AGENDA

Thursday, October 5
Kimpton Hotel Monaco Pittsburgh

3:00 p.m.   Registration – First Floor Rotunda
6:00 p.m.   Cocktail Reception – Rialto Suite/Emperor Rooftop
7:15 p.m.   Dinner – Sofia Ballroom

Friday, October 6
Kimpton Hotel Monaco Pittsburgh

7:00 a.m.   Breakfast Buffet and Pick-Up Badge – Sofia Foyer
8:00 a.m.   Welcome & Antitrust Admonition – Sofia Ballroom
             Marie Rudert, Host, Pennsylvania Surplus Lines Association
8:05 a.m.   State Updates
             State Stamping Offices and Surplus Line Associations
             David Kodama, PCI
             Pam Young, AIA
             John Meetz, WSIA
             Federal Updates
             Bob Woody, PCI
             Keri Kish, WSIA

10:15 a.m.  Break

10:30 a.m.  U.S. Policy and Broker Fees
             Liza Smith, Brown and Riding
             Joel Hopkins, Saul Ewing Arnstein & Lehr LLP

11:30 a.m.  Other Presentations
             CA Activity Restrictions – Nicole Zayac, Michelman & Robinson
             Political Update – Cliston Brown, SLA California
             Other

12:00 p.m.  Hot Topics - Audience

12:15 p.m.  Spring 2017 Surplus Lines Law Group Preview
             Norma Essary, SLTX

12:30 p.m.  Adjourn to Lunch – Sofia Foyer
ANTITRUST ADMONITION

This seminar is intended to inform participants about current developments in the law regarding surplus lines insurance related topics. All persons affiliated with the insurance industry need to be mindful of the constraints of the antitrust laws. There shall be no discussions of agreements or concerted actions that may restrain competition. This prohibition includes the exchange of information concerning individual company rates, coverages, market practices, claims settlement practices, or any other competitive aspect of an individual company’s operation. Participants in this seminar shall not discuss the business interests of any individual insurer or others, including but not limited to, the plans of an insurer involving, or the possibility or desirability of:

- Raising, lowering or stabilizing premiums or commissions;
- Doing business or refusing to do business with particular or classes of insurers, reinsurers, agents, brokers or insureds; or
- Acting in any way that would affect the availability of products or services in any market.

Dress for Event
Business causal is appropriate for both days of the meeting

WIFI
Network: Kimpton
Password: PSLA
Arizona: **SB 2139** set up a data matching program for child support withholding orders. The bill which took effect on August 9 initially included surplus lines transactions but was amended to only include insurers “authorized” to transact business in Arizona.

**HB 2279** requires the Department of Insurance to include an assessment of fees in their complaint ratios for motor vehicle insurance policies and amends the circumstances under which certain fees may be charged. For the purposes of this act, insurance maintained by a transportation network company (TNC) driver under a private passenger auto policy would be subject to the new requirements, however all other surplus lines and commercial insurance is exempt from the bill. The bill goes in to effect on August 9.

California: **AB 1641** passed the legislature and is pending the governor’s signature. If signed it would amend the allowable criteria for inclusion of risks on the export list. Risks that have not had time to develop an adequate admitted market would now be eligible for inclusion on the list pending an affirmative declaration by the insurance commissioner. The bill will also automatically add all members of the National Association of Registered Agents and Brokers (NARAB) as members of the state surplus lines advisory organization.

Colorado: **HB 1231** amends statutes related to market conduct examinations by requiring the commissioner to rely upon market conduct examinations of the state of domicile for nonadmitted insurers. The bill takes effect on January 1, 2018.


**HB 7126** provides for the regulation of TNCs and allows surplus lines insurers to cover the required insurance provided that the insurer has at least an A minus credit rating by A.M. Best or an A or similar credit rating by another rating agency approved by the Insurance Commissioner. The bill took effect October 1, 2017.

**HB 7183** amends policy renewal requirements for all insurers including surplus lines insurers. The bill requires insurers to issue a conditional renewal notice to insureds if the insurer intends to renew a policy under terms or conditions less favorable to the insured than provided under the existing policy. Surplus lines insurers were not previously exempt from any cancellation or nonrenewal provisions under Connecticut law. The aforementioned provision took effect October 1, 2017.

