLG) Fall Meeting, New York, NY
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October

Monday–Thursday October 11–October 14	National Association of Professional Surplus Lines Offices (NAPSLO) Annual Convention, Atlanta Marriott Marquis & Hyatt Regency, Atlanta, GA
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Thursday October 28	Professional Insurance Agents of New York State (PIANY) Hudson Valley RAP, Doubletree Hotel, Tarrytown, NY
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Monday–Thursday October 18–October 21	National Association of Insurance Commissioners (NAIC) Fall National Meeting, Gaylord Palms Hotel, Orlando, FL
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November

Thursday–Sunday November 18–November 21	National Conference of Insurance Regulators (NCOIL) Annual Meeting, Hilton Austin, Austin, TX
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Licensing Modernization Task Force, continued from page 6

be able to apply for a broker's license, an excess line broker's license, and an agent's license at the same time by just checking off the appropriate box or boxes on a single application form. Currently, a licensee has to fill out separate forms, which basically ask for the same information.

As a result of the findings and recommendations of the Licensing Task Force, it is expected that benefits realized should include a simplified, streamlined licensing process with increased online application lists (including online excess line broker licensing), increased disclosure regarding the legal requirements for entities (corporations, LLCs, partnerships, etc.) to be licensed as such, increased user friendliness/navigability of the NYSID's website, reduced need to access NYSID's call center for common requests, shorter service wait times, shorter license turnaround times, and ready access to accurate license and appointment data. Initial implementation for some of the desired benefits is anticipated for July 2010.

The findings of the Licensing Task Force were compiled in a report, which was recently sent to the NYSID for review and public comment.

LEGISLATIVE RECEPTION



ELANY's 2010 Legislative Reception was held at the Fort Orange Club in downtown Albany on May 17, 2010. From L to R: Dave Isenberg, Bob Shapiro, Senator Dean Skelos, Dan Maher, Gary Hollederer.

ELECTRONIC FILING UPDATE

Back in 2008, when ELANY initially implemented fully electronic filing, we started at a meager 10% in the first few months. However, with each month, we saw the numbers increase significantly. Our initial goal was 60%–70%. Two years later, the numbers have taken a meteoric rise to 87% fully electronic submissions consistently. Additionally, over 62% of all active brokers are using the fully electronic method to file. Figure 1 displays the January through May 2010 year-to-date numbers for ELANY's Affidavit analysis.

JANUARY THROUGH MAY 2010
ELECTRONIC
AFFIDAVIT SUBMISSIONS

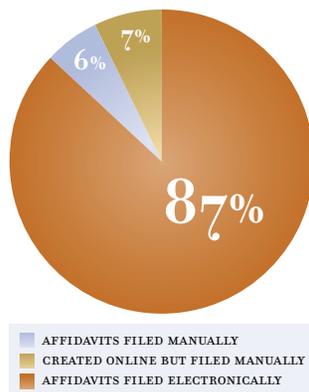


FIGURE 1

Fully Electronic Purchasing Group (PG) Module:

PG business accounts for approximately 10% of all transactions filed with ELANY. In our second iteration, we have targeted these transactions to create a fully electronic filing module for these brokers, in our efforts to become paperless. In the 3rd quarter 2010, when this goes live, we expect to gain an additional 3%–5% bump in fully electronic transactions. Our new goal is 90%. We are currently in the "Alpha Testing" stage of this deployment.

Programmatic Filing:

In addition to the Web Interface module, ELANY also has in its repertoire a fully programmatic filing option (data mapping/transfer from broker's system directly to ELANY's system) for medium to large sized brokers with packaged Agency Management Systems. One of our larger brokers is currently using this method, and it has been a resounding success. Currently, two other brokers are actively developing and testing this method in their offices.

The latest news on this front is Vertafore, Inc. has begun the development of a fully programmatic module for brokers who currently use the AIM system to submit their filings to ELANY. As you may know, Custom Insurance Services (CIS), the developer for the AIM system, was recently acquired by Vertafore, Inc. In our earlier surveys, a number of brokers are on the AIM system. ELANY expects to see the Programmatic Filing numbers increase dramatically after this becomes available.

ELANY Helpdesk:

ELANY established the Helpdesk to provide a "one-stop" resource to handle the registration, training, migration and respond to all questions about its electronic filing system. Currently, we have registered and trained over 600 brokers on the fully electronic filing method. We add to this number on weekly basis. The Helpdesk also provides one-on-one training and "hand-holding" as needed by the brokers and their support staff. To ease the burden and de-mystify the system, we have even made "field trips" where it was requested or necessary. ELANY recently added a video tutorial on using the e-filing Affidavit System.

Today, the Helpdesk is staffed by two full-time employees and a manager and responds to all the emails, voicemails and requests for help within 24 business hours. We maintain a very high and consistent level of customer service to the broker community. The feedback from various brokers and other sources has been overwhelmingly positive, for the system itself and the service and support the ELANY Helpdesk provides.

In order to sign up for e-filing or if you need assistance with the filing process, please contact the ELANY Helpdesk at **646-805-1200** or email us at **helpdesk@elany.org**.

