





Daniel F. Maber

THE E & S INDUSTRY IS uniquely a creature of the state-based system of insurance regulation. It is with substantial irony, therefore, that the future of the E & S industry may well depend upon a number of proposals to reform and/or supersede the state-based system of insurance regulation playing out at the federal level.

The momentum for these various Federal proposals stalled somewhat in 2005, due in large part to other pressing, even urgent matters and events, including the debate regarding broker compensation transparency, the horrendous devastation and destruction resulting from four powerful hur-

ricanes and the TRIA renewal legislation. Nevertheless, the battle lines are being drawn, the proponents and opponents have largely identified themselves, and the battlefield will be the hallowed halls of the U.S. Congress.

Competing proposals have been championed by various segments of the insurance industry. Arrayed behind the Optional Federal Charter "OFC" proposal are some major life insurance and other industry interests, including the American Council of Life Insurers (ACLI), the American Bankers Insurance Association (ABIA), the American Insurance Association (AIA), and the Council of Insurance Agents and Brokers (CIAB), to name some major protagonists. The major components of the OFC proposal include creating a parallel regulatory universe for insurers and producers to be regulated by a new federal insurance regulatory authority. The proponents assert that states would suffer no diminution of tax revenues. The OFC proposal, when last introduced, sought complete freedom of rate and form, among other provisions.

Another phalanx of industry interests support the so-called "SMART" proposal. SMART, as currently drafted, would force states to adopt a number of uniform standards or failing such adoption subject recalcitrant states to federal preemption. This proposal contains numerous provisions, some specific to the E & S industry. Perhaps the most controversial ones mandate freedom of rate and stratified freedom of form. The major industry supporter of this proposal is the Independent Insurance Agents and Brokers Association (Big I). The Property Casualty Insurance Association of America (PCI) has expressed interest in the proposal, particularly the freedom provisions. The National Association of Professional Surplus Lines Offices, Ltd. (NAPSLO) has pursued the incorporation of E & S provisions into the draft SMART bill. The American Association of Managing General Agents (AAMGA) supports a number of the concepts in the bill which bolster a robust E & S marketplace. CIAB, while supporting OFC, has expressed interest in the SMART proposal as a good start to modernizing insurance regulation.

The industry trades have enlisted their respective congressional white knights. In the House, Congressmen Oxley and Baker are supporting the SMART Act proposal. The OFC proposal has advocates in the U.S. Senate, where Senator John Sununu has taken a leadership position. There are vocal and formidable opponents to each of these proposals. The leading trade associations for regulators and insurance legislators, respectively the National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Legislators (NCOIL), have expressed views opposing both the SMART Act and OFC. NCOIL has passed a resolution opposing any federal act which would preempt state insurance laws. Many state legislators and regulators see both of these proposals as usurping state authority and degrading consumer protection by leaving consumers without recourse to seek redress for unresolved claims, cancellations and the like. A perceived threat to the tax revenues, which states receive from the insurance industry, is also a concern. The NAIC opposition is based upon similar reasoning. While the NAIC advocates a program to bring more uniformity to state-based regulation, it has no authority to compel states to make changes. The inability of the states to bring about modernization and uniformity to the state regulatory system is the states' Achilles heel and the reason many industry trade groups support either of these federal proposals.

Though the battle lines are largely established and the battle-field is clearly Washington DC, a victor is not likely to emerge anytime soon. Congressman Oxley, who chairs the House Financial Services Committee, has expressed clear opposition to the OFC proposal. Though Oxley supports the SMART concept, no Democrat in the House has yet to sign on to the SMART concept because of the "freedom of rate" provisions. The U.S. Senate, on the other hand, plans to introduce an OFC legislative proposal in 2006. While the Senate may pursue the OFC proposal, currently there appears to be no appetite in the House of Representatives for this legislation. Yet with midterm elections coming in 2006, along with the retirement of Congressman Oxley, a shift in Congressional support is a real possibility.

