# Annual Report 2009

**EXCESS LINE ASSOCIATION OF NEW YORK** 



SERVING THE EXCESS AND SURPLUS LINES BROKER COMMUNITY

FOR MORE THAN 20 YEARS

had a pretty good year when you consider the economic, political and governmental chaos, which dominated 2009. ELANY maintained a steady course continuing its efforts to modernize, reform and create efficiencies for the excess and surplus lines market.

As noted in Board Chairman Kevin McGill's report, use of ELANY's electronic filing platform continues to grow as new enhancements are added to the platform and new members continue to sign up for the short e-filing training program.

On the New York State level, ELANY, along with solid support from every other New York based producer association and NAPSLO, achieved significant reform with the adoption of an expanded export list. Thomas J. Derella offers additional insight regarding New York centric issues in his report for the Industry Liaison, Legislation & Regulation Committee.

The property and casualty insurance industry and the E&S lines segment of it, on the surface, achieved decent 2009 results. Investment values bounced back, somewhat, from the depths to which they had fallen in late 2008. Additionally, a quiet year for catastrophe losses and the release of redundant loss reserves altogether produced a positive bottom line for the industry. Ironically, the insurance industry is flush with capacity in a struggling economy, where net written premiums in the P&C sector have fallen three years in a row for the first time on record. Standard markets are aggressively writing business usually found in the E&S market to meet top line targets, further reducing the opportunities in the E&S market. Brokers and insurers struggled to maintain existing business. Most did not achieve growth.

History suggests the soft market conditions (and the severe economic recession) are cyclical; and therefore, the P&C industry will rebound at some point in the future. Ironically, this will probably not occur until financial pain becomes intolerable and drives competition from the market.

On the national level, ELANY continued to advocate for targeted reform of the state-based insurance regulatory system. ELANY supports enactment of: 1) the Nonadmitted and Reinsurance Reform Act of 2009 (NRRA) (HR 2571), 2) the National Association of Registered Agents and Brokers (NARAB II) (HR 2554) to ease the burden of nonresident producer licensing, and 3) the Surplus Lines Insurance Multistate Compact (SLIMPACT) as the best method to implement a uniform tax collection, allocation and distribution system for multistate E&S risks.

Also in 2009, the industry debate regarding the future of insurance industry regulation has morphed. It is no longer a two-sided coin, pitting Optional Federal Charter (OFC) proponents against those who support continuing state regulation with minimum national standards. Many proposals on the federal level introduced in 2009 would create dual state and federal regulation if enacted. The OFC concept that insurers and brokers might be permitted to choose a federal regulator or 50 state regulators is somewhat naïve. In fact, many industry representatives predicted long ago that when it came to the OFC proposal, the federal part would grow and the optional part would no longer be an option.

In 2009, OFC legislation (HR 1880) was introduced but not considered by the House the Senate nor a committee or subcommittee thereof. NRAA legislation passed the House unanimously again in 2009 for the third time. It was later incorporated into an omnibus financial services bill and passed by the House again and subsequently incorporated in an omnibus financial services Senate reform bill, circulated as a draft by Senator Chris Dodd, the Senate Banking Committee Chairman. Though ELANY supports the NRRA, some of the other provisions in the omnibus bills and other insurance or financial services legislation are cause for concern.

The Wall Street Reform and Consumer Protection Act (HR 4173) initially contained language to directly regulate title, mortgage and credit insurance. Those provisions were deleted by an amendment to the House version of the bill before it was passed by the House.

The Health Insurance Industry Fair Competition Act (HR 4626), as initially drafted, would have repealed the McCarran-Ferguson limited antitrust exemption for medical malpractice insurers, as well as accident and

EXECUTIVE DIRECTOR'S REPORT



Daniel F. Maher Executive Director



S MY TERM AS CHAIRMAN draws to a close, I cannot help but reflect on how decisions made in the early 2000's, moving from a paper-filing-based organization to utilizing the technology of a fully automatic electronic platform, have created the efficiencies, enabling us to prosper in such a difficult market environment.

