

The E&S Empire Express



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DICK BOUHAN – MOVING ON, BUT NOT GONE

A friend, of not only ELANY, but the entire surplus lines community will soon hang up his NAPSLO hat after three decades of serving as its affable and effective voice.

Richard “Dick” Bouhan recently handed over the keys of the National Association of Professional Surplus Lines Offices kingdom to the new Executive Director, Brady Kelly. However, he will stay on board until next June to provide some continuity and congeniality to the organization he clearly loves.

Bouhan came on board in 1981 after dealing with surplus lines carrier issues with the National Association of Independent Insurers. “I have a certain anti-authoritarian streak, and I kind of liked this idea that these guys were able to operate outside the rate and form requirements,” he said.

The great issue of the day was a New York State Insurance Department directive that would later be instrumental in serving as the birth of ELANY. The proposed revision of Regulation 41 would have imposed what Bouhan said were onerous diligent search requirements for surplus lines brokers.

“And New York being a major surplus lines state, that was a problem,” he said. In the end, Bouhan and other industry representatives eased some of the Regulation 41 requirements.

At the time, stamping offices proliferated on the West Coast but for some reason never took hold east of the Mississippi. “After the battle over Reg. 41, it was tossed around that if we could get a stamping office set up as an organization that could get involved with the department, and work as an overseer for the marketplace and assist the brokers, then something like that might be helpful and avoid the problems that came about because of Reg. 41,” he said. “Because a lot of them probably were a lack of communication between the regulatory community and the surplus lines market.”

Skepticism prevailed initially as to a stamping office working in New York. “But ultimately, some of the brokers and an assemblyman could see the benefit of this and by 1988, they had ELANY established,” he said.



Bouhan also fought efforts to get non-admitted companies to take part in a guaranty fund system. Today only New Jersey operates such a fund, and Bouhan is not shy about expressing his disdain for the state’s use of those funds to balance its regular budget.

He noted that according to A.M. Best reporting, the solvency record of the surplus lines market overall beats the solvency record of admitted companies.

NAPSLO is unique as an industry organization in that it represents both carriers and brokers. “Let’s just say it makes for some interesting board meetings,” he said.

And, while brokers and carriers may see the world differently on a number of issues, NAPSLO’s strength lies in the fact, according to Bouhan, “that once we take a stand on a certain issue, it represents the position of the entire marketplace,” he said. “And that is a very good position to be in when we go out lobbying because we are not going to have a group of surplus lines companies saying we don’t agree with our broker colleagues.”

As for his greatest frustration during his long tenure, Bouhan said the challenges surrounding the implementation of the Non-Admitted and Reinsurance Reform Act top the list, much to no one’s surprise. “I am disappointed leaving this in such a state of confusion, and I hope this can get straightened out and the problems that act in providing simplicity and uniformity will be resolved,” he said.

Bouhan’s greatest satisfaction consists of “watching a small fledgling association develop and become what I believe is a spokesperson that is recognized for the marketplace that it represents.”

“When I first started, there were not a lot of people who actually heard of NAPSLO, and now I think we are a very mature and respected organization,” he

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said. "Most of the top 50 companies that represent about 90% of the business are now members."

Surplus lines coverages have evolved with societal changes as new risks, stemming from complex financial products and cyber threats, make the admitted markets nervous to find a home there. "For a lot of this stuff there is no data, so naturally the coverages move to the surplus companies because the admitted companies don't know how to price it," he said.

June may seem a long way off; and while Bouhan has no specific plans at the age of 67, he said he looks forward to new opportunities for his hard earned expertise. "I think I know a lot about this business and can be of service," he said.

NICOLE PUGLIESE HONORED AS COLLEGE CLASS VALEDICTORIAN

Last month, Nicole Pugliese celebrated her fifth year at ELANY and an awful lot more.



The previous spring, she obtained her four-year degree from Metropolitan College of New York, located in downtown New York City, with the No. 1 ranking in her class of 200. With it came the honor of making the Valedictorian address.

With some college transfer credits, Nicole obtained her degree in an accelerated program in less than three years, all the while working full time.

