EXCESS LINE ASSOCIATION OF NEW YORK

# 2012 ANNUAL REPORT

ELANY

## Executive Director's Report

Daniel F. Maher, Executive Director

Superstorm Sandy rendered the Presidential election and every other 2012 event back-page news. The breadth and scope of the Storm's destructive forces will be felt for years to come. The Storm will force decisions about where and how homes and other buildings will be built and, in some cases, whether they will be rebuilt at all.

As detailed statistically in this Annual Report, thousands of homes and other buildings were destroyed, flooded or so severely damaged as to render them unsafe to occupy without extensive remediation and repair. The Storm created a short-term housing shortage. Even in less affected areas, hundreds of thousands of us went without electricity for more than a week and for some more than a month. Similarly, businesses were flooded or shuttered forcing many to find alternatives to operate, while others simply failed to reopen.

While the Storm caused immense damages and frustration, sometimes despair, the relief effort was truly amazing. I witnessed firsthand in Breezy Point, Queens and other effected waterfront communities efforts by first responders, neighbors, New York City firefighters, volunteers from AmeriCorps, World Cares, church groups and various other volunteer organizations coalesce, triage, respond and assist victims of the Storm. The response by volunteers was truly an uplifting experience.

The insurance industry also delivered on its promises to pay the victims of Sandy in a very large and responsive way. Many of our colleagues in the industry, victims themselves to the Storm that damaged their houses and closed their offices or limited their access to areas most ravaged by the Storm, nevertheless, inspected, adjusted and paid claims under incredibly trying circumstances.

The Department of Financial Services and the Governor's Office issued a number of emergency orders, established a moratorium on certain policy cancellations and non renewals, all of which implemented a crisis management type response for the industry to implement. The success of the industry's response is demonstrated by the fact that the Department of Financial Services only challenged the claims handling adequacy of three insurers.

It is unfortunate that many homeowners and even business owners are not clear that flood coverage is not a peril automatically insured under standard policies or that much of this coverage is provided under the "National Flood Insurance Program" (NFIP).

To those who have lost their houses to flood, many found the claims-handling process bureaucratic, frustrating and exhausting. The blame for the sins of the NFIP is being laid, to some extent, at the industry's doorstep. Better education and communication with insureds in this area will help our industry avoid being the recipient of anger and blame, which rightfully belongs elsewhere.

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## Chairman's Report

Joseph Caligiuri, Chairman

I am extremely proud to be a small part of the excess and surplus (E&S) industry, both pre and post Sandy. We saw many changes and challenging events in 2012, although none more impressive than how the New York State E&S industry and the entire private insurance marketplace responded in the wake of the disastrous Superstorm. In short, the insurance industry delivered on its promises to insureds and claimants. As an E&S broker on the South Shore of Long Island, I experienced the devastation first hand, both personally and professionally. I am also a witness to the extraordinary recovery effort, which is still underway.

ELANY staff returned to the office two days after Sandy hit New York, and ELANY was 100% operational in just under a week. Upon returning to work, ELANY waived late filings fees if they were caused by Sandy. ELANY immediately began fielding industry questions about emergency orders issued by the Governor and Department of Financial Services. "Hurricane deductibles" do not apply to Sandy losses but unambiguous "wind storm deductibles" could be applied. ELANY advised the marketplace to implement the provisions of the "moratorium on cancellations and non renewals" because it is the "right thing" to do.

One ELANY member, who lost access to their downtown Manhattan office, was invited to share ELANY's space while remediation and repairs took place.

ELANY's reaction to Sandy included financial support. Charitable donations were made to a number of organizations providing relief directly to storm victims; and through ELANY's participation in the Insurance Industry Charitable Fund (IICF), additional charitable relief was provided.

ELANY and the entire staff deserve our applause for their unselfish response in the wake of Sandy. They assisted their neighbors both personally and professionally, and they led the charge in donating funds to various charities to benefit victims of Sandy.

I would like to recognize the wonderful work that Janet Pane, our Operations & Procedures Committee Chairperson, and the ELANY management team have accomplished in operations! When we think we have reached our peak efficiency levels, we always seem to tweak them up a few percentage points. 95% of all filings are processed electronically. A total of 157,202 affidavit transactions were filed in 2012, 494 of which were suspended. Members can conclude that over 99% of all transactions are processed and returned quite routinely.

We continue to offer exceptional educational programs and content to all our members, excess and surplus line carriers and numerous trade associations. I am constantly hearing compliments from other E&S line brokers about ELANY's Helpdesk, training visits and our educational booth at various trade shows. I can personally attest to ELANY's educational efforts to keep my office on track and up to date on the latest rules and regulations.

As you will see elsewhere in this report in more detail, ELANY remains quite active in supporting legislation, which will create efficiencies and lower broker operational costs and/or create more insurance economic opportunities and jobs in this state.

