

# The E&S Empire Express



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## ELANY Celebrates 30 Years Serving New York!

ELANY turns 30 in 2019! We are celebrating all year long and we want our members and friends to be a part of it. Make sure you check out our [celebration video](#). We have also created a special anniversary logo that you can find on ELANY publications throughout the year.



In the words of ELANY Chairman Lance Becker, "ELANY has been serving New York's excess line community with distinction for three decades, benefiting consumers as well as excess lines brokers and insurers. We want to celebrate with the entire excess line community while looking forward to the next 30 years of leadership, service and innovation." ELANY Executive Director Dan Maher adds, "[m]embers and friends of ELANY should look for announcements throughout the year on how they can be part of what is truly a celebration of our joint success. We strive every day to help our members serve New Yorkers and our anniversary celebration would mean little without the people who make the New York excess line market such a vital part of the state's economy. We are gratified that New York policymakers recognized ELANY's value by recently enacting legislation, as they have done numerous times before, that extends ELANY's mission, this time through 2024."

## A Funny Thing Happened on the Way to the Forum...

Don't miss the **2<sup>nd</sup> Annual Surplus Lines and Reinsurance Forum** taking place on the afternoon of May 22<sup>nd</sup> at the Union League Club in Manhattan. Three panels will be presented – surplus lines, reinsurance, and a former regulators roundtable, followed by a one hour complimentary networking cocktail reception. The program is co-sponsored by ELANY, the Insurance Federation of New York, Inc. and Stroock. [Registration is free](#) and open to all.

## Take Me Out to the Annual Meeting

Join us at ELANY's Annual Meeting on May 8<sup>th</sup> at Yankee Stadium in the Bronx. Doors open at 5:00 pm and the Annual Meeting begins at 6:15 pm. Immediately following, be our guest for the Yankees game against the Seattle Mariners at 6:35 pm. You can find information [here](#). See Ya at the game!

## Remember to File Binding Authorities

Just a friendly reminder that a copy of each binding authority agreement, signed by both the excess line broker and the eligible excess line insurer, must be submitted to ELANY at least ten business days prior to binding any risk and issuing any binders or policies. Additionally, a copy of any amendments to, or any notice of cancellation or termination of, the agreement must be filed with ELANY no later than ten business days after adoption.

Please remember that it is the duty of the excess line licensee to bind business only within the written authority granted by the insurer. The stamping of a policy by ELANY does not confirm the risk(s) bound is within the authority granted to the licensee under the binding authority agreement. For a more detailed explanation of binding authority agreement filing requirements, please visit our [website](#) and see "Binding Authorities."

## Welcome Acting Superintendent Lacewell!

ELANY welcomes new Acting Superintendent of Financial Services **Linda Lacewell**. Acting Superintendent Lacewell, who is awaiting confirmation hearings in the New York State Senate, joined the Department of Financial Services in the beginning of February. She most recently served as Chief of Staff and Counselor to Governor Cuomo. Acting Superintendent Lacewell previously served as executive director of a cancer foundation initiative in Culver City, California, Chief Risk Officer and Counselor to Governor Cuomo, special counsel to the Governor, and special counsel to Attorney General Cuomo.

We look forward to working with Acting Superintendent Lacewell on issues of importance to the excess line market.



Acting Superintendent  
Lacewell

## Inside...

Senate and Assembly Insurance Committees Leadership.....	2
ELANY Advocacy.....	2
Free Cybersecurity Awareness Training and Final Compliance Deadline.....	3
Another Busy Year.....	3
Excess Line Insurer Requalification.....	3
Calendar of Upcoming Events.....	4

## Senate and Assembly Insurance Committees Leadership

Congratulations to **Senator Neil Breslin** on assuming the Chair of the Senate Insurance Committee. Senator Breslin has been a reasoned voice on insurance issues for many years and is currently sponsoring three bills at ELANY's request. **Senator Michael Ranzenhofer** is the new Ranking Member on the Committee and we extend our best wishes. ELANY would like to thank the former Chair, **Senator James Seward**, for all of his contributions to the New York insurance market and we wish him well in his new role as Ranking Member on the Senate Finance Committee, although he continues to serve as a member of the Insurance Committee as well. Finally, ELANY congratulates **Assemblyman Andrew Garbarino** on becoming Assembly Insurance Committee Ranking Member, working closely with returning Chair **Assemblyman Kevin Cahill**. ELANY looks forward to productive working relationships with all!



Senator Breslin



Senator Ranzenhofer



Senator Seward



Assemblyman  
 Garbarino



Assemblyman Cahill

### ELANY Advocacy

At ELANY's request, three bills have been introduced in the legislature that we strongly believe will benefit wholesale and retail brokers, insurers, New York State and most importantly, consumers. We are actively advocating for all three in Albany.