Delaware: The Department of Insurance has issued **Surplus Lines Bulletin 21** regarding mandatory use of OPTins for policy transaction reports, premium tax reports and payments by January 1, 2018.

**HB 147** increases filing fees for the initial registration and annual continuation for surplus lines insurers to $150, increases initial filing fee for brokers to $250 and increases resident and nonresident broker renewals to $200. The bill took effect July 3, 2017.
Florida: **HB 191** and **SB 208** were both introduced in January and would have exempted residential commercial property risks from the diligent effort in the same way that other commercial property risks are currently exempted. Similar legislation was presented last year, which failed on a procedural technicality. In addition to the legislation, the Department of Financial Services (DFS), the regulator of agents in Florida, responded to questions from agents regarding appropriate placement of commercial residential risks in the nonadmitted market. The Florida Association of Insurance Agents (FAIA) posted the questions and answers [here](#). Both bills failed to pass in 2017 but will be reintroduced in 2018.

**HB 221** provides for regulation of TNCs while allowing surplus lines insurers to cover the required insurance provided they have a superior, excellent, exceptional, or equivalent financial strength rating from a department approved rating agency. The bill took effect on July 1, 2017.

**HB 359** repeals an exemption of medical malpractice premiums from emergency assessment by the Florida Hurricane Catastrophe Fund. The bill took effect on June 23, 2017.

**HB 805** prohibits the transfer of a policy to an insurer in the same group if the policy is for personal lines residential or commercial residential property coverage and is being converted to a surplus lines policy. The bill became effective on July 1, 2017.

**HB 813** extends the diligent effort exemption for flood insurance that is currently set to expire in July through July 1, 2019, or until the Commissioner determines that an adequate admitted market exists. The bill establishes that the number of declinations necessary to meet the diligent effort requirement shall be no fewer than the number of authorized insurers providing flood insurance. The bill became effective on July 1, 2017.

Indiana: The Indiana Department of Insurance issued [Bulletin 239](#) on May 16 to declare the mandatory use of OPTins for all semi-annual tax filings and payments and all monthly filings going forward. The first mandatory OPTins filing was on August 1, 2017.

Iowa: **HSB 151** would have established standards to allow domestic surplus lines companies in Iowa but it did not pass during the session.

Illinois: **SB 1833** exempts designated Illinois Safety-Net Hospitals, when acting as industrial insureds, from independent procurement taxes and filing requirements. The bill became effective September 22, 2017.

**SB 1286** would alter the tax rate on independently procured nonadmitted insurance 3.5% to 0.5%.

Kansas: ** HB 70** provided for regulation and inspections of amusement park rides. A previous version, **HB 2389**, required that the inspections be paid for by the insurer which raised concerns about insurer liability in the event of an accident but that provision was ultimately removed. The bill took effect on July 1, 2017.

**HB 2118** will allow insurers to exclude liability coverage for services by a health care provider when acting charitably. The bill took effect on July 1, 2017.

Louisiana: **HB 233** requires unauthorized insurers to file evidence from the insurer’s domiciliary jurisdiction showing the types of insurance it may write in that jurisdiction. The bill became effective on July 1, 2017.
HB 503 increases first time surplus lines producer license applicant fee from $75 to $250 and renewal fees from $50 to $350. The bill takes effect on January 1, 2018.

Maryland: SB 19 eliminates the requirement that surplus lines brokers file a zero premium report in periods where they transacted no business. The legislation also reorganizes the statute regarding insurer eligibility but does not add any new requirements to meet the standards. However, it does specifically state that annual renewal for eligibility is due by June 30, as has been required since the implementation of the NRRA per the Commissioner but was not previously part of the statute. The bill took effect on October 1, 2017. The Maryland Insurance Administration proposed a corresponding change to the Code of Maryland Regulations.

SB 94 / HB 800 clarifies that surplus lines brokers are allowed to charge and collect expenses incurred for payment of premium, policy fee, other fees and taxes related to the policy by use of credit card, provided that a broker who accepts alternative forms of payment disclose those alternative forms to the insured. The bill took effect on October 1, 2017.

