

SURPLUS LINES STAMPING OFFICE OF TEXAS

Antitrust Policy

This Antitrust Policy affirms The Surplus Lines Stamping Office of Texas' ("SLTX") intention to avoid direct or indirect antitrust and anti-competitive activities. SLTX, its Board of Directors, its employees, and its representatives shall conduct ourselves in accordance with this policy.

1. INTRODUCTION

Created by the Texas Legislature in 1987, SLTX is a non-profit association created pursuant Texas Insurance Code Sec. 981.151. SLTX functions to ensure the integrity of the excess and surplus lines insurance market. Texas licensed surplus lines agents and registered purchasing groups must file copies, or equivalent electronic data, with SLTX within 60 days of the issuance of a surplus lines policy to a Texas home-state insured.

SLTX is governed by its Board of Directors ("the Board"), which has nine members appointed by the Texas Commissioner of Insurance. Up to five members of the Board may be employed in the insurance industry, including representatives of insurance companies, reinsurance companies, brokers, agents, administrators, and others engaged in the business of insurance. Some industry members of the Board may be in competition with each other as well as with representatives of the insurance industry in general. And, least four members of the Board must be individuals representing the public. Public members must have at least three years of experience in purchasing commercial insurance and, accordingly, will interact with individuals in the insurance industry in addition to industry members on the Board. Additionally, participants in SLTX activities, including meetings and forums, may be in competition with one another. For this reason, strict and full compliance with state and federal antitrust laws and other laws prohibiting anti-competitive activity is a requirement for SLTX. Board members, employees and representatives shall strive for full compliance with this Antitrust Policy.

Notwithstanding the above, SLTX encourages its members to freely discuss matters that do not create a direct or indirect restraint of trade and are in keeping with the SLTX's purpose.

SLTX's mission is to provide our business partners with meaningful data, analysis, and educational resources to empower their decisions.

SLTX's vision is to lead with innovative solutions that enrich the Texas insurance and specialty marketplace.

SLTX's Core Principles are as follows:

- Integrity. Ethical and accountable;
- Communication. Clear, consistent, and collaborative;
- Compliance. Responsive and results oriented; and
- Culture of excellence. Specialty focused and value driven.

2. DUTIES AND RESPONSIBILITIES OF SLTX BOARD MEMBERS, EMPLOYEES AND REPRESENTATIVES (COLLECTIVELY "SLTX ASSOCIATES")

- A. SLTX Associates will strictly comply with applicable laws and regulations, including state and federal antitrust laws. The basic content and structure of these laws and regulations are outlined in Appendix A.
- B. SLTX Associates shall not knowingly engage in antitrust or anti-competitive behavior in SLTX related activities or events. Additionally, SLTX and SLTX Associates shall not permit nor condone behavior that is directly or indirectly anti-competitive in any SLTX activities.
- C. In all SLTX related settings, SLTX Associates shall strictly avoid any activities, whether collectively or individually, which may constitute, or may be construed to constitute, price fixing, market allocation, bid rigging, boycotts, agreements on market capacity, restriction of market entry, and sharing of new market or new product development.
- D. SLTX Associates shall also avoid discussions concerning proprietary competitive information, including, but not limited to, pricing, costs, profit margins, conditions of sales, rebates and discounts, market strategy, and any other information that is not publicly available. SLTX Associates are obligated to immediately terminate any such discussions at SLTX related events, whether formal or informal proceedings.
- E. All SLTX Associates shall adhere to the standards of conduct stated above in all discussions that take place at the site of SLTX meetings, and in all communications concerning SLTX business.

3. ASSOCIATION MEETINGS, SEMINARS AND FORUMS

In order to further the purposes of this Antitrust Policy, SLTX's Board of Directors, presiding officers, and Committee Chairs shall follow the procedures below in holding or presenting SLTX meetings, seminars, and forums. In the event of a conflict with the Texas Open Meetings Act, Texas Government Code Chapter 551 or with the Texas Insurance Code, the Texas law shall control.

