

EXCESS LINE
ASSOCIATION
OF NEW YORK



2016 ANNUAL REPORT



2016 SET YET ANOTHER record year for the New York E&S market, the fourth in a row with calendar year gross premium topping out at just over \$3.7 billion and transactions processed totaling 303,303. While this is certainly an indication of a strong New York economy, it also reflects the fulfillment of the need for insurance expertise in the specialty classes of business serviced by the excess line market.

This is most evident when analyzing the predominant class or classes of specialty business in the market. When viewed from the perspective of which industry or industries regularly utilize the excess line market, the construction industry dominates. General liability, along with excess and umbrella coverage for the construction industry, topped out just short of \$1 billion of premium, representing 27.5% of the market and 47,405, or 15.6%, of all transactions. Looking at the market purely from the perspective of coverages, ELANY's data indicates that in 2016, capacity risks (\$659.6M), professional liability (\$427M), primary property (\$727.5M), and general liability (\$1.224M) were the driving forces of the excess line market, constituting 80% of the premium in the market place. This is extremely important because it statistically confirms that this is a specialty market and not one that competes head to head with the admitted or standard markets.

For those who remain skeptical and continue to harbor suspicions that the excess line market desires to compete with standard carriers, consider this. New York admitted market property and casualty volume easily exceeds 15,000,000 policies per year while the New York excess line market issued only 213,766 policies with 89,537 endorsements in 2016. 84.46% of excess line transactions were processed by wholesalers, who assisted retail brokers in finding willing markets for tough classes of business. Retail brokers only submitted 12.54% of all excess line transactions. However, premium was 37.18% of the



market, which indicates these are middle market or larger accounts.

In New York, there are over 42,800 licensed brokers but only 7,408 acquired excess line policies through wholesalers

for an average of 23 transactions apiece in 2016. From a transaction count standpoint, excess line business is a tiny fraction of the admitted market. It is the specialty nature of the risk and the sophisticated skill set of the brokers and underwriters that drives the excess line marketplace and certainly not a desire for head-to-head competition with standard insurers. The industry must galvanize itself to deliver the message that the market is a supplemental one bringing a special skill set to insuring complex risk. Otherwise, brokers will continue to be compelled to report transactions with onerous, antiquated and, quite frankly, unused data which drives inefficiency, errors and costs. ELANY and the excess line market need to change this.

The insurance industry is developing solutions for numerous types of emerging risk. From cyber liability to ride sharing to special insurance needs in the gig economy, the excess line market is there to innovate. While cutting edge solutions have been, and continue to be, developed to meet the brand new insurance needs of a high technology society, the excess line market is hampered by an old school regulatory regime. Online point-and-click technology is what consumers desire, and the excess line market has the capability to respond and deliver except that such an approach will violate existing regulations in many instances.

In order for the excess line market to succeed in meeting consumer and business needs for specialty coverages, particularly for emerging risk in the high technology area, the case must be made for regulatory reform. ELANY's new Statistics section in its website provides a strong and objective statistical data base from which rational discussion can commence. 📌



"2016 set yet another record year for the New York E&S market, the fourth in a row..."



CHAIRMAN'S REPORT

Janet Pane

OUR ANNUAL REPORT COVER features photos from a number of New York construction projects, highlighting the fact that the Construction Industry is the single largest industry utilizing the excess line market in New York.

For those of you who do not follow the excess line market trends on a regular basis, ELANY's website is the best source of information for our specialty segment of the insurance industry, bar none. ELANY's newly expanded Statistics section of the website contains a number of interesting reports evidencing that construction risk premium is the single largest driver of year-over-year premium increases.

While we anticipate serving the ongoing needs of existing specialty lines of business, such as construction for many years to come, ELANY is also looking ahead to help brokers achieve success with new and emerging risks they face today, and those just beyond the horizon. Together, ELANY and the insurance industry have established the excess line market as a supplemental market for specialty business and unique risks serviced by brokers and underwriters with deep skills and expertise serving sophisticated buyers. It is a nimble market that does not compete with the standard market but complements it by providing secure market solutions that address a rapidly changing risk landscape.

