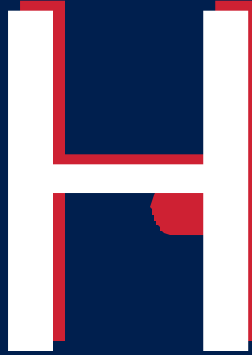


Lone Star Lines

The Quarterly Publication of the Surplus Lines Stamping Office of Texas



INSIDE :

SLSOT Officers
Elected During
Annual Meeting
page 2

Employee News
page 2

From the
EFS Help Desk
page 2

2003 Summary
Statistics for U.S.
Stamping Offices
page 3

Save-A-Tree
page 3

Helpful Hints
page 3

Premium
Comparison
page 4

Diligent Effort

by Phil Ballinger, CPCU, ASLI, General Manager

Each surplus lines agent has a statutory duty to make a "diligent effort" to first place insurance coverage in the admitted market.

Under Section 981.004 of the Insurance Code, surplus lines insurance can only be procured from an eligible surplus lines insurer if "the full amount of required insurance cannot be obtained, after a diligent effort, from an insurer authorized to write and actually writing that kind and class of insurance in this state".

However, there is no pat legal definition of what constitutes diligent effort in Texas. Each case is considered by Texas regulators or courts in accordance with its specific facts and circumstances. Texas law is thus more nebulous than that found in many other states, which commonly call for a declination from at least three licensed

carriers before export. As with the other technical requirements of Texas' surplus lines law, such as the payment of taxes and display of the guaranty fund disclaimer, the diligent effort obligation is "highly regulatory and must be strictly complied with." (*First Bank & Trust of Groves v Kraehnke 1987*)

Diligent effort remains a concern of all surplus lines agents for the following reasons:

1. Many agencies do not themselves have admitted markets. Because a surplus lines transaction implies many negatives for retail agents, including commission sharing, some loss of control regarding the procurement, incomplete knowledge of coverages provided, etc., it is widely assumed the sheer fact the risk has

continued, Diligent, page 2

TEXAS LEGISLATURE

Governor Perry Calls Special Session

Governor Rick Perry has called a special session of the Texas Legislature to reconfigure the state's system of public school finance. The session convened on April 20, 2004. The governor has proposed a shift away from the reliance on local property taxes as the primary means for funding schools. His plan includes capping both property tax rates and annual residential property appraisal increases, as well as moving business property from local district tax bases to a state property tax base.

For such a plan to succeed, significant additional sources of revenue

would be needed. Various proposals to date include taxing of video lotteries, increasing cigarette taxes, implementing a payroll tax to replace the franchise tax, and increasing the sales tax rate and eliminating certain exemptions. However, the Legislature will undoubtedly also need to review existing tax rates and exemptions for many other types of taxes, given the magnitude of revenue required to truly overhaul the system for funding public education. Ultimately, insurance taxes and fees could come under this scrutiny. H

been brought to the surplus lines agent is de facto proof of diligent effort. Nonetheless, since 1967 it is the surplus lines agent that has held this statutory responsibility. Some surplus lines agencies take the reasonable step of maintaining documentation from retail agents in their contract files identifying the reason for each risk's export. Of note, Texas Department of Insurance (TDI) regulations state "no surplus lines

agent or agency shall shift, transfer, delegate, or assign his or her responsibility to a person or persons not licensed as a surplus lines agent". (28 TAC Sec. 15.6(d))

adhering to diligent effort requirements is a direct threat to the entire market's fundamental freedom from rate and form regulation.

New Officers Elected During Annual Meeting

The following directors were elected as officers of the 2004 SLSOT Board of Directors during the Annual Meeting held March 23rd in Austin at the Surplus Lines Stamping Office of Texas:

Ted Hosterman, Chairman
Heath Insurance Brokers
Dallas, Texas

Terry McGarrity, Vice-Chairman
El Paso, Texas

Dan Whitt, Secretary
CRC Insurance Services, Inc.
Dallas, Texas

2. Texas case law is sparse regarding the interpretation of the diligent effort requirement, in major part because lawsuits alleging a failure to pursue a diligent effort to procure coverage in the admitted market also typically turn on the agent's failure to meet other statutory requirements that are easier to prove. The case often cited, *First Bank & Trust of Groves v Kraehnke*, was really an unauthorized insurance case, with the appeals court telling us that failure to make any diligent effort whatsoever is not legally sufficient, which we could probably have surmised on our own.