Since moving to a fully-electronic filing system capability in 2008, more and more members are availing themselves of this technology. Last year, an average of 79% of affidavits were filed electronically. (In December 2009 the rate was actually 83%.) An additional 7% of all affidavits were created online but filed manually. Only 14% of approximately 144,000 filings were done on an entirely manual basis. That is quite an accomplishment in two years!

Use of this system has enhanced accuracy and eased administration. Over 85% of all transactions are now stamped and returned within 24 hours of receipt. Most corrections can be accomplished with a telephone call. Only 836 or less than 0.6% of affidavits were suspended. By the end of 2009, ELANY had 810 active brokers with 51% of these brokers filing their transactions electronically.

These systems and their utilization have put the Association in a good position, not withstanding the current economic environment. This demonstrates a continued movement to the admitted market, as softer pricing and coverage availability prevailed. The processed transaction count was down only 5.5%. Over 200,000 transactions were still processed. ELANY's technological systems enabled it to readily handle the volume with efficiency and accuracy, even as the examiner staff shrank by attrition.

ELANY's Board of Directors and management staff continued to work tirelessly during 2009 on issues that would result in improvements that will make our marketplace stronger, more efficient and easier to navigate. Some examples of these efforts are:

- Continuing dialogue with the New York State Insurance Department regarding further expansion of the export list;
- Negotiations to ease and/or waive the diligent search/declination process. Proposals include exempting commercial purchases by sophisticated buyers, eliminating the need for declinations on the first- and second-year renewals on policies issued for a one-year term and the acknowledgement that an admitted quote, wherein the premium exceeds an excess line quote by 25% or more, can be construed to be a declination;
- Support for the increase of minimum capital requirements for eligible excess line insurers;
- Work done in conjunction with NAPSLO and other stamping offices to obtain a written endorsement of SLIMPACT by each state insurance commissioner.

These initiatives not only support our membership but also enhance protection for our ultimate client, the consumer.

We also continually seek to upgrade our member services. For example, additional website enhancements were made in 2009, including the addition of a video library. This new feature includes an at-a-glance ELANY overview and educational training clips, which detail, among other items, instructions as to the compilation and filing of Premium Tax Statements, excess lines broker requirements and utilization of the e-filing affidavit system.

As I noted in my report last year, we enjoy the benefits of being the premier excess lines organization in the country. In this role, we continue to lead industry efforts in necessary reforms and proposals for efficient business practices. It has been my distinct pleasure to serve as ELANY's Chairman, and I move on with all confidence that the Board and the Association's leadership will continue to meet and exceed your expectations in meeting the needs of your customers and insureds.



LANY'S LEGISLATIVE/REGULAtory efforts for the past year have continued to focus on making our members' lives easier. Improving the export list, supporting modernization efforts, and license reciprocity continue to be areas of opportunity where, we believe, ELANY can make a difference.

Expansion of the "Export List" was long overdue. The expanded classes of business added to the export list eliminate the declination process for members where it is reasonable to do so. This reform eases the compliance burden on brokers. We continue to work on the export list and hope to expand it even further in the future.

ELANY has continued to support other legislation and regulatory reform in New York State as well. Some of the modernization concepts we are supporting include changing the diligent search/declination process to a three-year process versus the current annual declination requirement. ELANY has proposed that a materially higher premium quote from a licensed insurer (+25% or more) be treated as a de-facto declination as well. ELANY has also proposed creation of a class of "exempt commercial purchasers," which could elect excess line coverage without first searching the licensed market. We are focusing on common sense approaches to complex problems that will make for a more efficient marketplace.

Proposed Public Vessel Liability Coverage legislation, if passed, will mandate that vessel owners purchase such coverage. ELANY agrees that this is good public policy but intends to make sure that the excess and surplus lines marketplace is allowed to participate and help solve this market need. We are working hard to make sure that any legislative or regulatory fix includes our marketplace and brokers.