Now she is pursuing her masters in public administration with an eye to graduation next summer.

In her Valedictorian address, Nicole recalled riding the subway from her Brooklyn home and seeing an ad for the school. She thought it seemed a good way to both further her career as an insurance examiner at ELANY, as well as any future ambitions in the nonprofit field.

"I talked a lot about the struggles over the past couple of years, particularly with some health issues in my family," she said. The demanding work and school schedule seems in danger of letting up soon. "I can't say that I had all that great a social life these past couple of years," she said.

Right now she is working with her ELANY colleagues on a masters thesis on continuing education in the workplace, a topic with which she obviously has a great deal of expertise.

"At ELANY, we are all proud of Nicole's tremendous accomplishments; and we continue to support her in her chosen field of graduate work. We're looking forward for a repeat as class Valedictorian in her Master's program," said Executive Director Dan Maher.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

ELANY member brokers woke up the morning of October 4 to a new insurance regulatory regime.

On the previous day, the old Department of Insurance became one of five units in the newly merged Department of Financial Services under the terms of legislation signed by Governor Andrew Cuomo in March.

Of course, not all that much really changed to the naked eye. However, ELANY Executive Director, Dan Maher, warned that some of the finer points of the Financial Services Law (FSL) have to do with stiffer penalties.

"Some of the more germane provisions of the merger legislation with respect to insurance activities are those amending the penalty provisions of the Insurance Law," he said.

Specifically, all penalties assessed against persons and entities regulated in connection with willful violations of the Insurance Law have been increased from to \$500 per offense to an amount not to exceed \$1,000 per offense.

The provision applies to not only licensed agents, brokers, adjusters, consultants and intermediaries, but also to other regulated persons and entities, which engage in insurance related activities.

The legislation also imposes fines of up to \$5,000 for violations of the Financial Services Law, primarily with the respect to financial fraud. The superintendent may not collect any penalty for an FSL violation and then impose it for an Insurance Law transgression. "Thus, the likelihood of a separate fine being assessed under the FSL on top of any Insurance Law violation may be diminished, since fines under the FSL are constrained to acts that constitute intentional fraud or misrepresentation."

Finally, Maher noted, the new law ascribes "defined violation" status to commission of acts, such as producing business or adjusting claims without a license or acting for or aiding an unlicensed or unauthorized insurer. Violators will be subject to the Superintendent's cease and desist power in addition to a \$500 per transaction fine for each violation. The penalty was previously set at \$500 for the first violation and \$500 per month for continuing violations.

Thus, while none of the provisions apply directly to the excess lines market, the increased penalties for acting on behalf of an unauthorized insurer, could include excess line eligible insurers.

"It is not beyond the imagination for a prosecutorial-oriented superintendent to exercise cease-and-desist authority granted pursuant to the consolidation law in an attempt to reach an unauthorized insurer if he believes the violation of the insurance law is serious enough," Maher said. "Moreover, the new law's potential for doubling the former fine

levels per transaction could have a devastating financial impact in the aggregate on excess lines licensees."

While not much may change for excess lines producers, the new law, according to an analysis provided by New York City-based attorney Mark Peters, partner in the Edwards Angell Palmer & Dodge law firm, expands the new agency's scope beyond that of either the original banking or insurance departments.

"The FSL recognizes that fraud can occur across industries and is detrimental to the social and economic well being of New York citizens," Peters wrote.

"Thus, the insurance fraud and criminal investigations bureaus will be consolidated into a new unit known as the Financial Frauds and Consumer Protection Division.

While the FSL continues the authority of the superintendent to levy assessments to fund the running of the department, the new law expressly limits assessments on insurance companies to fund the costs of regulating persons operating under the insurance law.

While New York is not the first state to consolidate financial services regulation, its role as a global financial center will shine a new light on this regulatory structure, and the full effect will be seen once the DFS becomes fully operational," Peters wrote.

