

THE E&S Empire Express

Mergers and Acquisitions and Formations, Oh My! *“Toto, I’ve a feeling we’re not in Kansas anymore.”*

This year saw an explosion of insurance producer mergers and acquisitions, with more than 550 deals through the first three quarters of 2021. The number represents the most activity for the first three quarters of any year. The E&S market welcomed a number of startup insurers as well, seemingly driven by opportunities created by a hardening market. In 2021, you couldn’t tell the players without a scorecard. ELANY experienced this firsthand with a record number of applications by insurers for listing.

In New York, insurers may qualify to write E&S risks by meeting certain prescribed requirements. A foreign insurer must maintain a minimum \$47M (\$48M as of 1/1/22) in policyholder surplus, be solvent and otherwise substantially compliant with solvency requirements for

authorized insurers and be authorized in its domiciliary jurisdiction to write the insurance policy proposed to be procured. In addition, an insurer must have satisfactory claims practices and trustworthy and competent management. Alien insurers must be listed by the NAIC's International Insurers Department (IID). Excess line brokers must comply with the “due care” standard imposed by New York law to verify that insurers meet all requirements.

ELANY maintains a separate list of insurers that voluntarily apply for inclusion. This is not a complete list of all insurers that qualify to write E&S risks in New York, but instead a compilation of companies that have voluntarily sought and received ELANY’s recognition for having met certain enhanced standards. While listing by ELANY is not required

to write E&S business in New York, it does indicate that the insurer has met the more stringent and fulsome requirements applied by ELANY. Each application is reviewed by the ELANY Board of Directors’ Security Committee and the full Board must vote to add a company to the ELANY list. For a discussion of how we analyze an insurer’s financial condition and management, please see [ELANY Elaborates](#) and our [Compliance Advisor, Fundamentals of Insurance Company Financial Analysis](#). ■

It’s Getting Close to 2021 Year-End Tax Time

All excess line brokers are required to electronically file a 2021 Broker Premium Tax Statement with the Department of Financial Services even if no business

was placed. All 2021 risks should be processed with ELANY by February 14, 2022 in order to be on a broker’s 2021 year-end tax reports. Excess line taxes must be paid electronically with DFS by March 15, 2022. Brokers should correct and resubmit any items currently on their Policy Suspense Listing, which is provided each month when invoices are released.

Please see our recent [Bulletin](#) and instructional video, [How to Complete and File an Excess Line Premium Tax Statement](#), for more information. ■



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Excess Lines Association of New York
 120 Wall Street, 24th Floor
 New York, NY 10005
 646.292.5500 | info@elany.org
www.elany.org

ELANY Visits the FDNY Academy

ELANY Executive Director Dan Maher and Communications and Marketing Manager Gina Marie Balog-Sartario visited the FDNY Fire Academy on Randall's Island in October to present a \$15,000 donation to Jean O'Shea, executive director of the [FDNY Foundation](#). During the visit, live demonstrations were being streamed to trainees on

how a fire moves through a room and how to knock it down the right way. Dan and Gina were also given a ride 40 feet up in the bucket of a fire truck, which allowed them to overlook the entire training academy grounds.

The FDNY Foundation, established in 1981, is the official not-for-profit of the New York City Fire Department. Its mission is to promote fire and life

safety education and help the FDNY better protect New York. The FDNY Foundation funds programs that advance the FDNY's goals, which include maintaining operational excellence, reaching out to the community with an array of fire and life safety programs and ensuring that firefighters and EMS personnel have the best available training and equipment. ■

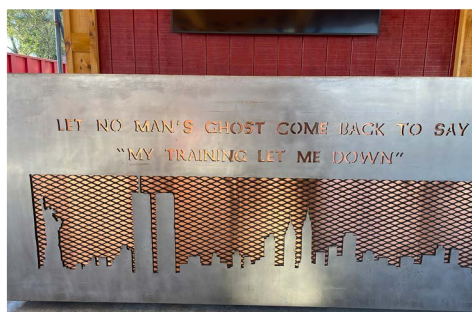


Pictured left to right: Firefighter Mike Bringe, Lt. Christopher Roberto, Jean O'Shea, Dan Maher, Battalion Chief Brian Fink, Firefighter David Besbears Jr., Firefighter Josh Raeben, Lt. Mike Ciampo and Lt. Joe Inga.



