

PSLA News

NEWSLETTER FOR THE PENNSYLVANIA SURPLUS LINES ASSOCIATION

PSLA Membership Division

Dues notices for 2010 were mailed in December. PSLA is aware of the difficult economic times in which we live and PSLA Membership Division dues have remained at the same amount for the previous five years.

2010 Member Dues:

Full	\$225
Branch	\$100
Associate Supporting	\$125

This is the time of year we look back and think about our accomplishments for the year and the goals and objectives we want to reach in the coming year.

Membership in PSLA provides the following benefits:

Continuing Education

During 2009, PSLA offered six continuing education classes attended by over 80 people. Two of these classes were presented at the Annual Meeting in April, and four classes were given during the year at various locations. The Membership Division strives

to present courses that are of particular interest to its members. PSLA members pay a discounted rate of \$75 for each 3-hour class.

For 2010 we will again offer four three hour classes and additional classes at the Annual Meeting in April at the Desmond Hotel. Please note, we are currently developing a specific Surplus Lines course.

Annual Meeting

The 2009 Annual in Gettysburg was a great success. Speakers incorporated the Battle of Gettysburg in their attention grabbing speeches about leadership and motivation.

The 2010 Annual Meeting will be held in April at the Desmond Hotel. An exciting program is being put together for you, and we hope you will take advantage of all that is offered at this meeting.

Newsletters

Periodic newsletters provide you with relevant information.

NAIC 2009 Fall National Meeting

The Surplus Lines Task Force met on December 7th. At the meeting the Task Force:

» Received and discussed a summary regarding the surplus lines license exemption survey. The survey was created to gauge states' opinions regarding a possible extension of the non-resident licensing exemption for multi-state risks to apply to surplus lines producers. The Task Force agreed to provide the summary to the Producer Licensing Working Group and the National Association of Registered Agents and Brokers Working Group.

» Heard a summary on eight responses from Task Force members regarding a survey requesting feedback on methods for achieving goals of the Non

admitted and Reinsurance Reform Act - H.R. 2571 (NRRRA-Title I). The Task Force noted that based on the limited survey responses, there appeared to be little consensus among the states regarding how to implement this proposed national legislation.

» Heard comments from interested parties requesting that the Task Force engage in discussions regarding a compact. Task Force members and NAIC staff highlighted existing efforts already being analyzed by the Task Force and the Multi-State Surplus Lines Premium Tax Working Group regarding uniform processes, and these initiatives did not necessarily require a compact.

2010 Annual Meeting Mark Your Calendars



Final planning is underway for an informative 2010 Annual Meeting on April 28-29, 2010 at the Desmond Hotel located in suburban Philadelphia. This hotel will provide a terrific venue for our meeting and is convenient to many regional attractions, such as Valley Forge National Park, Longwood Gardens, the QVC Studio Tour, and the King of Prussia Mall, to name a few. Go to www.desmondgv.com to learn more about this facility.

Although not finalized, we are working on presenting a class on using social networking in your business.



Federal Update

On December 11th the House passed the Regulatory Reform Package, known as The Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173).

Companion legislation is tracking in the Senate Banking, Housing and Urban Affairs Committee.

Provisions in the Regulatory Reform Package affect surplus lines. Included in this broad regulatory reform package are provisions which are identical to the Nonadmitted and Reinsurance Reform Act of 2009 (NRRRA) which the House passed earlier this year.

The NRRRA provisions will give the surplus lines licensee the answer to the often difficult question of which states are to be paid premium taxes in connection with a multi-state risk placement. Rather than having to calculate the amount of taxes which are to

be allocated and paid to numerous states, this bill requires that only the insured's home state may require payment of all premium taxes in the transaction.

The bill further states that the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state.

The bill says the states may (but are not required) enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's home state. More information about projects involved in the allocation of taxes among the states is found under the NAIC section of this Newsletter.

The Regulatory Reform Package also contains provisions which create the Federal Insurance Office (FIO). The FIO would be a national insurance information agency with some authority in the area of international insurance agreements.

The new federal office would not have any regulatory authority over the business of insurance and would not be able to override state insurance laws.

The bill contains specific language that the bill does not establish a supervisory or regulatory authority over the business of insurance and bars the FIO from pre-empting state insurance laws governing rates, premiums, coverage requirements, antitrust laws, underwriting or sales practices.

Around the States

» Pennsylvania - Termination of Insurance Agency's Commissions

The Pennsylvania Department of Insurance has determined in a decision in December 2009 that a carrier's reduction of an insurance agency's compensation to zero is an act of termination and illegal under state law.

Beginning in July of 2006, ECM Insurance Group said it would reduce the commission of H.N. Fishel & Associates, Inc. from agreed upon 13 to 25 percent to zero over a three year period.