Every year, ELANY seems to outdo itself becoming more financially stable and operationally efficient with clear leadership and vision. As members of ELANY, we should all be extremely proud to be a part of an association that advocates for our best interests.

In closing, 2012 was certainly an exciting year in the New York E&S arena. It appeared that the market was firming pre-Sandy and has continued to do so. The E&S market appears well positioned to step in as the market hardens and the licensed market retrenches.

## Information Resources and Security Committee

Margaret M. Beirne, Chairman

Superstorm Sandy ravaged New York and the tristate area this past October as the largest natural disaster in New York's recorded history. Its destructive force left our coast looking like a war zone and rendered many residents refugees. While the total cost of the storm is still at best an estimate, recent reports suggest it will cost the insurance industry $25 billion dollars for insured losses alone.

According to sources quoted by the Insurance Information Institute, Superstorm Sandy caused an estimated $50 billion in total economic losses, $7 billion of which come under the National Flood Insurance Program and $25 billion are insured by the property and casualty marketplace. As of early January 2013, almost $19 billion in claims have been paid, approximately 50% being New York claims.

According to New York's Department of Financial Services (DFS), 392,721 New York claims were made, of which 290,973 were closed with payment and 70,745 were closed without payment as of March 8, 2013. This indicates that 92% of the claims were investigated, processed and resolved in less than four months of the storm.

DFS's reports also indicated that there were 3,098 consumer complaints involving less than 1% of all claims reported. The foregoing demonstrates that the industry overwhelmingly responded to Superstorm Sandy claims in an expeditious and professional manner.

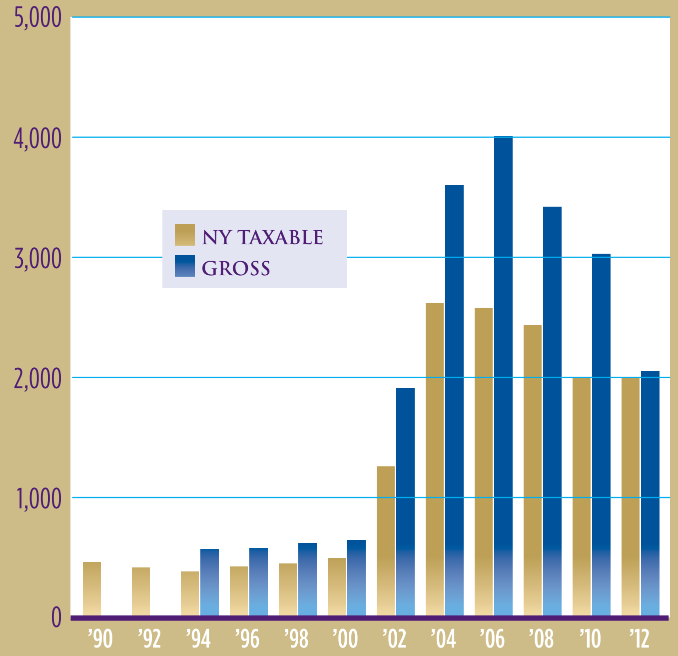
Notwithstanding this very devastating storm, the insurance industry has held up well, so far at least, from a financial standpoint. With a number of insurance groups reporting net losses in excess of a billion dollars each, it is a testament to the industry's superior overall capitalization that it could literally weather this storm without one insurer insolvency thus far.

The passage of the Nonadmitted Reinsurance Reform Act (NRRA), which preempted many state-specific eligibility requirements, has created a schism in the state-based eligibility approval process for surplus lines companies. While the states are permitted to adopt national uniform eligibility standards, if they do not, the NRRA essentially shifts primary responsibility for the ongoing solvency review of a foreign surplus lines insurer to the insurer's domiciliary regulator. Without change, New Yorkers will not have a New York regulator as the primary party protecting consumers. Alien companies are getting a "free pass" to eligibility by submitting information to the National Association of Insurance Commissioners (NAIC) for review and then being listed in the NAIC's Quarterly Listing of Alien Insurers. Unfortunately, there is a lack of transparency with the financial information submitted by these companies. It is now easier for an alien insurer to become eligible in New York than a foreign insurer. In the meantime, excess line brokers are saddled with regulatory obligations with which they cannot comply due to the NRRA's preemptive language. ELANY is in ongoing discussions with the DFS to amend New York regulation on this issue.

ELANY will continue to review the solvency of surplus lines writers in New York and, when necessary, will advise the DFS and the broker community when there is cause for concern. During the coming year, ELANY will add financial summaries of surplus lines companies writing in New York to its website. We urge all brokers to access this information and to contact us if you have any questions, comments or concerns.