Above: Gina and Dan with Lt. Mike Ciampo in the bucket of a firetruck.

(#selfie!)



The Proby Pavilion - This functional teaching space was built and dedicated to the memory of FDNY probationary firefighters who were killed in the line of duty while assigned to the fire academy.



This bronze statue stands tall and proud at "The Rock" symbolizing the raising of the flag at Ground Zero.

ELANY Publishes Homeowners Insurance Report

Does the E&S market compete for business with the admitted market? Too often there is a knee-jerk answer of “yes” on the part of policymakers and others. ELANY commissioned a third-party study to get the facts as they relate to the homeowners market. The answer was a clear “no.”

The study, [To Each Their Own: The Role of Excess & Surplus Lines Coverage in New York State’s Homeowners Insurance Market](#), was performed by NovaStance Analytics. It analyzed demographic, transaction and premium data. The study found that the New York homeowners insurance market is comprised of three distinct markets: 1) the core market, with about

82% of all owner-occupied homes and almost exclusively the province of admitted carriers; 2) the market for very high-value homes not on the oceanfront; and 3) oceanfront properties irrespective of value, defined in the study as those within 1,000 feet of the coastline. These markets are differentiated by the extent of coastal windstorm risk and the level of insured value.

The study concluded that E&S insurers serve homeowners with properties that are either high value or close to a coast with corresponding wind exposure. For example, E&S insurers have a 90% share of homes located within 1,000 feet of the coast. In contrast, the admitted market insures more than 99% of homes

DOES THE E&S MARKET COMPETE FOR BUSINESS WITH THE ADMITTED MARKET?

located more than one mile from the coast. Likewise, E&S market share is estimated to be below 1% in all small and midsize homeowners insurance policy categories, where more than 80% of New York policies are written. Inversely, among policies with \$500,000 or more in insured value, E&S market share increases to 3.7% of policies and 5.3% of premium but is still dwarfed by the admitted market’s 96% share.

In total, the E&S market writes only 0.7% of New York homeowners policies and 1.8% of the premium. The difference between policy share and premium share is attributable to the higher risk that properties in the E&S market present. ■

NAIC Revising Nonadmitted Insurance Model Act

A task force of the National Association of Insurance Commissioners (NAIC) is working on revisions to its Nonadmitted Insurance Model Act. ELANY is an active participant in the effort, working closely with the [Wholesale & Specialty Insurance Association \(WSIA\)](#) to offer the task force insights and suggestions to ensure the Model is consistent with the federal Nonadmitted and Reinsurance Reform Act (NRRA). The industry has stressed adherence to NRRA definitions and to consistently apply the Home State sole regulatory requirement throughout the model.

Interestingly, some members of the task force’s drafting group have questioned the need for a diligent search of the admitted market prior to placing a risk in the E&S market, or at least the necessity of doing so as broadly as exists in many states today.

In concert with WSIA, ELANY is working to introduce its proposal, as reflected in the New York diligent effort modernization legislation discussed in this newsletter, to excuse most wholesale commercial lines E&S placements from the diligent effort requirement. ■

DFS Adopts CE Requirements

In October, the DFS adopted [revised continuing education \(CE\) requirements](#) for producers, including resident excess line brokers (New York’s CE requirements do not apply to non-resident excess line brokers). The new requirements apply to any insurance producer whose license renews on or after April 1, 2022.

The revised regulation requires that of the 15 credit hours of instruction

that a licensee must complete, the following will need to be included:

- (1) at least one hour of Insurance Law instruction;
- (2) at least one hour of ethics and professionalism instruction;
- (3) at least one hour of diversity, inclusion, and elimination of bias instruction;

- (4) at least one hour of flood insurance instruction if the licensee is licensed to sell one or more lines of property/casualty insurance; and
- (5) at least three hours of enhanced flood insurance instruction if the licensee sells flood insurance through the National Flood Insurance Program. The CE requirements apply to every two-year license cycle. ■

ELANY Welcomes Alex Sarfo as Financial Director; Adds Five Examiners

ELANY is pleased to announce the addition of Alex Sarfo as financial director. Alex holds an M.Sc. in Economics from the London School of Economics. Subsequent to his graduation, Alex was recruited by Bankers Trust as a credit analyst and held a variety of roles until the bank's acquisition by Deutsche Bank in 2000. A treasury career ensued with positions at BAE Systems, Magellan Aerospace and ADP between 2000 and 2006. In 2006, Alex joined A.M. Best as a senior financial analyst until 2020. During his tenure, Alex managed credit ratings of various captive insurers and wrote articles in the utilities/energy sectors.