The national regulatory environment continues to develop at a snail's pace. While many well-intended bills have been initiated,

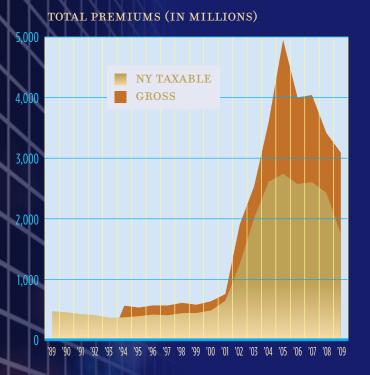
the pace of change is slow in our nation's capital. Two bills, which ELANY supports, are the NRRA and NARAB II. The NRRA or Nonadmitted Reinsurance Reform Act is legislation, which has been passed by the House of Representatives, that would streamline state regulation of the nonadmitted market and reinsurance industry by, among other things, applying single-state regulation and uniform standards. The legislation's provisions for reinsurance include (1) the ceding insurer's domiciliary state would be the sole regulatory authority for determining credit for reinsurance for the insurer's ceded risk; (2) federal preemption of a state's ability to regulate on an extraterritorial basis in certain circumstances, and (3) the reinsurer's domiciliary state to act as the sole regulator of that reinsurer's financial solvency. The National Association of Registered Agents and Brokers, NARAB II, is an updated version of a federal proposal from 1999 to establish a national board to oversee non-resident producer licensing and administrate uniform standards. Under the proposal, any agent or agency, which can qualify to be a member of NARAB, could then be licensed through NARAB for any nonresident state. CE standards would be changed to ease the burden on licensees. NARAB II would not establish a federal regulator. It would create a board consisting of insurance commissioners, carriers and producers, who would facilitate uniform licensing standards.

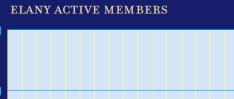
The New York State legislative turmoil continued to unravel before us over the past year as well. The leadership of the New York State Senate was reclaimed by Republicans for a brief period before Democrats regained control of that chamber. The unrest in the senatorial chamber materially affected the pace of legislative reform in Albany. We look to the coming year to help move our producer centric agenda forward and help our members whenever possible.

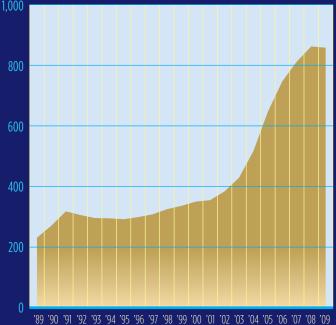
INDUSTRY LIAISON, LEGISLATION & REGULATION COMMITTEE



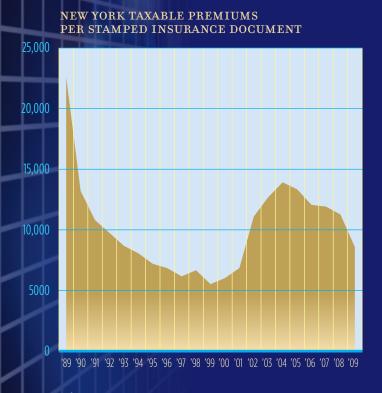
Thomas J. Derella Chairman



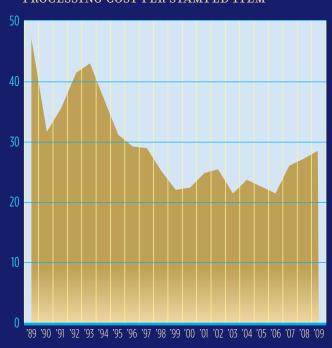




\*Tax allocation begun in 1994



PROCESSING COST PER STAMPED ITEM

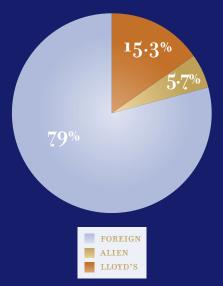


All figures and statistics are based on calendar year premium except where otherwise noted.