The company said the agency did not reach commission or loss ratio goals over that period of time, and the reduction in commission was a consequence. However, the company did not reduce commissions immediately, and it was not until May 2009 that the company actually stopped paying commissions.

Under Pennsylvania law, a company must first attempt to rehabilitate an agency before it can terminate the agency's contract. It also must give legitimate reasons for the move.

Insurance Commissioner Ario ruled that the action of reducing the agency's commission to zero was an act of termination and ordered the company to restore the agency's commission payments.

The ruling that ECM's action against Fishel amounted to a termination means that ECM must comply with the requirements of Pennsylvania Act 143 if it wants to

terminate Fishel. The law mandates that an insurance company make "a reasonable attempt to rehabilitate an agency if the agency agreement is terminated for adverse experience, mix of business or lack of premium volume," according to the PID ruling. ECM may appeal the ruling to Pennsylvania Commonwealth Court.

» California

In September 2009, a California court ruled surplus lines insurers would not be taxed both as surplus lines and as admitted insurers in California. In *Silvers v. State Board of Equalization, et al.* the judge rejected the plaintiff's contention that surplus lines carriers with California insureds were required to pay a tax on gross premiums written in addition to the surplus lines premium tax.

Plaintiffs sought a judicial declaration that Lexington Insurance Company had been doing business in California and was therefore subject to the annual gross premium tax under the California Constitution. Plaintiffs asserted that Lexington is "doing business" in California when it issues surplus line policies on California risks through licensed surplus lines brokers, and adjusts, investigates and defends against claims made under those policies in California.

Lexington asserted that the legislative history and intent establish that activities of a licensed surplus lines broker do not make the insurer subject to the Constitutional "doing business" tax and the legislative

history and case law establish that the surplus lines premium tax is in lieu of, not in addition to, the Constitutional tax.

The Court held that the Constitutional tax only applies to admitted insurers doing business in California and does not apply to surplus lines insurers.

» Florida

In June 2009, Florida Gov. Charlie Crist signed into law **HB 853**, which clarifies the surplus lines industry's status regarding forms and policy regulation that was challenged by the Florida Supreme Court's ruling in 2008 in the *Essex v. Zota* opinion.

The Bill restores the industry's exemption from regulation of surplus lines forms and policies that was put into question by the court ruling which said that surplus lines was only exempt from the rating section of Chapter 627 of Florida's statute (Insurance Rates and Contracts), but was subject to the chapter's other provisions.

The Florida Legislature, however, has now clarified the exemption for surplus lines insurers by providing that the provisions of Chapter 627 do not apply to surplus lines insurers unless a statutory section in Chapter 627 specifically states otherwise. The legislation applies retroactively to October 1, 1988, the effective date of the bill enacted in 1988 which added the surplus lines exemption to the statute.

Pennsylvania Insurance Department Enforcement Actions

- An individual who held an active PA resident producer's license and another producer posed as a policyholder in order to obtain confidential information from an insurance company. The policyholder was not harmed as the result of this activity. The resident producer agreed in a Consent Order to a \$5,000 penalty, five-year license supervision and full cooperation on related investigations for posing as a policyholder in order to obtain confidential information from an insurance company.
- An individual who owned, and was the designated licensee, of an insurance agency failed to adequately supervise an employee who committed theft, failed to mitigate the theft by protecting client accounts, and allowed the employee to solicit business after the employee's license was surrendered. The individual agreed to a license revocation, claims liability, and a \$120,000 fine.

Pennsylvania Insurance Department Information

In November, the Pennsylvania Insurance Department issued an update to its Eligible Surplus Lines Insurer List. You can obtain this update by clicking on the following link, [Eligible Surplus Lines Insurer List Update](#) (also on the PSLA website (www.pasla.org) under Eligible List), scrolling down and clicking on the

[2009 Eligible List Update - August to December 2009 link.](#)

You can find also find information about kinds, classes, and export lists on the PSLA website under Kinds / Classes / Export Lists.

PSLA Continuing Education

PSLA is committed to providing CE courses which give our members valuable information to assist them in their business.

During 2009 the PSLA presented classes on:

- Errors & Omissions and Producer Standards of Conduct
- Insurance Ethics
- Dram Shop Liability
- Cyber Insurance-Managing Cyber Risk
- Indemnification and Additional Insured Issues

In 2010 PSLA will present CE classes in February, April (Annual Meeting), June, September, and November. Information about the specific courses and dates will be circulated shortly and will be found on the PSLA website (www.pasla.org).