What can the E & S market expect in the future? First, the debate will continue. Is federal legislation necessary to modernize or supplant the state regulatory system? What form of legislation is likely to succeed at the federal level? Will the cure be worse than the illness? Can the states halt or avoid the federal efforts?

While the answers to these questions remain to be seen, if the states' intransigence to change continues while they simultaneously seek federal assistance on terrorism, national disaster and other forms of relief, the industry, by and large, may see some type of federal regulation as the only relief from the expense and problems in complying with 50 inconsistent, outdated state systems.

2005 MARKS MY LAST full year as Chairman of the Board of Directors of the Excess Line Association of New York. In reflecting on the issues that affected the E & S marketplace in 2005, two distinct perceptions emerge. ELANY continued on a deliberate track in implementing and designing its short-, medium- and long-term business goals. Completely separate and apart from ELANY's business plan, a number of unprecedented events occurred which impacted the E & S industry and ELANY, to which we collectively responded as necessary.

ELANY's business plan covers a broad spectrum of subjects. In 2005, on the regulatory and legislative side, ELANY pursued and successfully obtained a four-year reauthorization of its enabling legislation. We worked with the New York State Insurance Department to amend Regulation 4I to facilitate and authorize the electronic return of stamped documents, and we observed the rather quick action of the NAIC and NCOIL in pursuing disclosure of contingent commissions through model legislation rather than banning them.

From an operations standpoint, ELANY made substantial commitments to IT projects in bringing the affidavit creation system online, implementing the ImageRight scanning system, creating an electronic document return system, and building systems for redundancy and disaster planning.

ELANY has made a greater commitment to education by budgeting for a full time Education/Communications Director.

Financially, ELANY has a disciplined approach to managing revenues, investing conservatively and keeping expenses in check within an overall plan of proper corporate governance. A number of fortuitous events, whose impact was felt in 2005, also drove ELANY and the Industry to specific courses of conduct. The hurricanes of 2005 certainly stand out among all other issues. The hurricanes, in devastating large swaths of Florida, Mississippi, Louisiana and Texas, had a similar deleterious effect on many insurers and reinsurers. As the losses were counted and adverse development materialized, ELANY's Financial Director, Rich Schlesinger, maintained a very close watch on potential impact to each eligible insurer's ability to trade forward. Almost simultaneously, capital from new sources, such as hedge funds, replenished the lost capital of

some insurers and funded the class of 2005 insurers and a newly minted insurance vehicle, the sidecar. Perhaps, the most notable insurance industry observation, with respect to those hurricanes, is the lack of immediate insurer insolvencies. This is quite positive when compared to the aftermath of Hurricane Andrew.

Nevertheless, other fallout comes from these events. Political and legal issues, such as wind versus flood claim disputes, the need for state or a federal natural disaster fund and a potential market crisis in states where major homeowners' carriers withdraw are all issues. How these questions will impact the E & S market is another potent question.

The impact of the contingency fee/broker transparency debate and the effect on the industry is also worthy of a close look. On the surface, only a few states enacted statutes to deal with the question, and most of those statutes mandated disclosure only and exempted wholesalers and E & S brokers. The long-term impact may be greater if insurers, in settling bid rigging actions, continue to negotiate bans on contingen-

cies and/or insurer-specific disclosure requirements.

As we move into 2006, ELANY will continue to pursue its business plan and regulatory agenda, which are always geared toward service to members, reducing the burdens of compliance while maintaining consumer protection. Likewise, we will monitor the events that affect our industry, react accordingly and attempt to bring positive energy to those matters.

In closing, it has been my pleasure and privilege to serve as Chairman of ELANY, and I thank you and the members of the Association for entrusting me with this position of leadership.



David Isenberg

Financially, ELANY has a disciplined approach to managing revenues, investing conservatively and keeping expenses in check within an overall plan of proper corporate governance.





