



Government of the District of Columbia
Department of Insurance, Securities and Banking

Adrian M. Fenty
Mayor

Thomas E. Hampton
Commissioner



Market Conduct Examination

**National Association of Insurance Commissioners (NAIC)
Accredited**

Government of the District of Columbia
Department of Insurance, Securities and Banking



Thomas E. Hampton
Commissioner

January 3, 2007

I, Thomas E. Hampton, Commissioner of Insurance, Securities and Banking of the District of Columbia, hereby certify that I have compared the annexed copy of the

LIMITED SCOPE MARKET CONDUCT EXAMINATION REPORT

ON THE

DAVID A. RIFFERT

On behalf of

L.E. HARRIS AGENCY, INC.

January 1, 2003 through December 31, 2004

with the original on file in this Department and the same is a correct transcript there from, and of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this Department, at the City of Washington, the day and year first written

Thomas E. Hampton
Commissioner of Insurance, Securities and Banking

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SALUTATION

December 4, 2006

Honorable Thomas E. Hampton, Commissioner
Department of Insurance and Securities and Banking
District of Columbia
810 First Street Northeast, Suite 701
Washington, DC 20002

Dear Commissioner:

In accordance with your instructions and pursuant to the District of Columbia Official Code 31-1402(a) and procedures promulgated by the National Association of Insurance Commissioners, a comprehensive market conduct examination of the management and affairs has been conducted of:

DAVID A. RIFFERT

On behalf of

L. E. HARRIS AGENCY, Inc.

with statutory administrative offices located at 1353 Holton Lane, P.O. Box 8330, Langley Park, MD 20783-8330.

The report thereon, as of December 31, 2004 is herein respectfully submitted.

FORWARD

This examination is a systematic investigation of documents, procedures, and systems conducted in accordance with the guidelines and procedures recommended by the National Association of Insurance Commissioners (NAIC). The examination report generally notes only those areas or items which the Department of Insurance Securities and Banking (DISB) takes exception. The examination reflects the District of Columbia insurance activities of Mr. David A. Riffert, hereinafter referred to as the broker. In the District of Columbia, a brokerage firm, such as L.E. Harris Agency, Inc., cannot obtain a surplus line broker license. The brokerage firm uses the broker license of its designated employee, Mr. David Riffert. Any report reference to the brokerage firm is synonymous to the named licensee.

Violation(s) found in this report identifies the broker's activity that does not comply with an insurance statute or regulation. Brokerage policies, practices, and procedures are commented on for the purposes of giving the reader precision in clarity. The examination report may include management recommendations addressing areas of concern noted by DISB for which no statutory violation exists. In reviewing material for this report, the examiners relied primarily on records and materials furnished by the broker in reconciliation with records on file with the DISB.

This is the broker's initial market conduct examination.

SCOPE OF EXAMINATION

The on-site phase of this limited scope surplus lines broker examination of David A. Riffert on behalf of the brokerage was performed at its primary office location, which is situated at 353 Holton Lane, P.O. Box 8330, Langley Park, MD 20783. The examination covered the period from January 1, 2003 through December 31, 2004.

In accordance with DC Official Code § 31-1403, the guidelines and procedures set forth in the Examiners' Handbook adopted by the NAIC have been followed in the conduct of the examination and the preparation of this report.

METHODOLOGY

The examination process consists of a sequence of activities. Obtaining and confirming an understanding of the broker's operational system is vital in the examination process. Such activities are:

- Evaluating brokerage procedural manuals and memorandum;
- Conducting interviews with brokerage personnel; and
- Scanning transactions prior to sample selection

After obtaining operational knowledge, an evaluation or risk assessment is performed of the broker's unique characteristics, identifying and summarizing the major risks that will drive the individual exam area strategies.

Although the sequence of activities outlined occurs in every DISB market conduct examination and is based on NAIC Handbook standards and tests, some standards are measured using an analysis of general data gathered by the examiner, or provided by the broker in response to queries. Some standard findings are developed through direct reviews of random sampling of files.

The examiner's judgment determines the specific procedures, plans and tests appropriate for each brokerage operation. The standards were measured using tests designed to adequately measure how the broker met the standard. Each standard applicable to a broker's functional operation is reported under its respective heading. A failed standard that also has a specific DC Official Code citation is identified under the related broker function. Unresolved examination violations/issues are at the end of the report under the caption, "Summary of Significant Issues". Areas of review having a direct statutory requirement but not a direct NAIC standard are accompanied at the end of the report under a separate report heading.