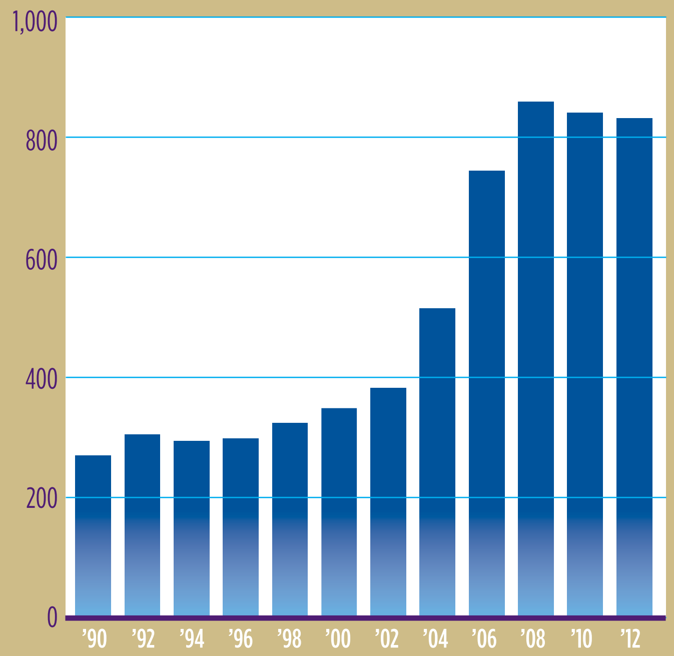
Three foreign companies and two alien companies were added to ELANY's eligibility list in 2012. Five foreign companies and one alien company withdrew from New York during the year. Ninety seven foreign companies remain eligible to write surplus lines business in New York. Under the provisions of the NRRA, alien companies listed on the NAIC Quarterly Listing of Alien Insurers are automatically eligible to write business in New York.

## Total Premiums (In Millions)

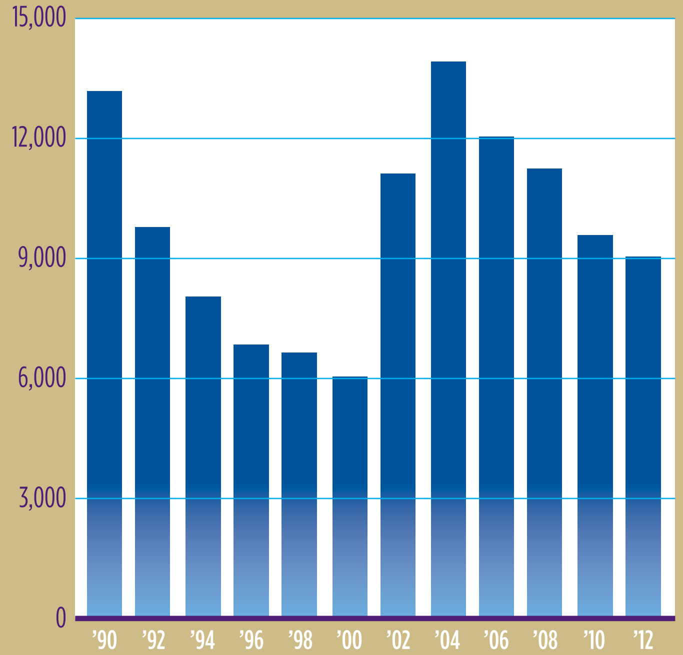



Tax allocation began in 1994.