- A. A written agenda shall be prepared in advance for every formal SLTX Board or Committee meeting. Where practical, the agenda shall be reviewed in advance by counsel, but, in all instances, the agenda shall be reviewed by the Chair of the Board, the presiding officer, or the committee chair for potential antitrust implications. Agenda items having potential antitrust implications shall be tabled until the matter is discussed with the Chair of the Board or with legal counsel, as necessary and appropriate.
- B. The written agenda shall be followed throughout the meeting. Accurate, detailed meeting minutes of every meeting will be prepared by the Secretary of the Board, the presiding officer, or Committee Chair, and reviewed by legal counsel, if necessary. The minutes shall be distributed to all members of the Board as soon as practical. Approval of the minutes shall be obtained at the next following meeting of the Board upon motion and vote after review by the members attending.
- C. In the event an issue with potential antitrust implications arises during any SLTX meeting, seminar, or forum, such discussion must be discontinued pending resolution of the matter through with legal counsel.
- D. In the event that any member has a concern about potential antitrust implications of discussion during a meeting, he or she shall interrupt the discussion and state that concern immediately. If the discussion is not terminated or if the concern not resolved, the

concerned member should state that he or she is leaving the meeting for that reason and leave.

- E. Conversations involving discussion of matters in violation of this policy will not be tolerated at an association meeting, seminar or forum, and the Chair of the Board, the presiding officer, or Committee Chair may eject violating parties from the meeting.

4. REMINDERS AND ADMONITIONS

- A. **Orientation and Annual Reminders.** Every newly elected SLTX Board Member and newly employed executive shall certify receipt and reading of this Antitrust Policy. A copy of this Antitrust Policy shall be presented annually to each SLTX Board Member and executive. The Antitrust Policy may be delivered electronically.
- B. **Publication.** This Antitrust Policy shall be available on SLTX's website.
- C. **Meetings.** The Chair of the Board, the presiding officer, or the Chair of a Committee presiding at a meeting shall remind all members attending of this Antitrust Policy at the outset of the meeting. The SLTX management shall provide copies, which may be delivered electronically, in the event a participating member or attendee requests a copy.
- D. **Seminars and Forums.** The following Antitrust Admonition shall be read out loud during the initial stage of any SLTX seminar or forum. Additionally, this Antitrust Admonition shall be prominently displayed in meeting materials.

ANTITRUST ADMONITION

This seminar/ forum is intended to inform participants about current developments in the law regarding insurance related topics, including surplus lines insurance. All persons conducting the business of insurance need to be mindful of the constraints of the antitrust laws. There shall be no discussions at this seminar/forum 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, expenses, or any other competitive aspect of an individual company's operation. Participants in this forum shall not discuss the business interests of any insurer or others in the business of insurance, including but not limited to, plans involving, or the possibility or desirability of:

- Raising, lowering or stabilizing premiums or commissions, or expenses;
- 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.

APPENDIX A

THE BASIC CONTENT AND STRUCTURE OF ANTITRUST AND ANTI-COMPETITIVE LAWS AND REGULATIONS

Each and every SLTX Associate must recognize a duty and responsibility to avoid and prevent antitrust violations. In this regard, SLTX Associates must understand basic antitrust and anti-competitive legal principles in order to recognize areas of potential antitrust or anti-competition activity risk.

The following information is provided as an initial guide for SLTX Associates and is not intended to provide legal advice. SLTX Associates are encouraged to contact SLTX legal counsel, or individual legal counsel hired at the SLTX Associate's personal expense, in the event further guidance is needed.

The McCarran-Ferguson Act delegates the regulation of the business of insurance to the states and grants the insurance industry a limited exemption from federal antitrust laws and regulations. However, insurers and others in the business of insurance remain individually subject to some aspects of federal antitrust laws and regulations and other prohibitions on anti-competitive behavior. Additionally, state antitrust laws and regulations and anti-competitive behavior bans typically mirror federal law and fill in the gaps created by the McCarran-Ferguson Act's limited exemption. Thus, SLTX Associates should be mindful of both federal and state restrictions.