This market conduct examination was focused upon the following major areas:

- Operations and Management
- Placement Activities
- Areas having a direct statutory requirement, but not a direct a direct NAIC standard

BROKER PROFILE

Documents providing a general description of brokerage activities were reviewed to determine a profile of operations, including management structure, goals, and recent developments of the brokerage for this examination period.

L.E. Harris Agency, Inc was founded in 1922. The brokerage operates as a “Wholesale” agency that works with other licensed agents and brokers and is licensed to perform the business of Surplus Lines in the jurisdiction of Washington DC, Maryland and Virginia. The brokerage activity is mainly in the Mid-Atlantic, although service is provided for producers’ national needs. As of this examination period, the brokerage serves approximately seven hundred (700) independent agents and brokers.

David Riffert serves the brokerage as a Director, its President, office manager, and principal surplus lines broker. He brought to the firm his experience drawn from working for a multinational London-owned brokerage. The other key personnel in the organization are Mark Baldwin, Vice President, Cindy Milburn, manager of underwriting, Rose Marie Richardson, accountant, and Emma Coleman, underwriter for binding authorities.

The three (3) professional organizations the licensee is affiliated with are the Professional Liability Underwriting Society, National Association of Professional Surplus Lines Offices and American Association of Managing General Agents.

The broker operates both a managing and a binding facility for over one dozen insurers and also function as a broker for over fifty (50) specialty companies. Some of these companies are Penn-America Group, Lloyd’s London, Berkshire Hathaway, and American International Group. The broker is compensated through fees and/or commissions for services provided to clients to identify, value, mitigate, transfer and administer risk. In addition to this compensation and any wholesale brokerage commissions, the firm has some markets that offer profit sharing or contingent commission agreements. These agreements typically reward the firm with additional compensation for business that develops a combined ratio less than expected.

The “In-House” authority of brokerage exists for all types of property, Inland Marine, General and Professional Liability insurance. The brokerage also quotes, binds and issues policies for Trucking and public auto risks. The broker has also developed a special expertise in Directors and Officers Liability, errors and Omission Liability, Miscellaneous Professional Liability and Financial protection areas.

In certain instances, the broker may act as underwriters on behalf of specialty insurers, having full quoting, binding and policy issuances authority but generally the broker serves as a broker’s broker to access companies for specialty lines of insurance. The brokerage has an interaction with these specialty underwriters on a daily basis which leads to a substantive book of business, but on the other hand, the producers may deal in these specialty areas maybe only once or twice a year.

The typical lines of business written by the broker acting as a Managing General Agent are:

- Commercial Auto Liability and Physical Damage
- Garage Liability and Garagekeepers Legal Liability
- Property Insurance, Inland Marine
- General Liability and certain Professional Liability, Liquor Liability
- Package Policies
- Personal Lines: Excess Auto Liability
- Umbrella, Homeowners, Boats (Substandard and unusual risk) and;

Typical excess and surplus lines of business placed by the broker are:

- Directors and Officers Liability
- Employment Practices Liability
- Products Liability
- Umbrella and Excess Liability
- Libel, Slander and other “Media” perils and;
- Contingency coverage such as Cancellation and Hole-In-One.

The operations of the broker are managed under a single operation in Washington DC with revenues in 2003 and 2004 of over Twenty-nine million dollars (\$29,000,000.00) and serving clients on both a national and international level.

The following table indicates the premium volume for the period under examination:

	Year	Year
Source of Premium Income	2003	2004
Admitted and Surplus Lines Companies	14,917,587	14,540,698
Admitted Companies/Binding Authority	8,592,923	8,578,666
Non-Admitted Companies/Brokerage	6,324,664	5,962,032

Subsequent to the conclusion of the examination fieldwork, the firm's principle, David Riffert, sold his 100% interest in L.E. Harris Agency, Inc. to a subsidiary of Insurance House Holdings, Inc. Marietta, Georgia. While it is anticipated that the agency will operate with virtually the same staff and at the same location, ultimate responsibility for the direction of the firm will rest with the new owners. For the immediate present, the broker will continue as Office Manager, but has resigned his positions as President and as a Director.