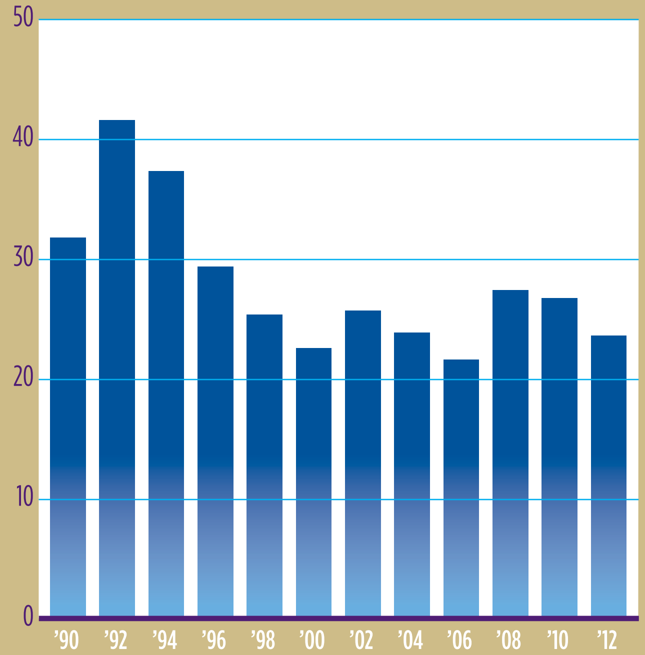
## ELANY Active Members




## New York Taxable Premiums Per Stamped Insurance Document

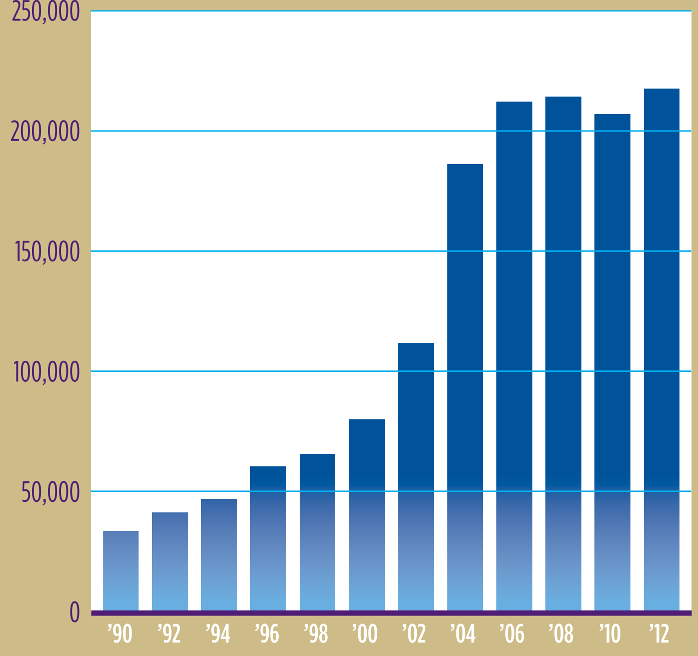



## Processing Cost Per Stamped Item

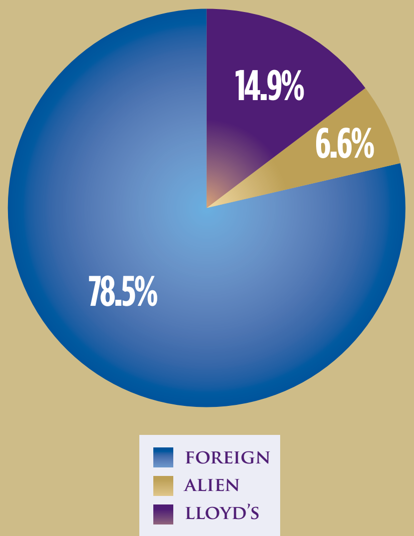



All figures and statistics are based on calendar year premium except where otherwise noted.

## Policies & Endorsements Processed

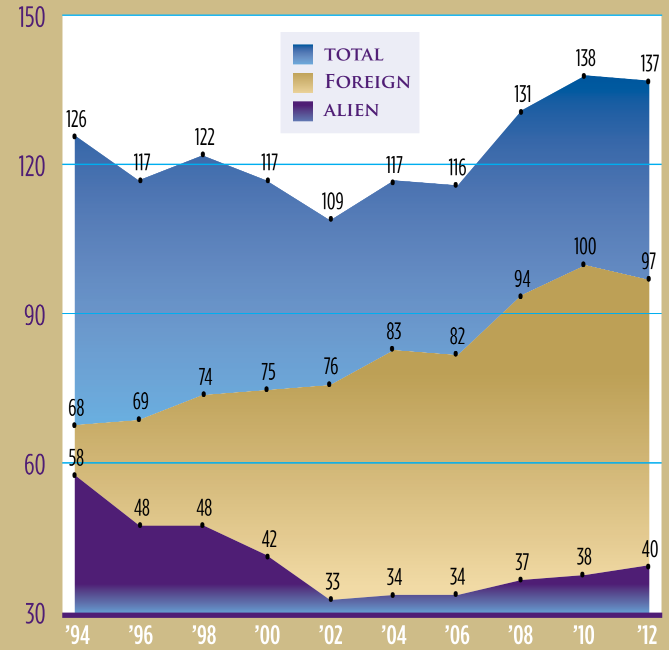



## Percentage of Year 2012 NY Taxable Premium Distribution by Eligible Insurers*

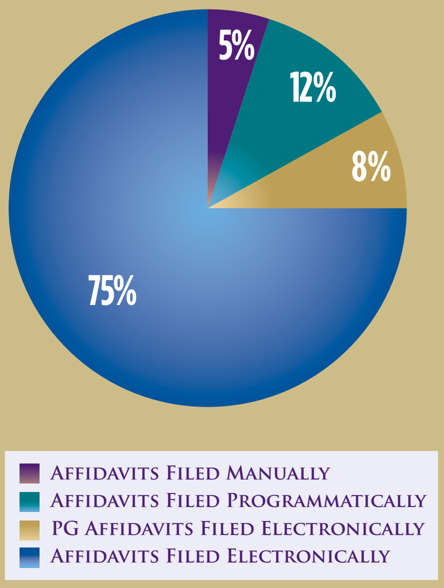



*Figures are on a risk attaching basis.

