

Draft date: 7/13/23

*2023 Summer National Meeting
Seattle, Washington*

SURPLUS LINES (C) TASK FORCE

Sunday, August 13, 2023

11:30 a.m. – 12:00 p.m.

Hyatt Regency Seattle—Regency Ballroom A—Level 7


ROLL CALL

James J. Donelon, Chair	Louisiana	Kathleen A. Birrane	Maryland
Larry D. Deiter, Vice Chair	South Dakota	Gary D. Anderson	Massachusetts
Mark Fowler	Alabama	Troy Downing	Montana
Lori K. Wing-Heier	Alaska	Francisco D. Cabrera	N. Mariana Islands
Peni Itula Sapini Teo	American Samoa	Scott Kipper	Nevada
Ricardo Lara	California	Mike Causey	North Carolina
Michael Conway	Colorado	Glen Mulready	Oklahoma
Karima M. Woods	District of Columbia	Michael Humphreys	Pennsylvania
Michael Yaworsky	Florida	Alexander S. Adams Vega	Puerto Rico
Michelle B. Santos	Guam	Michael Wise	South Carolina
Dean L. Cameron	Idaho	Carter Lawrence	Tennessee
Dana Popish Severinghaus	Illinois	Cassie Brown	Texas
Doug Ommen	Iowa	Mike Kreidler	Washington
Vicki Schmidt	Kansas		

NAIC Support Staff: Andy Daleo

AGENDA

1. Consider Adoption of its Spring National Meeting Minutes Attachment One
—*Commissioner James J. Donelon (LA)*
2. Consider Adoption of the Report of the Surplus Lines (C) Working Group
—*Stewart Guerin (LA)*
3. Consider Adoption of its 2024 Proposed Charges Attachment Two
—*Commissioner James J. Donelon (LA)*
4. Hear a Summary on Surplus Lines Industry Results—*Andy Daleo (NAIC)*
5. Discuss Any Other Matters Brought Before the Task Force
—*Commissioner James J. Donelon (LA)*



6. Adjournment

Draft Pending Adoption

Draft: 3/24/23

Surplus Lines (C) Task Force
Louisville, Kentucky
March 21, 2023

The Surplus Lines (C) Task Force met in Louisville, KY, March 21, 2023. The following Task Force members participated: James J. Donelon, Chair, Stewart Guerin, and Tom Travis (LA); Larry D. Deiter, Vice Chair, represented by Tony Dorschner (SD); Lori K. Wing-Heier represented by David Phifer (AK); Mark Fowler represented by Willard Smith (AL); Ricardo Lara represented by Libio Latimer (CA); Michael Conway represented by Rolf Kaumann (CO); Michael Yaworsky represented by Virginia Christy (FL); Doug Ommen represented by Travis Grassel (IA); Dean L. Cameron represented by Randy Pipal (ID); Dana Popish Severinghaus represented by Susan Berry (IL); Vicki Schmidt represented by Jessica Lillibridge (KS); Gary D. Anderson represented by John Turchi (MA); Kathleen A. Birrane represented by Erin Nickles (MD); Troy Downing represented by Bob Biskupiak (MT); Mike Causey represented by Robert Croom (NC); Scott Kipper (NV); Glen Mulready represented by Eli Snowbarger (OK); Michael Humphreys represented by Shannen Logue (PA); Michael Wise represented by Rachel Moore (SC); Carter Lawrence represented by Trey Hancock (TN); and Cassie Brown represented by Jamie Walker (TX). Also participating was: Robert Wake (ME).

1. Adopted its 2022 Fall National Meeting Minutes

Walker made a motion, seconded by Hancock, to adopt the Task Force's Dec. 12, 2022, minutes (*see NAIC Proceedings – Fall 2022, Surplus Lines (C) Task Force*). The motion passed unanimously.

2. Adopted the Report of the Surplus Lines (C) Working Group

Guerin reported that the Surplus Lines (C) Working Group met March 9 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings, to discuss two applications seeking approval for listing on the NAIC *Quarterly Listing of Alien Insurers*. One application was approved.

Snowbarger made a motion, seconded by Kaumann, to adopt the report of the Surplus Lines (C) Working Group. The motion passed unanimously.

3. Adopted Amendments to Model #870

Commissioner Donelon commented that before considering adoption of the *Nonadmitted Insurance Model Act (#870)* (Attachment _____), an update from the drafting group and a summary of the project history would be provided by Travis.

