



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

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Richard M. Bouhan  
Executive Director

May 6, 2010

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

**RE: Indiana NARAB Questionnaire**

Dear Mr. Bauer:

NAPSLO would like to comment about the Indiana 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 27-1-15.6-8 where it outlined the requirements for obtaining a non-resident surplus lines agent's license. Section 27-1-15.6-8 is specifically made applicable to surplus lines insurance by Section 27-1-15.8-2:

➡ **27-1-15.8-2 Applicable provisions throughout code**

Sec. 2. The following provisions of IC 27-1-15.6 apply to licensure of surplus lines producers under this chapter:

- (1) [IC 27-1-15.6-5](#).
- (2) [IC 27-1-15.6-6](#).
- (3) [IC 27-1-15.6-8](#) through [IC 27-1-15.6-13](#).
- (4) [IC 27-1-15.6-15](#) through [IC 27-1-15.6-17](#).
- (5) [IC 27-1-15.6-21](#).
- (6) [IC 27-1-15.6-32](#) through [IC 27-1-15.6-34](#).

Section 27-1-15.6.8 specifically controls non-resident surplus lines licensing and is controlling over other provisions of the surplus lines code because Section (d) states that it applies notwithstanding any other section of the code:

➡ **27-1-15.6-8 Nonresident producer license**

Sec. 8. (a) Unless denied licensure under [Section 12](#) of this chapter, a nonresident person shall receive a nonresident producer license if:

- (1) the person is currently licensed as a resident and in good standing in the person's home state;
- (2) the person has submitted the proper request for licensure and has paid the fees required under [Section 32](#) of this chapter;
- (3) the person has submitted or transmitted to the commissioner::

- (A) the application for licensure that the person submitted to the person's home state; or
- (B) a completed uniform application; and

(4) the person's home state awards non-resident producer licenses to residents of Indiana on the same basis as non-resident producer licenses are awarded to residents of other states under this chapter.

(b) The commissioner may verify a producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners and its affiliates or subsidiaries. . . .

(d) Notwithstanding any other provision of this chapter, a person licensed as a surplus lines producer in the person's home state shall receive a nonresident surplus lines producer license under subsection (a). Except as provided in subsection (a), nothing in this section otherwise amends or supercedes IC 27-1-15.8, as added by this act. . .

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 (a) of this statute. Section (a) of the statute requires a license in the home state, a request for licensure, and an application. It does not require an underlying non-resident P&C license from Indiana. We believe Section (d) should have resulted in the Indiana response to Question 4.a being that a non-resident surplus lines broker is not required to have an underlying non-resident P&C license. It provides that "notwithstanding any other provision of this chapter" a person licensed as a surplus lines producer in the persons' home state shall receive a non-resident surplus lines producers license under Subsection (a). The clear legislative intent was for this provision to control other provisions of the code. The questionnaire mentioned section 27-1-15.8 but it is specifically controlled by the provisions in Section (d) where it specifically states that it applies "notwithstanding any other provision 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. The frequently asked questions on the Indiana website indicate that a non-resident P&C license from Indiana is required for a non-resident surplus lines license but FAQ's may need to be updated to reflect the statutory scheme.

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 Indiana'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 acting as a retailer (and therefore 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  No  Citation: IC 27-1-15.8-3

Indiana Section 27-1-15.8-3(a) provides that a surplus lines licensee can obtain surplus lines insurance from non-admitted insurers:

Sec. 3. (a) A surplus lines producer may receive qualification for a license in one (1) or more of the kinds of insurance defined in Class 2 and Class 3 of [IC 27-1-5-1](#) from insurers that are authorized to do business in one (1) or more states of the United States of America but are not authorized to do business in Indiana whenever, after diligent effort, as determined to the

satisfaction of the department, the licensee is unable to procure the amount of insurance desired from insurers authorized and licensed to do business in Indiana.

A diligent search is required, as it is in almost all states, but we do not believe that the statute specifically 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 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. 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 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.

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 the 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. Because 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 a waste of time for the surplus lines wholesaler to conduct a second diligent search of the admitted markets prior to placement in the surplus lines markets.

Many states require the surplus lines broker to execute the affidavit even if the diligent search was conducted by a retail broker. Some states require the retail broker to execute an affidavit regarding the diligent search. The Indiana affidavit must be executed by the surplus lines licensee, like other states, but does not specifically prohibit the surplus lines broker from relying upon the diligent search already conducted by the retail producer. It is clear that a diligent search must be made, but provisions such as these are generally construed to allow the diligent search to be conducted by the retail broker and the wholesaler is not required to undertake a second diligent search.

Section 27-1-15.8-4 specifically acknowledges the functioning of the wholesale production system by allowing the surplus lines producer to accept and place business from a retailer.

**➡27-1-15.8-4 Percent of gross premiums remitted to department; affidavit and financial statement filed with department**

. . . (g) A surplus lines producer licensed under this chapter may accept and place policies or contracts authorized under this section for an insurance producer duly licensed in Indiana, and may compensate the insurance producer even though the insurance producer is not licensed under this chapter.

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Section 27-1-15.8-4 also mentions the diligent search but does not preclude the surplus lines wholesale broker from relying upon the diligent search conducted by the retail agent:

(b) A licensed surplus lines producer shall execute and file with the department of insurance on or before the twentieth day of each month an affidavit that specifies all transactions, policies, and contracts procured during the preceding calendar month, including:

(A) the licensee, after diligent effort, was unable to procure from any insurer authorized to transact the particular class of insurance business in Indiana the full amount of insurance required to protect the insured;

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 addressed the issue. 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 that a retail surplus lines broker must conduct a diligent search because they are the only producer in the transaction. Many state codes could be clearer on the ability of a wholesaler to reasonably rely upon the diligent search of a retailer, and many states have clarified this either by bulletin, modifying the affidavit, or issuing a FAQ.

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