HB 774 requires the Maryland Insurance Administration to conduct a study to assess the need in the state for short-term medical insurance offered by nonadmitted insurers and to submit a report to the governor on the subject before December 31, 2017. A subsequent bill, HB 123 altered the length of a policy term from 11 months to less than 3 months for short-term medical insurance procured from a nonadmitted insurer and alters the language of the notice that must be provided to the insured. Both bills took effect on June 1, 2017.

Massachusetts: SD 2231 would eliminate the state's requirement to tax home state risks at other states' rates. If the bill takes effect premiums for policies where the home state is Massachusetts will be taxed 100% at the Massachusetts tax rate of 4%. Massachusetts is one of three other states that still taxes premium at other state rates for multi-state policies (Hawaii, New Hampshire and Vermont).

SB 563 would allow surplus lines affidavits to remain in effect for policies renewed, continued or extended with the same company.

Minnesota: In February, the SLA board announced that stamping fees will be assessed on taxable premium (including broker fees) and not as they are currently assessed on the policy premium only. The change will be implemented for policies effective on January 1, 2018.

Missouri: Pursuant to Executive Order 17-03 the Missouri Department of Insurance (DOI) is undertaking a review of every regulation under its jurisdiction. To facilitate regulatory review requests the DOI set up an online portal where requests can be made. Comments were requested by October 2, 2017 but will be accepted on an ongoing basis.

Mississippi: The Mississippi Department of Insurance issued the Bulletin 2017-3 related to HB 447, which eliminated diligent effort requirements on July 1, 2017, to assist with compliance of the statute.

New Jersey: AB 5005 transferred $8 million from the New Jersey Surplus Lines Insurance Guaranty Fund (NJSLIGF) to the state general fund to help fill the State's budget shortfall. This is the latest in a series of raids by the New Jersey Legislature of the NJSLIGF, the only one of its kind in the nation. In total, the state has appropriated over $100 million from the NJSLIGF since 2002, leaving the Fund currently with only $4 million. Policyholder surcharges could be required to replenish the Fund - if so, the total assessment on New Jersey
surplus lines policyholders could reach 9%, when including the State’s 5% surplus lines tax. The bill became effective on June 30, 2017.

**Nevada:** [SB 209](#) allows the Commissioner to accept an independent audit of surplus lines stamping office. The bill also eliminates provisions related to participation in a multi-state tax sharing agreement and removes the requirement that the broker file an allocation report of multi-state exposures. The bill also includes a provision related to who may charge a fee in the surplus lines transaction. This bill took effect on July 1, 2017.

**ASB 69** provides for regulation of motor carriers, taxi companies and TNCs that utilize autonomous vehicles and allow the required insurance to be provided by surplus lines carriers. The bill took effect June 16, 2017.

**New Mexico:** [SB 367](#) eliminates the requirement for brokers to file surplus lines affidavits with the state. Rather, brokers will need to maintain a signed statement of diligent effort. The bill also repeals Surplus Lines Multi-State Compliance Compact (SLIMPACT) authorization. The bill became effective on July 1, 2017.

**New York:** The Department of Financial Services (DFS) issued final Cybersecurity Requirements for Financial Services companies that took effect on March 1, 2017 and will impact surplus lines brokers. The Cybersecurity Requirements mandate that each covered entity (including New York surplus lines licensees) must implement an extensive risk-based cybersecurity program to protect information systems and nonpublic information. The requirements are designed to identify and assess cyber risk, protect nonpublic information, respond to cyber events and report cyber capabilities and events to regulators.

As part of the state fiscal plan, [AB 3009](#) provides for the regulation of TNC services and specifically allows required insurance to be written by excess lines. The bill becomes effective on July 9, 2017. In response to the bill, the DFS issued emergency regulations applicable to nonadmitted TNC insurance. The DFS issued an emergency regulation which was filed on September 1. Provisions from which nonadmitted insurance is typically exempt have been applied by the regulation, including defense within limits, claims made regulations and unfair claims settlement practices. The regulation also states that exempt commercial purchaser provisions are not applicable to nonadmitted TNC insurance. The new regulation took effect on June 6, 2017. Read ELANY’s notice of the change [here](#).

