

The E&S Empire Express



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Record Premiums and Transactions for 2015

The New York E&S market set a new record for premiums (\$3,561,279,500) for the third consecutive year and for transactions processed (285,804) for the fourth consecutive year. One of the leading causes for this growth has been the increase in New York construction projects caused by the upturn in the economy and post Sandy commercial construction and infrastructure projects. Additionally, the admitted market is not encroaching on the traditional territory of the E&S market in search of sustained premium volume. Whether this is due to more sophistication and maturity in the underwriting process or simply extreme fear of the low interest rate environment, in either event it was positive news for 2015.

Passing of Kurt Bingeman

ELANY is mourning the loss of good friend and former Board member Kurt Bingeman, who passed away suddenly on January 12, 2016 at age 66.

At the time of his death, Kurt was the Chairman/CEO of Russell Bond & Co., Inc., a Buffalo, New York, based insurance wholesaler.

During his long successful professional insurance career, Kurt received many industry awards, which were a testament to his standing among his peers.

Kurt was instrumental in the creation of the Excess Line Association of New York, which was formed by statute in 1988. He was a strong advocate of insurance education and the attainment of professional designations in order to enhance our industry's professionalism and product knowl-



edge. Kurt was always generous with his time when it came to educating his peers and giving sage advice on insurance related matters.

Kurt was active with the National Association of Professional Surplus Lines Offices, Ltd. (NAPSLO), where he was President from 1991 to 1992. He also served as a Director of the Derek Hughes / NAPSLO Educational Foundation, Inc. Additionally, he was active with the American Association of Managing General Agents (AAMGA) and was a Past Director and Officer of the Professional Insurance Wholesalers Association of New York State, Inc. (PIWA).

Underutilization of the Export List

The "export list" sets forth types of insurance coverages that the New York Superintendent of the Department of Financial Services has determined are generally not available from licensed insurers and therefore, three declinations are not necessary pursuant to the requirements of Section 2118(b)(4) of the New York Insurance Law.

ELANY recently reviewed export list transactions data submitted for the period of January 1, 2015 through September 30, 2015. The review indicated that excess line brokers and producing brokers are not fully taking advantage of the export list coverages. The following export list categories are substantially underutilized:

- Contractors Liability Coverages
- General Pollution/Environmental Impairment
- Contract Frustration
- Special Events primary or excess liability coverage for unique exposures for a limited duration
- Primary and/or Excess Liability for Vacant or Unoccupied Buildings

The grand total for new and renewal export list transactions filed with ELANY for the period January 1, 2015 through September 30, 2015 was 7,585. However, the review also indi-

Inside...

Record Premiums and Transactions for 2015	1
Passing of Kurt Bingeman	1
Underutilization of the Export List.....	1
Federal Legislation	2
Binding Authority Agreement Filing Reminder....	2
Excess Line Tax Filing Reminder	2
Excess Line Broker Licensing Renewal—Early Reminder	2
New Cyber Liability Insurance Coverage Code ...	2
Increase in Minimum Surplus Reminder.....	3
Declination Date Verification	3
Comings and Goings at The DFS.....	3
ELANY'S Website Enhancement.....	3
Calendar	4

cated that a substantial number of transactions (9,990) were submitted to ELANY with diligent search declinations, even though these transactions involved types of coverages that are **ON** the export list.

ELANY realizes that it takes time for licensees to become familiar with the export list coverages. However, we are once again urging member excess line brokers, their staff, and their retail producers to become familiar with the "export list" coverages particularly with regard to coverages they place regularly, and more importantly, to utilize the "export list". Use of the export list streamlines the declination requirement process making it easier to file excess line documents with ELANY, and thereby, saving brokers time and money.

It is important to remember that use of the "export list" only exempts the broker from the diligent search effort requirement. The filing of affidavits and related documentation is still required.

For the complete list of all coverages included on the "export list," please log onto our website www.elany.org and click on "Lexicon/FAQ Topics," then search for "Export List." Should you have any export list questions, please contact Gene Nunziata, Education/Communications Director, by e-mail enunziata@elany.org or by telephone (646) 292-5584.

Federal Legislation

On December 18, 2015, Congress passed an Omnibus Appropriations Agreement that included the following favorable insurance consumer legislation:

1. **Policyholder Protection Act (S.798/H.R.1478)**—preserves the authority of state insurance regulators to regulate insurance and protect consumers, clarifies Congressional intent with respect to the Dodd Frank Act that state insurance regulators have primary authority to liquidate or rehabilitate financially troubled insurance companies, and limits the ability of the Federal Deposit Insurance Corp. (FDIC) to seize insurance company assets intended for policyholder payments when an affiliated financial entity is subject to liquidation.
2. **Affordable Care Act (ACA)**—included a two-year delay of the so called "Cadillac Tax," which would have imposed a 40% excess tax on fully insured and self-funded employer health benefit plans.

Binding Authority Agreement Filing Reminder

This is a reminder that a copy of each binding authority agreement, signed by both the excess line broker and the eligible excess line insurer, must be submitted to ELANY at least ten (10) business days prior to binding any risk and issuing any binders or policies. Additionally, a copy of any amendments to or any notice of cancellation or termination of the agreement must be filed with ELANY no later than ten (10) business days after adoption.

Please remember that it is the duty of the Excess Line licensee to bind business only within the written authority granted by the insurer. The stamping of the policy by ELANY does not confirm the risk(s) bound is within the authority granted to the licensee under the binding authority agreement.