## Active Eligible E&S Insurers




## 2012 Electronic Affidavit Submissions

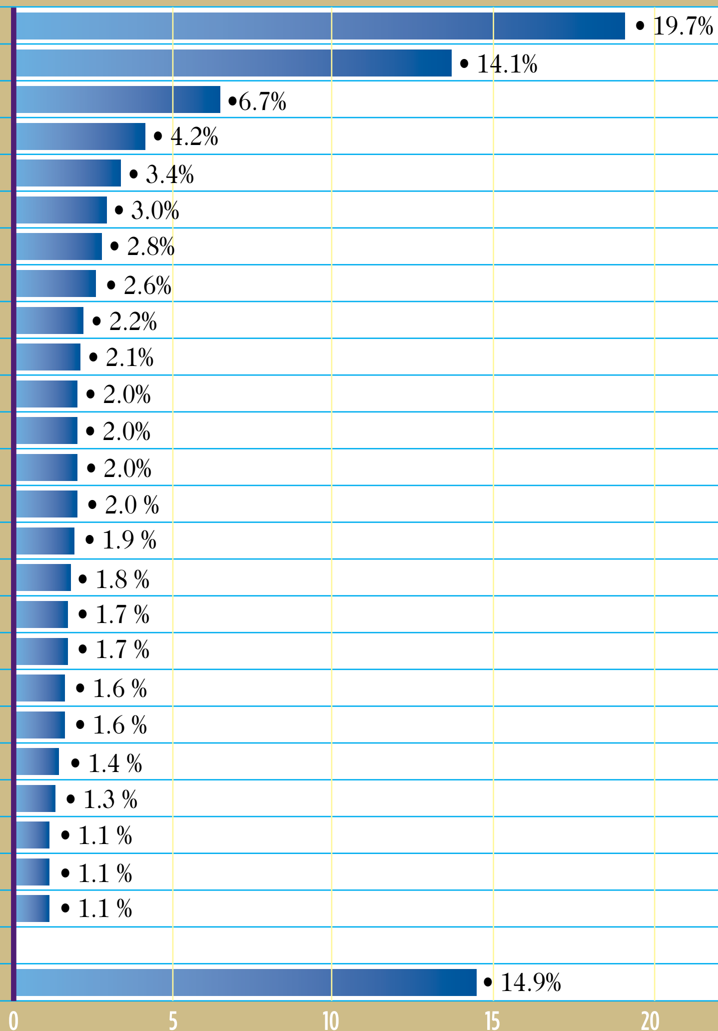



This year ELANY added 3 foreign companies and 2 alien companies.
Five foreign companies and 1 alien company voluntarily withdrew.
Since 1994, the total number of companies increased from 126 to 137. However, while foreign companies increased by 29, the alien companies decreased by 18 with a yearend 2012 total of 97 foreign companies and 40 alien companies.

All figures and statistics are based on calendar year premium except where otherwise noted.

# 2012 New York Taxable Premium by Insurance Group

| Group Name | Number of Companies | New York Premium |
|---|---|---|
| Chartis Group | 4 | $ 391,977,111 |
| Lloyd's of London | | $ 280,713,546 |
| Nationwide Mutual | 2 | $ 132,721,718 |
| Zurich American Ins Group | 2 | $ 83,285,848 |
| Travelers Companies, Inc | 5 | $ 66,789,248 |
| Fairfax Financial Group | 4 | $ 58,673,894 |
| Great American P&C Ins Group | 3 | $ 55,359,151 |
| WR Berkley Corp | 5 | $ 51,895,152 |
| Markel Corporation Group | 4 | $ 42,816,288 |
| Endurance Specialty Holdings Ltd. | 2 | $ 41,095,764 |
| Chubb & Son Inc | 2 | $ 40,229,467 |
| Berkshire Hathaway | 5 | $ 39,170,308 |
| XL Capital Limited | 2 | $ 39,017,262 |
| RLI Insurance Group | 1 | $ 38,960,624 |
| IFG Companies | 2 | $ 37,708,788 |
| Aspen Insurance Holdings Ltd. | 2 | $ 36,110,520 |
| Arch Group | 3 | $ 34,596,074 |
| Axis Capital Group | 3 | $ 34,203,275 |
| Ironshore, Inc. | 2 | $ 32,740,280 |
| Argo Group | 1 | $ 32,305,349 |
| Ace Ltd | 3 | $ 27,704,991 |
| Munich Reinsurance Group | 4 | $ 26,074,907 |
| Alleghany Corporation | 2 | $ 22,235,625 |
| CNA Insurance Group | 2 | $ 22,073,588 |
| HCC Insurance Holdings Grp | 1 | $ 21,257,958 |
| **SUBTOTAL** | | **$ 1,689,716,736** |
| All other | 77 | $ 295,618,957 |
| **TOTAL** | | **$ 1,985,335,693** |




