

Welcome to Fall 2024 Surplus Lines Law Group

Hosted by



Thank you to our sponsors



Wifi Network:  
Edgewater\_Conference

No password is required

# Anti-trust Admonition

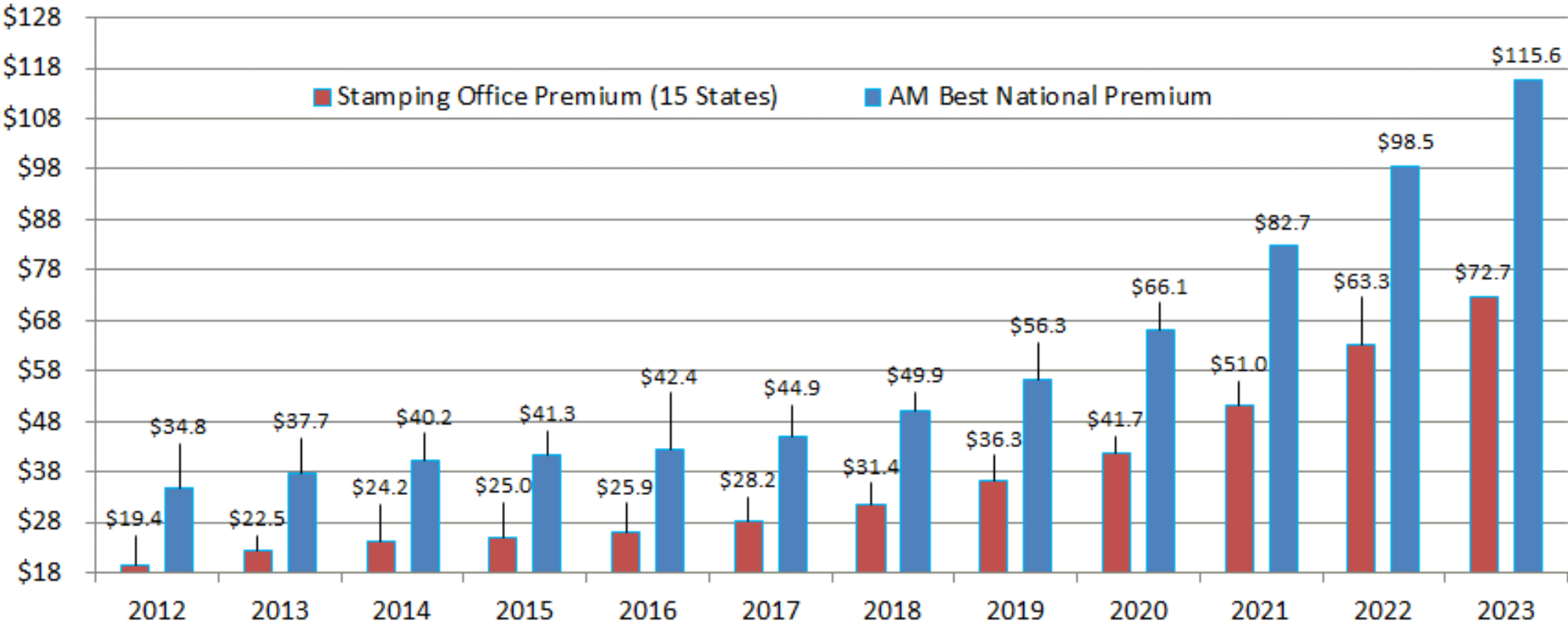
This seminar is intended to inform participants about current developments in the law regarding surplus lines insurance and related topics. All persons affiliated with the insurance industry need to be mindful of the constraints of the antitrust laws. There shall be no discussions of agreements or concerted 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.

# Agenda

7:00 a.m.	Breakfast buffet/registration	10:15 a.m.	WA Political Updates/News
8:00 a.m.	Welcome and antitrust	10:45 a.m.	Wildfire Exclusions and Sub-limits in CA: Are They Enforceable?
8:05 a.m.	AM Best/Stamping Office Midyear Report	11:05 a.m.	Where are they now? Former Law Group Topics.
8:15 a.m.	State updates	11:30 a.m.	Hot topics from audience
9:30 a.m.	Federal updates	11:55 a.m.	Spring 2025 & Future Meetings
10:00 a.m.	Break	12:00 p.m.	Lunch Begins