3. It is notably with program business that there is potential conflict with state diligent effort laws. Particularly in the case of personal lines, mass writing is susceptible to allegations of unfair competition with licensed carriers. While such accusations are largely anecdotal, they are easily made but less readily refuted. Ultimately, carelessness by a few agents in

4. Historically, substantive differences in policy coverage or limits between a licensed insurer and a surplus lines insurer have been deemed a legitimate cause for export. In conflict with this interpretation is a very old (1954) Attorney General's opinion, which states, "To construe (the surplus lines law) to mean that insurance may be taken out with a nonlicensed insurer merely because the insured cannot secure a certain type of policy from a licensed insurer, which it is prohibited from issuing under the Texas law, would defeat the purpose of (the surplus lines law) and other provisions of the Insurance Code."

5. Market conduct exams of surplus lines agencies in Texas are rare and typically prompted by specific complaints or significant market disruptions. However, in the event an agency faces an exam, TDI expects validation of diligent effort to be readily available. A word to the wise: **document, document, document.** H

Employee News

The Stamping Office welcomed Rachel Harrison and Matthew Ramirez as new employees this quarter. Both are employed as Data Entry Clerks in our Data Services Department.



Harrison



Ramirez

We also congratulate Cheyenne Norment on her promotion to EFS Help Desk Specialist II, and Veronica Valdez who was promoted to the new position of Data Services Supervisor. H

From the EFS Help Desk:

Almost every call starts out with a voice saying, "I hate to bother you...". As EFS Help Desk Specialists, we cheerfully respond that this is our job and we are more than happy to help you with any sort of question you have, even if you have asked before. We would prefer you take a few minutes at the beginning to get clarification, rather than hours at the end "cleaning-up" because of an incorrect guess. We have seen from experience that these incorrect guesses can snowball and, with repeated use, become a nightmare to sort out and correct. Please don't think you are a bother to us. Your problems are our problems.

Help Desk Specialists Cheyenne Norment and Janet Kantor are available to assist you with EFS filings Monday-Friday (Central time) from 8:00 a.m. to 5:00 p.m. Their toll-free number is (800) 681-5848. H



2003 Summary Statistics for U.S. Stamping Offices

STATE	2004 Rates		Premium (millions)		% Chg	Items		% Chg	
	Stamping Fee	Surplus Lines Tax	2003	2002		2003	2002		
Arizona	0.25%	3.00%	\$395.3	\$325.6	21.4%	39,258	31,862	23.2%	
	New stamping fee rate effective July 1, 2004								
California	0.225%	3.00%	\$5,098.9	\$3,563.2	43.1%	371,689	331,835	12.0%	
	New stamping fee rate effective Jan. 1, 2004								
Colorado	0.10%	3.00%	\$470.3	\$335.0	40.4%	43,729	32,168	35.9%	
	New stamping fee rate effective Jan. 1, 2004								
Florida	0.25%	5.00%	\$2,821.6	\$2,229.5	26.6%	1,214,025	1,269,292	-4.4%	
	New service fee rate effective April 1, 2004								
Idaho	0.50%	2.75%	\$57.4	\$35.4	62.1%	12,231	10,471	16.8%	
Illinois	0.30%	3.50%	\$815.0	\$511.1	59.5%	92,662	72,279	28.2%	
Mississippi	0.25%	4.00%	\$233.7	\$160.6	45.5%	59,803	54,969	8.8%	
Montana	1.00%	2.75%	\$36.8	\$30.4	21.1%	8,419	6,789	24.0%	
Nevada	0.50%	3.50%	\$220.2	\$173.2	27.1%	16,906	12,685	33.3%	
	Fee subject to \$25 minimum; no fee on endorsements								
New York	0.40%	3.60%	\$2,540.5	\$1,467.1	73.2%	158,770	113,018	40.5%	
	Certain add'l. fees apply for late filing, cancel., etc.								
Oregon	0.35%	2.00%	\$238.1	\$173.3	37.4%	30,417	24,427	24.5%	
	Certain minimum fees apply for return premiums, etc.								
Pennsylvania	\$ 15.00	3.00%	\$707.3	\$646.9	9.3%	102,947	124,792	-17.5%	
	Flat stamping fee rate of \$15 per original filing								
Texas	0.10%	4.85%	\$2,945.5	\$2,506.2	17.5%	928,743	831,001	11.8%	
Utah	0.25%	4.25%	\$135.9	\$106.2	28.0%	13,163	11,613	13.3%	
Washington	0.40%	2.00%	\$621.5	\$407.2	52.6%	103,728	87,833	18.1%	
TOTAL		\$	17,338.0	\$	12,670.9	36.8%	3,196,490	3,015,034	6.0%

