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The Honorable Delores G. Kelley
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 572- Insurance - Surplus Lines Brokers - Policy Fees - FWA

Our client, the Insurance Agents and Brokers of Maryland (IA&B), is a trade association comprised of nearly 200 independent agencies, employing between 1,000 and 2,000 licensed Maryland insurance producers, which are located in and doing business throughout the State of Maryland and surrounding states. IA&B wishes to offer amendments to Senate Bill 572.

For those Committee members who may be unfamiliar with the surplus lines insurance market, it exists to provide access to Marylanders to insurance that, typically, cannot be obtained from a standard insurer doing business in Maryland. For example, a commercial building that may not qualify for coverage in the standard because of its age, its construction, its condition, its location etc. may need to procure such coverage in the surplus lines market. Common examples would include coastal properties in Ocean City, or perhaps even a historic building such as the Maryland Inn in Annapolis. Thus the surplus lines insurance market plays a small, but important role in meeting the needs of our citizens.

Approximately 25 years ago I was involved in legislation that created the language that is the subject of Senate Bill 572. That legislation permitted surplus lines brokers to charge policy fees, limited to $100 for individuals and $250 for commercial insureds, when issuing a surplus lines policy. A surplus lines broker is essentially an insurance wholesaler, and often is responsible for services that a standard insurer would provide without charge. The Insurance Commissioner understood that some surplus lines broker services do justify the charging of additional fees, hence the passage of the original legislation authorizing such fees.

Today, this bill is before you to increase those fees. To be clear, my clients, who procure insurance for their clients through surplus lines brokers every day, do not object to the charging of fees under the current law. In addition, they do not object to a reasonable increase in such fees, as long as there is some measure of regulatory oversight.

Our problem with Senate Bill 572 is that it eliminates the $250 cap on fees without a suitable replacement. Instead, surplus lines brokers are permitted the imposition of a 10% charge, based on the policy premium, for policy fees to commercial insureds. Under the bill, there is no cap on a commercial policy fee – only the 10% rate. Because surplus lines insurance is frequently more expensive than similar insurance from a standard insurer, the additional cost to the insured can be quite substantial.

Other problems may also occur. For example, there is no provision in the bill (or the existing law) requiring that policy fees be identical for similar policies. In other words, a surplus lines broker could charge one policy fee on a commercial risk, but acting within the 10% fee range, charge a quite different fee for another, similar policy. Because IA&B members often procure surplus lines insurance for their clients, they naturally wish to ensure that the application of policy fees is fair and equitable. While the Insurance Commissioner can review the practices of a surplus lines broker, any increase in permitted policy fees should include a clear standard by which they are regulated.

Although there is a standard in the law today, its language at Section 27-216(d)(3) is highly detailed and provides no clear guidance that can be applied by the regulator in a compliance action.

These and other problems can be avoided if the General Assembly simply takes the appropriate incremental step of increasing the existing cap on commercial surplus lines policy fees. My client believes that an appropriate policy fee cap is $500, which would represent a 100% increase over the current cap of $250. This increase should serve to defray additional costs incurred by surplus lines brokers that are intended to be covered by an increase in the policy fee.

Proponents have argued that the market should be permitted to establish a cap on commercial policy fees, and that the only necessary statutory limit is the 10% limitation in Senate Bill 572. The fallacy of this argument in that surplus lines insurance is, by definition, insurance not available in the broader market. In other words, there are fewer choices – often only choice – that can be presented to a prospective insured. Under Senate Bill 572 as drafted it would be a simple matter to charge the maximum 10% fee. For example, a surplus lines policy, covering commercial property, with an annual premium of $50,000 – a not uncommon amount – could easily incur a $5,000 policy fee. That is a very substantial increase in cost to the consumer.

Finally, it is worth noting that policy fees are in addition to the commission that a surplus lines broker may earn from a surplus lines insurer. Often that commission is shared with a retail agent, such as the agents comprising my client trade association. There is no express prohibition in the bill about sharing a portion of a policy fee with a retail agent, although clearly it is not intended by the surplus lines law, either current or proposed in Senate Bill 572. If this Committee wishes to increase the policy fees that are the subject of this bill, the issues set forth above should be considered. The amendment that IA&B recommends – an increase in the current maximum fee to $500 – would mitigate if not eliminate these issues.

Accordingly, the Insurance Agents and Brokers respectfully request that its recommended amendment be adopted in order to advance this legislation.

Thank you for your consideration.

Very truly yours,

Bryson F. Popham