

Syruplus Lines



Understanding the Nuances of Excess & Surplus Lines Insurance

First Party Claims Conference – October 19

Presented by:
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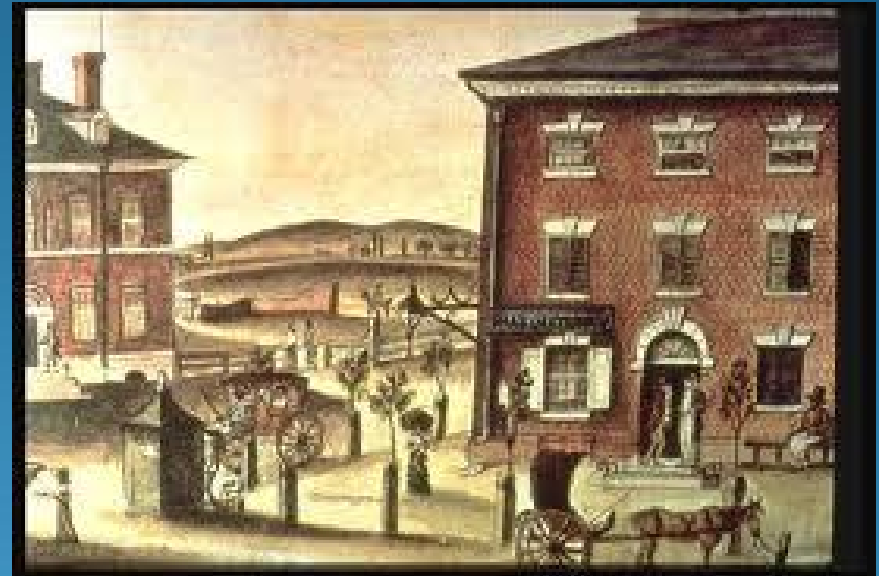
Introduction to Surplus Lines

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Origins of Surplus Lines

- Dates back to 1800's & British Insurers.
- Novel way to cover unique business risks.



Surplus Lines Defined

- Not available or refused by standard lines.
- Known as non-admitted carriers.
- Provides insurance for risks and exposure too large or unusual for admitted carriers to accept.
- Flexibility to meet emerging risks across all policy segments.



What Does Non-Admitted & Unregulated Mean?

- Policies, forms & price not regulated by State insurance regulators.
- Carriers choose not to be regulated in order to take advantage of higher risk opportunities.
- More flexibility to meet specific or unique customer needs.
- In Florida: Not backed by FIGA.



Consumer Oversight & Protections Through the Broker

- Surplus lines brokers are required to be licensed in the state where they do business.
- Broker must make certain carrier meets certain financial standards.
- Financial condition of insurers are monitored and made available to producer/broker.
- Brokers required to make a certified diligent effort to obtain coverage from a general lines market before resorting to the surplus lines carrier.



Surplus Lines Industry

- Trade association: Int'l Association of Claims Professionals



- Goal:
“Forum for excess and surplus claims specialists to discuss issues, share their knowledge, build their relationships and seek the opinions of their peer group on the handling of challenging situations that are part and parcel of the claim industry.”

Miles J. Banks
Lloyd's of London

Surplus Lines Industry

- NAPSLO-National Association of Professional Surplus Lines Office
- www.napslo.org - 2010 Membership Directory of worldwide names, addresses, web sites and email of brokers, companies, underwriting managers and associate members.



Key Participants



Lexington Insurance Company



Two Examples of Surplus Lines Policies

- Difference in Conditions (DIC) Policies
- Excess Flood Policies



An Often Heard Statement

CLAIMS

“We are not regulated by the Department of Insurance and thus we do not have to follow their rules, regulations or the law.”



If Not Our Law, Whose Law?

- Chapter 627 of the Florida Statutes contains Florida's rating law as well as content and filing requirements for policy forms and most other policyholder-related provisions historically applicable to licensed, admitted insurers.
- Florida Statute 626.913-626.937 mandates the laws to be followed by surplus lines carriers.

The Courts, The Legislature & the Surplus Lines Market

- Recent court decisions affecting the market:
 - Essex Insurance Co. v. Zota
 - CNL Hotel & Resorts Inc. v. Twin City Fire Insurance Co.



Essex Insurance Co. v Zota

Florida Supreme Court

- Questioned if delivery of a surplus lines policy to retail agent constituted delivery to the insured.
- Essex argued that Chapter 626 which governs surplus lines should apply.
- The court relied on provisions in Chapter 627, Part II which typically apply to “admitted” carriers, thus ruling it does constitute delivery to the insured.
- This meant Surplus Lines were not exempt from Part II. Only those of Part I covering rates and rating organizations.

CNL Hotel & Resorts Inc. v Twin City Fire Insurance Co.

Federal Appellate Court Decision

- Are claims for legal fees enforceable if the policy endorsement that prevents the recovery has not been approved by the State Insurance Commission?
- Court relied on Essex, ruling the exclusion for legal fees did not apply.

Consequences

- Would require surplus lines carriers to seek State approval for all policies
- Result in negative legal rulings for existing policies that were not reflected in policy pricing
- Force many carriers to leave the State

Why Were These Two Cases Important to the Florida Market?

- Florida ranks #4 behind California, Texas and New York as the biggest surplus lines market.
- Collects \$4 billion in premiums with \$200 million paid in state taxes.
- 700,000 excess and surplus line insured each year in Florida with 40% coverage in personal lines.