# Annual Premium Growth



# Stamping Office Line of Business Report

As of June 30, 2024

Line of Business	Premium				Items			
	2024	2023	% of Total	% Growth	2024 <sup>(12)</sup>	2023	% of Total	% Growth
Liability (Non-Professional) <sup>(1)</sup>	\$ 13,685,342,966	\$ 13,207,914,907	34.6%	3.6%	1,152,138	1,071,756	36.6%	7.5%
Property <sup>(2)</sup>	14,597,937,354	12,649,247,514	36.9%	15.4%	517,169	453,162	16.4%	14.1%
Professional Liability <sup>(3)</sup>	3,480,896,613	3,453,311,035	8.8%	0.8%	147,044	148,958	4.7%	-1.3%
Multi-Peril <sup>(4), (5)</sup>	2,592,608,887	2,235,239,587	6.6%	16.0%	257,476	231,341	8.2%	11.3%
Residential, Homeowners and Other Personal Property <sup>(6)</sup>	1,850,013,878	1,425,867,170	4.7%	29.7%	597,069	497,116	19.0%	20.1%
Auto Liability <sup>(7)</sup>	1,244,871,575	872,066,759	3.2%	42.7%	89,054	90,426	2.8%	-1.5%
Other <sup>(8)</sup>	808,423,740	763,470,602	2.0%	5.9%	167,663	153,305	5.3%	9.4%
Auto Physical Damage <sup>(9)</sup>	594,374,572	633,979,784	1.5%	-6.2%	59,081	66,237	1.9%	-10.8%
Inland Marine <sup>(10)</sup>	515,671,647	496,492,305	1.3%	3.9%	116,218	79,992	3.7%	45.3%
Disability/A&H <sup>(11)</sup>	144,900,643	144,168,051	0.4%	0.5%	47,832	50,098	1.5%	-4.5%
Totals	\$ 39,515,041,875	\$ 35,881,757,713	100.0%	10.1%	3,150,744	2,842,391	100.0%	10.8%



# Stamping Office Line of Business Report

As of June 30, 2024

U.S. Surplus Lines Service Offices								
Mid-Year Assessment								
	% of Change		June 30, 2024		June 30, 2023		Rates	
	Premium	Items	Premium	Items	Premium	Items	Stamping Fee	S/L Tax
Arizona	8.3%	11.6%	\$ 830,241,543	66,075	\$ 766,814,027	59,220	0.20%	3.00%
California	7.0%	14.9%	8,199,445,002	556,056	7,666,170,769	483,996	0.18%	3.00%
Florida	12.3%	8.6%	9,722,426,013	1,004,371	8,654,085,240	924,536	0.06%	4.94%
Idaho	54.3%	10.9%	244,760,428	15,946	158,654,657	14,382	0.50%	1.50%
Illinois	16.4%	7.1%	2,102,879,256	96,384	1,806,563,307	90,033	0.04%	3.50%
Minnesota	42.1%	12.4%	783,783,752	36,301	551,705,916	32,289	0.04%	3.00%
Mississippi	2.6%	0.8%	477,114,901	95,900	465,196,802	95,170	0.25%	4.00%
Nevada	-2.0%	-1.5%	484,763,882	28,475	494,737,360	28,918	0.40%	3.50%
New York	8.3%	10.1%	4,300,431,850	222,303	3,969,182,743	201,824	0.15%	3.60%
North Carolina	8.7%	4.1%	1,057,497,085	118,233	972,454,616	113,586	0.30%	5.00%
Oregon	4.4%	3.4%	476,450,940	41,853	456,273,564	40,492	\$10	2.00%
Pennsylvania	-1.7%	2.3%	1,256,798,243	63,243	1,278,091,643	61,796	\$20	3.00%
Texas	11.0%	16.9%	8,000,473,134	673,510	7,206,713,137	576,246	0.04%	4.85%
Utah	0.0%	2.9%	358,392,431	37,390	358,487,422	36,319	0.18%	4.25%
Washington	13.3%	13.3%	1,219,583,415	94,704	1,076,626,508	83,584	0.10%	2.00%
Totals	10.1%	10.8%	\$ 39,515,041,875	3,150,744	\$ 35,881,757,713	2,842,391		