I am honored to serve as the Board's Chairman for ELANY, having served seven years on the Board, most recently as Operations & Procedures Committee Chair. The Board's role is to monitor ELANY's performance against the governing objectives and ensure the ongoing value creation of the Association. ELANY has done an excellent job linking both financial and nonfinancial drivers in determining how best to deliver



value within the excess line market. The management team, led by Dan Maher, Executive Director, is one of the best in the business. Our members are the direct beneficiaries of their years of industry knowledge and expertise and their outstanding service ethic.

The most successful companies understand the drivers of value creation must change over time as the consumer base becomes younger and more digitally savvy and the risks evolve. ELANY's efforts and functions align with the brokerage community in a number of ways. ELANY is focusing on using data in strategic ways, leveraging cutting edge technology to reduce costs and obtain new efficiencies, while also seeking solutions to address barriers to entry for the excess line market to fully participate in meeting insurance needs arising out of emerging risk and high technology issues.

Looking ahead, we see the laws and regulations will have to change along with a rapidly evolving marketplace. In order to function effectively in an increasingly online world, brokers will need to develop technology to offer excess line coverages over smart phones and other devices in real time to meet the demands of the new consumer. This is quickly becoming the primary distribution channel chosen by individual insurance buyers; and if we watch other industries, we have every reason to believe the trend will be adopted by corporate buyers as well. If that is the future, then the laws will need to be modernized, and ELANY now has the data to prove this proposition. The challenge is to present that data and convince legislators and regulators that legal modernization is necessary if, as an industry, we are going to stay ahead of the curve in order to meet the dynamic needs of our members and New York consumers. 🇺🇸



"...the Construction Industry is the single largest industry utilizing the excess line market in New York."



INFORMATION RESOURCES AND SECURITY COMMITTEE REPORT

Margaret Beirne, *Chairman*

AS WE REVIEW YEAR-END results, we note that the insurers on ELANY's eligibility list continue to be financially sound. As of January 1, 2016, the minimum policyholders' surplus for ELANY eligible insurers increased to \$46 million. All eligible insurers have met the minimum surplus requirement. 97.5% of all New York excess and surplus line premiums are written by carriers with an "A" rating or better. In fact since 2004, the number of admitted U.S. property/casualty insurers that have gone insolvent has totaled 207 insurers, while no insurer, who wrote excess lines business in New York during the same period, has become insolvent.

ELANY continues to notice an increase in the number of insurers interested in eligibility. Many carriers looking to enter the excess line insurance space are doing so to augment the insurance products offered via their related admitted companies. Also, the excess line insurance market continues to be affected by consolidations in the insurance industry—notably, Ace's acquisition of Chubb; Hartford's acquisition of Maxum Indemnity; Liberty Mutual's acquisition of Ironshore; Fairfax's acquisition of Allied World Assurance; and Markel's consolidation of three insurers into Evanston.

Regulation 41 places the responsibility of monitoring the solvency of eligible insurers a broker places business with on the excess line licensee. It is known as the "due care" standard. The passage of the Nonadmitted Reinsurance Reform Act (NRRA) in 2010 has diminished the ability of individual states to

establish state-specific solvency requirements by preempting many of those standards. ELANY has directed its efforts towards assisting excess line brokers, who must meet their statutory "due care" obligation within the framework permitted by the NRRA.

ELANY continues to review the financials of all foreign excess line insurers writing business in New York. When evidence of financial deterioration is noticed, the insurer is contacted and asked how the issues in question are being addressed. If ELANY determines that serious financial issues remain, the insurer is asked to voluntarily withdraw. During 2016, three foreign excess line insurers' surplus to policyholders dipped below the minimum amount of \$46 million. Upon being advised by ELANY of this surplus breach, all three insurers' respective parents contributed additional capital increasing surplus back above \$46 million.

Financial summaries for all eligible foreign excess line insurers are maintained on the ELANY website. We encourage all brokers to visit the website and the financial summaries frequently and to contact us if you have any questions, comments or concerns.

Five foreign insurers were added to ELANY's eligibility list in 2016 and two foreign insurers merged with an insurer already eligible. Overall, 111 foreign insurers are eligible to write excess line business in New York. Under the provisions of the NRRA, all alien insurers listed on the NAIC Quarterly Listing of Alien Insurers are automatically eligible to write business in New York. 



"...the insurers on ELANY's eligibility list continue to be financially sound."

