

SURPLUS LINES (E) TASK FORCE

Surplus Lines (C) Task Force March 16, 2024, Minutes

Draft Pending Adoption

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Surplus Lines (C) Task Force
Phoenix, Arizona
March 16, 2024

The Surplus Lines (C) Task Force met in Phoenix, AZ, March 16, 2024. The following Task Force members participated: Larry D. Deiter, Chair and Frank Marnell (SD); Cassie Brown, Vice Chair represented by Jamie Walker (TX); Mark Fowler represented by Jimmy Gunn (AL); Lori K. Wing-Heier represented by Sian Ng-Ashcraft (AK); Ricardo Lara represented by Libio Latimer (CA); Michael Conway represented by Rolf Kaumann (CO); Karima M. Woods represented by Angela King (DC); Michael Yaworsky represented by Alex May (FL); Gordon I. Ito (HI); Dean L. Cameron represented by Randy Pipal (ID); Dana Popish Severinghaus represented by Marcy Savage (IL); Vicki Schmidt represented by Philip Michael (KS); Timothy J. Temple represented by Stewart Guerin (LA); Kathleen A. Birrane represented by Erin Nickles (MD); Gary D. Anderson represented by James A. McCarthy (MA); Grace Arnold represented by Kathleen Orth (MN); Remedio C. Mafnas (NMI); Scott Kipper (NV); Mike Causey represented by Angela Hatchell (NC); Glen Mulready represented by Eli Snowbarger (OK); Michael Humphreys represented by Michael McKenney (PA); Michael Wise represented by Will Davis (SC); Carter Lawrence represented by Trey Hancock (TN); and Mike Kreidler represented by Todd Dixon (WA).

1. Adopted its 2023 Fall National Meeting Minutes

Walker made a motion, seconded by Pipal, to adopt the Task Force's Dec. 1, 2023, minutes (*see NAIC Proceedings – Fall 2023, 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 Dec. 13, 2023, 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*. Both applications were approved.

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

3. Discussed Service of Process

Marnell commented that Tom Dawson (McDermott Will & Emery) discussed an issue identified by the International Underwriting Association (IUA) with respect to the Uniform Consent to Service of Process (Form 12). He indicated that the IUA's concern stems from the recent Supreme Court case of *Mallory v. Norfolk Southern Railway Co. (Mallory)*. Specifically, the Supreme Court found that a corporate defendant that registered for general business purposes with the state of Pennsylvania consented to be sued in that state, even though the plaintiff had no other jurisdictional connection with that state. The IUA advised that many states require nonadmitted surplus lines carriers to file the Form 12 before placing surplus lines insurers on local approved/eligible lists. Marnell indicated that this practice may be problematic after the *Mallory* decision because Form 12 has a broad service of process appointment that would potentially permit a surplus lines insurer to be sued in any state designated on Form 12. Marnell commented that this is inconsistent with the *Nonadmitted Insurance Model Act (#870)*, Section 9—Service of Process, which provides that a nonadmitted insurer may only be sued upon any cause of action arising on risks or exposures located in the state. Under Model #870, the surplus lines carrier could only be sued in the state where the cause of action arose and not potentially in every state in

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which it filed Form 12. Marnell stated that in order to remedy this, the IUA proposed creating a new surplus lines specific Form 12 in order to avoid the potential problem caused by the *Mallory* Supreme Court decision.

Marnell indicated that the drafting group formed in January includes Indiana, Louisiana, Oklahoma, South Dakota, and Washington. He stated that the drafting group met on Feb. 13 and March 4. He commented that during the Feb. 13 call, the drafting group reviewed the materials provided by Dawson and discussed the overall issue regarding Form 12. Marnell indicated that the drafting group issued a four-question survey to the state insurance departments to get a better understanding of the state practices with respect to the use of Form 12. Marnell summarized that the survey was sent out to all states and territories and resulted in 32 state responses. He indicated that the drafting group wanted to understand the requirements for filing Form 12 and learned that 16 states require the filing of service of process forms for both U.S. and non-U.S. insurers doing business in their state, 12 states do not require any filings, and four states only require the form for U.S. domiciled insurers. Further, he summarized that Form 12 is utilized by 15 states, and six states implement a state-specific Form 12. Lastly, he commented that seven states support the creation of a surplus lines-specific service of process form. He indicated that the low number likely is the result of states not being aware of the over-arching issue regarding Form 12.

Marnell commented that Form 12 is currently available within the Uniform Certificate of Authority Application (UCAA) for companies requesting licensure. He indicated that it is currently accessible outside of the new licensing portal, but next year, Form 12 will only be available for companies using the UCAA portal for licensure.

Director Deiter inquired about any comments and, hearing no objections, directed the drafting group to proceed with developing a surplus lines service of process form and requested a report during the 2024 Summer National Meeting.

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

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