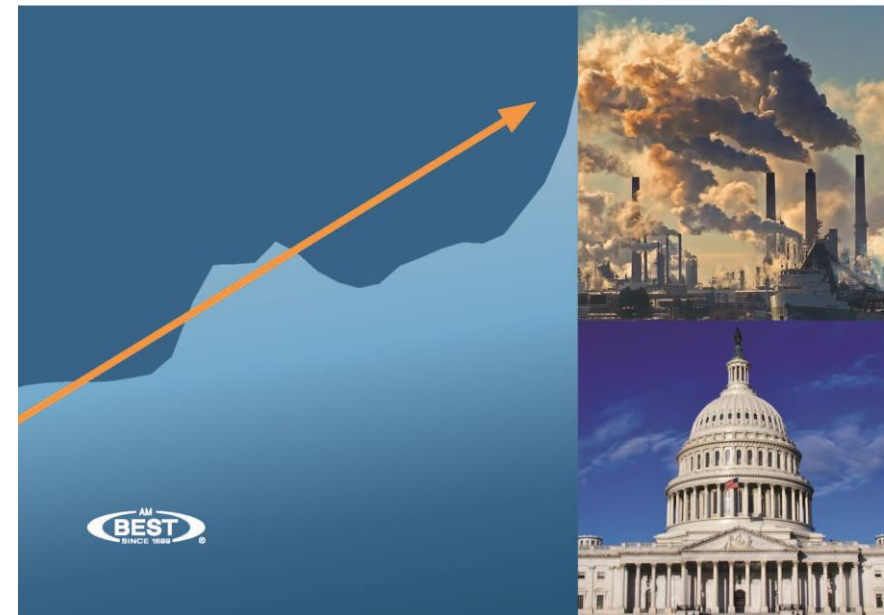
## 2024 AM Best Report Highlights

- \$115.6 billion market, surpassing \$100 billion for first time in 2023
- 17.4% increase in 2023 surplus lines premium
- 271% increase since 2011
- Higher ratings than standard P/C industry
- No impairments in 20 years, with one unique exception
- AM Best outlook is stable

