

300 WORDS (more or less) about EXCESS & SURPLUS LINES

PROBLEM—A series of recent court cases has threatened the viability of the excess and surplus lines (E&S) market in Florida. They have the effect of regulating the operations of E&S carriers by requiring prior approval of their forms.

BACKGROUND—It has long been conventional wisdom in insurance circles that surplus lines carriers are, for the most part, unregulated by the state in the area of rates and forms. This was not unique to Florida; it is the norm throughout the nation. All of this changed on June 26, 2008, with a Florida Supreme Court decision. In *Essex Ins. Co. v. Zota*, the Court ruled that Chapter 627 of Florida Statutes regulates E&S policies with the only exception being Part I relating to rates. The Court did this despite the literal reading of the statute that the Legislature did not intend such regulation. In explaining their decision, the high Court said "...the Court will not follow the letter of a statute when it leads away from the true intent and purpose of the Legislature and to conclusions inconsistent with the general purpose of the act." If this sounds familiar, it is similar in nature to the Court's recent decision in the *Murray* case, overturning

the Legislature's clear attempt to regulate attorney fees in workers' compensation cases.

As bad as that was, matters soon got worse. In August, a Federal Court decision used the *Essex* decision to find that E&S policy terms, conditions, and exclusions were invalid if not approved by the Florida OIR. Claimants and their attorneys immediately began using the decision to void endorsements and exclusions that would otherwise limit coverage. Last fall, at least one E&S company has announced an immediate "cessation of all new and renewal business in Florida until this issue is resolved by the Florida Legislature or further court decisions." Insurance carriers in E&S and voluntary markets, agents, and even the OIR, are united in their belief that this decision must be fixed as soon as possible.

SOLUTION—Support HB 853 by Rep. Patterson and SB 1894 by Sen. Bennett to overturn this decision and take the E&S coverages out from under OIR regulation of forms.

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