

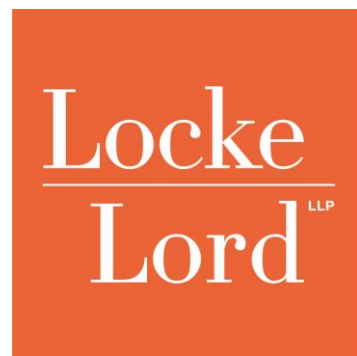
*On the road again...*

**Surplus Lines Law Group**  
April 26 - 27, 2018

**Hyatt Lost Pines**  
Austin, TX



Hosted by: **SLTX**



# Agenda

7:00 – 8:30 AM	Breakfast/Registration	
8:30 – 8:35 AM	Welcome/Anti-Trust Admonition	
8:35 – 9:30 AM	Political Panel: <i>The View...</i>	Barry Goldwater, Jr. Danny Saenz Jose Montemayor
9:30 – 10:20 AM	Looking Back: A “ <i>High Tide</i> ” Year	Gary Pullen David Walling G. Michael Sloane
10:20 – 10:45 AM	Planes, Trains, Blockchains	Tara Mitchell
10:45 – 11:45 AM	“ <i>To Fee or Not to Fee... that IS the question!</i> ”	Rick Brown Jeff Klein Dennis Burden
11:45 – 12:15 PM	Other Business/State Updates	John Meetz
12:15 – 1:30 PM	Lunch	

# Antitrust Admonition

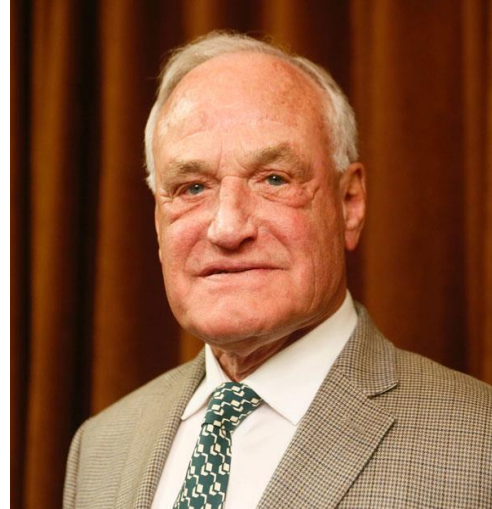
This seminar is intended to inform participants about current developments in the law regarding surplus lines insurance related topics. All persons affiliated with the insurance industry need to be mindful of the constraints of the antitrust laws. There shall be no discussions of agreements or concerted actions that may restrain competition. This prohibition includes the exchange of information concerning individual company rates, coverages, market practices, claims settlement practices, or any other competitive aspect of an individual company's operation. Participants in this seminar shall not discuss the business interests of any individual insurer or others, including but not limited to, the plans of an insurer involving, or the possibility or desirability of:

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

# Political Panel

*The View.....*

## Guest Speakers



*Former Congressman*  
**Barry Goldwater, Jr.**  
Chairman Emeritus  
NTG Consultants



**Danny Saenz**  
Director & SVP  
Business Development  
NTG Consultants



**Jose Montemayor**  
Principal  
Black Diamond Partners

# Guest Speakers

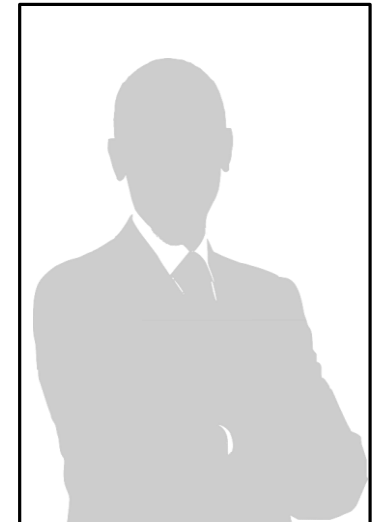
Looking Back:  
*A “High Tide”*  
Year



**Gary Pullen**  
Executive Director  
Florida Surplus Lines Service Office



**G. Michael Sloane**  
Executive VP & CMO  
Wright National Flood



**David Walling**  
Attorney  
Texas Windstorm Ins. Assoc.



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**TEXAS WINDSTORM  
INSURANCE ASSOCIATION**

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# Year In Perspective – CAT Losses and Best Practices

**David Walling – Staff Attorney**

# Who We Are

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- **TWIA was created to provide wind/hail coverage on the coast when no one else will**
- **Created by legislature, but not a state agency**
- **Not for Profit**

