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DATE: January 23, 2004

TO: All Resident and Non-resident Surplus Lines Licensees

FROM: Kenneth A. Rudert - Executive Director

**SUBJECT: Enforcement Action Prevention**

Periodically, the Pennsylvania Surplus Lines Association Advisory Organization (stamping office) sends out reminders to licensees regarding the various terms and conditions related to the Pennsylvania Surplus Lines Law. It is particularly important at this time, since we are approximately six months into the new environment created by the reciprocity of licensing legislation (Act 147) that was effective June 4, 2003. What follows are a series of items that should be kept in mind with regard to your office relating to surplus lines business placed in Pennsylvania.

#### **A. Individual and Agency Licensing Requirements**

We have noticed that there have been an increasing number of individuals obtaining surplus lines licenses who have not made provision to also license the agency in which they are affiliated. Utilization of an individual surplus lines license alone is only applicable in the case of certain proprietorship type agencies. In the vast majority of cases, however, an individual license is not only required but an appropriate agency license is also required. In the case of non-resident licensees, this requirement in Pennsylvania is notwithstanding any alternative requirements that may apply in your home state. Therefore, whether there are one or more individual surplus lines licensees in an agency, all must function under the single agency license.

Recently, PSLA began the distribution of Licensee and Support Staff Information forms. Although the main purpose of this questionnaire is to help us in coordinating with your office from a contact standpoint, it has also become a means to alert PSLA to the fact that an agency license may also be required.

While on this subject, please keep in mind that if you, the individual surplus lines licensee, have changed employers, it is important to notify the Pennsylvania Insurance Department of this change. Remember that the new agency in question must be properly licensed for surplus lines as well. We suggest that you contact the Pennsylvania Insurance Department Bureau of Producer Services at 717-787-3840 (phone), 717-787-8553 (fax) or [ra-in-producer@state.pa.us](mailto:ra-in-producer@state.pa.us) (email) if you need to pursue these matters.

## **B. Surplus Lines Tax Bond Repealed**

The amendments to the Surplus Lines Law that became effective September 7, 2002, (contained in Act 110) not only made a provision for non-resident surplus lines licensing, but, repealed the former requirement of maintaining an appropriate surplus lines tax bond. Since all surplus lines licenses will renew the end of February we would remind you that you may discontinue the surplus lines tax bond accordingly.

## **C. Surplus Lines Premium Tax Form (RCT-123)**

Each year at this time, PSLA reminds all licensees that the collected 3% surplus lines premium tax that you have collected during calendar year 2003 is due and payable to the Pennsylvania Department of Revenue by January 31, 2004. The 3% surplus lines tax is calculated on the Pennsylvania portion of the gross premium (Pennsylvania, like most states, is an allocation state).

This year, we have had numerous inquires trying to locate this year's version of the RCT-123 used for payment of taxes by surplus lines licensees. For your convenience we have provided a link to the Department of Revenue's web site that can be reached from the PSLA web site [www.pasla.org](http://www.pasla.org). If you click on "Forms" then scroll down to "Reporting Forms" and then click on the "RCT-123 Annual Tax Form" you will be able to print a copy of this form.

Note: As a further reminder the surplus lines law requires that each surplus lines licensee (agency) file a complete copy of the RCT-123 with the Pennsylvania Surplus Lines Association so that we may report the appropriate production numbers to the Pennsylvania Insurance Department.

## **D. Courtesy Filings**

PSLA reminds all surplus lines licensees that in Pennsylvania courtesy filings have always been and continue to be illegal. We have some concern that some new (and even existent) surplus lines licensees have taken the position that since they now hold a license, this enables them to have their branch office within the Commonwealth of Pennsylvania make the surplus lines filing for them. This is incorrect and will create a very bad situation for both parties. The purpose of obtaining a license (resident or non-resident) is for the licensee that conducted the transaction to make the appropriate filing in compliance with the surplus lines law and its supporting regulations. If you (and your agency) made the surplus lines placement for a Pennsylvania insured, you make the filing, not someone else. We have seen this very important point overlooked with often severe consequences.

## **E. Independently Procured Surplus Lines Insurance**

Like most states, the Pennsylvania Surplus Lines Law has a provision for the payment of surplus lines premium tax directly by the insured to the Pennsylvania Department of Revenue when the insured has secured coverage independent of any licensee. (Please refer to Section 1622 of the Surplus Lines Law - this can be obtained on the PSLA web site, [www.pasla.org](http://www.pasla.org).) We have concern that this provision is utilized as a means to bypass the surplus lines filing process. This has proven to be an unwise option for the surplus lines licensee and particularly unwise for the entity with no surplus lines license at all.

We trust that these points of interest will be helpful to you in your day-to-day processing of surplus lines business in the Commonwealth of Pennsylvania. Should you need further explanation or details regarding any of these items outlined in this Bulletin or any other questions that you might have, please do not hesitate to access our web site or contact us by telephone.

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