ELANY has created an electronic Part C affidavit to streamline and improve compliance. Review the bulletin from ELANY and instructions [here](#).

**North Carolina:** [SB 100](#) requires operators of zip lines and other similar devices to hold insurance provided by insurers “authorized to transact business in this State.” It has been confirmed that the Department of Insurance will allow eligible nonadmitted insurers to provide the required insurance.

The Department of Insurance issued [notice](#) to surplus lines individual and business entity licensees that licenses are now available for renewal through the NIPR. The Department also issued an [FAQ](#) to assist licensees with the process.

**North Dakota:** [SB 2103](#) eliminates the $10 filing fee associated with filing power of attorney for nonadmitted companies. This bill became effective on July 1, 2017.

**Oklahoma:** [SB 478](#) authorizes the Insurance Commissioner to negotiate compacts with other states for the purpose of setting up accident and health insurance policies that may be sold across state lines. Previous
versions of the bill authorized the Commissioner to regulate the market conduct and financial solvency of nonadmitted insurers pursuant to the compact provisions. The bill was amended to remove any language related to nonadmitted insurers and instead refers to approved accident and health insurers domiciled in a compacting state. The bill took affect August 25, 2017.

**SB 438** exempts cities and towns in Oklahoma from paying tax on any policy of surplus lines insurance. The bill takes effect on November 1, 2017.

**Oregon:** **SB 985** exempts insurers that transact certain classes of commercial insurance from the requirement to file rates or policy forms. Lines exempted from rate and policy review include boiler and machinery insurance, environmental impairment and pollution insurance, kidnap and ransom insurance, political risk or expropriation insurance, surety insurance, wet marine and transportation insurance and any property insurance in specifically defined situations as well as any commercial lines approved by the Director of Insurance. This bill does not eliminate the diligent effort search requirement for these risks. The bill becomes effective on January 1, 2018.

On June 27, 2017, the Oregon Division of Financial Regulation Issued Bulletin DFR 2017-3 which withdraws Insurance Division Bulletin 2011-1 and removes the requirement for surplus lines brokers to provide allocation information on multistate policies.

**Rhode Island:** **HB 5934** repealed Rhode Island’s SLIMPACT authorization. This bill took effect July 18, 2017.

**South Carolina:** **SB 463** adds to the definition of surplus lines insurance, disability insurance in excess of any benefit limit available from an admitted insurer. The bill took effect on May 19, 2017.

**Texas:** **HB 2492** will establish standards to allow domestic surplus lines insurance (DSLI) companies in Texas. Texas will join Arizona, Arkansas, Delaware, Illinois, Louisiana, Missouri, New Hampshire, New Jersey, North Dakota and Oklahoma. Connecticut and Wisconsin also passed DSLI bills in 2017. The bill takes effect on January 1, 2018.

**HB 1559** provides an exemption from diligent effort requirements for any industrial insureds that employ qualified risk managers, have aggregate nationwide commercial insurance premiums of $25,000 in the last year or have 25 full-time employees. The bill took effect on September 1, 2017.

**Virginia:** **SB 1364** amends insurance requirements for motor carriers including transportation of property for hire and specifically allows surplus lines to cover required insurance. The bill becomes effective on January 1, 2018.

**SB 1494** amends insurance requirements for TNCs and specifically allows surplus lines to cover required insurance. The bill became effective on July 1, 2017.

**Washington:** **HB 1027** requires any applicants for a resident surplus lines broker’s license to have and maintain a resident producer license with a property and casualty line of authority. The legislation will ensure that Washington resident licenses are given reciprocity for nonresident licenses in other states. The bill becomes effective January 1, 2018. In response to the statutory change the Washington OIC proposed **R 2017-10** to repeal section **WAC 284-15-010[2]** that no longer adheres to the requirements set forth in the new legislation. The rule has an open comment period until October 23, 2017.
Wisconsin: **SB 77** will establish standards to allow domestic surplus lines insurance (DSLI) companies in Wisconsin. Wisconsin will join Arizona, Arkansas, Delaware, Illinois, Louisiana, Missouri, New Hampshire, New Jersey, North Dakota and Oklahoma. Connecticut and Texas also passed DSLI bills in 2017. The bill also contained a provision that will clarify the ability of surplus lines to provide the required insurance for contractors who obtain a building permit with the Department of Safety and Professional Services. The bill took effect June 23, 2017.