ELANY Executive Director Dan Maher said, "We welcome Alex to the ELANY management team knowing he brings us his substantial skill set and an easygoing and congenial personality to benefit the team."

ELANY also welcomes five new examiners to the team.



OWEN MONAHAN

Owen Monahan graduated from Kean University with a B.S. in General Business. After graduation, Owen took a position with MasMutual NJ-NYC as a financial services representative and shortly after, moved on to Plymouth Rock Assurance where he worked as an insurance producer on the inside sales team. Owen is licensed as a health and life and P&C producer.

Trecia Mignott's insurance career started in 2001. She is licensed as a property & casualty insurance broker since 2004 and has held various positions in the industry such as underwriter and account executive. Prior to ELANY, Trecia was an account manager at Irvin

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Weber Associates Agency/Brown & Brown, Inc., where she handled the surplus lines book of business filings for all states. She was also responsible for servicing and managing admitted commercial lines accounts.



TRECIA MIGNOTT

Trecia holds an Associate's degree in Science for Business Administration from Nassau College and lives in Long Island with her husband and son. She frequents her home country of Jamaica where she sponsors a yearly scholarship program that assists sixth graders transitioning to high school.



XIOMARA TORRES

Xiomara Torres graduated from L.I. University with a B.A. in Business. After graduation, she began working in the financial services industry in several positions included loan administration and remained there for 19 years. She started working with ELANY in 2021 as an examiner and continues to pursue accredited courses in the financial services industry.



RALPH MARRERO

Ralph Marrero began his insurance career working with Trayner & Company, Ltd., in the risk transfer & commercial lines departments. He handled the day-to-day activities of the firm's larger accounts. Previously, Ralph held several freelance positions working with videography, graphic design and marketing.

Ralph holds a Bachelor of Arts degree in New Media from Purchase College and holds a valid New York Property & Casualty Brokers License.



ANABELL BEATO

Anabell Beato is an Examiner with the Excess Lines Association of New York (ELANY). Prior to ELANY, she worked in human resources as an associate recruiter at Baldor Specialty Foods, Inc., as a recruitment specialist at Vertex Global Solutions and as a talent acquisition specialist at United Staffing Solutions.

Anabell attended Universidad APEC and is bilingual in English and Spanish. She currently lives in New Jersey with her husband and daughter. ■

**ELANY'S WEBSITE
IS A PREMIER SOURCE
FOR THE NEW YORK
E&S MARKETPLACE
WWW.ELANY.ORG**

New Coverages Mean New Coverage Codes!

As reported in our [Bulletin No. 2021-21](#), New York has authorized paid surrogacy insurance coverage, specifically 1) donor medical expense insurance for intended parents who have entered into a gametes (reproductive cells) donor agreement, and 2) a new kind of credit insurance indemnifying an intended parent for financial loss incurred as a result of the failure of the person acting as surrogate to perform under the surrogacy contract. The latter should be filed with ELANY under coverage code 6801 — ALL CLASSES /CREDIT INSURANCE, while the former should be filed under new code 7400

— DONOR MEDICAL EXPENSE COVERAGE.

In addition, as discussed elsewhere in this newsletter, the state has authorized excess business disability insurance, both on a primary (when unavailable in the admitted market) and excess basis. The respective coverage codes are 7301 — EXCESS OF A PRIMARY BUSINESS-RELATED DISABILITY POLICY and 7302 — PRIMARY BUSINESS-RELATED COVERAGE INCLUDED. The Department of Financial Services has agreed to ELANY's request to permit licensed life insurance brokers to place excess business disability risks through excess line wholesale brokers. ■

The Year in Albany

ELANY advocated proactively on behalf of the excess line community in 2021 and we are pleased to report that progress was made. Our three bills were reintroduced – excess line diligent effort and affidavit modernization ([S498](#)), medical malpractice excess line reform ([S714](#)) and insurability of punitive damages ([A1813](#)). The modernization and malpractice bills were passed by the Senate and we thank Insurance Committee Chair Neil Breslin for sponsoring and shepherding these bills. There were extensive talks in the Assembly regarding the modernization bill and the Senate even passed an amended bill (S498A) that removed diligent effort reform as a compromise to facilitate movement in the Assembly, but to no avail.