AM Best  
September 2024  
Market Segment  
Report

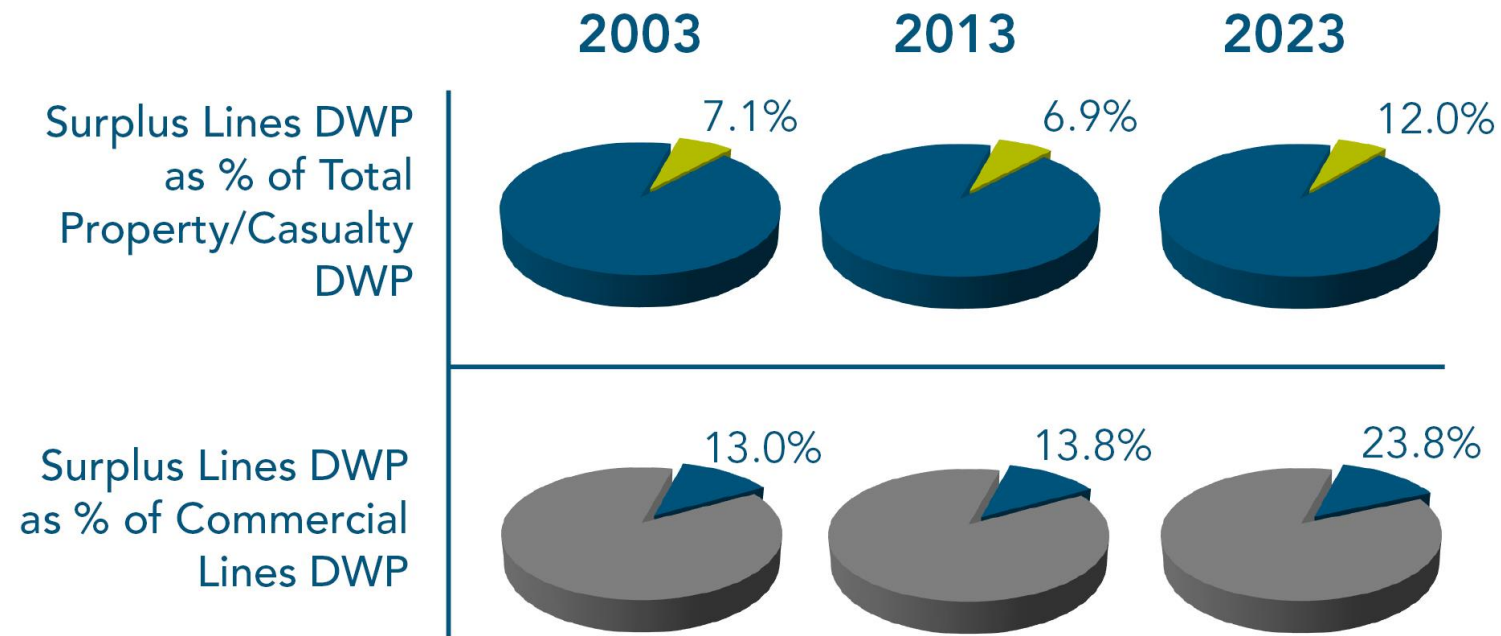


**Improved Underwriting and Operating Results  
Sustain US Surplus Lines Market Momentum**

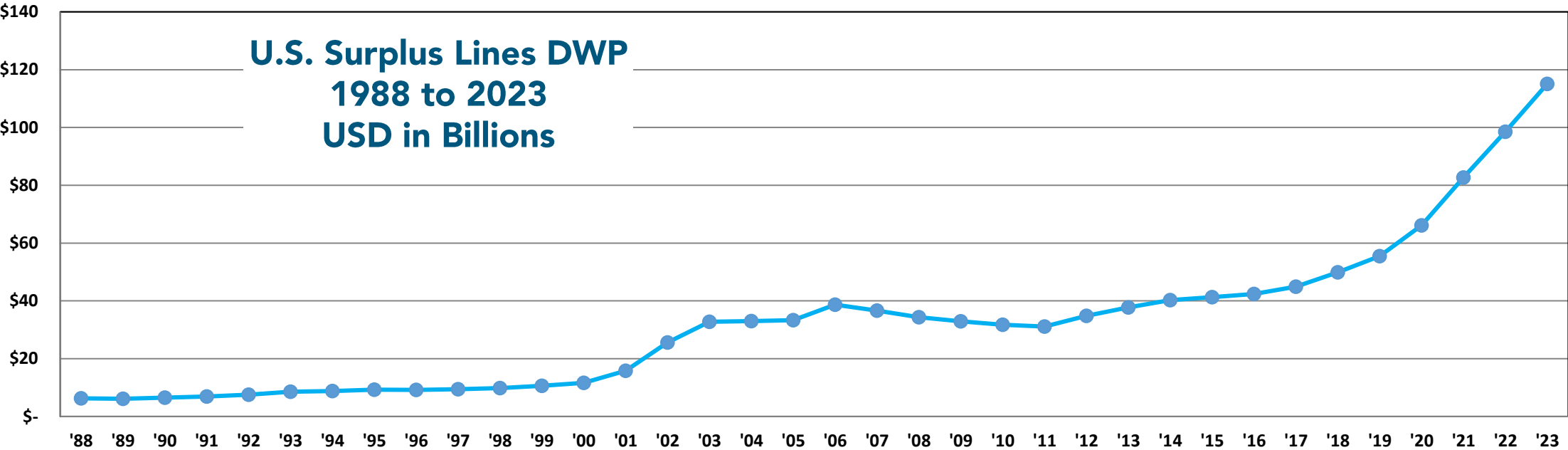




# AM Best Report Highlights



# Surplus Lines Premium History



# State Updates

## **Additional States**

John Meetz, Wholesale & Specialty Insurance Association

## **New York**

Janet Pane & Howard Greene, Excess Line Association of New York

## **Nevada**

Maria Muzea, Nevada Surplus Lines Association

## **Louisiana/Texas**

Ronnie Johnson, Holland Knight

## **Illinois**

David Ocasek, Surplus Line Association of Illinois

## **California**

David Kodama, Surplus Line Association of California

## **Arizona**

Scott Wede, Ed Dresselhuys, Surplus Lines Association of Arizona

## **Oregon**

Roger Helbing, Surplus Line Association of Oregon

# Federal Updates

Gary Sullivan

American Property and Casualty Insurance Association



# SURPLUS LINES LAW GROUP

## OCTOBER 2024

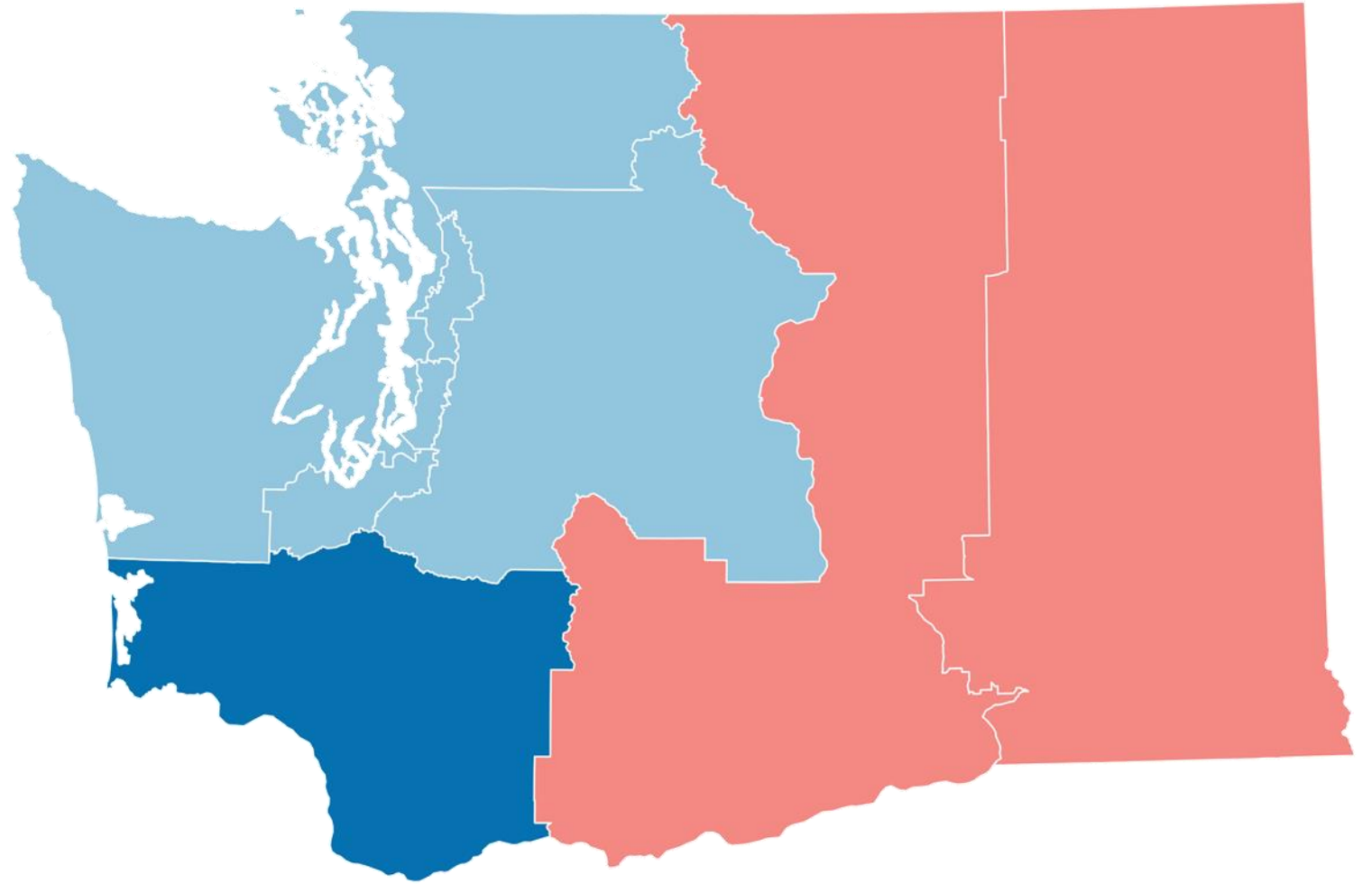
INTISAR BENGE

LOBBYIST

---

**McBRIDE**  
PUBLIC AFFAIRS

# Washington State Congressional Map







# Legislative Landscape

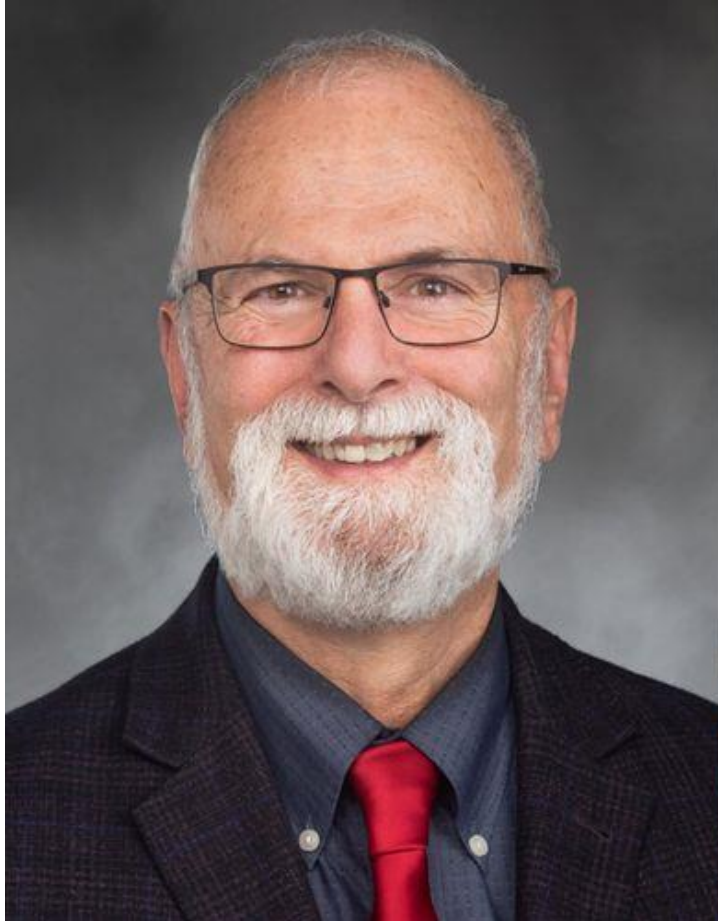
---

- All 98 Seats in the House and 25 of the 49 seats in the Senate are on the ballot this November.
- Democrats hold majorities in both the House (58-40) and the Senate (29-20).
- All 6 statewide offices are also on the ballot.

# Office of the Insurance Commissioner

---

Senator Phil  
Fortunato (R)



Senator Patty  