Kurt C. Bingeman, Chairman

ONE OF ELANY'S PRIME missions is to facilitate and encourage compliance by excess line licensees and retail producers in New York, who use the excess and surplus line marketplace to solve client needs not met by the standard or admitted market. This is accomplished through education and by active involvement in the legislative process, where we seek clarity, efficiency and balance in regulation of the industry.

The number one objective of 2005 was the renewal of ELANY's enabling legislation. Although we were not successful in gaining the permanency we sought, the extension provides ELANY a four-

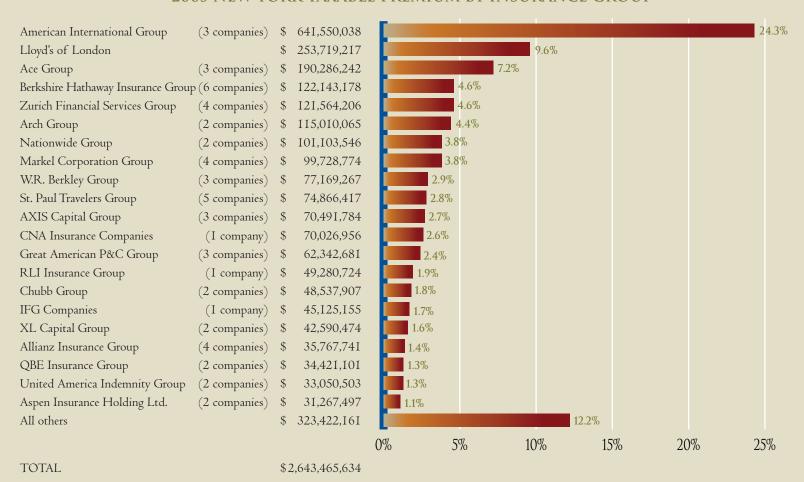
year reauthorization. The increase from historical three-year authorization cycles provides for better continuity, longer-range planning and assistance in recruiting and retaining quality staff needed to fulfill our mission.

We continued our long-time cooperative efforts with New York producer organizations such as PIWA, PIA, IIABA, CIBGNY and IBANY. We hosted public educational classes such as our CE certified class "Basics of Excess & Surplus Lines for New York Retail Brokers," as well as private classes for licensees on compliance issues and proper processing. We began 2006 with another E & S educational session in Albany for a number of state agencies.

ELANY's efforts extend to national issues, as we participate with NAPSLO, AAMGA, NAIC and NCOIL on national E & S issues such as the SMART Act and Optional Federal Charter proposals in Washington, as well as the long-standing quest for a workable solution to compliance and tax payments on multi-state E & S placements.

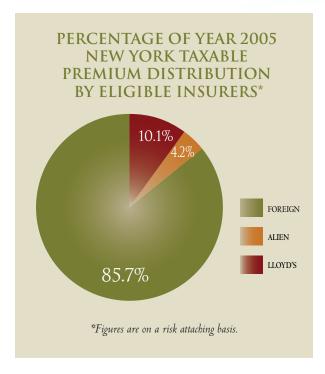
You will recall that based upon ongoing questions from licensees regarding their role and responsibilities in connection

2005 NEW YORK TAXABLE PREMIUM BY INSURANCE GROUP









with the New York Board of Fire Underwriters' Fire Patrol assessments, we have raised questions regarding the workings of that entity. In early 2006, insurance companies, with the right to vote, voted to not sustain the Fire Patrol and to develop a plan to wind down operations. We will monitor the situation so we can inform licensees of the plan and how it might affect them.

Some recent court cases in New York have focused on E & S markets and the role of the excess line broker following unpaid claims resulting from the insolvency of a non-admitted insurer. Although the two courts took divergent views, the cases highlight the importance of regulatory compliance by producers, especially the diligent search (declination) pro-

cess, as well as proper notifications to the client of the excess line placement. We encourage all to be mindful of their legal responsibilities in their dealings in the E & S market.

Remember that you and your staff can always obtain current information regarding these and other topics at ELANY's website at www.elany.org, especially in the Lexicon section. Also, the staff at ELANY is always available as a resource.

