

NWC ALLIANCE NEWSLETTER

Standing together

MYTHS...Admitted vs Surplus Lines

Residential Construction Liability



Admittedly, pun intended, we are stirring the pot a bit with this month's newsletter. Some agents and insurers may take issue with our decision to even bring up this topic, much less the facts and opinions we are raising. However, our goal is to get people thinking about common perceptions regarding admitted insurance which may not be entirely true.

Here is the question we are addressing: ***Is an Admitted "Preferred" policy better than an Excess and Surplus Line "Non-Admitted" policy?***

When it comes to residential construction liability in a construction defect state, the answer is, "**Not in most cases**". However, Admitted insurers often get overplayed as better than Excess and Surplus (E&S).

Before going into specific myths, let's discuss some background and history. Insurance regulators certainly prefer admitted insurers because admitted insurers pay their premium taxes directly and the regulators have input on solvency concerns. However, regulators can stifle innovation by how they oversee rate and form. E&S carriers can therefore solve coverage problems that Admitted insurers aren't yet ready to address.

Moreover, E&S insurers do pay their taxes. Rather than paying premium taxes directly, E&S insurers pay their premium taxes via the E&S licensed Broker who collects and remits it as collected from and illustrated to the policyholder. A recent article from the Insurance Journal goes into some of the detailed mechanics regarding E&S Insurers:

[20 Things to Know About Surplus Lines Insurance in 2020](#)



Here are the 5 MYTHS:

1) *If you have an Admitted policy in place, you are not allowed to offer an E&S policy option. If you get an Admitted policy quote, you cannot also offer E&S quotes.*

NOT TRUE. While declinations from Admitted insurers may be required to offer and bind E&S options in some states, there is no prohibition on offering E&S **if it is a matter of needed coverage.** In residential construction liability, especially in construction defect states, most Admitted options exclude faulty work for subcontracted installations (see our [April Newsletter](#)), earth movement/subsidence, action over and more. There are usually plenty of coverage reasons to look at E&S options. What you can't do is offer E&S only to save on premiums.

2) *Only Admitted policies can return premium at audit if business is slower than projected for the policy year.*

NOT ALWAYS TRUE. Some E&S policies can be negotiated to allow return premiums, typically using an 80% or 90% minimum exposure deposit. In those cases, policies can allow a return premium of up to 20% or 10% respectively. Using conservative projections is a common practice if there are return premium concerns. Admitted insurers with unlimited return premium provisions after audit may certainly be favorable for an individual policyholder's situation. However, after the 2008 banking and construction collapse a number of Admitted carriers went bankrupt as a result of sweeping return premiums...and the return commissions significantly impacted many agents. Accordingly, in the last few years some Admitted insurers are getting forms approved by regulators that disallow return premiums upon audit.



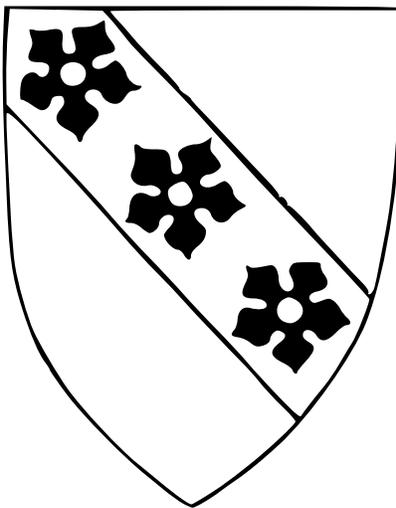
3) *Admitted policies are protected by the State's Guaranty Fund, so E&S policies are in danger of insolvency.*

UNTRUE. While the first part of this statement may be true, it's used to twist an outright lie at the end. E&S insurers are rated by AM BEST and other organizations in the same way that Admitted insurers are.