**Wisconsin**

Wyoming: **HB 80** provides for regulation of TNCs and specifically allow surplus lines insurers to provide the required insurance. The bill took effect on March 3.

**Wyoming**

Export Lists

Pennsylvania reissued its export list on May 13 which now includes Multi-Peril Homeshare Business and General Liability for Scrap Metal Dealers and Recycling Centers with Off-Site Disassembling. Michigan reissued its export list on June 6 without any changes.

The WSIA has a [compliance chart](#) that details the statutory authority, the process and timing for amending and the criteria for including risks on export lists around the nation.

**Export Lists**

Insurer Eligibility

California and Texas recently reissued their eligible insurer lists.

**Insurer Eligibility**

Stamping Office Statistics

The Surplus Lines Stamping Office of Texas issues a bi-annual report of stamping office statistics. The report compares premium and filings received by the 15 stamping offices in the given time period.

**Stamping Office Statistics**

**2017 Q1 – Q2 Stamping Offices Report**

Highlights from the report include:

- Total surplus lines premium reported to the stamping offices was $14.3 billion through the first six months of 2017, representing a 6.6% increase over the $13.4 billion through the first six months of 2016.
- Approximately 2.1 million filings were made with the stamping offices during the first half of 2017, up 10.96% from 2016.

**NAIC updates**

At the 2017 NAIC Summer Annual Meeting, the Surplus Lines Task Force heard a summary of survey results on accident and health premiums being written in the nonadmitted market. The task force formed a subgroup to discuss the results of the survey and discuss whether to produce additional guidance for the states.

The Surplus Lines Task Force is revising the Plan of Operation for the IID/Quarterly Listing of Alien Insurers and will publish a draft in the near term. Additionally, similar to the recent requirement related to cybersecurity data, the Task Force is considering a charge that will require alien insurers to provide data related to private flood insurance policies as part of the annual filing. The NAIC now requires alien insurers filing applications and annual renewals for inclusion on the IID listing to be filed electronically through OPTins.
The Innovation and Technology Task Force voted to adopt the Insurance Data Security Model Law as recommended by the Cybersecurity Working Group. The model will still need approval from the Executive and Plenary Committee but is expected to pass. The model was amended to include provisions that were present in the NY Cybersecurity Requirements for Financial Services Companies. WSIA will monitor state activity as more states begin to implement cybersecurity regulations. If states implement the NAIC model, those that have taken steps to comply with and implement the New York regulations should be set to comply with the new states’ regulatory requirements.

To help educate industry members on the new requirements, WSIA hosted a webinar on August 1 providing an overview of the regulation and potential compliance issues.

- To view a recording of the webinar, please click here.
- To download a copy of the PowerPoint slide deck, please click here.
- To download a copy of the FAQs, please click here.
NONADMITTED AND REINSURANCE REFORM ACT (NRRA) UPDATES

Surplus Lines Taxation
On May 2, 2016 the NIMA Board announced the unanimous decision to dissolve the agreement and as of October 1, 2016, each of the remaining states entered a 12 month run-off period ending September 30, 2017. After the dissolution of NIMA, there are 47 jurisdictions (45 states plus the District of Columbia and Puerto Rico) where surplus lines taxes will be calculated at the home state’s tax rate on 100% of the premium and retained 100% by the home state. The only jurisdictions that continue to require taxes to be submitted with multistate allocations of risk are Florida, Hawaii, Massachusetts, New Hampshire and Vermont. Work continues to achieve uniformity in the home state tax approach nationwide.

In June, a Senate Bill was introduced to eliminate multistate premium tax allocation and to instead, calculate all premium for which Massachusetts is the home state entirely at the Massachusetts rate of 4%.