Kuderer (D)



# 2024 Introduced Legislation

---

- [SB 5797](#): increases the amount OIC may fine an authorized insurer in addition to or in lieu of suspension, revocation, or nonrenewal of a certificate of authority from \$250 to not more than \$10,000, to not more than \$25,000 per violation. *Did not pass.*
- [SB 5963](#): Requires surplus line insurance brokers and insurance producers to inform customers of the requirement to keep and maintain an insurance policy that covers losses or damages resulting from the accidental or unintentional discharge of the firearm. *Did not pass.*
- [SB 6081](#): Requires every consumer contract and insurance contract to be written in plain language and be appropriately divided and captioned by its various sections; and establishes civil penalties and other relief for violation of the plain language requirement. *Did not pass.*
- [SSB 5798](#): Extends the written notice requirement for cancellation or nonrenewal of an auto insurance policy from 20 days to 30 days; and extends the written notice requirement for cancellation or nonrenewal of health, and property and casualty insurance policies from 45 days to 60 days. *Did pass.*

# Ballot Initiatives

---

- Four Initiatives on the ballot.
- [Initiative 2109](#), repealing the state's 7% capital gains tax, would reduce revenue by an estimated \$2.2 billion over five years.
- [Initiative 2117](#), repealing the Climate Commitment Act and eliminating carbon auctions, would reduce state revenue collections by an estimated \$3.9 billion for fiscal years 2025-2029.