Gross premium reported in NY (calendar year).

TX data excludes \$270.0 mil. in "other state" & \$180.9 mil. in "tax exempt" premium.

Data includes the following in IP premium: CO: \$26.8 million, FL: \$417.1 million

Items include certain non-premium filings in IL, NV, & TX

Prepared by Surplus Lines Stamping Office of Texas

----- Save-A-Tree -----

File your policies electronically with the SLSOTElectronic Filing System (EFS) and put an end to all copying and mailing of paper copies of policies to our office.

Call the EFS Help Desk Toll-free at (800) 681-5848 to help you register For this Service Today!

Helpful Hints

- n** Please complete the Transmittal and Verification Slip with the License ID and name just as they are shown on your Surplus Lines license. Do not use a dba if it is not on file with the Texas Department of Insurance.
- n** Late Tag Notices will not have a copy of the item attached. The original item is returned to you along with the tag when it is first issued.
- n** Be sure policies, binders, and cover notes show the complete name of the insurance company, just as it is listed on the Surplus Lines Insurers List. **H**



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 Surplus Lines Stamping Office of Texas
 P.O. Box 160170
 Austin, Texas 78716-0160

Presorted Standard
 U.S. Postage
 PAID
 Austin, Texas
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Return Service Requested

Comparison of SLSOT Premium Processed by Line of Business

Annual Statement Line of Business	Premium through 3/31/04	Premium through 3/31/03	Percent Change
1 Fire (incl. allied lines)	\$195,587,010	\$181,181,849	8.0%
2 Allied lines	\$8,857,312	\$6,453,092	37.3%
3 Farmowners multiple peril	\$489,159	\$342,913	42.7%
4 Homeowners multiple peril	\$36,083,558	\$39,175,766	-7.9%
5 Commercial multiple peril	\$18,306,859	\$19,626,667	-6.7%
8 Ocean marine	\$980,403	\$1,542,991	-36.5%
9 Inland marine	\$18,507,017	\$12,204,871	51.6%
11 Medical malpractice	\$30,749,486	\$8,778,128	250.3%
12 Earthquake	(\$11,461)	\$100	-11561.0%
13 Group accident & health	\$27,537,718	\$30,963,444	-11.1%
15 All other A&H	\$324,658	\$7,666	4135.0%
17 Other liability	\$431,941,597	\$294,946,422	46.4%
18 Products liability	\$12,734,581	\$10,042,211	26.8%
19.2 Other priv pass auto lia	\$6,439	\$2,252	185.9%
19.4 Other comm. auto liab	\$34,338,201	\$23,221,400	47.9%
21.1 Priv pass auto physical	\$401,354	\$230,398	74.2%
21.2 Comm auto phys.damage	\$20,529,378	\$18,853,626	8.9%
22 Aircraft (all perils)	\$3,937,169	\$1,153,793	241.2%
23 Fidelity	\$794,368	\$535,465	48.4%
26 Burglary & theft	\$483,098	\$116,195	315.8%
27 Boiler & machinery	\$122,033	\$8,542	1328.6%
28 Credit	\$24,016,150	\$14,326,257	67.6%
31 Aggregate/other business	\$2,235,041	\$74,124	2915.3%
TOTAL	\$868,951,128	\$663,788,172	30.9%

Note: Due to rounding figures may not total

Updated monthly premium totals can be found on-line at www.slsot.org/premium.htm

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The "Lone Star Lines" is published quarterly by the Surplus Lines Stamping Office of Texas for surplus lines agents, companies, and others involved in surplus lines business.

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We invite readers to suggest topics for articles that may be of interest to others. Any submissions or inquiries should be sent to the following address:

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