PROCESSING COST PER TRANSACTION

The processing cost per transaction for the year 2016 was **\$18.63**.

This is the second lowest cost in the history of ELANY.

PURCHASING GROUP BUSINESS

In 2016, **20,704** PG transactions were processed, representing **6.8%** of the total transactions processed and **\$36,354,980** of taxable premium, representing **1%** of total New York taxable premium.

Purchasing Group volume has fallen significantly since its high point in 2005.

EXEMPT COMMERCIAL PURCHASER (ECP) & EXPORT LIST TRANSACTIONS (NEW/RENEWAL/ENDORSEMENTS)

1,975 ECP transactions and **16,621** Export List transactions were processed in 2016.

ECP and Export List transactions combined represent 6% of the total transactions processed for 2016.

MULTISTATE TRANSACTIONS

In 2016, a total of **4,319** transactions was reported as multistate transactions with a gross written premium of **\$509,240,421**. Of the total transactions, **2,755** were U.S. only, multistate with no tax allocation, and **1,564** were international where **\$82,233,643** of **\$272,465,646** was allocated to non U.S. exposures.

ELANY ACTIVE MEMBERS

There were **803** active members for the year 2016.

TAXABLE PREMIUM PER STAMPED DOCUMENT

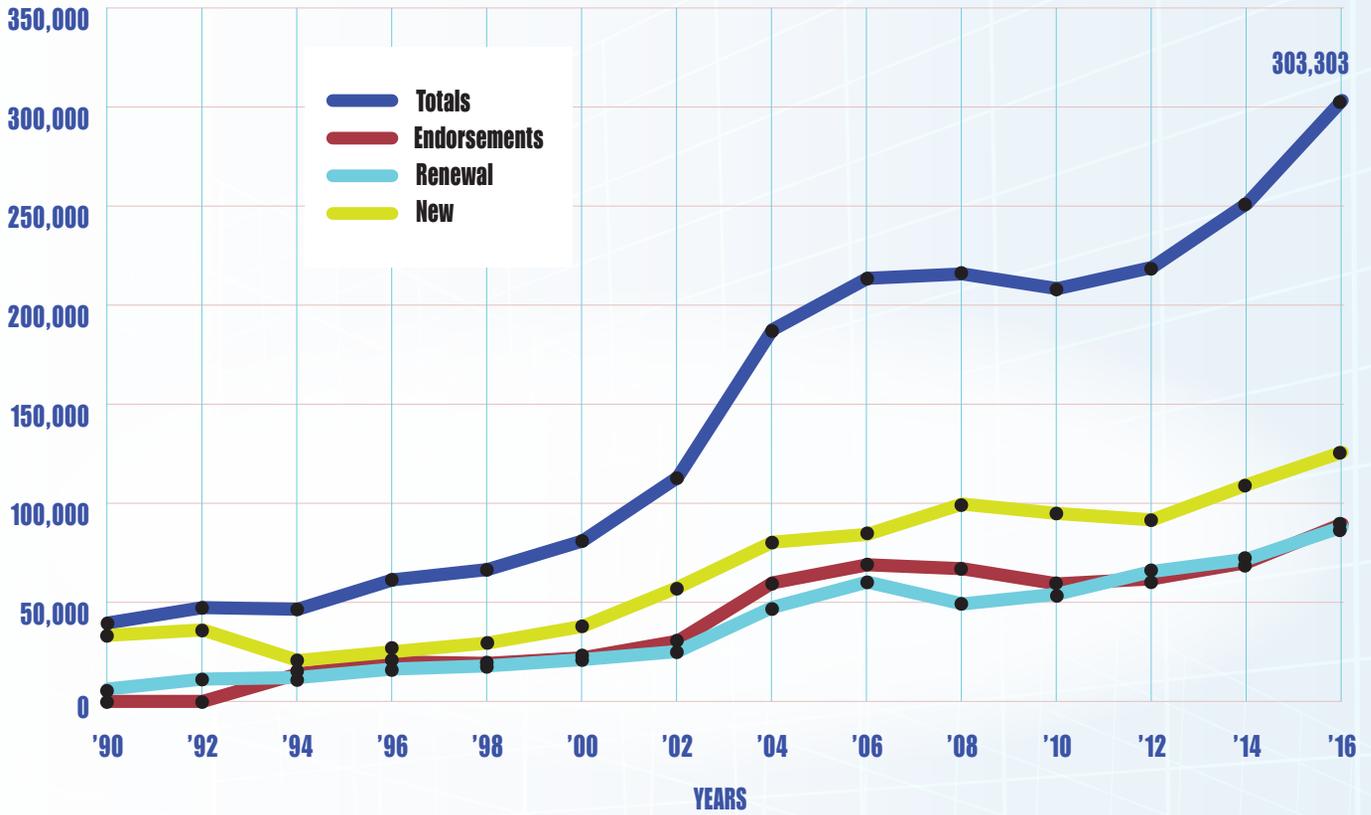
In 2016, **\$11,946** was the average taxable premium per stamped document.