# Any Questions?

---

**Intisar Benghe**

LOBBYIST

[intisar@mcbridepa.com](mailto:intisar@mcbridepa.com)





# Surplus Lines Law Group

Fall 2024  
Seattle, Washington  
Shawn Rediger



# Washington State Legislature 2023-24 Session

- Last session, Washington state legislature focused on housing and homelessness
- Legislators heard about difficulties for low-income housing and adult family home providers to find or maintain insurance coverages
  - Affordability
  - Non-renewal
  - Other obstacles
- Legislature directed OIC to lead two workgroups
  - Study insurance market for housing providers that receive housing trust fund resources
  - Review availability and cost of liability insurance for adult family homes

# Market Study Work Group for Housing Providers Using Housing Trust Funds

- OIC study on the insurance market considerations for housing providers receiving housing trust fund resources and serving low-income households
- Work group includes consultation with various stakeholders:
  - Housing providers
  - Authorized and unauthorized insurers
  - Providers of non-profit insurance services
  - Risk-sharing pools for public housing authorities
  - Nongovernmental owners of affordable housing properties
  - Risk retention groups
  - Relevant association groups including Surplus Lines Association of Washington
  - Relevant state agencies
    - Department of Enterprise Services (DES)
    - Office of Risk Management (ORM)
    - Department of Commerce (DOC)
- Report to Legislature due December 31, 2024