Attorney General Spitzer's investigations of broker practices, compensation and other issues continued to make the news in 2005. Although the investigation hasn't ended, we have not seen any significant legislative or regulatory response to date in New York and most states. It is apparent that regulators and state legislators wanted to make a thorough review and be certain any response is balanced and necessary. Several of the largest wholesaler brokers, however, were put up for sale by the major brokers. We will have to wait to see if there is more fallout in the future.

The year 2006 is already upon us, and one of ELANY's major goals will be the expansion of the Export List. The Export List identifies those classes of coverage where the Superintendent of Insurance has determined there is not a sufficient admitted market writing the class of business. The Superintendent, therefore, exempts the class from the requirement that a diligent search be made when placing such risks. We have met with an ad hoc group of retail producers and others to develop suggested changes with the hope that the New York State Insurance Department will soon call a hearing to review the existing list and work with us on reasonable and appropriate updates.

As always, we encourage you to thoroughly review ELANY's publications, newsletters, and especially our Bulletins, for important news and compliance procedures.

This chart (left) includes 21 Insurance Groups that each wrote more than 1% of the 2005 New York calendar year taxable premiums. Last year (2004), 21 groups wrote more than 1% each for a total of 85.7% of NY year taxable premium. The new groups on the list for 2005 are the RLI Insurance Group, Allianz Insurance Group and Aspen Insurance Holding Ltd. The Hartford Insurance Group, Swiss Reinsurance Group and HCC Insurance Group are not on the list for 2005.





Margaret M. Beirne, Chairman

SOLVENCY CONTINUES TO BE

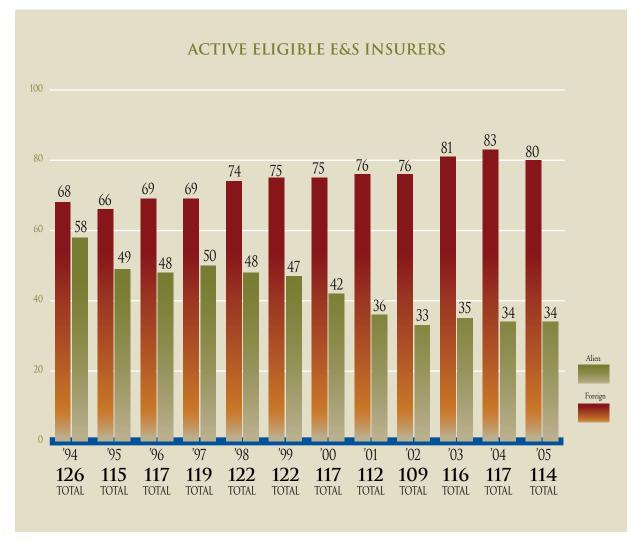
the main focus of the Information Resources and Security Committee. The number of insurance company failures has continued to drop since the peak in 2000; however, that does not imply that the Committee relaxes its oversight of the companies on the eligibility list and their affiliates.

In a year when the industry was particularly hard hit by hurricanes, Japanese typhoons and European floods, there have not been any reported insolvencies. However, as year-end results are released, rating agencies are reacting to the lag in the reporting and then the magnitude of the

losses. Despite pricing that had started to trend downward, the industry had reported record profits through the first half of the year— then the wind blew. The unprecedented storm losses impacted companies' earnings and essentially wiped out the profits of the past few years in some cases. Insurers and reinsurers suffered but the reinsurance community was

particularly hit hard. Almost overnight, after more than \$50 billion left the industry, insurers and reinsurers turned to the capital markets to restore approximately \$12 billion in capital. Before the year was out, eight new insurers were capitalized, and three sidecars were formed. Sidecars are a relatively new investment vehicle, formed by a group of investors who are relying on an established underwriter to generate profitable returns. The benefit to the established underwriter is the ability to write more business. The underwriter then quota shares the premiums and losses to the sidecar.