This averaged twelfth highest in ELANY's history.

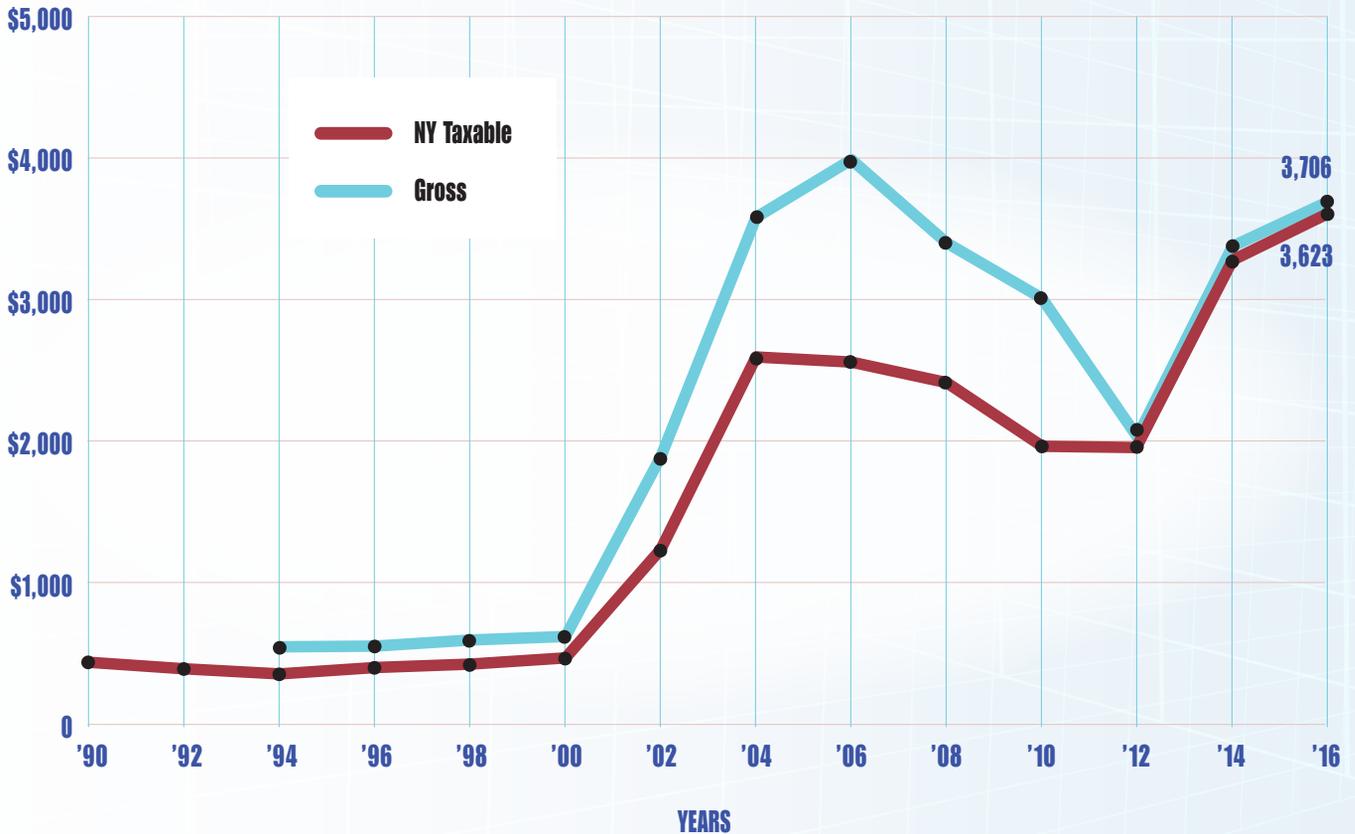
ELECTRONIC AFFIDAVIT SUBMISSIONS

In 2016, **99%** of all transactions processed were submitted electronically, of which **12%** were submitted programmatically. **91%** of active excess line brokers file electronically. ➡

