



**National Association of Professional Surplus Lines Offices, Ltd.**

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Richard M. Bouhan  
Executive Director

April 1, 2010

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

**RE: North Carolina NARAB Questionnaire**

Dear Mr. Bauer:

NAPSLO would like to comment about the North Carolina NARAB Working Group Reciprocity Checklist responses. The responses indicate that an underlying non-resident 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 section 58-33-32 and 58-21-65 where it outlined the requirements for obtaining a non-resident surplus lines agent's license:

(d) A person licensed as a surplus lines producer in that person's home state shall receive a nonresident surplus lines license under subsection (c) of this section. Except for the licensure provisions of this section, nothing in this section otherwise amends or supersedes any provision of Article 21 of this Chapter.

Section C of 58-33-32 provides:

(c) Unless denied licensure under [G.S. 58-33-30](#) or [G.S. 58-33-50](#), a nonresident person shall receive a nonresident producer license if:

(1) The person is currently licensed as a resident and in good standing in that person's home state;

(2) The person has submitted the request for licensure in the form prescribed by the Commissioner and has paid the applicable fees required by [G.S. 58-33-125](#);

(3) The person has submitted or transmitted to the Commissioner a copy of the application for licensure that the person submitted to that person's home state, or in lieu of the same, a completed Uniform Application or Uniform Business Entity Application; and

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(4) The person's home state awards nonresident producer licenses to residents of this State on a reciprocal basis.

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 (c) of this statute. Section (c) 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 license from North Carolina. We believe Section 58-33-32 should have resulted in the North Carolina response to Question 4.a. being that a non-resident surplus lines broker is not required to have an underlying P&C license.

Section 58-21-65(b) addresses the licensing of a resident surplus lines broker, but it specifically provides that:

Nonresident surplus lines licensees shall be licensed in accordance with Article 33 of this Chapter.

We believe the legislature intended to address non-resident licensing for surplus lines brokers and that they did not intend to require a non-resident P&C license as a precondition for a non-resident surplus lines license. I have attached complete copies of Sections 58-33-32 and 58-21-5 below. If the survey response to question 4.a. is "no" then there is no reason to respond to the other parts of Question 4.

A separate question in part 4 of the survey is whether the surplus lines broker is required to perform a diligent search. It may be unnecessary for the purposes of the NARAB Working Group to address the diligent search issue since the state has already decided that an underlying non-resident P&C license is not needed for a non-resident surplus lines license. Nevertheless NAPSLO would like to comment on North Carolina's response to Question 4.c. because we believe that a surplus lines license is required to perform a diligent search only when the surplus lines broker is the only licensed producer in the transaction. The question and the response are as follows:

Is the surplus lines producer required to perform the diligent search of the admitted market in your state?

Yes X No \_\_\_ Citation: NCGS 58-21-15 (2)

North Carolina Statutes Section 58-21-15(2) provides that a surplus lines licensee can obtain surplus lines insurance from non-admitted insurers if:

(2) The full amount or kind of insurance cannot be obtained from insurers who are admitted to do business in this state. Such full amount or kind of insurance may be procured from eligible surplus lines insurers, provided that a diligent

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search is made among the insurers who are admitted to transact and are actually writing the particular kind and class of insurance in this state; . . .

A diligent search is required, as it is in almost all states, but we do not believe that the statute required that a surplus lines wholesale broker to conduct the diligent search. The statute requires that a diligent search is made, but does not indicate if the retail agent or the wholesale broker should conduct the diligent search. We believe the statute was worded this way to accommodate both production systems.

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. 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. It would be an unnecessary waste of time for the surplus lines wholesale broker to conduct a second diligent search of the admitted markets, because the retail agent has already done so.

There are retail surplus lines brokers that directly access the surplus lines markets. 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.

In a transaction involving both a retail broker and a surplus lines wholesaler, we believe the role of the surplus lines market as a supplemental market is better served if the retail broker is allowed to conduct the diligent search. For example, if a doctor had multiple claims during the year, the doctor may not realize there is no admitted market for his/her malpractice coverage until his retail agent has made a submission to the admitted markets. Only after the risk is declined by the admitted markets would the retail agent contact the surplus lines broker to make a submission in the surplus lines markets. The doctor could not know in advance that his coverage would be declined by the admitted markets. Since the surplus lines market is intended to be a supplemental market, there are good reasons for the retail broker to search the admitted markets prior to contacting the surplus lines wholesaler. It would be impractical for the surplus lines wholesaler to conduct a second diligent search of the admitted markets prior to placement in the surplus lines markets.

The North Carolina statutes contemplate the involvement of a retail agent and allows the surplus lines wholesale broker to compensate the retailer for the business. The Wholesale production system is discussed in Section 58-21-70:

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- (a) A surplus lines licensee may originate surplus lines insurance or accept such insurance from any other duly licensed agent or broker, and the surplus lines licensee may compensate such agent or broker therefore.

North Carolina has recognized that the wholesale production system also functions in the state. We do not believe the statutory scheme intended for the surplus lines wholesale broker to conduct a second diligent search of the admitted markets. We wanted to address this issue because of the response to Question 4.c.

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

Enclosures