# Top 10 Perils*

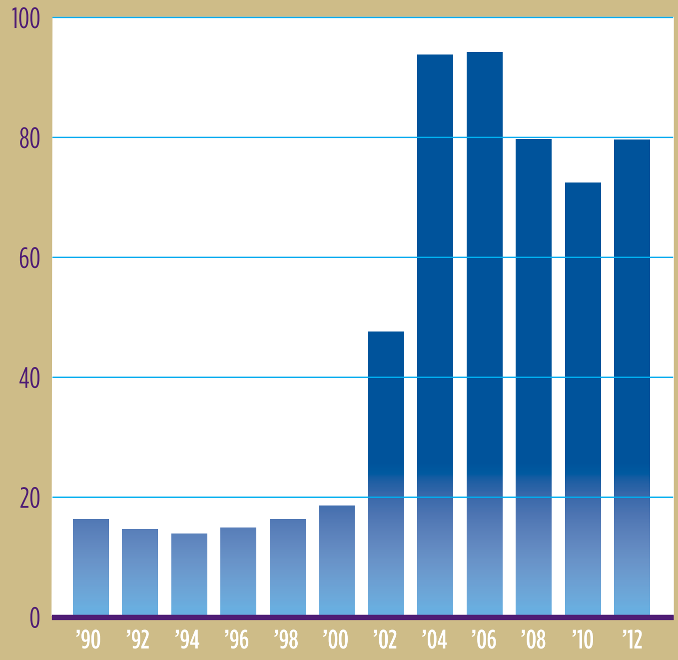
| | Peril | New York Taxable Premium | 2011 Ranking |
|---|---|---|---|
| 1. | General Liability | $ 822,178,647 | 1 |
| 2. | All Risk | $ 356,060,015 | 3 |
| 3. | Errors and Omissions | $ 251,857,312 | 2 |
| 4. | Multiple Peril | $ 156,462,644 | 4 |
| 5. | Additional Property Coverage | $ 104,733,793 | 9 |
| 6. | Umbrella Liability | $ 93,678,499 | 5 |
| 7. | Fire | $ 79,175,247 | 7 |
| 8. | Miscellaneous Professional | $ 67,616,302 | 8 |
| 9. | Environmental Impairment | $ 66,156,982 | 6 |
| 10. | Inland Marine | $ 40,159,299 | 0 |
| | **SUBTOTAL** | **$ 2,038,078,740** | |
| | All Others | $ 177,318,575 | |
| | **TOTAL** | **$ 2,215,397,315** | |

All figures and statistics are based on calendar year premium except where otherwise noted.

*Figures are on a risk attaching basis.

## E&S Tax (in millions)*

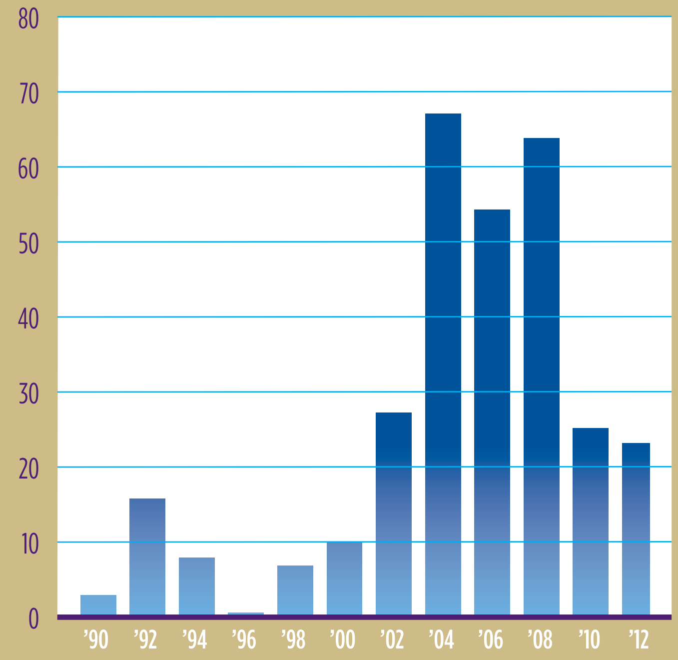
Table/Graph Revised 5/2013.




Total excess line taxes (based on a 3.6% rate) paid to the State on business placed through licensed excess line brokers.

## Purchasing Group Activity (in millions)*

Table/Graph Revised 5/2013.




*Beginning 1998, these statistics are on a risk attaching basis.