The first is a new bill that Senate Insurance Committee Chair Neil Breslin has introduced, **S769A**. This bill would eliminate the three declination requirement for commercial risks that are placed in the excess line market by a retail broker via an unaffiliated wholesaler. In addition, the bill would streamline the declination section of the excess line affidavit to eliminate four data elements—declination date, reason for the declination, and name and affiliation of the declining company representative.

Eliminating declinations for commercial line placements where a retailer accesses the excess line market through an unaffiliated wholesaler would remove an unnecessary burden that imposes costs and hinders speed to market. It is difficult to imagine a retailer choosing to place business through a wholesaler in the excess line market when coverage is available from an admitted carrier because that retailer would need to share their commission with the wholesaler. This is a powerful incentive for retail brokers to only place risks in the excess line market when necessary. Indeed, it is illuminating to note that in 2018, only 7,500 of the 45,000 producing New York-licensed brokers, or 17% of New York-licensed producing brokers, placed excess line business through wholesale brokers for an annual average of twenty-five transactions each. Of those 7,500 brokers, 5,000, or two-thirds, placed fewer than 10 transactions with wholesale excess line brokers during 2018. This is a powerful indicator that retailers only go to wholesalers when the retailers' admitted markets refuse to insure a risk.

Streamlining the declination portion of the affidavit would lessen confusion, mistakes and delays by reducing the number of required data elements with no adverse impact on regulatory oversight. Most retail brokers place only a small number of excess line policies and are therefore not intimately familiar with the affidavit and its nuances. The more complicated the affidavit, the more burdensome and time consuming it is for the wholesale excess line insurance broker to obtain it from the retail insurance broker for filing with ELANY. This can lead to unnecessarily delayed transactions, which are to the consumer's detriment. A streamlined affidavit would reduce mistakes and therefore help avoid "suspended" filings, which result in delays and extra fees. The affidavit would continue to require the name of the declining company, the company's National Association of Insurance Commissioners number and the reason for the broker's belief that the insurer would consider underwriting the risk.

A prime example of the antiquated and unnecessary nature of the data targeted for elimination relates to the many submissions to carriers that are now made through web portals which generate either an electronic quote or a declination. A web portal declination does not contain the name of an individual or their affiliation (company employee, agent, other). The current affidavit requires this information, placing brokers in an untenable situation.

New York is one of only seven states that require the filing of declination information, and the only state that requires twenty-one declination data elements in total for three separate declinations. An excess line broker that is required to file declinations and also allocate tax for an international risk must submit seventy-one affidavit data elements to New York.

Note that all declination data elements would still be available to the Department of Financial Services should they audit a broker, as is the case in other states.

For further discussion of S769A, see our latest [ELANY Elaborates](#).

The second bill has been introduced by Assembly Insurance Committee Chair Kevin Cahill and Senate Insurance Committee Chair Neil Breslin as [A157/S1603](#), respectively. The legislation, which has been introduced in prior legislative sessions, would permit excess line brokers to place primary medical malpractice risks covering doctors, dentists and general hospitals. Currently, a broker must obtain a declination from the Medical Malpractice Insurance Pool (MMIP), New York's medical malpractice insurance residual market mechanism. Because MMIP, with few exceptions, does not as a matter of practice decline risks, coverage cannot be placed in the excess line market.

It is in the best interests of the New York medical community, and the patients they serve, to have access to excess line insurers that can bring new expansive products to insure emerging medical malpractice risks. New York's medical malpractice insurance marketplace is currently plagued by a dearth of financially strong insurers and the addition of secure options and greater choice would be very beneficial to the state's medical practitioners and institutions. New York's medical professionals are, compared with other states, disproportionately insured by Risk Retention Groups (RRGs). While some are financially stable, others are more questionable and during 2016–2017, four RRGs that wrote medical malpractice insurance in New York were placed into insolvency. National experience indicates that the availability of excess line insurance will not reduce admitted insurers' marketshare, but will instead more evenly apportion the remainder between the excess line market and RRGs.

The third bill would permit a commercial non-auto liability policy to expressly provide coverage for punitive damages, civil penalties and other non-compensatory damages except in the case of intentional harm. [S1604/A6251](#), sponsored respectively by Senate Insurance Committee Chair Neil Breslin and Assembly Judiciary Committee Chair Jeffrey Dinowitz, would legislatively supersede a New York State Court of Appeals ruling that insurance coverage of punitive damages is contrary to public policy. New York is one of only two states that completely and definitively bar insurance for any punitive damages. Other states permit coverage of punitive damages and civil penalties based on the reasoning that criminal charges, death, injury or revocation of a license are much more likely to deter recklessness than a lack of punitive damages insurance.