# POLICIES & ENDORSEMENTS PROCESSED

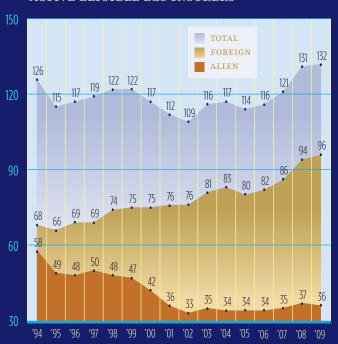


# PERCENTAGE OF YEAR 2009 NY TAXABLE PREMIUM DISTRIBUTION BY ELIGIBLE INSURERS\*



\*Figures are on a risk attaching basis

# ACTIVE ELIGIBLE E&S INSURERS



# 2009 ELECTRONIC AFFIDAVIT SUBMISSIONS 14,% 7% AFFIDAVITS FILED MANUALLY CREATED ONLINE BUT FILED MANUALLY AFFIDAVITS FILED ELECTRONICALLY

This year ELANY added 2 foreign companies and 1 alien company.

Two alien companies voluntarily withdrew and no foreign companies were removed.

Since 1994, eligible foreign companies increased by 28 while eligible alien companies decreased by 22, and the total of 132 eligible companies in 2009 is the largest total in the past 15 years.

# 2009 NEW YORK TAXABLE PREMIUM BY INSURANCE GROUP

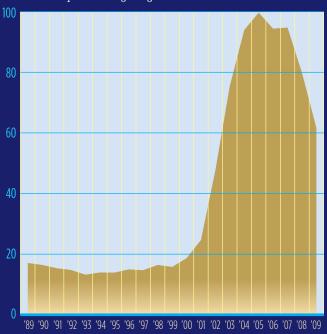
Chartis Group	(3 companies)	\$ 347,128,311					19.8%
Lloyd's of London		\$ 270,026,242				• 15.4%	
Nationwide Mutual	(2 companies)	\$ 94,559,304		•5.4%			
Travelers Companies, Inc	(5 companies)	\$ 67,505,087	13.9	) <sup>%</sup>			
Zurich Financial Services Group	(2 companies)	\$ 62,765,073	·3.6°				
CNA Insurance Companies	(1 company)	\$ 58,150,261	3.3%	)			
Berkshire Hathaway Insurance Group	(6 companies)	\$ 52,854,225	-3.0%				
W.R. Berkley Group	(3 companies)	\$ 47,909,761	2.7%				
Markel Corporation Group	(4 companies)	\$ 47,897,241	•2.7%				
Ace Group	(3 companies)	\$ 46,781,164	•2.7%				
XL Capital Group	(2 companies)	\$ 40,798,474	2.3%				
AXIS Capital Group	(3 companies)	\$ 40,347,931	2.3%				
Arch Group	(3 companies)	\$ 37,067,999	2.1 %				
Allianz Insurance Group	(4 companies)	\$ 36,422,809	•2.1 %				
Aspen Insurance Holdings Ltd.	(2 companies)	\$ 34,378,677	2.0 %				
First Mercury Financial Group	(1 company)	\$ 31,650,776	1.8 %				
Argo Group (formerly Argonaut Group	o) (1 company)	\$ 29,923,533	1.7%				
RLI Insurance Group	(1 company)	\$ 26,327,286	1.5 %				
Chubb & Son Inc.	(2 companies)	\$ 24,611,634	1.4,%				
HCC Insurance Holdings Group	(1 company)	\$ 22,763,241	1.3 %				
Munich Re Group	(4 companies)	\$ 22,402,734	1.3 %				
IFG Companies	(2 companies)	\$ 19,418,787	1.1 %				
Alleghany Corporation	(2 companies)	\$ 19,136,365	•1.1 %				
Allied World Assurance Group	(2 companies)	\$ 18,113,908	1.0 %				
Great American P&C Group	(3 companies)	\$ 16,765,105	•1.0 %				
SUBTOTAL		\$ 1,515,705,928					
Allothers		\$ 234,083,624			•13.3	<mark>%</mark>	
			0	5	10	15	20
TOTAL		\$ 1,749,789,552					