## Top 10 Insurers*

| | Insurer | New York Taxable Premium | % |
|---|---|---|---|
| 1. | Lexington Insurance Company | $ 350,500,104 | 16% |
| 2. | Lloyd's Underwriters | $ 325,753,793 | 15% |
| 3. | Scottsdale Insurance Company | $ 137,063,630 | 6% |
| 4. | Chartis Specialty Insurance Company | $ 73,187,034 | 3% |
| 5. | Steadfast Insurance Company | $ 72,547,888 | 3% |
| 6. | Travelers Excess & Surplus Lines | $ 52,168,670 | 2% |
| 7. | American Empire Surplus Lines Insurance Company | $ 47,397,553 | 2% |
| 8. | First Mercury Insurance Company | $ 46,601,129 | 2% |
| 9. | Columbia Casualty Company | $ 42,588,513 | 2% |
| 10. | Endurance American Specialty Insurance Company | $ 41,962,766 | 2% |
| | **SUBTOTAL** | **$ 1,189,771,080** | **54%** |
| | All Others | $ 1,025,626,235 | 46% |
| | **TOTAL** | **$ 2,215,397,315** | **100%** |

The top 10 insurers accounted for 53.7% of total premiums written in 2012, compared to 62.4% in 2011, 62.6% in 2010, and 57.3% in 2009.

*Figures are on a risk attaching basis.

## Industry Liaison, Legislation & Regulation Committee

Joseph Caligiuri

ELANY pursued a number of goals to improve the New York marketplace through legislative or regulatory changes in 2012.

On the federal level, ELANY supported the passage of the NARAB II (National Association of Registered Agents and Brokers) bill, which, if passed, should greatly streamline the nonresident licensing process for brokers, agents and excess line brokers.

ELANY's efforts in this regard are pursued in a coalition effort primarily with NAPSLO (National Association of Professional Surplus Lines Offices, Ltd.). At ELANY's urging, NAPSLO committed itself to enactment of the NARAB II legislation in 2012. With NAPSLO's full support, this legislation stands a good chance of passing in 2013.

ELANY is also monitoring the efforts of the new Federal Insurance Office (FIO) created in 2011 under the Dodd Frank Act. A report from the FIO, now long past due, will reveal a great deal about how far the federal government intends to go in regulating insurance or, alternatively, leaving insurance regulation with the states where it currently resides.

On the state level, ELANY focused on one major legislative initiative and one area of reform in the regulatory arena.

On the legislative front, ELANY promoted legislation to permit an insurance company to incorporate under New York law but to operate as an excess line insurer instead of a licensed insurer. Six other states presently permit insurers to do so, which allows such an insurer to operate as an E&S insurer in all 50 states. ELANY believes this authority will allow New York to better compete for the jobs and economic benefits that result from such legislation and enable New York to always remain a premier venue for the insurance industry.

On the regulatory side, ELANY expects the expansion of the export list, originally sought in 2010, will be adopted as soon as the State Administrative Procedures Act process has been completed.

The major 2012 regulatory initiative was directed at protecting excess line brokers from a schism created by the NRRA (Nonadmitted Reinsurance Reform Act) in preempting certain state law. Currently, New York law continues to impose "due care" standards on New York excess line brokers, which include requirements that a number of financial documents be in the possession of either ELANY or excess line brokers. A number of E&S companies and trade associations contend that they no longer must provide such documents, based on preemptive language contained in the NRRA.

Unless New York law, specifically Regulation 41 is amended, excess line brokers are in a no-win position exposed to regulatory violations and possibly damages in a lawsuit should an insurer become insolvent. ELANY is seeking to have the Department of Financial Services recast the definition of meeting the "due care" standard in a manner which conforms to the NRRA. If the structure recommended by ELANY is adopted, brokers will be able to meet the "due care" standard as restructured, ELANY will continue to analyze the financial condition of E&S insurers for market security purposes, and insurer eligibility requirements will be streamlined as promised by the NRRA. The efforts pursued in 2012 will hopefully come to fruition and finalization in 2013.

On the legislative front, ELANY promoted legislation to permit an insurance company to incorporate under New York law but to operate as an excess line insurer instead of a licensed insurer.

## Operations & Procedures Committee

Janet Pane, Chairman

ELANY continues to bring state-of-the-art technology solutions to the compliance and education process. ELANY's goal is to deliver a fully integrated, efficient system to minimize broker education and compliance costs.

At the heart of ELANY's operations is the electronic filing system for brokers and the back office data system by which ELANY reports data and statistics to broker members and the Department of Financial Services (DFS). The system is generally operational 24/7 providing broad access to broker members throughout the United States. ELANY returns 86% of all batches filed within 48 hours, many of which are processed and returned on the same date as received.