The Class of 2005, as they are known, quickly raised capital, assembled management teams and headed to Bermuda to be ready for the year-end renewal season. The investor base of this Class of 2005 has taken a different direction than the Class of 2001. The major investors in the Class of 2001 were insurance companies, insurance brokers and the major institutional investment houses. The Class of 2005 secured capital through private placements, most of which came from hedge funds. The newest companies have entered the



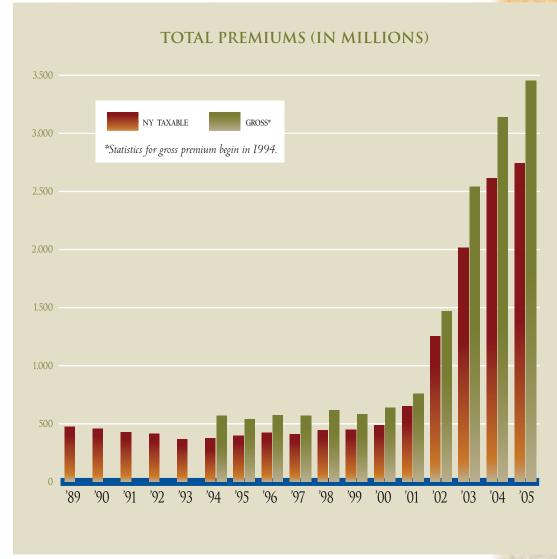
This year ELANY removed 3 foreign companies, added 4 alien companies and removed 4 alien companies. Since 1994, eligible foreign companies increased by 12, while alien companies decreased by 24.

market with a focus on property and catastrophe lines of business, anticipating a surge in the pricing of this business. It appears that this did occur in hurricane-exposed areas, but rates on non-hurricane prone business did not experience the anticipated increases. It remains to be seen if these investors will tolerate the volatility of the business, the possibility of having to provide additional capital, and the historically low ROE produced by the industry.

ELANY is anticipating that some of these new companies will eventually make applications to write surplus lines business in an effort to diversify the business mix. Two of the companies formed after Hurricane Andrew are major participants in the surplus lines market. Several members of the Class of 2001 have expanded their writings into the surplus lines arena, and one company from the Class of 2005 has already made an application for eligibility in New York. The continuing interest in surplus lines can be attributed to the strong results posted by the companies on the eligibility list. Many of the eligible companies are members of larger insurance groups. While other members of the group may have produced poor results, the surplus lines companies have generally been profitable.

ELANY currently has 114 companies on the eligibility list compared to 117 companies in 2004. During the year, ELANY had three foreign and four alien companies withdraw and added four alien companies to the eligibility list. Currently, there are 80 foreign and 34 alien companies eligible to write excess and surplus lines business in New York. The premium distribution for the calendar year 2005 was 86.3% for foreign insurers; alien insurers and Lloyd's represented the remaining 13.7%.

The Information Resources & Security Committee is responsible for screening all new applicants for eligibility, in



addition to monitoring the financial strength and viability of those companies currently on the List of Eligible E & S Insurers. ELANY places great emphasis on this responsibility, as insureds covered under policies issued by surplus lines carriers do not have access to any guaranty fund protection. The Committee benefits from the expertise of ELANY's staff, who coordinate their efforts with the New York State Insurance Department, and from feedback from the member brokers. While the work of the Committee continues to serve ELANY, its members and the State, it is important to note that this oversight process is intended as a complement, not a substitute, for the due diligence each broker must exercise in selecting financially stable E & S insurers.





Donald Privett, Chairman

THE YEAR 2005 PROVED to be another growth year for the E & S industry in New York. ELANY's processed transaction count increased from 187,593 in 2004 to 205,585 in 2005, which is a 9.6% increase. We had anticipated a flat or down year, not another increase in the transactions processed count for 2005.

The graph below shows the increase in transactions processed since the inception of ELANY. The staff of ELANY has done an excellent job handling the significant increases in workload, which has accelerated over the past five years. The increase in transactions processed during the past

five years is approximately 117%.

