



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

200 N.E. 54th St. • Suite 200 • Kansas City, MO 64118 • 816/741-3910 • Fax 816/741-5409  
www.napslo.org

Richard M. Bouhan  
Executive Director

April 19, 2010

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

**RE: Puerto Rico NARAB Checklist**

Dear Mr. Bauer:

NAPSLO would like to comment about the Puerto Rico 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 the code where it outlines a process with the following sections:

26 L.P.R.A. § 1012

(1) A surplus line producer may accept and place surplus line business for any insurance producer licensed in Puerto Rico for the kind or kinds of insurance involved, and may compensate such insurance producer therefore.

(2) The surplus line producer shall have the right to receive from the insurer the customary commission.

—

CHAPTER 10. Unauthorized Insurers

§ 1007 Surplus line insurance

Any portion or all of an insurance coverage which cannot be procured from authorized insurers, which coverage is hereinafter designated as "surplus line," may be procured from unauthorized insurers if:

(1) The insurance cannot be procured from authorized insurers, or has been procured to the full extent such insurers are willing to insure; Provided, That in the case of residential condominiums of fifteen (15) meters or more, whether or not under the horizontal property regime, the insurance cannot be obtained from at least two (2) authorized insurers; and

**April 19, 2010**  
**Page Two**

(2) such insurance is procured through a licensed surplus line producer, hereinafter in this chapter referred to as the “producer”; and

In specifically allowing the surplus lines producer to accept business from other producers, the legislature is specifically allowing the surplus lines broker to act as a wholesaler. The survey question submitted did not address the issue of whether a non-resident wholesaler needed a non-resident P&C license. The question could have been referring to a surplus lines retailer, who would need the P&C license to make a submission to an admitted company. If there is only one producer in a transaction, that producer obviously must conduct a diligent search. In a wholesale transaction, the diligent search would have been conducted by the retail broker. The Puerto Rico law allows the wholesaler to conduct business with a retailer and we believe that if the law intended to require a second diligent search by the wholesaler it would have specifically mentioned such an unusual requirement.

The statutes also indicate that surplus lines can be utilized if “the insurance cannot be procured from authorized insurers” but it does not specify who is to make that determination. If it intended to impose the unusual requirement we believe it would have stated as much. The normal process is for the retail agent to conduct a diligent search and if the retailer is unable to locate an admitted market, the surplus lines wholesaler is brought into the transaction. Because this is a standard surplus lines transaction, we believe the code was intending this to be utilized in Puerto Rico.

Puerto Rico does have an unusual law, but it is specifically addressing the authority of a surplus lines broker. It provides:

Every surplus lines insurance broker, prior to placing insurance of this class, should offer the risk being placed as such on the form created by the Office of Insurance Commissioner for this purpose. The surplus lines insurance broker shall make such offer of insurance using the risk distribution center which shall be established for such purpose and administered by the Office of the Insurance Commissioner.

Although this is an unusual provision, and nothing like it appears in the other laws of the states, it does not appear to mandate that a non-resident surplus lines broker obtain a non-resident P&C license. It creates a process for a surplus lines broker to make a submission, but since it is specifically allowing this to be done by a surplus lines broker, I would not read it to require a P&C license. It is imposing duties and granting authority to a surplus lines broker and would not otherwise appear to implicate any other license. The law could have required this process to be completed by a retailer prior to accessing the surplus lines broker, but the legislature elected to require the surplus lines broker complete the process outlined in the statute.

**April 19, 2010**  
**Page Three**

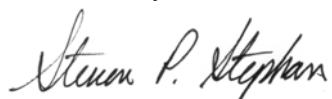
The wholesale surplus lines broker would normally rely upon the diligent search conducted by the retail agent and the statutory scheme specifically permits this use of the wholesale production system. The retail agent is typically an independent insurance agent. The retail agent is the expert in the 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. By contrast, in a wholesale production system, the retail broker is in the best position to conduct a diligent search of the admitted markets.

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 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. The doctor would not know to contact a surplus lines broker for his coverage until it was 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.

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