# TOP 10 PERILS\*

	PERIL	NI	EW YORK PREMIUM	2008 RANKING
		1/1		IUMINI
1.	General Liability	\$	640,128,089	1
2.	All Risk	\$	275,232,752	3
3⋅	Errors and Omissions	\$	240,704,230	2
4.	Multiple Peril	\$	120,389,305	5
5.	Umbrella Liability	\$	77,092,110	4
6.	Miscellaneous Professional	\$	66,131,290	8
7.	Fire	\$	65,076,096	6
8.	Environmental Impairment	\$	40,831,612	7
9.	Fidelity and Surety	\$	39,420,561	10
10.	Inland Marine	\$	38,477,678	9
	SUBTOTAL	\$	1,603,483,723	
	All Others	\$	108,394,776	
	TOTAL	\$	1,711,878,499	

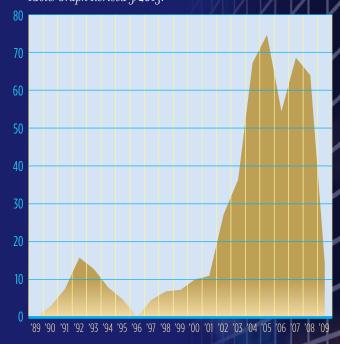
# E&S TAX (IN MILLIONS)

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.



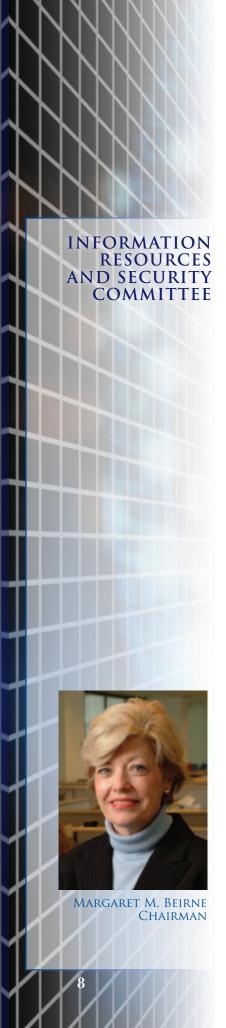
Beginning 1998, these statistics are on a risk attaching basis.

# TOP 10 INSURERS\*

	INSURER	NEW YORK PREMIUM	
1.	Lexington Insurance Company	\$ 287,155,363	17%
2.	Lloyd's Underwriters	\$ 261,502,954	15%
3.	Scottsdale Insurance Company	\$ 83,8 <sub>7</sub> 3,989	5%
4.	Chartis Specialty Insurance Company	\$ 69,475,928	4%
5.	Steadfast Insurance Company	\$ 55,043,977	3%
6.	Columbia Casualty Company	\$ 54,704,312	3%
7.	Travelers Excess & Surplus Lines Company	\$ 49,139,825	3%
8.	Illinois Union Insurance Company	\$ 42,865,603	3%
9.	Indian Harbor Insurance Company	\$ 39,367,593	2%
10.	Arch Specialty Insurance Company	\$ 37,922,845	2%
	SUBTOTAL	\$ 981,052,389	57 <sup>%</sup>
	All Others	\$ 730,826,110	43%
	TOTAL	\$ 1,711,878,499	100%

 $The \ top\ 10\ insurers\ accounted\ for\ 57.3\%\ of\ total\ premiums\ written\ in\ 2009,\ compared\ to\ 60.5\%\ in\ 2008,\ 61.7\%\ in\ 2007,\ and\ 55.1\%\ in\ 2006.$ 

\*Figures are on a risk attaching basis.



ESPITE THE VOLATILITY IN the capital markets in 2008 and 2009, the surplus lines carriers on ELANY's eligibility list have fared rather well. The balance sheets and income statements for the 2009 year are showing improvements in both the underwriting results and the investment portfolios. The absence of major catastrophe losses during the year and favorable development of prior year losses helped produce underwriting profits. The turnaround in the equity market has helped companies realize gains and recoup some unrealized losses of 2008. ELANY has seen substantial reductions in written premium in 2009; and that, combined with continued low yields on the investment portfolio, will put pressure on future overall results.