OPERATIONS AND MANAGEMENT

In order to evaluate the brokerage operations and management, the examiner gathered data using informational requests, direct questioning, interviews, and presentations by the broker staff and officers.

During the course of this examination, the broker's operations were reviewed using tests prescribed in the NAIC Examiners Handbook, Volume I, Chapter X to determine if the broker was meeting established industry standards. The examiner verified that the brokerage does not collect nonpublic personal information in connection with respect to their commercial business transactions. NAIC standards, B-11, B-12, B-13, B-14, B-15, B-16, B-17 and B-18 are not applicable in this examination and or excluded from comments and findings. The following report section gives direct reference to the NAIC handbook standards applicable for review.

[NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-1](#)

[The broker has procedures in place to report, as required by statutes, rules, and regulations, fraudulent activities to the appropriate authorities.](#)

Comments: The review methodology for this standard does not have a direct statutory requirement. DC Official Code §§ 22-3225.09 and 22-3225.12 speaks to the business of anti-fraud as it relates to an insurance company but does not apply to the business of surplus lines.

Finding: The broker is in compliance with the standard.

Observations: The broker does not have a formal anti-fraud plan in place to address any activities that may appear to be fraudulent. The broker stated that firm attempts to qualify a producer by asking for basic information in addition to securing a copy of the broker's E&O declaration sheet. The broker's policy on handling fraudulent or unauthorized transaction addresses both fraud that involves outsiders and the acts of employees and officers, which is regarded potentially more serious as it could expose the broker to criminal prosecution, civil liability or investor's lawsuits.

Recommendations: It is recommended that reporting responsibilities enumerated in the brokers practices be expanded in a policy document to include notice mandated in DC Official Code § 22-3225.09. The examiner concluded that there are possible fraudulent acts encompassed throughout the broker's daily operation that would possibly require reporting to the Department of Insurance or DC Metropolitan Police Department. Therefore, it is recommended that a fraud plan be developed.

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-2

The broker has a valid disaster recovery plan

Comments: This review methodology does not have a direct statutory requirement.

Findings: This Standard was not met according to the guidelines of the National Association of Insurance Commissioners (NAIC).

Observations: The broker does not have a formal disaster recover policy. The broker did provide the examiner with a written statement that addresses policy data. The broker stated that data used internally to produce invoices, financial records of billings, receivables, and payables are backed up daily and taken off the premises each evening, and the tape is maintained by an off-site "batch" accounting service that was retained by the broker.

Recommendations: It is recommended that the broker develop a formalized policy on disaster recovery that adequately provides for off-site computer back up and security. It will also be suggested that the broker consider provisions that adequately addresses the state of the handicap in the event of an emergency if applicable.

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-3

Records are adequate, accessible, consistent, and orderly and comply with state record retention requirements.

Comments: In connection with the verification and evaluation of surplus lines affidavit entries and premiums, the examiner reviewed numerous policy files, along with premium information for the years under examination that was provided by the company. Particularly in view of the volume and complexity of these files, their maintenance, legibility, and organization were found to be very good. In addition, with regard to the maintenance and availability of records requested throughout the course of this examination, the examiners found that the broker is in compliant with the provisions of DC Official Code §§ 31-2231.10 and 31-1403(b).

Findings: The broker is in compliance with the standard.

Observations: The brokerage provided a written statement of office policies applicable to the retention and destruction of insurance records. The broker appoints an off-site professional custodian who is responsible for the maintenance of insurance records. The broker stated that records are maintained for at least the past ten (10) years.

Recommendation: It will be recommended that the broker develop specific procedures to address all insurance records.

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-4

The broker is appropriately licensed.

Comments: The review methodology for this standard has a direct statutory requirement. DC Official Code § 31-2502.40(a) that states in part any agent or broker licensed in the District may be licensed to procure policies from companies that are not authorized to do business in the District.

Findings: The broker is in compliance with the standard.

Observations: None

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-5

All statutorily required bonds are in force.

Comments: The DC administrative citation requiring a statutory bond was repealed in 1999. The DISB failed to inform producers or bond providers of the change in bonding requirements. The broker provided the examiners with copies of bonds issued biennially covering acts of licensee. Each of the bond forms indicates a penal sum of \$20,000.