For a more detailed explanation of binding authority agreement filing requirements, please log onto our website www.elany.org and click on "Lexicon/FAQ Topics," then search for "Binding Authorities."

Excess Line Tax Filing Reminder

ELANY members are reminded that all affidavits for accounts incepting in 2015, as well as premium bearing endorsements effective during 2015 or earlier, must be received in our office by **February 16, 2016** to be included in their 2015 tax summary report. Please note that items currently in suspense are not included in the tax summary unless you have successfully resubmitted them for stamping on or before February 16, 2016. Now would be a good time to review your monthly reports for any discrepancies and to reconcile your books and records.

For more information regarding "2015 Affidavit Filings and Premium Tax Reports," please visit our website www.elany.org and refer to the "Hot News" navigation bar, click on ELANY Bulletins, then click on ELANY Bulletin No. 2015-24.



Excess Line Broker Licensing Renewal—Early Reminder

All current excess line broker **business entity licenses** (corporation, LLC, or partnership) expire on **October 31, 2016**.

Please note that **individual excess line broker licenses expire on the licensee's birthday** in even numbered years for individuals born in even numbered years and in odd numbered years for those born in odd numbered years.

individual excess line broker
licenses **expire on the
licensee's birthday**

New Cyber Liability Insurance Coverage Code

ELANY and the New York State Department of Financial Services (DFS) jointly determined that it is appropriate to capture "**standalone" cyber liability insurance** under a separate coverage code.

The coverage code assigned to this coverage for use when submitting affidavits is:

5051 – Cyber liability—standalone which may include business interruption and extra expense.

This new coverage code (5051) should only be used for "**standalone" cyber liability insurance policies**. These "**standalone" policies** may include coverage for business interruption and extra expense but the code is **not** for use when cyber liability coverage is combined with or endorsed onto standard general liability policies or errors and omission insurance policies.

Increase in Minimum Surplus Reminder

Section 27.13 (b)(3) of Regulation 41 requires that as of **January 1, 2016** and every three years thereafter, the minimum policyholders' surplus for eligible insurers shall be increased by **\$1,000,000**. Effective **January 1, 2016**, all eligible insurers must maintain a minimum policyholders' surplus of **\$46,000,000** to remain eligible in New York.



Declination Date Verification

The Department of Financial Services (DFS) has expressed concerns where notice of excess line placement dates or policy inception dates preceded one or more of the declination dates submitted in an excess line affidavit. The DFS asserts that if declinations are acquired after an excess line placement is made the placement may violate the excess line law. While such date issues may be only an administrative error, it would be wise for licensees to review internal procedures and avoid any negative inferences drawn by the DFS.

Comings and Goings at The DFS

ELANY wishes to congratulate Shirin Emami on being named Acting Superintendent of the Department of Financial Services (DFS) and to Stephen Doody on being named Deputy Superintendent of the Property Bureau.

Best wishes to recent DFS retiree Jim Davis, who was an Assistant Chief in the Financial Division of the Property Bureau and additional congratulations to Jim for accepting his new position as Financial Director at ELANY.

Jim's contact information at ELANY is:

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ELANY'S Website Enhancement

ELANY is proud of our new responsive web design which allows users to easily view, read and navigate our website (www.elany.org) across a wide range of devices from desktop computers to laptops to i-pads to mobile phones. This responsive design will cause the device to display the website in a manner best suited to the particular device.

We want to thank the 177 respondents who were kind enough to participate in completing our recent 10-question new website and customer service survey. We value your opinion and feedback and will take your suggestions under advisement.

ELANY strives to publish and maintain the most extensive E&S website in the country by continually enhancing, revising and updating our website whenever possible.

CALENDAR

2016

January

Thursday January 28	Professional Insurance Agents of New York (PIANY) Metro Rap The Roosevelt Hotel 45 East 45th Street at Madison Avenue New York, NY
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FEBRUARY

Friday–Sunday February 26–February 28	The National Conference of Insurance Legislators (NCOIL) Spring Meeting Little Rock Marriott Little Rock, Arkansas
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March

Monday–Wednesday February 29–March 2	National Association of Professional Surplus Lines Offices (NAPSLO) Mid-Year Leadership Forum Fairmont Scottsdale Princess Scottsdale, Arizona
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April

Sunday–Wednesday April 3–April 6	National Association of Insurance Commissioners (NAIC) Spring Meeting Sheraton New Orleans and Marriott New Orleans New Orleans, Louisiana
Thursday April 21	Insurance Club of Buffalo Buffalo I-Day Buffalo Niagara Convention Center Buffalo, New York

May

Wednesday May 4	Professional Insurance Agents of New York (PIANY) Long Island Rap Crest Hollow Country Club Woodbury, New York
Thursday May 5	ELANY Annual Members' Meeting Location–TBD New York, New York
Monday May 16	ELANY Annual Legislative Reception Fort Orange Club Albany, New York **OPEN TO THE PUBLIC**
Sunday–Wednesday May 22–May 25	American Association of Managing General Agents (AAMGA) Annual Meeting J.W. Marriott Desert Ridge Resort Phoenix, Arizona
June	
Wednesday–Friday June 1–June 3	New York Insurance Association, Inc. (NYIA) Annual Conference Turning Stone Resort Verona, New York
June 5–June 7	PIANY/PIANJ Joint Annual Conference Harrah's Resort Atlantic City, New Jersey



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