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Lone Star Lines

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82nd Texas Legislature Update

by Alex Gonzales, Winstead PC, representing SLSOT as general counsel

Facing an unprecedented $27 billion revenue deficit, when the 82nd Texas Legislature convened in January of this year, the main focus was reforming the state's budget. Other contentious issues confronted by the 82nd Legislature included congressional and legislative redistricting, voter identification, abortion sonograms, and eminent domain. In the midst of all this, the Legislature managed to consider several pieces of legislation related to the regulation of insurance in Texas, including several bills directly affecting the surplus lines industry.

After nearly dooming the Texas Department of Insurance (TDI) and several other state agencies by failing to pass sunset legislation in 2009, the Legislature this year was resolute to enroll legislation continuing the Department and other state insurance agencies subject to sunset review. Through HB 1951, SB 647, HB 2605, and HB 1774, the Legislature continued the existence of TDI, the Office of Public Insurance Counsel, the Division of Workers' Compensation, and the Office of Injured Employee Counsel (OIEC), respectively.

Included in these bills were several revisions to the agencies' operations in response to recommendations by the Sunset Advisory Committee. For example, each of the agencies is obligated under the legislation to develop policies regarding alternative dispute resolution. Also, both TDI and OIEC are required to implement policies to encourage negotiated rulemaking. Notably, HB 1951 adds to TDI's statutory duties the responsibilities to "protect and ensure the fair treatment of consumers" and to "ensure fair competition in the insurance industry in order to foster a competitive market."

Another insurance entity to undergo substantial reform at the hands of the Legislature was the Texas Windstorm Insurance Association (TWIA), the entity created by the Legislature in 1971 to provide basic wind and hail coverage to coastal property owners when such coverage is excluded from homeowners and other property policies. Calls for reform of TWIA followed Hurricane Ike in 2008 which resulted in the depletion of TWIA's financial resources and significant litigation against TWIA.

In the special session, the Legislature passed HB 3, which makes numerous statutory amendments focused primarily on guaranteeing TWIA's financial ability to pay claims. To

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increase funding, the bill allows TWIA to issue pre-event bonds. To decrease litigation costs, the bill shortens the time in which policyholders may bring claims and limits the damages that may be sought. The bill also makes several changes intended to promote the transparency and integrity of TWIA.

Many other bills relating to the regulation of private insurance carriers and professionals were enrolled this session. SB 1431 makes significant revisions to the regulation of insurance holding companies, and SB 1433 incorporates changes mandated by recent federal legislation to insurance receivership. In the property and casualty sector, HB 1951 reforms the process for filing and approval of premium rates, and SB 425 restricts the use and content of certificates of insurance. Related to title insurance, HB 2408 revises the licensing and appointment procedures for title insurance agents and escrow officers, in addition to streamlining the ratemaking process.

The vast majority of enrolled health insurance bills relate to coverage. For example, two bills were passed that include health coverage mandates – one for anticancer medication and the other for breast cancer screening. One of the most significant health insurance bills, SB 7 of the special session, makes significant revisions to the state Medicaid program. None of the bills filed in response to the passage of federal health care reform passed.

Significantly, the Legislature passed a few bills directly related to surplus lines insurance. One such bill, SB 1806, was prompted by TDI's recent rise in enforcement against surplus lines agents for filing policies past the statutory deadline. In lieu of formal enforcement proceedings and significant administrative penalties, the bill establishes a nominal fee to be assessed against agents for late filings. Specifically, it permits the Insurance Commissioner to assess a fee against a surplus lines agent who files a policy past the statutory deadline. The amount of the fee ranges from $50 to $200 depending on how late the policy is filed and on what percent of the agent's filings in the preceding calendar year were late. The bill further restricts the Commissioner's authority to bring formal enforcement for late filings in only limited circumstances.

While the Legislature failed to pass a bill implementing all of the statutory changes mandated by the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), the Legislature included in SB 1 of the special session statutory revisions implementing the NRRA's tax provisions. Article 16 of SB 1 limits the taxation of surplus lines insurance and independently procured insurance to premiums paid for insurance transactions in which Texas is the "home state" of the insured. For any policy in which Texas is the home state, the premium tax is computed on the entire portion of the policy premium.

The Legislature also declined to pass legislation that would enter Texas into the Surplus Lines Insurance Multistate Compliance Compact (SLIMPACT) or any other similar interstate agreement to apportion surplus lines taxes pursuant to the NRRA. However, SB 1 provides that if the Comptroller by rule enters Texas into an agreement or compact with another state for the allocation of surplus lines tax, the premium tax on multi-state policies must be allocated and reported according to such agreement or compact. Regardless of whether Texas enters an agreement or compact with other states, the Comptroller is authorized by SB 1 to adopt rules to establish an alternate basis for taxation of multi-state and single-state policies "for the purpose of achieving uniformity."

Also related to the taxation of surplus lines insurance, HB 3410 addresses the issue of which agent is responsible for collecting, reporting, and paying taxes in a surplus lines transaction involving two surplus lines agents – one who exercises underwriting authority for the insurer and one who is the broker interacting with the insured. Under TDI's current rules, the "surplus lines agent of record," which, for purposes of a multi-agent transaction, is defined as the Texas agent closest to the insurer, is responsible for paying the premium tax and filing the policy with the Stamping Office. HB 3410 supersedes this rule and, effective January 1, 2012, obligates the producing agent in a multi-agent transaction to collect, report, and pay the surplus lines premium tax. The managing underwriter will be responsible for maintaining appropriate records of the transaction and making the records available for inspection by TDI and the Comptroller.