Finding: The broker is in compliance with the standard.

Observations: Examiners selected to perform this NAIC standard based on information available during the planning phase of this examination. During the execution phase of the examination, the examiner learned of the statutory repeal.

Recommendations: Broker was advised of the change in the DC bond requirement during the course of this examination period.

All required reports have been filed with the Department of Insurance or the appropriate authority.

Comments: The review methodology for this standard has a direct statutory requirement. DC Official Code § 31-2502.40(a) states in part that each broker so licensed for unauthorized policy procurement shall execute and file with DISB on or before the 10th day of each month an affidavit covering the policy transactions of the previous month.

For the purposes of testing timeliness of reporting, as well as other attributes discussed in this report, the brokerage was asked to provide affidavits reflecting a total of 800 unauthorized (surplus lines) business transactions reported during the examination period. A sample of 52 transactions was identified, utilizing ACL. The brokerage provided the appropriate policy and companion marketing files, enabling detailed review of each of the selected transactions.

Findings: Accordingly the broker is not in violation of DC Official Code § 31-2502.40(a).

Observations: It was found that one (1) affidavit entry reflected an incorrect gross premium amount, as compared with policy file documentation. At the same time, it was determined that the tax amount, which was based on the corrected premium, was correct. The lack of an adequate time increment between the transaction month and the report filing due date the following month (only 10 days) can be problematic due to the normal time lags involving typical workflow disruptions, i.e., peaks in workflow volume (particularly toward year-end when a disproportionate number of policy renewals are processed), vacation, illness.

Recommendations: It is recommended the broker take appropriate steps to streamline internal reporting procedures so delayed reporting of surplus lines transactions to DISB be avoided and the broker can more fully assure its timely filing objective.

The applicable taxes are reported and are credited to the state

Comments: The review methodology for this standard has a direct statutory requirement. DC Official Code § 31-2502.40(a) states in part that each broker so licensed for unauthorized policy procurement shall execute and file with DISB on or before the 10th day of each month an affidavit covering the policy transactions of the previous month. For the purposes of testing accuracy of reporting, as well as other attributes discussed in this report, the brokerage was asked to provide affidavits reflecting a total of 680 unauthorized (surplus lines) business transactions reported during the examination period. A sample of fifty-two (52) transactions was identified, utilizing ACL. The brokerage provided the appropriate policy and companion marketing files, enabling detailed review of each of the selected transactions.

Findings: The broker is in compliance with the standard.

Observations: None

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-8

Consumer and insurance department complaints responded to in accordance with statutes, rules, and regulations.

Comments: The review methodology for this standard has direct statutory requirements, i.e., DC Official Code §§ 31-2231.10 and 31-2231.18. The former citation states in part that no person shall fail to maintain its books, records, documents, and other business records in such order that data regarding complaints, claims, rating, underwriting, and marketing are not accessible and retrievable for examination. The latter citation states in part that the broker shall maintain a complete record of all complaints since the date of its last examination.

Findings: The broker is in compliance with the standard.

Observations: Brokerage personnel were questioned regarding complaint handling and confirmed to the examiners not having received any consumer or Department of Insurance complaints during the examination period. The Department's records did not reflect any complaints filed against the broker during the examination period.

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-9

If the surplus lines broker is responsible for such calculations then unearned premiums are correctly calculated and returned to appropriate party in a timely manner and in accordance with applicable statutes, rules and regulations.

Comments: The review methodology for this standard does not have a direct statutory requirement.

Findings: The broker is in compliance with this standard.

Observations: None

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section B Standard B-10

The broker cooperates on a timely basis with examiners performing the examinations.

Comments: The review methodology for this standard has a direct statutory requirement. DC Official Code § 31-1403(b) that states in part that every person from whom information is sought must provide the information to the examiners and must facilitate the examination and aid in the examination so far as it is in their power to do so.

Findings: The broker is in compliance with the standard.

Observations: The broker responded within a timely manner to all inquiries that were made as a result of the examination and cooperated fully to facilitate the progress of the examination.

Recommendations: None

PLACEMENT - CANCELLATION/NONRENEWAL

In order to evaluate the broker's placement and cancellation/nonrenewal practices, the examiner gathered data using informational requests, direct questioning, interviews, and presentations by the broker staff and officers.