An A X (Ten) Admitted insurer is no more solvent than an A X (Ten) E&S insurer. Certainly solvency is an important factor, and efforts should be made to avoid companies that may not be around 10 or 12 years later (through your statute of limitations/repose). Unfortunately, a State's Insurer Guaranty Fund may not do enough for a policyholder if an insurer does go insolvent. Most such funds have a \$300,000 limit: a far cry from the \$1M plus unlimited defense costs needed for a nasty construction defect lawsuit. A detailed Insurance Journal Article can be found here:

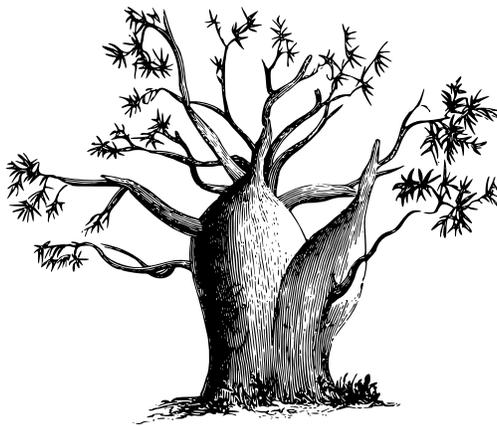
[The Untold Story: State Guaranty Funds](#)

Bottom line: solvency is about well rated insurers, not guaranty funds. Some agents may not be aware of statutes that absolutely prohibit mention of a guaranty fund in any comparison or marketing capacity.



4) *Admitted policies are less expensive and don't have expensive taxes or fees when compared to E&S policies.*

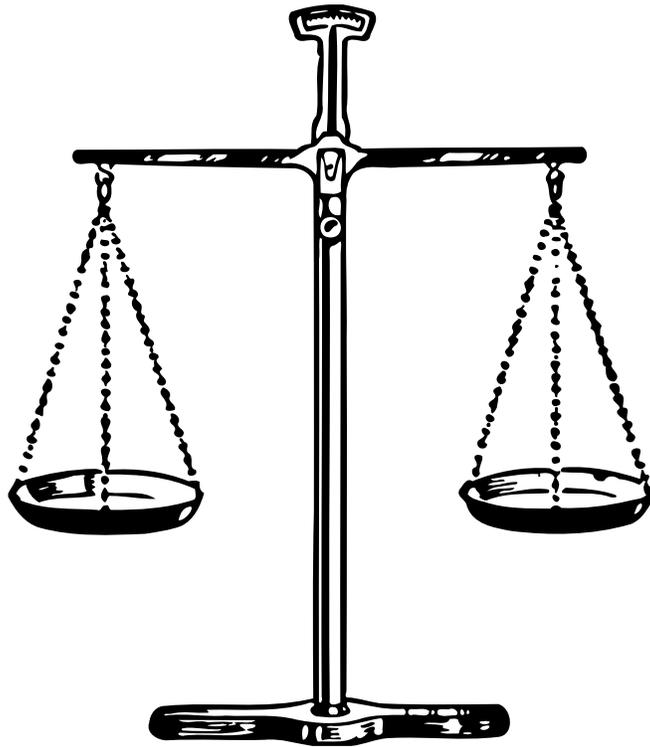
SOMEWHAT TRUE, BUT TWISTED. When looking at construction liability in a construction defect state, the admitted carrier may certainly be cheaper and avoid surplus line taxes and associated fees. Admitted insurers and their agents often add fees anyway. That's not always a problem, especially if costs beyond the placement of coverage need to be passed through to the policyholder. But sometimes the total cost of needed coverage not offered by Admitted insurers but provided through an E&S policy is criticized. If residential construction liability is complex and difficult to properly cover, shouldn't it cost more?



5) *Admitted policies have better coverage because they are regulated.*

NOT TRUE. While regulators certainly oversee rate and form, it is not from a perspective of overseeing coverage for the consumer. Instead, insurance regulators are making sure the rates are adequate for the coverage offered. That means the actuarial math attached to coverage granted and excluded has to match up with the rates charged to make a profit. While regulators oversee claims and marketing conduct for both Admitted and E&S insurance, they will almost always support the exclusions used by the insurer in the policy contract.

At the end of the day, it is a matter of context and disclosure. We know that Admitted insurers compete in the construction liability arena and we distribute for a number of them. However, we also know when to look to E&S carriers to get adequate coverage. Unfortunately, not everybody takes a balanced approach to the use of both Admitted and E&S solutions. With difficult coverage in play, be sure to look at all the options.



If you want to learn more about how Wise Insure and the NationWide Contractors Alliance might be able to help you or the construction clients you work with, [Contact us today](https://www.nwcalliance.com) or call 360-464-2531.