In an effort to more closely monitor the quality of insurer investment portfolios, ELANY now requests that each company complete an "Asset Quality Questionnaire." The questionnaire requests the companies provide details of valuation methodology of asset backed securities such as CDO's and CMO's, both at the company level and at the holding company level. We further request whether they have written down or written off investments in an amount in excess of 1% of total asset values. The responses generally indicate the companies on the eligibility list are conservatively managing their investment portfolio.

While we have witnessed a slowdown in the pace of companies applying for eligibility, the flexibility of the surplus lines market continues to attract companies. During its first year of operation in 1989, 48 foreign companies were eligible in New York. Of the original 48 companies, 29 companies are still on the eligibility list and are better capitalized than when they initially applied. During 2009, ELANY added two foreign companies and one alien company. Two alien companies withdrew. This compares with the addition of 8 foreign and 3 alien companies in 2008. In 2009, there were 132 companies on the eligibility list, consisting of 96 foreign companies and 36 alien companies.

ELANY has proposed, and the New York State Insurance Department has agreed, to increase the minimum policyholders' surplus eligibility requirement to \$45 million. At year-end 2009, 86% of the eligible companies had policyholders' surplus in excess of the \$45 million policyholders' surplus standard. Those eligible insurers wrote 96% of the 2009 taxable New York premium. Companies having less than the \$45 million are subsidiaries of large, financially-sound insurers. Those companies will have several years under "catch up" provisions to increase the eligible company's surplus or withdraw from the New York market.

ELANY's Information Resources and Security Committee continues to address the many challenges that face the industry. We will continue this due diligence with input from the broker community, the New York State Insurance Department and the knowledgeable staff at ELANY.

# EXECUTIVE DIRECTOR'S REPORT

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health insurers. While the medical malpractice insurance antitrust repeal has been removed from the bill, the attempt to repeal the exemption in the first instance shows a fundamental lack of understanding regarding the very nature of the P&C insurance industry.

While the industry may have won a couple of skirmishes, it still has to contend with other legislative proposals and additional issues.

Many questions concerning the future of insurance regulation remained unanswered in 2009. Will the federal government create an Office of National Insurance, Federal Insurance Office, or by any name, a federal insurance regulator? If so, what will the parameters of such a regulator's authority be? Is it possible that any one insurance company can be of such a size as to present a systemic financial risk to our nation? Should large insurers be forced to

HE PROLONGED SOFT MARKET, amplified by the downturn in the economy, created some new challenges for ELANY in 2009. It also validated the electronic processing initiatives that have been undertaken, evidenced by the efficiencies and cost reductions for ELANY internally and for members as well.

While nonadmitted taxable premium written in 2009 correlates to less stamping fee revenue for ELANY (down 28%), the number of transactions processed did not decrease proportionately (down only 6%). The various charts, included in this Annual Report, show these trends in detail. Not unlike other businesses, ELANY is doing more with less revenue. The benefits of automating the processes that were implemented during the 2008 calendar year have helped control expenses, as well as created a more efficient method for processing

contribute funds to prevent systemic risk exposures caused by banks or the securities markets? Such proposals will be bitter pills for the insurance industry to swallow, when it was the only segment of the financial services industry whose conduct did not contribute to the economic meltdown in any material manner.

In 2009, the political debate over universal health insurance and other financial services reform often became a vituperative attack on the insurance industry as a whole. Loss costs, acquisition costs and operating expenses, as drivers of premium rates, were absent from the debate.

Progress in 2010 may well depend upon the industry's ability to coalesce around the right reforms necessary to create an effective and efficient system of regulation to serve the public in today's world. A clear message regarding the industry's positive impact on the nation must be created and delivered, if the industry is to have any place in the debate.

filings. With over 80% of all affidavit filings processed using this new platform, ELANY and its members were able to realize a full year of benefits in 2009. To further improve this percentage, a module is being created that will enable Purchasing Groups to realize the benefits of e-filing.