Legislation ([S5760A](#)) was enacted to add “Excess Business Disability Insurance” to the authorized insurance definitions statute and to expressly

permit excess line brokers to place such business with excess line insurers. Excess business disability insurance insures against financial loss experienced by a business where an individual, integral to the successful operation of the business, becomes disabled due to sickness, ailment or bodily injury. E&S insurers may write excess of a primary business-related disability policy or, in the absence of such a policy, where coverage cannot be obtained from an authorized insurer. ELANY issued a Memorandum in Support which was circulated in the legislature.

Bills ([S3079/A7488](#)) to prohibit lead paint exclusions in liability policies for rental property owners were introduced in both chambers. The Assembly passed A7488 but the Senate did not move S3079. ELANY issued a Memorandum in Opposition and distributed it widely in the legislature. We argued that the legislation would give landlords a financial incentive not to remediate lead paint exposure, thereby endangering children. ELANY also explained that insurers, both admitted and excess line, would likely reduce capacity, leaving unregulated risk retention groups as the available market for coverage. We also urged the legislature to include an exemption for excess line policies if it chooses to proceed with the legislation despite our strong objections.

Finally, legislation was passed by both chambers to require defendants in a lawsuit to supply plaintiffs with a myriad of insurance information ([S7052](#)), including a running total of payouts that reduce the value of a policy's available coverage. ELANY sent a letter to the governor requesting a veto based on difficulties in complying with the bill's requirements, the burden that will be placed on brokers in practice, unsound drafting and public policy objections. The bill has not yet been sent to the governor. ■

**ELANY ADVOCATED
PROACTIVELY ON BEHALF
OF THE EXCESS LINE
COMMUNITY IN 2021 AND
WE ARE PLEASED TO REPORT
THAT PROGRESS WAS MADE.**



ELANY 2021 Member Appreciation Day - A Grand Slam!

ELANY's 2021 Member Appreciation Day was held on Monday, June 28, 2021, at Yankee Stadium in the Bronx. Despite the excessive heat, members, colleagues and friends packed three party suites making it a night filled with cool drinks, good food and a lot of laughter! Some pictures from the event are below. A complete gallery of photos can be found on our [website](#).

The 2022 Member Appreciation Day is set for Monday, May 2, 2022, at Citi Field. The Mets will be playing the 2021 World Series Champion Atlanta Braves. More information will follow as game day gets closer. ■



ELANY Cybersecurity Awareness Training Offer Renewed for 2022

We are pleased to announce that ELANY's complimentary cybersecurity awareness training offer for active members has been renewed for 2022. New York-licensed excess line brokers that have filed an insurance policy or endorsement for stamping with ELANY since January 1, 2020, are eligible to have up to 417 employees trained at no cost to the broker. To read more about the training and to enroll, please see [here](#).

ELANY's free cybersecurity awareness training for active members continues to be a great benefit for excess line brokers. Through the first 11 months of 2021, 6,223 people were trained at 92 firms. Since the offer's

inception in mid-2017, ELANY has paid for training 32,319 individuals at 204 firms. The training, while helping many firms to comply with the Department of Financial Services' [cybersecurity regulation](#), is of critical importance to all excess line brokers. The ability of employees to spot various types of cyberattacks, such as phishing and CEO fraud, is an indispensable frontline defense against costly and disruptive breaches. All qualifying brokers are urged to enroll. ■

**THE TRAINING ... IS OF
CRITICAL IMPORTANCE TO
ALL EXCESS LINE BROKERS.**



And Programmatic Filing for All

Programmatic filing (broker system to ELANY system) is the most efficient and accurate method for brokers to submit filings to ELANY. This method eliminates duplicate entries and greatly reduces the occurrence of typos and other data entry errors. Brokers filing programmatically see a reduction in the time and cost of staff entering data and submitting transactions. ELANY regularly evaluates solutions to enhance the programmatic filing experience.

Currently, approximately 25% of all affidavits are submitted programmatically. ELANY would like to see that percentage grow substantially in 2022. To learn more about programmatic filing, please contact the ELANY helpdesk at (646) 805-1200 or helpdesk@elany.org. ■

**PROGRAMMATIC FILING ... IS THE MOST EFFICIENT AND ACCURATE
METHOD FOR BROKERS TO SUBMIT FILINGS TO ELANY.**

