



National Association of Professional Surplus Lines Offices, Ltd.

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Richard M. Bouhan
Executive Director

December 2, 2009

John W. Bauer
Chief Counsel, Regulatory Affairs
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, Missouri 64108

RE: Michigan NARAB Questionnaire

Dear John:

NAPSLO would like to comment about the Michigan survey responses. The survey responses indicate that an underlying P&C license is required as a precondition for obtaining a non-resident surplus lines broker's license. We believe the legislature intended to address this issue in 500.1206 where it outlined the requirements for obtaining a non-resident surplus lines agent's license:

500.1206a. Licensing of nonresident insurance producers; qualifications; notice and certification of change of address; surplus lines insurance and limited lines insurance licenses.

Sec. 1206a. (1) Unless denied licensure under section 1239 [FN1], a nonresident person shall receive a nonresident insurance producer license if he or she meets all of the following:

- (a) Is currently licensed as a resident and in good standing in his or her home state.
 - (b) Has submitted the proper request for licensure and has paid the applicable fees required by section 240 [FN2].
 - (c) Has submitted or transmitted to the commissioner the application for licensure that the person submitted to his or her home state or a completed uniform application as required by the commissioner.
 - (d) The person's home state awards nonresident producer licenses to residents of this state on the same basis.
- (4) Notwithstanding any other provision of this chapter, a person licensed as a **surplus lines** insurance producer in his or her home state shall receive a nonresident **surplus lines** insurance producer license pursuant to subsection (1). Except as otherwise provided in subsection (1), this section does not otherwise amend or supersede any provision of chapter 19 [FN3].

The legislature intended to directly address the Graham-Leach-Bliley requirements by indicating that a non-resident surplus lines broker can obtain a license by compliance with section 1 of this statute. Section 1 of the statute requires a license in the home state, a request for licensure, and an application. It does not require an underlying P&C

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license. We believe Section 1206 should have resulted in the Michigan response 4.a being that a non-resident surplus lines broker is not required to have an underlying P&C license. We recognize that it is possible to interpret the licensee/diligent search requirement as being consistent with non-resident licensing provisions, but we believe the legislature clearly made a policy decision in favor of reciprocal licensing.

A separate question in the survey is whether the surplus lines broker is required to perform a diligent search. Michigan Statutes Section 500.1910 indicates the surplus lines market can be used for coverage "the licensee is unable to procure after diligent search among authorized insurers." This could be read to mean that the surplus lines licensee must conduct the diligent search, although a retail agent would also possess a producer's license and could be considered a "licensee." The statutory scheme specifically allows the retailer to be compensated by the surplus lines broker. Section 1916 provides:

A licensee may be compensated by an unauthorized insurer and the licensee may compensate a licensed resident agent in this state for obtaining surplus lines insurance business. The licensed resident agent authorized by the licensee may collect a premium on behalf of a surplus lines licensee, and, as between the insured and the licensee, the licensee shall be considered to have received the premium if the premium payment has been made to the agent.

The statute contemplates the involvement of a retail agent and allows the surplus lines wholesale broker to compensate the retailer for the business. The retailer will have already done a diligent search before involving the surplus lines wholesale broker. The retailer is typically an independent insurance agent and will place the risk with one of his or her markets if there is one available. Only when it is clear there is not an admitted market available for the risk does the retail agent involve the surplus lines wholesale broker. The retail agent must share a commission with the surplus lines wholesaler so there is a disincentive to use the surplus lines market if an admitted market is available.

The surplus lines wholesale broker typically only places business with surplus lines companies and they frequently have no access to admitted markets in order to complete a diligent search. The statutory scheme recognizes the wholesale system exists, but is admittedly worded in a way that could be construed to require the surplus lines broker to conduct the diligent search, although this is contrary to the practical way the market functions. The retailer is in the best position to complete the diligent search and does so in all transactions involving a wholesaler. NAPSLO has over 700 surplus lines wholesale brokerage companies that would not perform a diligent search.

This wholesale system was again discussed in Bulletin 85-06 as follows:

Section 1207(4) of the Michigan Insurance Code, MCLA 500.1207(4); MSA 24.11207(4), provides that "If an agent is unable to immediately provide, through his insurers that are authorized to underwrite the coverage, all or a part of the coverage requested on a risk, he may obtain the part of

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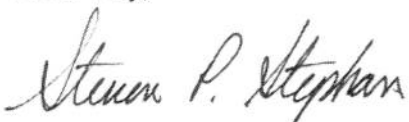
the coverage refused by his insurers through another licensed agent, through the state accident fund or through a risk sharing plan permitted by state law." The purpose of Section 1207(4) of the Code which is commonly known as "the refused or excess statute" is to provide an avenue for the procurement of insurance by an agent of insurers who normally write such coverages but have declined to write all or part of an unusually large or undesirable risk. This section permits the agent to obtain the refused coverages, through another licensed agent. This section, in conjunction with Section 1916 of the **Surplus Lines** Insurance Act, permits a resident agent to obtain the refused business through a Michigan **surplus lines** licensee.

Again, Michigan has acknowledged that the wholesale distribution system is functioning and but the ambiguous statute was nevertheless the basis for the states responses to the survey that appears to require the surplus lines licensee to conduct a diligent search. We would urge Michigan to clarify by bulletin or otherwise that a surplus lines broker may rely upon the diligent search conducted by the licensed P&C agent. Many states take this approach and it is consistent with the market realities. The vast majority of states specifically allow the diligent search to be conducted by the retail agent, but there are some that have issued a bulletin to clarify that the diligent search performed by the retailer can be relied upon by the surplus lines wholesaler. If this point were clarified, then the survey responses could be changed and the state could be certified as reciprocal under the terms of GLBA.

As you know, our view is that the underlying P&C license requirement should only be imposed if the surplus lines wholesaler is actually conducting a diligent search. NAPSLO members all operate as wholesalers and do not conduct a diligent search. We believe the wholesale distribution is widely utilized in Michigan, as it is in all states, so allowing the wholesaler to rely upon the diligent search conducted by the licensed retail producer would be validating existing practices.

We believe it is in the best interest of the States, the NAIC, and NAPSLO to have as many states certified as reciprocal as possible. Great strides have been made in the area of reciprocal licensing and in this would be one more step in the direction of reciprocal licensing. If there is anything NAPSLO can do to further this overall objective, please let me know.

Yours truly,



Steven P. Stephan, J.D., CPCU, ARe
Director of Government Relations