DOUBLE TRAGEDY – THE SINKING OF THE *ETHAN ALLEN*

The *Ethan Allen*, a tour vessel on Lake George, capsized in 2006 leaving 20 elderly passengers dead. The tragedy was compounded by the owner's failure to maintain valid insurance on the vessel.

The purported insurance policies were supposedly issued by a series of insurance companies located in the Caribbean island of Nevis; but in fact, the insurance companies were entirely fraudulent.

Christopher Purser, 50, a Houston-based insurance broker, pled guilty to the federal felony offense of conspiracy to commit wire fraud in U.S. District Court in Houston in October, stemming from the sinking of a cruise boat in Lake George six years ago. Mr. Purser had a long history of fraudulent insurance practices that came to light with the sinking of the *Ethan Allen*.

Purser's trouble with the law goes back to 2003 when the Texas Department of Insurance banned him from any involvement in the insurance business. Among the assorted businesses, such as apartment complexes and condo associations that purchased liability insurance from him through 2006, was Shoreline Cruises Inc., operator of the *Ethan Allen*.

Purser first sold marine liability insurance to Shoreline in May of 2004. The policy was renewed a year later. In response to the substantial claims stemming from the October 2 sinking, Purser presented backdated documents to make it appear falsely that the policy did not cover the boat while it was operating on Lake George.

Purser now faces a maximum of 20 years in federal prison without parole to be followed by a maximum of three years of supervised release, a fine of up to \$250,000 and an order to pay full restitution to the victims. Five other defendants were charged along with Purser. Three of those defendants are set to begin trial before Judge Sim Lake late this year.

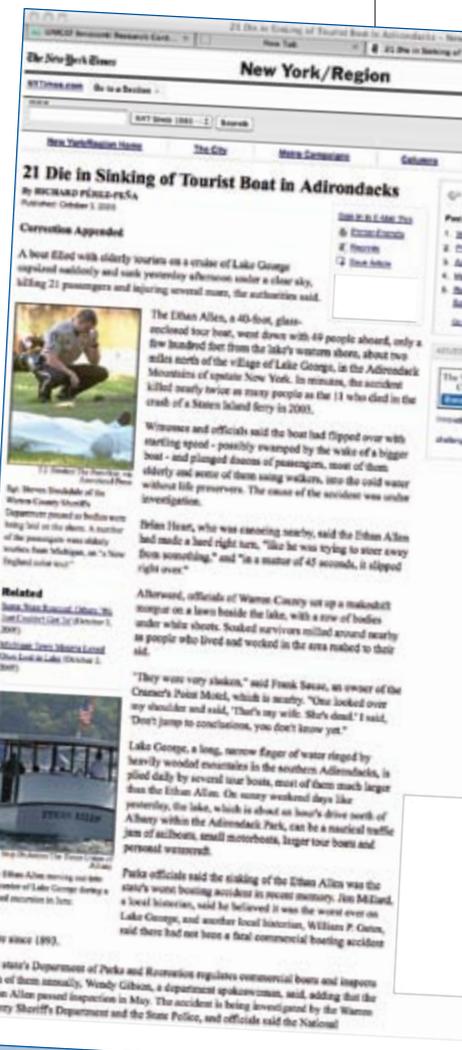
Families of the victims settled last year with the Lake George Steamboat Co. for an undisclosed settlement claiming that the wake from its vessel, the *Mohican*, was responsible for tipping the *Ethan Allen* on that sunny fall afternoon six years ago.

Lake George Attorney James Hacker said he then moved against the New York Parks and Recreation Department because it had certified the tour boat as safe for 50 passengers, when subsequent testing found the boat safe for 14 passengers.

Claims have already been settled against both the owner of the *Ethan Allen* and its captain. A federal judge in 2009 previously dismissed claims against Scarano Boat Building of Albany, which built a wooden canopy on the boat replacing a canvas top.

Meanwhile, the New York State Court of Appeals is in the process of weighing the issue of government immunity in the case of the victims' lawsuit against the New York State Department of Parks and Recreation.

As a result of the *Ethan Allen* tragedy, ELANY worked with the state legislature for years to fashion an insurance mandate for public vessels that would appropriately provide access to excess line insurers for this product. To date, however, the legislation has not been enacted.