# Market Study Work Group for Adult Family Home Liability

- OIC working group to look at the difficulties adult family home operators are facing to find affordable insurance
  - Review availability and cost of liability insurance for adult family homes
  - Identify obstacles to adult family homes accessing liability insurance including underwriting restrictions, market conditions, legal and regulatory requirements
  - Evaluate the financial risk to adult family homes, residents, state Medicaid program and other risks due to increased insurance costs or for uninsured homes due to lack of access to coverage
  - Make policy recommendations to improve access to liability insurance coverage for adult family homes.
  - Work group discussing various options, including should state create a risk pool?
- Preliminary report due December 31, 2024; final report due June 30, 2025

# Questions for the Group

- **Similar working groups in your state?**
- **How is your state dealing with insurance for low-income housing? Adult family homes?**
- **Any state creating risk pool?**
- **How does your state facilitate information exchange for hard to place insurance?**
  - High risk populations
  - Natural disasters (hurricanes, wildfires, floods)
- **Trends?**
- **Pending Litigation?**

# **Wildfire Exclusions and Sublimits in CA: Playing With Fire?"**

**October 4, 2024**

Dan Brown

*Partner, Insurance Transactions & Products*

# Standard Form Fire Policies

- Unlike any other policy forms in California, the same rules apply to both admitted and nonadmitted insurers any time a policy is issued covering fire.
- Insurance Code section 2070 states: "All fire policies on subject matter in California shall be on the standard form...."
- The status of the insurer is irrelevant, the location of the risk determines whether the standard form must be used.
- The statute does not distinguish between personal lines and commercial lines fire coverage.



# Standard Form Fire Policies

- The standard form requires coverage of “all LOSS BY FIRE” (capitalized as in the statute). Cal Ins. Code § 2071.
- Any changes to the standard form must provide “coverage with respect to the peril of fire, when viewed in its entirety, [] substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy.”
- Only admitted companies must file their policy forms as part of the rate approval process, but because of the statutory mandate to use the standard form, the same form requirements apply to nonadmitted insurers.

# Wildfire Exclusions

- Until 2019, the California Department of Insurance (“CDI”) routinely approved standard forms that included a “Wildfire Exclusion” or wildfire sublimits such that the policies covered a “regular” fire but not a wildfire, or provided only reduced coverage for wildfire.
- Nonadmitted insurers exercised their freedom of rate and form to use the same/similar Wildfire Exclusion and other coverage limitations.

# Wildfire Sublimit Class Action

- Marrufo v. Southern California Auto Club (Los Angeles County, 2018)
- Homeowners fire policy included a “Wildfire Smoke Endorsement” that had been approved by the CDI.
- The endorsement set a lower limit (\$5K) for damage from “wildfire smoke” than the limit for damage directly from fire or from smoke from a fire that was not a wildfire.
- The court concluded that smoke is a by-product of fire and is a “peril of fire” covered by the statutory form regardless of what the policy said and regardless of the CDI approval.
- Fire policies must cover damage from “any accidental fire.”

# CDI Current Stance on Wildfire Exclusions

- Based on Marrufo the CDI changed its interpretation of the requirements of the standard form and started requiring admitted companies to withdraw their previously approved wildfire exclusions and sublimits.
- The CDI position is that “fire is fire” and either you cover all perils of fire under the standard form, or you do not cover any fire at all; limits and deductibles must be the same for any accidental fire.
- Ken Allen, Deputy Commissioner of the Rate Regulation Branch: “Fire includes wildfire, and wildfire exclusions are not compliant with the requirements of coverage for the peril of fire under the standard fire policy form.”

# Status

- Marrufo is not a published decision so is not binding on other courts.
- California courts are required to give substantial deference to the CDI's interpretation of insurance statutes.
- Any challenge to a wildfire exclusion is likely to occur in the county where a wildfire just occurred.
- Some commercial packages are arguably "substantially equivalent to or more favorable to the insured."
- Straightforward wildfire exclusions are unlikely to be enforceable in California.





EVERSHEDS  
SUTHERLAND

**Dan Brown**

Partner

(415) 528-7329

[danbrown@eversheds-sutherland.us](mailto:danbrown@eversheds-sutherland.us)

101 California Street, Suite 4750

San Francisco, CA 94111

**eversheds-sutherland.com**

© 2024 Eversheds Sutherland (US) LLP

All rights reserved.