Punitive damages coverage would benefit everyone. It would be a boon for injured New Yorkers who today obtain substantial awards only to find that they cannot collect their judgments. This is especially egregious where economic damages are small and punitive damages make up the

preponderance of the overall damages award. Insureds want punitive damages coverage to protect themselves or their shareholders from the adverse financial and business consequences of punitive damages awards, particularly when those awards arise out of strict or vicarious liability. It is important to note that in practice, New York insureds that want punitive damages coverage can still obtain it from unregulated offshore insurers beyond the jurisdiction of New York courts and regulation. New Yorkers would benefit if they could acquire such coverage through the New York regulated market where consumer protection is a paramount goal.

ELANY will continue to work toward achieving these goals. Look for updates on [LinkedIn](#).

## Free Cybersecurity Awareness Training and Final Compliance Deadline

We have extended our complimentary cybersecurity awareness training offer through the end of 2019. To qualify, a firm must have an active New York excess line broker's license and must have filed insurance transactions with ELANY since January 1, 2016. Details of the offer can be found [here](#). To date, ELANY has fully funded training for more than 170 members firms encompassing over 15,000 of their employees.

The final implementation date for the Department of Financial Services cybersecurity regulation came and went on March 1<sup>st</sup> with the implementation deadline for the Third Party Service Providers (TPSP) requirement. See [here](#) for more information. Brokers should be mindful that the insurers they do business with may be their TSPS and the reverse may be true as well. Compliance certifications covering 2018 were due to the Department of Financial Services by February 15<sup>th</sup>.

## Another Busy Year

ELANY handled 343,521 transactions in 2018 totaling \$4,333,776,372 in premium. These are record numbers and indicate the importance of the excess line market in covering complex risks that may be distressed, unique, volatile, or involve new businesses or coverages without loss history.

## Excess Line Insurer Requalification

Excess line insurers are reminded to file for requalification. Of note, the minimum capital and surplus for excess line insurers writing business in New York increased to \$47M on January 1<sup>st</sup>, the most stringent requirement in the country. While some filings were due on March 15<sup>th</sup>, a copy of the most recent audited financial statement for the ultimate parent of the company is due by July 10<sup>th</sup>. See [here](#) for more information.

## CALENDAR OF UPCOMING EVENTS

### 2019

#### MAY

<b>MAY 1</b> Wednesday	<b>Professional Insurance Agents Of New York (PIANY)</b> LI RAP 2019 Crest Hollow Country Club Woodbury, NY
<b>MAY 8</b> Wednesday	<b>ELANY Annual Members' Meeting</b> Yankee Stadium Bronx, NY
<b>MAY 22</b> Wednesday	<b>2nd Annual Surplus Lines and Reinsurance Forum (Co-Sponsored by ELANY, IFNY and Stroock)</b> The Union League Club New York, NY
<b>MAY 29-31</b> Wednesday-Friday	<b>New York Insurance Association (NYIA)</b> Annual Conference The Sagamore Bolton Landing, NY

#### JUNE

<b>JUNE 9-11</b> Sunday-Tuesday	<b>Professional Insurance Agents of New York (PIANY)</b> PIA NY/NJ Conference Harrah's Atlantic City, NJ
<b>JUNE 24-26</b> Monday-Wednesday	<b>The Western States Surplus Lines Conference 2019 (WSSLC)</b> 2019 CIWA Summer Forum & Annual Meeting hosting the Western States Surplus Lines Conference Monterey Plaza Hotel & Spa Monterey, CA

#### JULY

<b>JULY 10-13</b> Wednesday-Saturday	<b>The National Conference of Insurance Legislators (NCOIL)</b> Summer Meeting Newport Beach Marriott Hotel & Spa Newport Beach, CA
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#### AUGUST

<b>AUGUST 3-6</b> Saturday-Tuesday	<b>National Association of Insurance Commissioners (NAIC)</b> Summer Meeting New York Hilton Midtown New York, NY
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#### SEPTEMBER

<b>SEPTEMBER 22-25</b> Sunday-Wednesday	<b>National Association of Mutual Insurance Companies (NAMIC)</b> Annual Convention National Harbor, MD
<b>SEPTEMBER 22-25</b> Sunday-Wednesday	<b>Wholesale &amp; Specialty Insurance Association (WSIA)</b> Annual Marketplace Manchester Grand Hyatt, Marriot Marquis San Diego, CA

#### OCTOBER

<b>OCTOBER 23</b> Wednesday	<b>Insurance Brokers' Assoc of New York (IBANY)</b> Fall Reception Tribeca Rooftop New York, NY
<b>OCTOBER 24</b> Thursday	<b>Professional Insurance Agents of New York (PIANY)</b> HV RAP 2019 Crowne Plaza Suffern, NY

#### DECEMBER

<b>DECEMBER 7-10</b> Saturday-Tuesday	<b>National Association of Insurance Commissioners (NAIC)</b> Fall Meeting JW Marriott Austin Hyatt Place Austin Austin, TX
<b>DECEMBER 10-12</b> Tuesday-Thursday	<b>The National Conference of Insurance Legislators (NCOIL)</b> Annual Meeting JW Marriott Austin, TX



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