



National Association of Professional Surplus Lines Offices, Ltd.

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Richard M. Bouhan
Executive Director

August 30, 2010

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

RE: Missouri NARAB Questionnaire

Dear Mr. Bauer:

NAPSLO would like to comment about Missouri's response to the NARAB working group checklist. Question 4.a. asks if non-resident surplus lines producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Missouri's response was "yes" and they cited section 384.043.2. We believe the legislature has more recently addressed the issue in section 375.017 as follows:

375.017. Insurance licenses for nonresidents fees, application for license, requirements, application of section

1. Unless denied licensure pursuant to section 375.141, a nonresident person shall receive a nonresident producer license if:

- (1) The person is currently licensed as a resident and in good standing in his or her home state;*
- (2) The person has submitted the proper request for licensure and has paid the fees prescribed by the director;*
- (3) The person has submitted or transmitted to the director the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed uniform application or the uniform business entity application; and*
- (4) The home state of the person awards nonresident producer licenses to residents of this state on the same basis.*

2. The director may verify the licensing status of the nonresident producer through the producer database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries or through any other method the director deems appropriate.

3. A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address within thirty days of the change of legal residence.

4. Notwithstanding any other provision of this chapter, a person licensed as a surplus lines licensee or producer in his or her home state shall receive a nonresident surplus lines license pursuant to subsection 1 of this section. Except as provided in subsection 1 of this section, nothing in this section otherwise amends or supercedes any provision of chapter 384, RSMo.

...

6. A satisfaction by the nonresident producer of the continuing education requirements of his or her home state for licensed insurance producers shall constitute satisfaction of the continuing education requirements of this state if the home state of the nonresident producer recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis. This subsection shall also apply to surplus lines licensees licensed pursuant to chapter 384, RSMo. . . .

Subsection 4 specifically provides that the non-resident licensing provisions apply notwithstanding the provision in chapter 384. Section 384.043 would have required an underlying P&C license except it was amended by section 375.017. Section 384.043 provides:

2. The director shall issue a surplus lines license to any qualified holder of a current resident or nonresident property and casualty insurance producer license but only when the licensee

The license requirement in section 384 is specifically made inapplicable by the following language in 375.017:

Except as provided in subsection 1 of this section, nothing in this section otherwise amends or supercedes any provision of chapter 384, RSMo.

In other words, subsection 1 does amend or supercede the provision of chapter 384 on the issue of non-resident licensing (subsection 1). We believe that 375.017 should have resulted Missouri responding “no” or “only retail surplus lines brokers must obtain an underlying P&C license.”

NAPSLO would also like to comment about the response to section 4.c. Section 4.c. asks if the surplus lines producer is required to perform a diligent search of the admitted market in your state. Missouri answered “yes” and cited 20 CSR 200-6.500(1). We believe the response would be accurate in the context of a surplus lines retail producer who would be the only producer in the transaction. In the context of a wholesale surplus lines transaction, the retail agent would normally conduct the diligent search and there would not be a need for a second duplicative diligent search to be undertaken by a surplus lines wholesale broker. The wholesale surplus lines broker is an intermediary between the producing broker and the company. We believe section 384.045 could be construed to authorize a surplus lines wholesale broker to rely upon the diligent search of the retail agent:

384.045. Licensees may originate or accept insurance from other licensees or brokers, compensation

A surplus lines licensee may originate surplus lines insurance or accept such insurance from any other agent or broker duly licensed as to the kinds of insurance involved, and the surplus lines licensee may compensate such agent or broker therefore.

Missouri acknowledges that a surplus lines broker may accept business from another agent. In accepting business from another broker or agent, a surplus lines wholesale broker would not normally conduct a second duplicative diligent search. The retail agent would need to split a commission with the surplus lines wholesale broker so the wholesale broker is not brought into a transaction if there is any way to get the business placed without a wholesaler. In addition, the taxes, compliance cost and premium are typically higher in the surplus lines market. The retail

agent has every reason to exhaust the possibilities of placing the business in the admitted markets prior to involving a surplus lines wholesale broker.

The regulations do impose some obligation on the wholesale broker to ensure they cannot place the business with admitted markets. This is typically a non-issue for a surplus lines wholesale broker because they have little or no contacts in the admitted markets. The applicable regulation provides:

20 CSR 200-6.500. Standards for Determining the Availability of Coverage

(1) For purposes of section 384.017, RSMo, an available market shall be deemed not to exist for the type and quality of coverage required by the insured if, at the time of the request, the surplus lines licensee and the licensee's producing insurance producer, if any, have been unable, after the exercise of due diligence, to obtain such coverage from both--

(A) Those admitted insurers with whom the surplus lines licensee and any producing insurance producer have been appointed to act, respectively, as insurance producers; and

(B) Those other admitted insurers to whom the surplus lines licensee and any producing insurance producer have reasonable access and from whom they either knew they could obtain coverage or from whom they would typically be able to obtain coverage, during the normal course of business.

We acknowledge that some obligations are imposed upon the wholesale broker. We do not know if this has been construed to impose upon a surplus lines wholesale broker the obligation to conduct a second duplicative diligent search. If they believe a second duplicative search is necessary, we will try to determine if the state will clarify, by bulletin or otherwise that a second diligent search is not necessary if the originating producer has already concluded there is no admitted market for the risk.

The code provides for a diligent search but does not prohibit the surplus lines wholesaler from relying upon the diligent search conducted by the retail agent. The regulations impose obligations upon the surplus lines wholesale broker, but there may be a need for further clarifications.

The wholesale surplus lines broker would normally rely upon the diligent search conducted by the retail agent. The retail agent is typically an independent insurance agent and typically does not have a surplus lines broker's license. The retail agent is the expert in the admitted markets. The surplus lines wholesale broker is an intermediary between the retail agent and the surplus lines company. The surplus lines wholesale broker is an expert in surplus lines markets and would have little or no contacts in the admitted markets.

There is a second production model where the retail surplus lines brokers directly access the surplus lines markets without a wholesaler. Retail surplus lines brokers would conduct a diligent search of the admitted markets. They are the only broker in the transaction and the only broker who could conduct the diligent search. A retail surplus lines broker would need both a P&C license and a surplus lines broker's license.

Many states require the surplus lines broker to execute the affidavit even if the diligent search was conducted by a retail broker. Some states also require the retail broker to execute an

affidavit regarding the diligent search. The states that require the wholesaler to execute the affidavit do not typically prohibit the surplus lines wholesale broker from relying upon the diligent search already conducted by the retail producer.

The question could have been more specific in distinguishing the requirements for a retail surplus lines broker and a wholesale surplus lines broker. We believe the answers to the question 4 are accurate in the context of a surplus lines retail broker because a retail surplus lines broker must conduct a diligent search. A non-resident retail surplus lines broker would need an underlying P&C license in order to conduct a diligent search. We believe that a non-resident wholesale surplus lines broker would not need an underlying P&C license because the diligent search was already conducted by the retail producer.

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,

A handwritten signature in cursive script that reads "Steven P. Stephan".

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