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Private Flood Insurance and Reauthorization of the NFIP
The Flood Insurance Market Parity and Modernization Act/Reauthorization of National Flood Insurance Program: After Congress returned from August recess, the NFIP reauthorization was just one of the growing number of major legislative items, including the debt ceiling and a spending package to avoid a government shutdown, that had to be addressed before the end of September. With the impact of Hurricanes Harvey and Irma, followed by Maria, Congress returned to the Hill and agreed to a clean, no changes, short-term extension of the NFIP to December 8, 2017. The bill that extended the NFIP also included hurricane relief aid to states impacted by these storms. The legislation did not address the Flood Insurance Market Parity and Modernization Act (H.R. 1422/S. 563). This bill is referred to as Ross-Castor in the House and Heller-Tester in the Senate. Below is an update on where the legislation stands in both chambers.

At the time of this report, the House had added the Ross-Castor bill as part of the Federal Aviation Administration (FAA) reauthorization (set to expire on September 30) for consideration on the suspension calendar. The package failed to get the support needed for suspension calendar rules and is now anticipated to be considered in the days leading up to September 30. The Senate will also need to consider the package that the House ultimately sends over. We will have a full report on the progress of private flood legislation during the October 6th meeting.

Foreign Account Tax Compliance Act (FATCA)
H.R. 871 is pending and will eliminate the P&C industry’s requirement to report non-cash-value premiums under FATCA. Since FATCA was passed, the P&C industry has asked for relief from FATCA reporting due to its unnecessary and burdensome application to our industry. Ultimately, FATCA is directed at foreign financial institutions and financial intermediaries and aims to prevent tax evasion by U.S. citizens, U.S. residents and corporations through the use of offshore accounts, but the application to the law cast a wide net, include groups like our industry that is not in a position to commit the type of tax evasion the law intended to curtail. This legislation is noncontroversial and is not expected to have any opposition; however, the issue with moving the legislation will be a matter of priority with the Committees of jurisdiction (House Ways & Means and Senate Finance). Sen. Tim Scott (R-SC), a former retail agent, is supportive of industry’s efforts and asked a question of Treasury Secretary Mnuchin during the biannual status hearing of the Senate Banking Committee and the Department. In response to the Senator’s questions, the Secretary indicated that his office was aware of FATCA and the issues expressed and that he would follow-up in due time with the Senator.

Covered Agreement
The Dodd-Frank Act of 2010 provided authority for the U.S. to enter into covered agreements with other nations. The Federal Insurance Office announced an agreement just prior to the change in administration. The outgoing FIO negotiated the agreement between the U.S. and EU. On September 22, the U.S. and EU announced that they signed the agreement. The NAIC issued a statement that they will assess the impact and consider if or how the agreement may impact state regulation. Industry is particularly interested in the impact on credit for reinsurance requirements.

Terrorism Risk Insurance Act (TRIA)
The U.S. Treasury Department issued guidance that TRIA compliance may be required for cyber liability policies. Lloyd’s provided a helpful compliance memo outlining the impact on specific policy situations.

In 2016, the NAIC added “Cyber Liability” to the Uniform P&C Product Coding Matrix as a sub-line under “Line 17 – Other Liability”, which is a covered line under TRIA. The NAIC defines “Cyber Liability” as:

Stand-alone comprehensive coverage for liability arising out of claims related to unauthorized access to or use of personally identifiable or sensitive information due to events including but not limited to viruses, malicious attacks or system errors or omissions. This coverage could also include expense coverage for business interruption, breach management and/or mitigation services. When cyber liability is provided as an endorsement or as part of a multi-peril policy, as opposed to a stand-alone policy, use the appropriate Sub-TOI of the product to which the coverage will be attached.

Policies that fit within this definition should comply with the notice and make available requirements under TRIA. This shall apply to stand-alone cyber policies and may also apply to certain cyber liability covered by endorsement or a multiperil policy. To further understand your reporting and compliance obligations for these policies, we strongly recommend reviewing the Treasury’s guidance.

**National Association of Registered Agents and Brokers (NARAB)**

No action has been taken to implement NARAB by the new administration. Since the FIO is responsible for making recommendations for appointments of the Board of Directors, it is likely that this issue is on hold until a new FIO director is named. After that, all new nominees will be required to go through background checks before the President will be able to nominate them.