Not surprisingly, the insurance industry continues to undergo significant changes at the hands of the Legislature. The surplus lines market, in particular, saw many changes this session and will likely experience many more as the questions left unanswered by the NRRA are resolved in the coming months. ★

SAVE THE DATE!

In an effort to simplify implementation of the Nonadmitted & Reinsurance Reform Act (NRRA) provisions incorporated into Texas insurance law, we are presenting two agent seminars in October to discuss those provisions that affect you and filing procedures – as we currently know them. Seminars will address filing with the SLSOT (both through our Electronic Filing System (EFS) and paper filings) when Texas is the Home State and a new requirement for providing a breakdown of all the states on multi-state risks. Representatives from the Texas Department of Insurance and the Texas Comptroller's Office will also review additional regulatory and tax issues.

The SLSOT agent seminars will be held in Houston on October 6 and Arlington on October 28. Please watch for SLSOT e-bulletins as well as "Hot News" on our website, www.slsot.org, for times and registration details. ★

EFS Quick Tips

Electronic Policy Filing

- If your agency writes multi-state policies, please contact the EFS Help Desk to discuss the revised filing procedures due to the Nonadmitted & Reinsurance Reform Act (NRRA).
- The EFS Help Desk can assist you with a multitude of questions and procedures regarding surplus lines transactions; however, there are some things that we cannot do. There are some pieces of information that we simply cannot provide for you, such as the "correct" company name, policy number, policy or endorsement dates, etc. If you do not know or have access to this information, you cannot call the Help Desk and get it. This information comes from your agency, not our office.
- When entering cancellations (or any endorsement with return premium) you are required to enter the negative sign. We do not assume that a cancellation is return premium.
- When communicating with our office regarding our EFS Data Validation request/results, please include your agent or agency name, surplus lines license ID, and data validation number (four digit number in parenthesis). This information helps us identify your agency's EFS Data Validation series. ★

Helpful Hints

Paper Policy Filing

- Sec.15.13 states "No report required to be filed under the Texas Insurance Code or these sections relating to surplus lines insurance shall be deemed filed with the department or the stamping office unless the documents submitted are correctly completed".
- Reconcile your reports and look for errors. If you file by paper, notify us of any errors as quickly as possible; do not wait. If you discover transactions listed on the monthly late filing report that you believe appear in error, please contact us at once. Please call Veronica Bohannon at (512) 225-1856 or email vbohannon@slsot.org with questions regarding these reports. ★

Locations

Houston, Texas
October 6, 2011
Omni Hotel
9:00 a.m.

Arlington, Texas
October 28, 2011
Arlington Convention Center
9:00 a.m.

Course Topics

- Implementation of the NRRA in Texas
- Surplus Lines Laws from the 82nd Legislature
- Updates on Additional Regulatory & Tax Issues

Registration

An E-Bulletin will be distributed in September with instructions on how to register. You can also check Hot News & the Education Link at www.slsot.org for additional information as it becomes available.

Comparison of SLSOT Premium Processed by Line of Business

Annual Statement Line of Business	Premium through 7/31/2011	Premium through 7/31/2010	Percent Change
1 Fire (including allied lines)	$526,370,694	$561,489,926	-6.25%
2 Allied lines	$34,050,488	$26,714,281	27.46%
3 Farmowners multiple peril	$531,001	$692,478	-23.32%
4 Homeowners multiple peril	$61,371,961	$55,802,248	9.98%
5 Commercial multiple peril	$131,519,280	$73,566,588	78.78%
8 Ocean marine	$13,078,754	$9,728,844	34.43%
9 Inland marine	$27,933,725	$34,807,136	-19.75%
11 Medical malpractice	$29,230,512	$28,189,280	3.69%
12 Earthquake	$16,280	($62,968)	125.85%
13 Group accident & health	$40,176,043	$48,859,253	-17.77%
15 All other A&H	$2,899,987	$2,728,037	6.30%
17 Other liability	$771,441,580	$793,701,200	-2.80%
18 Products liability	$13,896,642	$11,426,214	21.62%
19.2 Other private passenger auto liability	$0	$2,161	-100.00%
19.4 Other commercial auto liability	$44,999,884	$40,641,851	10.72%
21.1 Private passenger auto physical	$1,618,558	$1,401,777	15.46%
21.2 Commercial auto physical damage	$22,626,496	$37,855,296	-40.23%
22 Aircraft (all perils)	$3,215,486	$3,382,138	-4.93%
23 Fidelity	$1,099,468	$1,904,880	-42.28%
24 Surety	$163,216	$359,555	-54.61%
26 Burglary & theft	$3,087,547	$1,420,037	117.43%
27 Boiler & machinery	($14,350)	($2,081,328)	99.31%
28 Credit	$125,510,957	$193,295,046	-31.53%
31 Aggregate/other business	$206,040	$392,828	-47.55%
TOTAL	$1,855,030,249	$1,926,216,758	-3.19%

Note: Due to rounding figures may not total

Lone Star Lines

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The "Lone Star Lines" newsletter is published quarterly by the Surplus Lines Stamping Office of Texas for surplus lines agents, companies, and others involved in the surplus lines industry. Previous issues of this newsletter are available on the SLSOT website.

The Lone Star Lines staff includes Phil Ballinger, CPCU, ASLI; Dalén Keith, CIW; Elaine White, ASLI; and Brian Wilds, CPA, ASLI.

We invite readers to suggest topics for articles that may be of interest to others.