



National Association of Professional Surplus Lines Offices, Ltd.

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Richard M. Bouhan
Executive Director

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

RE: NARAB Washington Reciprocity Checklist

Dear Mr. Bauer:

I am writing from the National Association of Professional Surplus Lines Offices, Ltd. (NAPSLO) regarding the NARAB Working Group Washington Reciprocity Checklists. I would first like to thank you, the NARAB Working Group and the NAIC for undertaking this important step to ensure that the state licensing system functions as efficiently as possible.

NAPSLO's interpretation of Washington law is that the state clearly intended to allow the retail insurance agent to conduct a diligent search and for the surplus lines wholesale broker to rely upon the diligent search conducted by the retailer. The NAIC survey question does not distinguish between a retail surplus lines broker and a wholesale surplus lines broker. A retail surplus lines broker would conduct a diligent search, but a surplus lines wholesale broker would not conduct a diligent search because the retail agent has already done so. It would be a redundant waste of time for the surplus lines wholesale broker to conduct a second diligent search of the admitted markets. In responding to the question, Washington may have been unaware that the need to draw such a fine distinction in responding to the survey. Washington's response to the survey was partly correct in that a retail surplus lines broker would need to conduct a diligent search, but a wholesale surplus lines broker would rely upon the diligent search conducted by the retail agent (typically and independent insurance agent).

Washington law seems to acknowledge the functioning of the surplus lines wholesale distribution system in the following places:

1. Section 48.15.080 provides ➔ **48.15.080. Licensed surplus line broker may accept business**

A licensed **surplus line broker** may accept and place **surplus line** business for any insurance producer licensed in this state for the kind of insurance involved, and may compensate that insurance producer therefore.

2. WAC 284-15-080 provides: When a surplus lines broker accepts surplus line business from an insurance producer not acting as an agent of the insured as permitted by RCW 48.15.080 acceptance of the business does not mean that the insurance producer has become the representative of the insured with respect to that business . . .

3. WA Bulletin 91-7 “a licensed surplus line broker may accept and place surplus line business for any insurance agent or broker licensed in this state for the kind of insurance involved and may compensate such agent or broker therefore.
4. WA technical Assistance Advisory 2006-04 provides in connection with placing surplus line business, a surplus line broker may compensate an agent or broker.
5. The affidavit required for use by the surplus line broker requires the “name and address of producing agent or broker (if any).”

In our opinion, it is clear the state intended to allow the retail agent to submit the business to the surplus lines wholesale broker. It is customary in such a transaction for the retail agent to conduct the diligent search. This is the most common production model utilized in the surplus lines market. NAPSLO members are all wholesale brokers and surplus lines carriers that utilize the wholesale production system.

For the surplus lines market to function as designed it is the retail agent would normally conduct a diligent search of the admitted markets to place the risk, because it is not possible to know in advance if there is an admitted market for a particular risk. Only once the risk has been declined by the admitted markets does it become apparent to the retail agent that a surplus lines wholesaler should be brought in to assist with the placement of the risk in the surplus lines market. If for example, a doctor had a bad claims history during a year, he or she may discover that there is no longer an admitted market for their malpractice coverage. The retailer would need to contact a surplus lines wholesaler to complete the placement. The insured could not know in advance whether it is necessary to contact a surplus lines broker. The surplus lines market acts as a safety valve for hard-to-place risks and it functions most efficiently if the retail agent conducts the diligent search prior to contacting the surplus lines broker.

We do not believe that Washington intended to say in the survey response that the normal wholesale distribution system could not function in the state. Our understanding is that there is a robust surplus lines wholesale distribution system functioning every day in the state of Washington.

Thank you for the opportunity to comment. Please contact me if I can be of further assistance.

Yours truly,



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