ELANY requested and received approval from the New York State Insurance Department for a further reduction in the stamping fee from .3% to .2%. This reduction went into effect on July I, 2005.

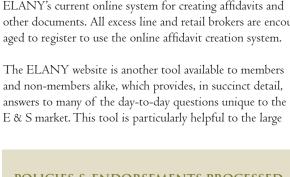
From an operations standpoint, ELANY has been investing a great deal of time, energy, manpower and money to improving its infrastructure. The management staff at ELANY, and particularly IT Manager, Brian Persaud, completed a high level use case design for two new systems with the assistance of Renaissance Systems, Inc. The ELANY Board, following the completion of the design process, approved a contract to build a new database system and a system to provide for complete electronic document filing. In the meantime, ELANY rolled out an electronic document return system, designed in 2005, to eliminate the delay caused by returning stamped documents by regular mail. This system complements ELANY's current online system for creating affidavits and other documents. All excess line and retail brokers are encouraged to register to use the online affidavit creation system.

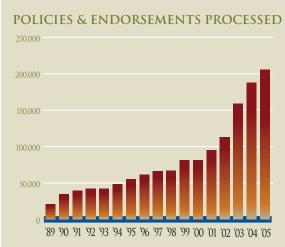
number of new licensees in New York, who have obtained non-resident excess line licenses, first made available in October of 2003. While ELANY makes a significant number of educational presentations every year, both within New York State and without, the website is easily accessible from anywhere, at any time, to provide you the information you require.

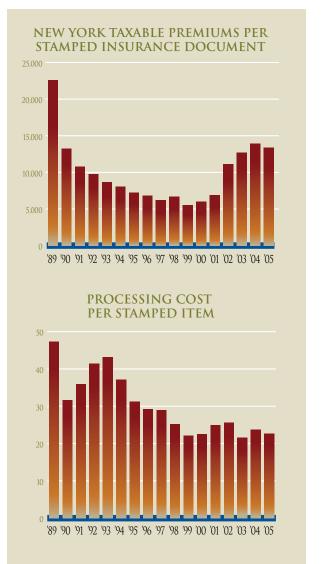
The results of ELANY's efforts through 2005 suggest that the Association, since 1997, has been able to manage a transactions submitted increase, which tripled; a fivefold premium processed increase; a threefold increase in active excess line brokers, while simultaneously cutting the stamping fee charges in half.

ELANY's continuing investment in technology is intended to simplify the compliance burden on excess line brokers, reduce the long-range compliance costs to brokers and squeeze additional efficiencies from ELANY's operations.

The efforts of the management and staff of the Association in implementing new technology creating greater efficiencies are to be commended.







IN 2005, ELANY SOUGHT and obtained New York State Insurance Department permission to reduce the stamping fee of the Association from .3% to .2%, which was effective for all risks attaching July I, 2005 and thereafter. This second fee reduction, in as many years, has effectively cut the long-standing (since 1989) .4% stamping fee in half.

The Board's purpose in reducing the fees was to slow revenue growth as the Association was accumulating a fund balance in excess of its need for current operations at ELANY. The direct result of the second fee reduction brought 2005 revenues to \$7,686,633 or 81% of the 2004 revenues of \$9,540,689. The impact of this fee reduction will have a greater effect on dampening revenues in 2006 when all newly placed E & S accounts will be subject to the reduced stamping fee.

The unprecedented volume of placements in the E & S market since 2001 continued to grow in 2005. New York E & S volume was up over 2004 numbers: up over 5% when comparing premium volume and up approximately 10% when comparing transaction count.

In 2005, a number of factors drove the increasing utilization of the E & S market. The need to access property capacity in the wake of the impact of the 2005 hurricane season, continued demand for the terrorism coverage afforded in the excess marketplace, coverage for small construction contractors, and, of course, additional non-resident licensees joining the Association all pushed the volume upward. For 2005, calendar year taxable premium volume totaled \$2,743,400,000

as compared to the 2004 year volume of \$2,611,200,000. Total transactions processed for the 12-month period ending in December 2005 were 205,585, an increase of 17,992 over the 2004 total of 187,593.