Ninety-five percent of all filings are processed using the electronic system. ELANY continues to encourage and facilitate programmatic filing, whereby broker systems transfer transactions in bulk to ELANY's platform. In 2012, 12% of transactions were processed programmatically. ELANY continues to work with insurance producer software vendors to grow this approach to filing. In the meantime, regular system upgrades are made to maximize system efficiency and to integrate changes required by law or regulation.

In the area of education, ELANY's Helpdesk and Education/Communications Director have registered and trained 930 brokers and their staff on use of these systems. ELANY continues to provide educational programs for continuing education credits and to publish newsletters, bulletins, and compliance advisors as well as updating its website to keep the marketplace informed on all current matters relevant to the E&S market.

ELANY was forced to close down due to Superstorm Sandy for less than a week, as reported in more detail elsewhere in this Annual Report. ELANY's quick recovery avoided disruptions to the broker filing process. While delays on ELANY's end were therefore minimal, ELANY waived late fees for brokers whose filings were delayed as a result of Sandy. The number of transactions filed late in 2012 remained constantly in the single digit range. This is important in light of concerns among New York regulators regarding "contract certainty."

In 2012, ELANY negotiated an extension on its office lease for an additional five years, well in advance of its June 30, 2014 expiration date. The lease extension provided ELANY continuity and certainty from an operations standpoint, locked in future costs for budgeting purposes and provided for early office upgrades in 2013.

ELANY strives to deliver unparalled services and support and welcomes member feedback and suggestions.



**In the area of education, ELANY's Helpdesk and Education/Communications Director have registered and trained 930 brokers and their staff on use of these systems.**

## Audit and Finance Committee report

John A. Buckley, Chairman

2012 again tested ELANY as the market remained soft, although certain areas began to tighten towards the end of the year. The ELANY staff remained committed to its service standards; and the Audit and Finance Committee, in conjunction with the full Board, continued to work to balance the expenses of the Association with the revenue income generated from the stamping fees and investments.

Total revenue for 2012 was $4,853,262, representing a decrease of approximately 8% from 2011. This decrease resulted from a 6% drop in stamping fees, along with reduced interest income as a result of the economy and ELANY's continued conservative approach on its investment portfolio. Total expenses dropped approximately 7.7% to $5,145,364, with the main drop being the reduction in depreciation expense as the amortization of ELANY's electronic filing system/automation system has been completed.

ELANY's net income for 2012 resulted in a deficit of $292,102, as anticipated during our budgeting, and is a deficit that our current fund balance can easily handle.

Total written premium for 2012 was almost $2 billion, while the number of documents processed was over 219,000 for the year. With the efforts of the professional and hard-working staff of ELANY, we continue to meet our support goal of returning stamped documents within 48 hours while continuing to improve our efficiency. The cost per transaction dropped approximately 9% from 2011 to $23.48.

ELANY's goal for 2013 remains superior service with a disciplined and conservative approach to expenses to allow us to maintain our financially stable position for years to come.

**The cost per transaction dropped approximately 9% from 2011 to $23.48.**



| 2012 REVENUES | |
|---|---|
| Stamping Fees | $4,663,887 |
| Investment & Miscellaneous Income | 189,375 |
| **TOTAL** | **$4,853,262** |

| 2012 EXPENSES | |
|---|---|
| Payroll | $1,954,114 |
| Depreciation | 558,507 |
| Computer Charges | 458,258 |
| Rent & Utilities | 330,667 |
| Professional Fees | 351,725 |
| Postage/Printing/Stationery | 47,617 |
| All Other | 1,444,476 |
| **TOTAL** | **$5,145,364** |
| **FUND BALANCE** | **$18,967,359** |

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.

ELANY

# BOARD OF DIRECTORS



# 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*
Sharon Pereira, *Financial Director*
Fazeda Ahamad-Raghunandan, *Examiner*
Benedict Bardeguez, *PC Analyst/Helpdesk*
Christian Carbajal, *Examiner*
Lorraine Chin, *Examiner*
Eusebio Del Valle, *Examiner*
Melissa Downey, *Examiner*
Kesana Francis, *Examiner*
Frances Gerace, *Executive Assistant*
Jenny Kyi, *Examiner*
Donald Lipkins, *Scanning Technician*
Traci Martin, *Examiner*
Darlene Moreta, *Administrative Assistant*
Bryan Nebel, *Examiner*
Deanna Olah, *Stamping Office Supervisor*
Brian Vidal Persaud, *Examiner*
Beth Pfluger, *Stamping Office Supervisor*
Ivan Rodriguez, *PC Analyst/Helpdesk*
Keith Vittore, *Examiner*
Branan Whitehead, *Stamping Office Supervisor*

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Serving the Excess and Surplus Lines Broker Community
for More Than 20 Years

Cover photos middle, bottom row: Willie Chu and Robin George