NEW YORK EXCESS LINE TRANSACTION COUNT



NEW YORK EXCESS LINE PREMIUM (IN MILLIONS)*



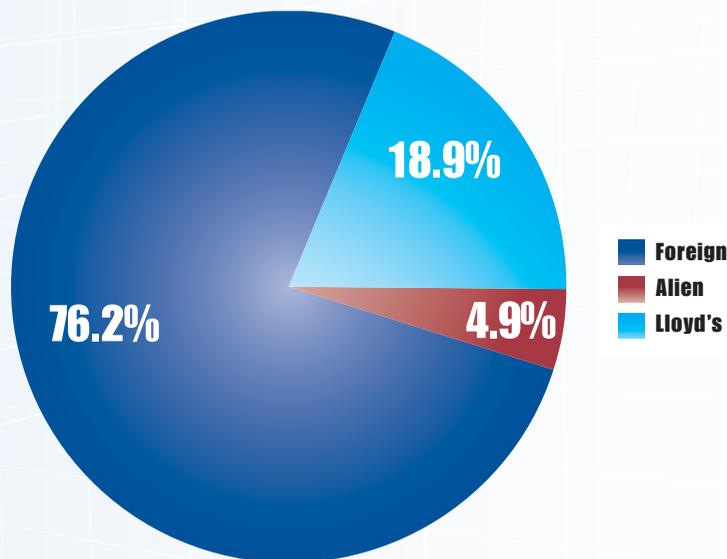
*Tax allocation began in 1994.

All figures and statistics are based on New York taxable calendar year premium.

2016 NEW YORK TAXABLE PREMIUM BY INSURANCE GROUP

Group Name	Number of Companies	New York Premium	
Lloyd's of London		\$ 687,936,390	• 19%
American International Group, Inc.	3	\$ 365,858,088	• 10%
Nationwide Mutual Insurance Company	2	\$ 253,984,798	• 7%
Chubb Corporation	5	\$ 153,118,171	• 4%
Travelers Companies, Inc.	4	\$ 141,441,918	• 4%
W.R. Berkley Corporation	6	\$ 140,793,491	• 4%
American Financial Group, Inc.	3	\$ 122,199,379	• 3%
Zurich Insurance Group Ltd.	2	\$ 108,198,829	• 3%
Arch Capital Group Ltd.	3	\$ 106,536,490	• 3%
Argo Group International Holdings, Ltd.	1	\$ 101,529,951	• 3%
XL Group PLC	4	\$ 89,882,861	• 2%
Fairfax Financial Holdings Limited	5	\$ 80,355,249	• 2%
Axis Capital Group	2	\$ 73,083,371	• 2%
Markel Corporation Group	4	\$ 72,671,770	• 2%
RLI Corp.	1	\$ 65,950,628	• 2%
Berkshire Hathaway	5	\$ 65,541,694	• 2%
Fosun International Holdings, Ltd.	5	\$ 60,466,035	• 2%
Endurance Specialty Holdings Ltd.	3	\$ 55,189,813	• 2%
CNA Financial Corporation	2	\$ 52,624,487	• 1%
Alleghany Corporation	4	\$ 50,936,044	• 1%
State National Companies, Inc.	1	\$ 48,663,967	• 1%
Swiss Re Limited	4	\$ 44,679,408	• 1%
James River Group Holdings, Ltd.	1	\$ 39,102,527	• 1%
Allied World Assurance Co Holdings, AG	2	\$ 36,242,059	• 1%
ProSight Global Holdings Limited	1	\$ 35,283,334	• 1%
SUBTOTAL Top 25 Groups		\$ 3,052,270,752	
All Other	80	\$ 570,880,771	• 16%
TOTAL NY Taxable Premium		\$ 3,623,151,523	