During the course of this examination, the broker's placement and cancellation/nonrenewal practices used the same sample developed for the review of operations to determine if the broker was meeting established industry standards. All NAIC standards for this phase of the examination were determined applicable. The following report section gives direct reference to the NAIC handbook standards examined.

NAIC Market Conduct Examinations Handbook – Chapter X, Section C Standard C-1

All required disclosures are made in accordance with statutes, rules, and regulations.

Comments: The review methodology for this standard does not have a direct statutory requirement.

Findings: The broker is in compliance with the standard.

Observations:

In all cases, the examiners found the appropriate warning in the sample of 52 files that were reviewed. While the District of Columbia does not require such warnings, it was noted that all reviewed surplus lines placements originating in the D.C. office reflected the stamped warning language on both binders and policy declarations pages.

Recommendations: None.

NAIC Market Conduct Examinations Handbook – Chapter X, Section C Standard C-2

When issued by the surplus lines broker, all forms and endorsements forming a part of the contract are listed on the declaration page.

Comments: The review methodology for this standard does not have a direct statutory requirement.

Findings: The broker is in compliance with the standard.

Observations: None

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X Section C Standard C-3

The selected carrier was evaluated to ensure it complies with statutory requirements regarding financial condition.

Comments: The review methodology for this standard does not have a direct statutory requirement.

Findings: The broker is in compliance with the standard.

Observations: None

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section C Standard C-4

The authorization to bind was provided before the binder was extended to the insured.

Comments: The review methodology for this standard does not have a direct statutory requirement.

Findings: The broker is in compliance with the standard.

Observations: Based on the examiner's review of fifty-two placement transactions that were sampled, the examiner found no case where the broker exceeded their authority. L.E. Harris was granted binding authority with their surplus lines carrier and the examiner did not find any case where the broker exceeded the authority that was granted. Binders that were issued by the carriers were found in files sampled.

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section C Standard C-5

All advertising and sales materials are in compliance with applicable statutes, rules, and regulations.

Comments: The review methodology for this standard has several direct statutory requirements. DC Official Code §§ 31-2231.03 refers to misrepresentations and false advertising, 31-2231.04 addresses false information and advertising generally, 31-2231.05 speaks to defamation and finally 31-2231.21 prohibits the practice of twisting.

Findings: The broker is in compliance with the standard.

Observations: The materials provided and reviewed consisted primarily of organizational advertisements or invitations to inquire within the contexts of promotional educational and materials that spoke to the types of product lines offered.

Recommendations: None

NAIC Market Conduct Examinations Handbook – Chapter X, Section C Standard C-6

Diligent effort was made to place the risk with an admitted carrier in compliance with statutes, rules, and regulations.

Comments: The review methodology for this standard can be found in DC Official Code § 31-2502.40 that states in part that prior to procurement of unauthorized policies the licensed agent or broker must make a diligent effort to place the insurance with authorized companies.

Findings: The broker was unable to satisfy the examiner that it possessed documented evidence, either from a licensed agent or broker, that they performed a diligent effort to place their risk with an admitted carrier prior to seeking placement through the broker.

Observations: Diligent placement effort is an area that was discussed with the broker. The broker does not have a formal procedure in effect that evidences diligent effort. The referenced Code citation is not specific with respect to the number of diligent efforts placement required, it nonetheless requires evidence to support that the risk was presented and declined with an admitted carrier. The broker's surplus line placements were performed on the full faith that the submitting producer's risks were declined by the admitted markets prior to contacting the broker.

Recommendation: The broker should hold the producing agents/brokers to a standard practice of documenting their attempts to place the risk with admitted carriers.

SUMMARY OF FINDINGS

Standard B-2

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A valid disaster recovery plan was discussed with the broker who agreed to consider our recommendation in future plans.

Standard B-6

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The lack of an adequate time increment between the transaction month and the report filing due date the following month (only 10 days) was discussed with the broker who said this issue was problematic due to the normal time lags involving typical workflow disruptions, i.e., peaks in workflow volume (particularly toward year-end when a disproportionate number of policy renewals are processed), vacation, illness.

ACKNOWLEDGMENT

In addition to the undersigned, William McCune, Supervisory Market Conduct Examiner reviewed the supporting work papers and assisted in the preparation of the written report.

Respectfully submitted,

Janet LeGore, Market Conduct Examiner