The current platform allows the electronic filing of documents, as well as completion of Part A affidavits online. The next phase, currently being developed, will allow the Retail Brokers to complete and transmit Part C affidavits electronically to the wholesale excess line brokers.

ELANY's website was updated, with the most noticeable changes being the introduction of a series of educational and instructional videos. There are presently eight videos covering a variety of topics pertaining to the excess and surplus lines market. More are being prepared on topics that answer questions most frequently asked or clarify many of the misunderstood intricacies when transacting nonadmitted business in New York.

In addition to these projects that are visible to the membership, significant energy has been dedicated to disaster planning. The plan, which was developed several years ago, continues to mature. The plan is reviewed routinely, modified as necessary and tested to make sure it will meet the challenges that might occur should the office be inaccessible as the result of a disaster.

In these most unusual times, the ELANY staff has shown flexibility and resilience responding to the challenges presented and is to be commended for the excellent service they bring to the excess and surplus lines industry.

OPERATIONS & PROCEDURES COMMITTEE



Gary Hollederer Chairman





HILE INSURER RESULTS FOR year-end 2009 improved when compared to 2008, the same cannot be said for the excess line broker community. Taxable excess line premium was down \$680,000,000 in 2009 compared to 2008. Compared to the market's peak year, 2005, when taxable premium was \$2,743,400,000, year 2009 taxable premium is off almost \$1,000,000,000. Gross excess line premium also peaked in 2005, just short of \$5 billion. Gross premium shrank from \$3.4 billion in 2008 to \$3.1 billion in 2009.

This soft market premium slide correlates to ELANY's revenues as well. Stamping fee revenues were down approximately \$1.4 million as compared to 2008. ELANY's total revenues decreased approximately \$1.6 million year over year from 2008 to 2009. While ELANY's expenses also went down from 2008 to 2009, that difference was only \$52,500.

ELANY's Board actively manages ELANY's budget and forecasted the 2009 results. Notwithstanding the stamping fee reductions of 2004 and 2005, which as a practical matter combined to cut ELANY's revenues by 50%, the Association had accumulated a significant fund balance to stabilize the Association through some lean years. The substantial costs of building the electronic filing platform, which has driven ELANY's depreciation expense up approximately 500%, combined with soft market conditions, put ELANY in a deficit position in 2009.

However, with a fund balance of \$20,004,964 and a conservative investment approach, ELANY will be able to manage deficits, while the market remains soft, and avoid an increase in stamping fees for the foreseeable future.

The following briefly highlights 2009 financial results:

### 2009 REVENUES

Stamping Fees
Investment & Miscellaneous Income
TOTAL\$4,277,250

# 2009 EXPENSES

Payroll
Depreciation1,140,658
Computer Charges
Rent & Utilities
Professional Fees
Postage/Printing/Stationery56,148
All Other
TOTAL\$5,829,042
FUND BALANCE. \$20,004.064

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.





# BOARD OF DIRECTORS

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Association Counsel

Dewey & LeBoeuf LLP

JOHN McPARLAND, CPA

Independent Accountant McGladrey & Pullen, Inc.

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Nancy Born, Office Manager
Theresa Hetherington,
Stamping Office Manager
Eugene Nunziata, Education/
Communications Director
Brian Persaud, IT Manager
Fazeda Ahamad-Raghunandan,
Examiner
Benedict Bardeguez,
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Areina Battle, Examiner
Christian Carbajal, Examiner
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Kesana Francis, Examiner
Jenny Kyi, Examiner
Catherine Leonard, Examiner
Donald Lipkins, Scanning Technician
Traci Martin, Examiner
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Bryan Nebel, Examiner
Deanna Olah,
Stamping Office Supervisor
Beth Pfluger,
Stamping Office Supervisor
Nicole Pugliese, Examiner
Ivan Rodriguez, PC Analyst, Helpdesk
Keith Vittore, Examiner
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