PERCENTAGE
OF YEAR 2016
NY TAXABLE
PREMIUM
DISTRIBUTION BY
ELIGIBLE INSURERS



TOP 10 INSURERS

Insurer	New York Taxable Premium	%
1 Lloyds Underwriters	\$ 687,936,390	19%
2 Lexington Insurance Company	\$ 269,965,480	7%
3 Scottsdale Insurance Company	\$ 251,560,891	7%
4 Travelers Excess & Surplus Lines Company	\$ 120,130,906	3%
5 Steadfast Insurance Company	\$ 107,888,477	3%
6 Arch Specialty Insurance Company	\$ 106,103,614	3%
7 Colony Insurance Company	\$ 101,529,951	3%
8 American Empire Surplus Lines Insurance Company	\$ 94,274,525	3%
9 AIG Specialty Insurance Company	\$ 92,227,638	3%
10 Indian Harbor Insurance Company	\$ 72,341,043	2%
SUBTOTAL	\$ 1,903,958,915	53%
All Others	\$ 1,719,192,608	47%
TOTAL	\$ 3,623,151,523	100%

The top 10 insurers accounted for 52.5% of total premiums written in 2016, compared to 53.2% in 2015 and 52.2% in 2014.

NEW YORK TAXABLE PREMIUM BY COVERAGE CATEGORY

Coverage Category	New York Taxable Premium	2015 Ranking
1 Primary GL & Other BI/PD	\$ 1,224,623,339	1
2 Primary Property Coverages	\$ 727,488,493	2
3 Excess Liability & Umbrella & Medical Malpractice Excess	\$ 518,290,460	3
4 E&O, D&O	\$ 427,098,815	4
5 Commercial Multiperil	\$ 164,874,708	6
6 Excess of Loss Property Coverages	\$ 141,322,373	5
7 Medical Malpractice & Miscellaneous Professional	\$ 100,608,424	7
8 Marine	\$ 83,659,450	8
9 Homeowners/Dwelling Coverage	\$ 66,227,647	10
10 Auto	\$ 60,033,847	11
11 Fidelity & Surety	\$ 48,625,188	9
12 Credit	\$ 33,101,449	12
13 Salary Protection	\$ 15,169,632	13
14 Miscellaneous/Not Otherwise Classified	\$ 12,027,698	14
TOTAL	\$ 3,623,151,523	



**INDUSTRY LIAISON,
LEGISLATION &
REGULATION
COMMITTEE
REPORT**

Joseph Caligiuri, Chairman

“ELANY remains focused on promoting and supporting positive, beneficial legislation in the best interest of our members through 2017 and beyond.”



IN 2016, ELANY INITIATED discussions with the Governor’s staff and Legislature for the introduction of a bill allowing insurers to provide coverage for punitive damages. The bill was introduced by Senator Seward and Assemblyman Brindisi. Throughout the summer and fall, ELANY visited legislative members across the state in their district offices to discuss the bill and received a positive reception from all. We will continue to push for its passage in the 2017 legislative session. New York is one of only two states that completely bars insurance for punitive damages assessed. In 1979, the New York State Court of Appeals determined that punitive damages were not insurable because they are designed to punish the wrongdoer and deter further misbehavior [Hartford v. Village of Hempstead (48 N.Y. 2d 218)]. This policy set by the judiciary, over thirty-five years ago, has not been reconsidered despite the national trend. This legislation seeks to fix an antiquated policy and align New York State with the rest of the nation. This bill permits the sale and purchase of such coverage but does not mandate either.

Today, insurance producers and insurers sell punitive damage insurance on a regular, yet selective, basis in almost every state. They do so because insureds desire to protect themselves from the adverse financial and business consequences of punitive damages awards, particularly when those awards arise out of strict liability or vicarious liability. New York insureds who desire this coverage are forced to purchase such insurance from insurers not licensed in the state, including off shore insurers in Bermuda and other countries beyond the jurisdiction of New York courts and beyond state regulators and regulation. New York consumers would benefit if they could acquire such coverage through the New York regulated market, where consumer protection is a paramount goal.