Insurance Industry Charitable Foundation – Volunteer Week

If the office seemed somewhat short-staffed during the week of October 15, through October 22, 2011, it was because numerous toilers in the ELANY vineyard were taking part in Volunteer Week, sponsored by the Insurance Industry Charitable Foundation.

Branan Whitehead and Nicole Pugliese spent the day at Park East High School on the Upper East Side with juniors and seniors discussing their challenging future in today's uncertain economy.

"They asked a lot of great questions, such as what is the greatest mistake we ever made," said Whitehead. "And in keeping with Woody Allen's theory that 90% of life is just showing up," Whitehead said his main advice was "just learn to wake up on time."

Bryan Nebel taught guitar to elementary and middle age children at the Boys Club of New York, while Darlene Moreta made Halloween decorations for the Starlight Children's Foundation.



Petry Officer 2nd Class David R. Quillen

The Foundation's activities will culminate with its Gala Dinner at the Waldorf-Astoria on December 14, featuring KATIE COURIC (see *Calendar of Events* on Page 5 for details). While the \$1000 ticket may deter some staffers here, event planners stressed that it does include unlimited trips to the salad bar.

ELANY joined a long list of property casualty insurance players in giving back to society. According to the recent findings of the McKinsey report on charitable giving by the property casualty industry, a total of \$500 million was produced, with 80 percent coming from cash donations and the rest in volunteer hours.

The report said the industry's contribution was just slightly ahead of other sectors such as financials and manufacturing. A total of 34% went to education, with health and social services (20%) and economic development (18%) the next two in line.

While the industry's giving is in line with that of other industries, executives believe they are not maximizing the impact of charitable giving or receiving full recognition for their company's contributions. A total of 60% of executives believe the industry can increase the social and business impact of its charitable programs while maintaining current levels of giving.

Other ELANY staffers taking part in Volunteer Week activities were: Tola Zubairu, Jasmin Johnson, Deanna Olah, Keith Vittore, Eddie Del Valle, Cristian Carbajal, Traci Martin, Fazedha Raghunandan, Melissa Downey and Brian Persaud.



VOLUNTEER WEEK

Department of Financial Services – Insurance Division

COMINGS AND GOINGS

Congratulation to Rob Easton on his return to the Insurance Division as the Executive Deputy Superintendent, along with the return of Jean Marie Cho as the Deputy Superintendent of the Property Bureau.

Best wishes to recent Insurance Department retirees Mike Moriarty, Gene Bienski and Joyce Bushell.

AND THANKS TO...

ELANY wants to express our appreciation to Steve Tuckey, who wrote this edition of the *E&S Empire Express*. Steve has written on insurance issues for more than ten years for several national media outlets.

CALENDAR OF EVENTS

December

Wednesday,
December 14, 2011

Insurance Industry Charitable Foundation 5th Annual New York/Northeast Division Benefit Dinner

Waldorf Astoria Hotel, Grand Ballroom, New York City

Reception: 6:00 pm

Dinner & Program: 7:00 pm

HONOREE

Zurich Financial Services
Accepting the honor for Zurich: Mike Foley,
Chief Executive Officer

SPECIAL GUEST SPEAKER

Katie Couric

SPECIAL GUEST PRESENTERS

Denis Leary, *Actor, Comedian, Author; and Founder, The Leary Firefighters Foundation*
Archie Manning, *NFL Great*
General Richard B. Myers, *USAF, Retired; Former Chairman of the Joint Chiefs of Staff*

HOST/EMCEE

Kirstin Cole, *Correspondent, WPIX-TV*

For more information about the dinner, please call 212-763-8597 or email iicf@cmevents.net

January

Wednesday,
January 18, 2012

Professional Insurance Agents New York Metropolitan Regional Awareness Program

Continuing education, networking and more, with a focus on the New York City metropolitan area.

Hilton New York

1335 Avenue of the America's
New York, NY 10019

For more information about the event, please call PIANY at (800) 424-4244 or email: pia@pia.org



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