For the year 2005, expenses totaled \$4,659,165 as

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

compared to the \$4,452,631 outlay in 2004. This represents an increase of \$206,534 or 4.64%. The increase is mostly attributable to the additional staffing costs required to process transactions.

The fund balance at yearend increased in excess of \$3.5 million to a total of \$19,000,864.

ELANY's commitment to provide ever-improving

service is demonstrated by its investments in technology. In 2005, ELANY began to change the examination process and move away from paper by implementation of ImageRight, a document scanning system, and the electronic return of scanned documents. These represent the first phase of the development of a fully integrated electronic filing capability. Additional funding will be required in 2006 for the replacement of ELANY's line of business software and the creation of the fully electronic receipt/return filing platform.

During the course of 2005, the Board of the Association sought a review of the Association's internal security and control at the recommendation of Dan Maher, the Executive Director. Four additional internal control procedures recommended by an independent outside auditor were fully implemented. We intend to periodically monitor all operations and processes to ensure the Association meets all standards of financial security and compliance in an ever-changing business environment.



Kevin McGill, Chairman

2005 REVENUES

Stamping Fees
Investment & Miscellaneous Income
TOTAL\$8,207,997

2005 EXPENSES

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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.



*The following statistics are on a year 2005 risk attaching basis.

TOP 10 INSURERS

	Insurer	N	ew York Premium	%
Ι.	Lexington Insurance Company	\$	431,650,476	16%
2.	Lloyd's Underwriters	\$	279,542,766	10%
3.	Steadfast Insurance Company	\$	233,536,286	8%
4.	Illinois Union Insurance Company	\$	181,504,291	7%
5.	American International Specialty Lines Insurance Company	\$	181,390,256	6%
6.	Arch Specialty Insurance Company	\$	113,424,589	4%
7.	Scottsdale Insurance Company	\$	100,734,017	4%
8.	Columbia Casualty Company	\$	77,464,771	3%
9.	U.S. Underwriters Insurance Company	\$	67,078,407	2%
10.	Evanston Insurance Company	\$	56,186,943	2%
	SUBTOTAL	\$	1,722,512,802	62%
	All Others	\$	1,046,105,270	38%
	TOTAL	\$	2,768,618,072	100%

The top 10 insurers accounted for 62.2% of total premiums written in 2005, compared to 57.7% in 2004, 55.6% in 2003, and 54.2% in 2002.

PURCHASING GROUP ACTIVITY

Of the \$2.769 billion in premiums written and reported to ELANY, \$75 million of written premium was attributable to purchasing groups. Past years' premiums attributable to purchasing groups were as follows:

2005	\$74,615,877	2002	\$27,301,283
2004	\$67,233,313	2001	\$10,992,045
2003	\$36.365.169		

ELANY ACTIVE MEMBERS

ELANY had 647 active licensees submit business in 2005.

TOP 10 PERILS

	Peril	N	ew York Premium	2004 Ranking
Ι.	General Liability	\$	1,259,742,130	I
2.	Errors and Omissions	\$	408,213,491	2
3.	All Risk	\$	318,275,499	4
4.	Umbrella Liability	\$	224,726,262	3
5.	Multiple Peril	\$	129,373,639	5
6.	Miscellaneous Professional	\$	75,289,446	7
7.	Inland Marine	\$	57,883,531	10
8.	Fire	\$	57,053,969	8
9.	Environmental Impairment	\$	53,782,190	6
10.	Auto Physical Damage	\$	41,833,663	_
-	SUBTOTAL	\$	2,626,173,820	
-	All Others	\$	142,444,252	
-	TOTAL	\$	2,768,618,072	

E & S TAX

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

2005	\$99,670,251	2002\$47,675,088	
2004	\$93,953,772	2001\$24,674,333	
2003	\$75,495,604	2000\$18,647,436 👑	



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