1. Federal Law

The Sherman Act, the Clayton Act, the Federal Trade Commission Act, and the Robinson-Patman Act form the basic foundation for federal antitrust enforcement.

- A. The Sherman Act prohibits antitrust behavior in restraint of trade in interstate commerce, whether by contract, combination of entities, conspiracies, or agreements. The Sherman Act prohibits price fixing, market allocation; boycotts and monopolies.
- B. The Clayton Act forbids activities which lessen competition or monopolize trade, including exclusive deal arrangements, and mergers and acquisitions which will tend to lessen competition.
- C. The Federal Trade Commission Act bans unfair methods of competition and unfair or deceptive acts and practices. This Act also includes prohibitions on anticompetitive activities proscribed by the Sherman and Clayton Acts. The main difference, however, is that violations of The Federal Trade Commission Act do not require two or more actors. A single person or entity may violate the Act through individual actions.
- D. The Robinson-Patman Act prohibits price discrimination which lessens competition.

2. State Law

Although the McCarran-Ferguson Act provides for a limited anti-trust exemption for persons and entities engaged in the "business of insurance," state antitrust laws may apply to fill in the regulatory gaps created by the McCarran-Ferguson Act. Most states have laws in their insurance codes prohibiting unfair trade practices, to include antitrust prohibitions, as well as proscriptions of deceptive trade practices. The following are examples of Texas laws prohibiting anti-trust and anti-competitive behavior in the business of insurance.

- A. Texas Insurance Code Sec. 101.103 permits the Commissioner of Insurance to issue an emergency cease and desist order or to seek an administrative cease and desist order or civil injunctive relief if the Commissioner has reason to believe a person is engaged or threatening to engage in an “unfair act.” This statute is typically directed at unauthorized insurance violations, but the statute also prohibits unfair acts in general. Civil remedies include fines of up to \$10,000 per day. Violations may also constitute criminal offenses if done knowingly.
- B. Subtitle C, Title 5, Texas Insurance Code defines and prohibits unfair methods of competition or unfair or deceptive acts or practices. The state may institute cease and desist proceedings or seek injunctive relief as well as civil fines and restitution. Violations may also constitute criminal offenses if done knowingly. Violations may also create a private cause of action with treble damages.
- C. The Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), Texas Business and Commerce Code Sec. 17.41 prohibits false, misleading, and deceptive business and insurance practices, unconscionable actions, and breaches of warranty. The state may seek civil injunctive relief as well as civil fines and restitution. Violations may also constitute criminal offenses if done knowingly. Violations may also create a private cause of action with treble damages.
- D. Texas Free Enterprise and Antitrust Act mirrors many aspects of federal antitrust law and is enforced by the Texas Attorney General. The state may bring suit in either state court under Texas law or in federal court under federal law.

3. Consequences of Antitrust and Anti-competitive Violations

Violations of The Sherman Act are subject to both civil and criminal penalties, including jail terms. In addition to enforcement by the Antitrust Division of the United States Department of Justice and by the Bureau of Competition of the Federal Trade Commission, Sherman Act violations are subject to private law suits possible remedies including treble damages.

Federal Trade Commission Act violations could result in the Federal Trade Commission issuing cease and desist orders for which violations are subject to civil fines of \$10,000 per day. Additionally, associations which are found in violation are subject to court ordered remedies.

As summarized above, Texas laws and regulations have similar remedies and prohibitions.

And individual members of an association may be held personally liable for civil remedies and criminal penalties if the association is held to be involved in the unreasonable restraint of competition.

Accordingly, SLTX and SLTX Associates must be vigilant to avoid antitrust and anticompetitive behavior and/or discussions at any SLTX related event.