The Legislature – The Fix

- Given the gravity of the outcome of these cases and the likely result of the market disruption with surplus lines threatening to pull out of Florida.
- Florida House and Senate unanimously passed legislation that restored the historical exemptions of prior forms/policy surplus lines carriers enjoyed.
- Effective June 2009: Legislature re-instated surplus lines exemption of forms and policies retroactive to October 1, 1988



The Political Connection & Controversy

- St. Pete Times accuses Florida Governor Crist and Commissioner McCarty of deception.
- Florida's Governor and Insurance Commissioner boast that \$4.9 billion in new capital has come into the Florida property insurance market.
- In reality: 87.8% is surplus lines
 - 40% is in the homeowners market where policyholders are not knowledgeable about the differences in coverage issues or realize they are paying for an unregulated insurance product at higher cost.



August 17, 2009

Has This New Legislation Brought Clarity and Fairness to the Insurance Consumer?

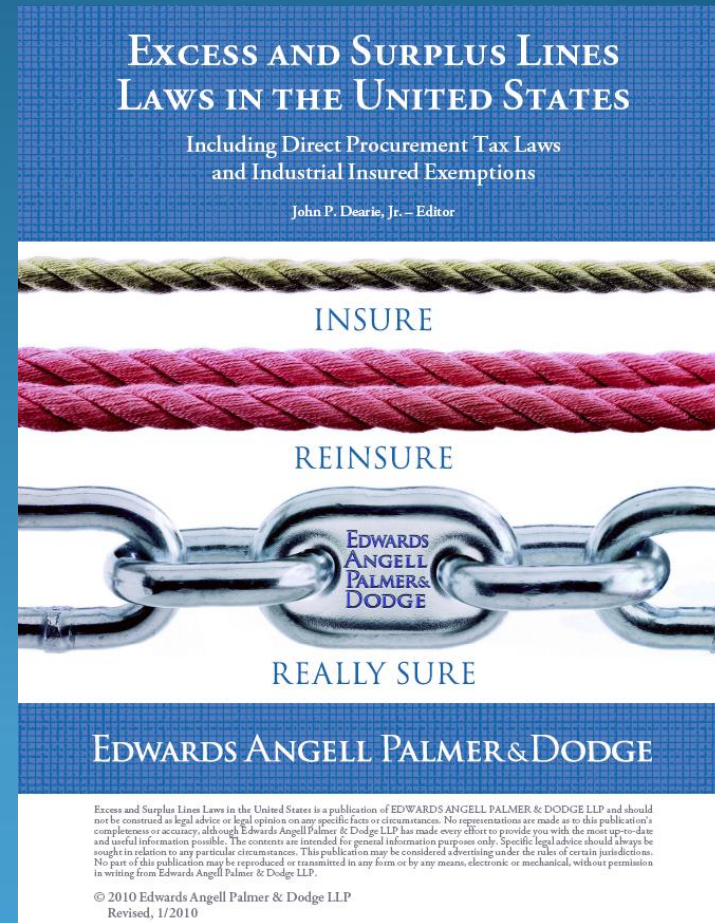
- Surplus lines policyholders in residential losses, will be treated differently than “admitted” lines policyholders
- Admitted carriers must pay RCV on both contents and dwelling
- Surplus lines carriers pay ACV until work is completed or contents are replaced (if coverage exists)
- Other items in Florida Statute 627
 - The Valued Policy Law
 - Law and Ordinance Coverage (required in all admitted homeowners policies unless rejected by the policyholder)
 - Florida’s prompt payment statute – 627.70131(5)(a)
 - Sinkhole Coverage
- These are not insignificant differences and will likely impact insurance consumers at time of loss

Are Surplus Lines Insurers The Bad Boys of The Insurance Community Given Their Unique Status?

- No - They provide a very valuable product in our very competitive and capitalist world society.
- Room for Improvement on disclosure? Yes - Policyholders need to know the details especially the retail homeowner customer.
- For Professional Claims Professionals - I respectfully suggest you read these policies. Clearly these forms need to be viewed with the mind-set that “The BIG PRINT May Giveth, But the Little Print May Taketh Away.”

Tips

- Know the rules in your state:
<http://surplusmanual.eapdlaw.com>
- Order a certified copy of the policy covering the loss you are involved in.



Tips

- Check to see if disclosed items are present on the face of the policy in at least 14 point bold face type with the following statements:

HURRICANE DEDUCTIBLE

- *“This policy contains a separate deductible for hurricane or wind losses which may result in a higher out of pocket expense to you.”*

COINSURANCE

- *“This policy contains a copay provision that may result in high out of pocket expenses to you.”*

FIGA PROTECTION?

- *“This insurance is issued pursuant to the Florida Surplus Lines law. Persons insured by surplus lines carriers do not have the protection of the Florida Insurance Guaranty Act to the extent of any right of recovery for the obligation of an insolvent unlicensed insurer.”*
- Is the agent identified by name address and identification # on the outside of the policy and on any certificate, cover note or other confirmation of insurance?

Summary

- When the next big one hits unfairness will continue surprising the policyholder and further alienating the electorate.
- If involved in a loss, know if the coverage is a surplus lines or an admitted carrier.
- Review the surplus lines law as it applies to the state where the loss occurred.
- Set your client's expectations accordingly. In Florida, a surplus lines carrier will most likely not follow Statute 627 but instead perform based on the actual language in the insurance contract.



Summary

- Remember, surplus lines are unique as to policy form and price. But in Florida they are covered by their own statute.
- Watch for a push by insurance carriers for national surplus lines legislation. A bill has been introduced to authorize insurance agents to obtain a national license to sell policies. If they can avoid state regulations such as Florida's Statute 626 as well as set unregulated prices for products, it will be a bonanza for big insurance companies who also have surplus lines business units.



Thank You

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