As insurance producers, you look to acquire the broadest coverage possible for



your insureds. ELANY also initiated discussions with the Legislature and Governor’s office to introduce a medical malpractice reform bill, as many believe New York State continues to suffer from a malfunctioning medical malpractice insurance marketplace that has often been described as a crisis. In 2016, the bill was introduced by Senator Seward and Assemblyman Cahill. The bill simply repeals the requirement to obtain a declination from the residual market, Medical Malpractice Insurance Pool (MMIP).

Brokers need financially viable markets for medical malpractice risks, and the excess line market should be made available to provide doctors more freedom of choice. Currently, doctors and hospitals complain that premiums are already too high, while the insurers in the market contend they are desperate for rate increases. As a result, there are only four insurers who assume a significant volume of such business, insuring over 80% of the entire New York market. Of those four insurers, three are not able to obtain a financially secure rating from a nationally recognized rating agency, and one of those three insurers reports itself to be financially impaired or insolvent. Those three insurers support the fourth insurer financially by bearing a portion of the losses which exceed premium. That fourth market is the residual market, Medical Malpractice Insurance Pool (“MMIP”). MMIP exists to underwrite all medical malpractice risks rejected by licensed insurers. The remainder of the New York market is spread among nonresident risk retention groups, which are exempt from most New York insurance consumer protection laws.

During the fall, and as part of the 2016 year-end negotiations, the Governor internally circulated his own version of Transportation Network Company (TNC) legislation. Initially, excess and surplus lines would be excluded from writing policies for this type of business. However, after weeks of negotiation with ELANY, all parties were convinced of the need for a range of insurance

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2016 IN THE E&S MARKET proved to be another big year with premiums increasing slightly over 2015, while transactions processed were up 6% year-over-year to 303,303, the highest transaction count ever in the history of ELANY. With that being said, ELANY is in the process of creating an electronic version of the Part C Affidavit, another tool for E&S brokers to ease the filing process with ELANY. A link will be available on the ELANY website, where brokers can just click on the link and create a Part C affidavit in a minute or less.

While premiums continue to increase, the stamping fee reduction to .18% initiated mid-year 2015 produced a stamping fee reduction of approximately \$300,000. In 2016, ELANY has applied for and received approval from the Department of Financial Services for a further stamping fee reduction to .17% for policies incepting on or after January 1, 2017.

The Operations & Procedures Committee is proud of the ELANY website and encourages members to visit. Take a look at the sections created from the Lexicon/FAQ Topics to the newly created Statistics section, as these sections have been created by what we believe the broker community is interested in. We would welcome any suggestions or comments for additional data or information that would be of interest.

Promoting a programmatic filing approach for processing transactions is a major priority with ELANY. Brokers currently filing

programmatically see a reduction in the time and cost of staff entering data and submitting transactions. ELANY is working with several agency management software vendors to develop necessary bridge software to permit brokers to push data from their systems directly to ELANY's system programmatically.

In the world of cybersecurity and the recent proposed regulation by the Department of Financial Services (DFS), ELANY is working with its outside IT vendor to install an intrusion detection and prevention system targeted for completion in early 2017. ELANY also plans to initiate cybersecurity awareness staff training to detect the phishing of emails.

On the education front, ELANY also has been busy. A newly approved C-E credit course on the state of the E&S industry will be presented in a number of future meetings and will also be offered at insurance association events. Another C-E course, in the form of a webinar, was created to instruct brokers on how to avoid fines for non-compliance. At the interest from the broker community, ELANY will be developing an educational training video for the use in training CSRs on how to file transactions and avoid mistakes.

ELANY remains focused to keep the E&S community well informed and educated and assists the broker community in their efforts to remain compliant in the New York E&S community. 🇺🇸



“Promoting a programmatic filing approach for processing transactions is a major priority with ELANY.”





AUDIT AND FINANCE COMMITTEE REPORT

John Buckley, Chairman



ONCE AGAIN IN 2016, New York excess and surplus lines activity grew, as both written premium and the number of transactions filed and processed with ELANY increased over 2015. The net taxable premium in 2016 increased by \$62 million over 2015 to \$3.6 billion, while transactions filed were 303,000, an increase of 18,000 from 2015.

Stamping fee revenue was \$6.9 million for the year. This represented a 3.5% reduction from 2015, a direct result of the reduction in the stamping fee to .18% for business effective on or after July 1, 2015. A further reduction in the stamping fee to .17% will be in place on all business incepting on or after January 1, 2017.