» CE at your office

In 2009 PSLA began presenting CE classes via web conference. The instructor is located at the PSLA's office in Exton and the presentation is shown via web conference at various locations, both within and outside of Pennsylvania. Attendees have given very favorable evaluations to our instructors and to the web conference format.

PSLA can make CE available to you in the comfort of your office. For more information, please call Paul Spector at (610) 225-2639 or e-mail him at MemberServices@pasla.org.

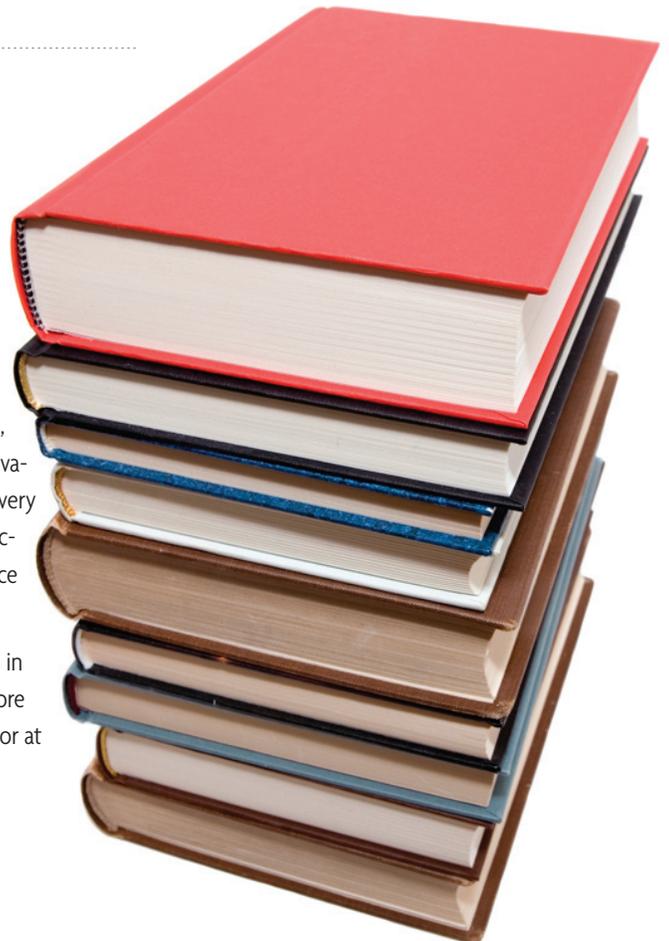
Stamping Office News

Montana CSI to assume stamping office functions.

The Montana State Auditor and Commissioner of Insurance revised its rules, effective July 1, 2009, to provide that the Montana Commissioner of Securities and Insurance will review and process surplus lines insurance submissions, determine applicable stamping fees owed, and send surplus lines agents tax and fee statements.

All of these functions were previously performed by the Montana Surplus Lines Agents Association (MSLAA).

The Montana Insurance Department held a hearing on August 21, 2009 at which time various parties testified in opposition to this action.



Technology News

» Combating Teen Age Drivers Texting & Using Cell Phones While Driving

A company has come up with an idea for a smart phone application that prevents drivers from talking on the phone and texting while driving. Illume Software released the application iZUP on December 15th.

The application iZUP uses GPS technology to detect a car's speed. If a car is traveling over 5 miles per hour, the application sends incoming calls to voice mail and holds text messages. It also blocks outgoing text messages and calls, except emergency 911 calls.

Account holders have the option of entering authorized phone numbers, such as parents' cell



phone numbers, that the driver can both call and receive calls from while en route.

The application is teenager tamper proof, according to Illume Software. It is difficult to improperly uninstall, and if it is successfully uninstalled, the account holder

will immediately receive an e-mail alert.

The application is only available at the moment for Blackberry and handsets that run on Windows Mobile and Android operating software. The application can be found at www.getizup.com.

» Social Media Use Lags With Agents & Brokers, AAB Survey Finds

Twenty percent of agents and brokers in a reader poll said they are considering using social networking for marketing, but less than 25 percent currently employ it according to an exclusive American Agent & Broker survey.

Published in AA&B's December issue on Internet marketing, the survey suggests that although agents may still be holding back from full involvement in social media, interest is strong in reaching customers through other Web methods.



The online survey, which was conducted in October and November, included more than 600 participants of all sizes and locations. The questions focused on what types of Internet marketing methods users were currently employing, from basic Web sites to Twitter and Facebook.

In general, the responses suggest that although most agents and brokers are actively using more traditional Internet methods, they have been slower to get involved in more cutting-edge practices.

To read more on internet marketing, read the article in American Agent & Broker online magazine by [clicking here](#).

New PSLA Logo

The PSLA is proud to unveil its new logo



PENNSYLVANIATM
SURPLUS LINES ASSOCIATION