*PRIVILEGED AND CONFIDENTIAL*

*This communication cannot be used for the purpose of avoiding any penalties that may be imposed under federal, state or local tax law.*

# Where are they now?

Revisiting former Law Group topics



# National Association of Registered Agents and Brokers (NARAB)

NARAB\_June\_2024

June 27, 2024

The Honorable Joseph R. Biden  
President of the United States  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

Dear President Biden:

On behalf of the undersigned representatives of the U.S. insurance industry, we write to encourage the Administration to fulfill the statutory obligations of the *National Association of Registered Agents & Brokers (NARAB) Reform Act* and submit nominations to the U.S. Senate to establish its Board of Directors (Board) without delay.

NARAB was enacted in January 2015 to provide a national, standardized process for insurance agents and brokers to obtain eligibility to do business outside of their home states. Unfortunately, after nine years the NARAB Board of Directors has not become operational. Under the law, the Executive branch is required to submit nominations to the Senate for advice and consent. While nominations were submitted back in 2016, they were not acted upon by the Senate Banking Committee prior to the conclusion of the Obama Administration. Since then, no new nominations have been submitted to Congress.

The Act requires that the Board consist of thirteen members appointed by the President who are charged with overseeing the activities of the organization. Of the 13 members, 8 of whom are to be current or former State Insurance Commissioners. Notably, nominations to the Board are granted a privileged and streamlined Senate confirmation process. Additionally, as 8 of the nominees are to be current or former State Insurance Commissioners, these nominees will have been vetted in their previous roles.

Action to establish the NARAB board is long overdue. As the Administration has acknowledged in its Executive Order on Promoting Competition in the American Economy, "*Fewer than 5% of occupations that require licensing in at least one state are treated consistently across all 50 states. That locks some people out of jobs, and it makes it harder for people to move between states—particularly burdening military spouses, 34% of whom work in a field requiring a license and are subject to military-directed moves every few years.*"<sup>1</sup> Submitting its NARAB nominations to the Senate can go a long way in advancing this underlying goal of the Administration in the financial services industry.

The implementation of NARAB will bring much needed help to streamline licensure processing, reduce administrative redundancies and provide regulatory compliance efficiencies by allowing insurance agents and brokers to conduct business in more than one state through a single application. This simple act will single-handedly reduce compliance costs, promote consumer choice, and foster economic growth, all while continuing to preserve the state-based system of insurance regulation. All that is needed to realize these benefits is for the Administration to submit its nominees to the U.S. Senate so that it can become operational.

We stand committed to working with your administration on the implementation of NARAB to the benefit of all engaged in the insurance space – from the consumers to producers.

Thank you for your attention to this important issue.

American Property Casualty Insurance Association  
Council of Insurance Agents and Brokers  
Independent Insurance Agents and Brokers of America  
Insured Retirement Institute  
National Association of Insurance and Financial Advisors  
National Association of Mutual Insurance Companies  
Wholesale and Specialty Insurance Association

<sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>

# National Flood Insurance Program (NFIP)

- Reauthorized September 26 through December 20, 2024
- 32nd short term re-authorization since 2017
- At issue is subsidies for NFIP policies and Congressional resistance to either:
  - Provide a long-term authorization with fewer subsidies for NFIP policies in flood planes
  - Provide a long-term authorization with existing subsidies for NFIP policies in flood planes
- Powerful Congressional delegations in particular states have prevented the former alternative

# Tax sharing

## **NONADMITTED INSURANCE MULTI-STATE AGREEMENT (NIMA)**

**WHEREAS**, the Nonadmitted Reinsurance and Reform Act of 2010 (“NRRA”), which was incorporated intact into the Dodd-Frank Financial Reform Bill, H.R. 4173, provides that only a insured’s “home state” may require a premium tax payment for nonadmitted insurance; and

### **304.10-400 Surplus Lines Insurance Multi-State Compliance Compact.**

The Surplus Lines Insurance Multi-State Compliance Compact is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

# Topics from the audience?

- Broker fees
- Business interruption policies and exclusions for pandemics
- Data security requirements
- Transportation Network Companies
- Unaffiliated groups – home state issues

**2025 Spring Surplus Lines Law Group**

**March 20 - 21, 2025**

**Hosted by the**

**North Carolina Surplus Lines Association**



**Grandover Resort & Spa**

**Greensboro, NC**

**A Wyndham Grand Hotel**