The Audit and Finance Committee works closely with the ELANY management and staff to monitor and manage the Association's expenses. Total expenses for 2016 were \$5,650,316, an 8% increase over 2015. See chart below for breakout of key expenses.

The average cost per transaction for 2016 was \$18.63, among the lowest average in ELANY's history. This is a testament to the entire ELANY staff, who work diligently to maintain our commitment to meeting our turnaround goal of 48 hours for all properly filed documents.

ELANY's fund balance at December 31, 2016 increased by \$1,828,415 to a strong \$26,699,705.

Copies of the annual independent audit of the Association's operations are available at the ELANY offices for members to review.

INDUSTRY LIAISON, LEGISLATION & REGULATION

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options, and there was three-way agreement to include language that would allow excess and surplus lines the opportunity to offer insurance to this new industry. The 2017-2018 Executive Budget is likely to include TNCs and maintain language necessary for excess and surplus lines insurers to write such business.

In September, 2016, the Governor announced the first in the nation, proposed cybersecurity regulation to protect New York's financial services industry and consumers from the ever growing threat of cyber attacks by terrorist organizations and other criminal enterprises. The proposed regulation (23 NYCRR 500) requires banks, insurers, insurance producers and other financial institutions regulated by the New York State Department of Financial Services (DFS) to establish and maintain a cybersecurity program to protect the financial institutions information systems and their customers private data.

During the regulation's "Public Comment Period," ELANY submitted a number of comments and recommendations to the Department of Financial Services (DFS) that were of concern to our members. Among other recommendations, ELANY proposed broadening of the limited exemption, increasing time frame deadline requirements, improving definitions, adopting and coordinating protocols that already exist in other cybersecurity laws, and deleting or delaying the requirements to encrypt data.

ELANY remains focused on promoting and supporting positive, beneficial legislation in the best interest of our members through 2017 and beyond. Our strong legislative team has been consistent and relentless in our pursuit of fair legislation for the E&S industry. We continue to stay true to our core value of freedom from rate and form regulation that ultimately benefits the New York State excess and surplus lines insurance consumer!



2016 REVENUES

Stamping Fees	\$ 6,935,969
Investment & Miscellaneous Income	542,762
TOTAL	\$ 7,478,731

2016 EXPENSES

Payroll	\$ 2,667,354
Depreciation	160,769
Computer Charges	436,421
Rent & Utilities	413,609
Professional Fees	307,836
Postage/Printing/Stationery	37,795
All Other	1,626,532
TOTAL	\$ 5,650,316
FUND BALANCE	\$ 26,699,705

The annual independent audit of the Association's books and records has been completed and copies are available at the ELANY offices for members to review.

EXCESS LINE ASSOCIATION STAFF

Daniel F. Maher, *Executive Director*

Nancy Born, *Director of Operations*

Theresa Hetherington,
Stamping Office Manager

Eugene Nunziata, *Education/
Communications Director*

Brian Persaud, *Director of
Information Technology*

James Davis, *Financial Director*

Fazeda Ahamad-Raghuandan,
Examiner

Jason Alvarez, *Examiner*

Mischelle Balkissoon, *Examiner*

Benedict Bardeguez,
PC Analyst/Helpdesk

Christian Carbajal, *Examiner*

Dannis Chen, *Examiner*

Lorraine Chin, *Examiner*

Cheryl Coleman, *Examiner*

Angela Creed, *Examiner*

Eusebio Del Valle, *Examiner*

Melissa Downey, *Stamping
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Jenny Kyi, *Examiner*

Donald Lipkins, *Examiner*

Felicita Lopez, *Examiner*

Emily Maldonado, *Examiner*

Traci Martin, *Examiner*

Darlene Moreta,
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Beth Pfluger, *Stamping
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Ivan Rodriguez, *PC Analyst/
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Sharon Shapiro, *Examiner*

Kimberly Velez, *Examiner*

Damien Vittore, *Scanning
Technician*

Keith Vittore, *Examiner*

Branan Whitehead, *Stamping
Office Supervisor*





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JOHN McPARLAND, CPA
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EXCESS LINE ASSOCIATION OF NEW YORK

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