Travis stated that since the 2022 Fall National Meeting, the Model 870 Drafting Group met twice. First, it met Jan. 18 to address comments and expose Model #870 as directed by the Task Force at the 2022 Fall National Meeting. Then, it met Feb. 10 to discuss a few lingering comments received from the exposure. Travis stated that as a result of the exposure, a couple of edits have been made to the draft model. He indicated that those edits are highlighted in yellow in the redlined version. He stated that Section 5D received several comments to remove the statement "with the exception of workers' compensation insurance, excess workers' compensation insurance, and accident and health insurance," and the drafting group concurred with removing it. He said following a discussion with Maine, the drafting group added a drafting note that Daleo circulated to the Task Force. He indicated that the drafting note covers Section 522(d) of the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA) with regard to exceptions to the home state authority. Second, he commented that regarding Section 9H on arbitration,

Draft Pending Adoption

“Aviation” was added to the draft, bracketed to reflect as optional. He concluded by summarizing the Model #870 project history (Attachment _____).

Wake commented that he believes there was consensus during the last meeting that there would be a carve-out for workers’ compensation and disability regarding Section 5D. He commented that he was surprised to hear that the drafting group had pushback on this and it was removed. He indicated that he would urge the Task Force to reinstate that provision. He stated that if the Task Force thinks that reinstatement is too much of a heavy lift at this late stage, the proposed drafting note is a good compromise. He commented that Lloyd’s summarized it best by stating that the carve out for workers’ compensation, excess workers’ compensation, and accident and health (A&H) is unnecessary because the model law already memorialized that states have the ability to decide for themselves which lines of business are permitted to be placed in surplus lines insurance. He indicated that Congress said 13 years ago that the states no longer have that ability after Section 5D was added as an exception. He stated that if it were not for Section 5D, Section 3 would give states that ability. He commented that within Section 522 of the NRRRA, Congress allowed states to reserve the authority to control, as the non-home state, the placement of workers’ compensation and excess workers’ compensation; and because of the way nonadmitted insurance is defined, the power to control A&H insurance was never taken away. The carve-out would exercise that right; without the carve-out, that right is not being exercised. Wake indicated that that is why the carve-out was proposed; however, he understands that the drafting note may be the best that the Task Force can do at this late date. However, he proposed going back to the carve-out language.

Sabrina Miesowitz (Lloyd’s) commented that Lloyd’s supports the drafting note, and the comment letter indicated that there was some disagreement regarding the interpretation of what the NRRRA says. She said Lloyd’s believes states have the authority to decide whether workers’ compensation or A&H are allowed to be exportable to the surplus lines market. She indicated that that is why Lloyd’s supports preserving that language, so that possibility is not being closed for states where A&H can be exportable.

Commissioner Donelon commented that the Task Force has come a long way with Model #870, and it has reached the finish line. He offered a special thanks to the drafting group, specifically Colorado, Illinois, Louisiana, Texas and Washington, and he commended them on all the hard work. Before moving forward to consider adoption, he inquired about any questions or comments. Given that none were raised, he asked for a motion to adopt the proposed amendments to Model #870, including the drafting note.

Walker made a motion, seconded by Kaumann, to adopt the proposed amendments to Model #870, including the drafting note. The motion passed unanimously.

Having no further business, the Surplus Lines (C) Task Force adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/SLTF/2023 Spring NM/SLTF Minutes March 21 2023.docx

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*Adopted by the Property and Casualty Insurance (C) Committee—
Adopted by the Surplus Lines (C) Task Force—*

2024 Draft Charges

SURPLUS LINES (C) TASK FORCE

The mission of the Surplus Lines (C) Task Force is to monitor the surplus lines market and regulation, including the activity and financial condition of U.S. and ~~alien-non-U.S.~~ surplus lines insurers participating in the U.S. market by providing a forum for discussion of issues and to develop or amend relevant NAIC model laws, regulations and/or guidelines.

The **Surplus Lines (C) Task Force** will:

- A. Provide a forum for discussion of current and emerging surplus lines-related issues and topics of public policy, and determine appropriate regulatory response and action.
- B. Review and analyze ~~quantitative and qualitative industry~~ data on U.S. domestic and ~~alien-non-U.S.~~ surplus lines ~~industry insurers participating in the U.S. market results and trends~~.
- C. Monitor federal legislation related to the surplus lines market, and ensure all interested parties remain apprised.
- D. Develop or amend relevant NAIC model laws, regulations, and/or guidelines.
- E. Oversee the activities of the Surplus Lines (C) Working Group.

The **Surplus Lines (C) Working Group** will:

- A. Operate in regulator-to-regulator session pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, and ~~operate~~ in open session when discussing surplus lines topics and policy issues, such as amendments to the International Insurers Department (IID) Plan of Operation.
- B. Maintain and draft new guidance within the IID Plan of Operation regarding standards for admittance and continued inclusion on the NAIC *Quarterly Listing of Alien Insurers*.
- C. Review and consider appropriate decisions regarding applications for admittance to the NAIC *Quarterly Listing of Alien Insurers*.
- D. Analyze renewal applications of alien surplus lines insurers on the NAIC Quarterly Listing of Alien Insurers, and ensure solvency and compliance per the IID Plan of Operation guidelines for continued listing.
- E. Provide a forum for surplus lines-related discussion among jurisdictions.