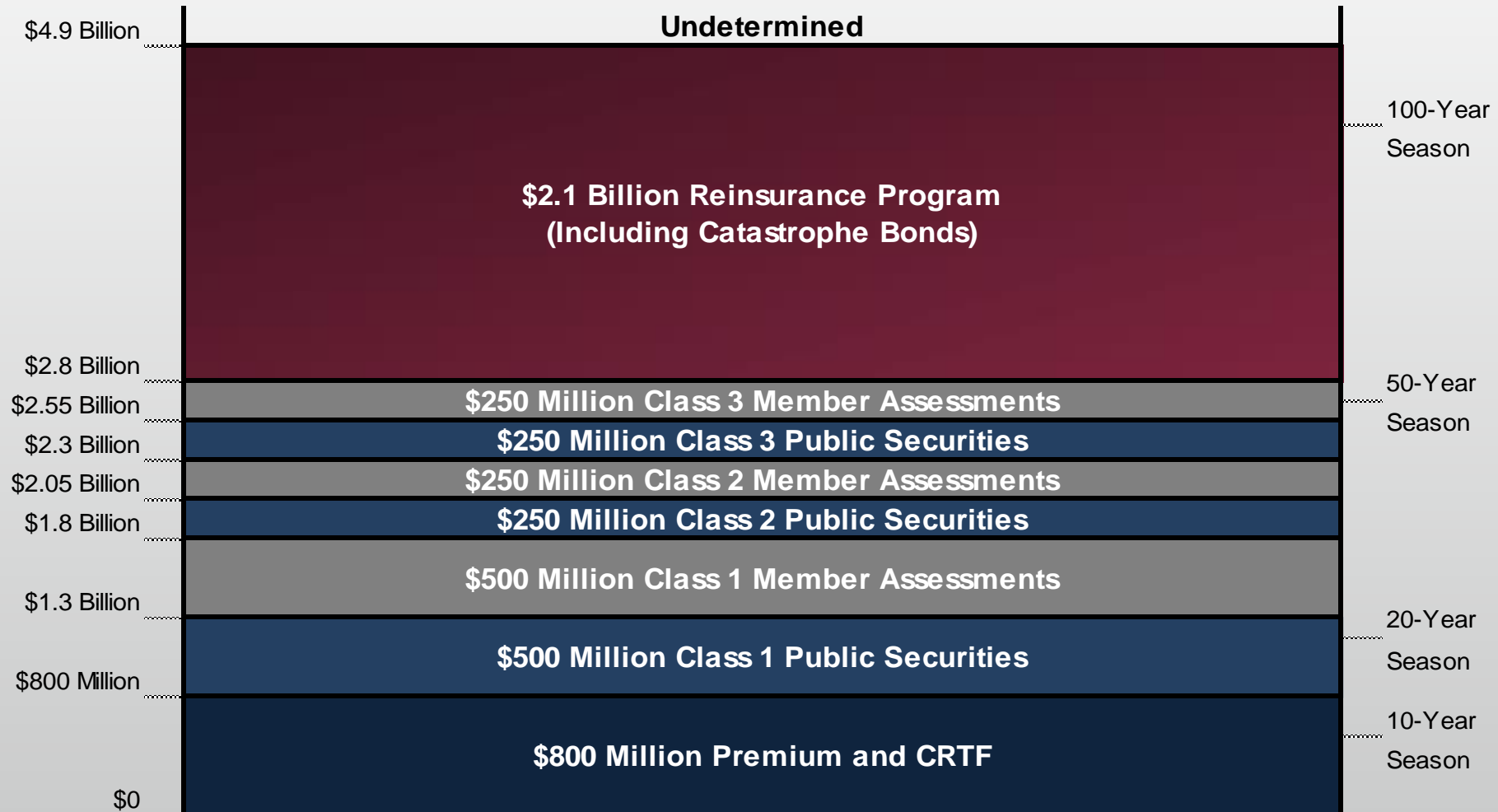


# Who We Are

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- **TWIA is the second largest plan of the 36 residual market plans**
- **Has the third-lowest operating expense as a percentage of premium at 5.5% and has maintained that ratio for six years**
  - **Industry average for Texas carriers is 12%**
- **231,567 Policies in Force (as of September 2017)**
  - **221,717 Residential**
  - **9,049 Commercial**
  - **801 Mobile Home**
- **Exposure: \$66,377,905,161**

# Pre-Harvey Funding



Notes: Storm frequencies based on modeled losses using TWIA exposures as of 12/31/16

# Hurricane Harvey Claims

As of April 19, 2018

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- **Claims Received: 75,503**
  - August 25 - 31: 33,613
  - September: 35,671
  - October: 2,984
  - November: 1,111
  - December – April: 2,116
- **Claims from Rockport and Port Aransas amount to 93% and 92% of PIF in those areas**

# Hurricane Harvey Claims

As of April 19, 2018

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- **Closed Claims: 71,546 (94.8%)**
- **Closed with Payment: 43,933 (58.3%)**
  - Average Residential: \$17,240
  - Average Commercial: \$171,257
- **Closed without Payment: 27,553 (36.5%)**
  - 14,614 Under Deductible
  - 10,032 NPIF or Duplicate claims
- **Paid Indemnity: \$1,068,348,431**
- **\$694 million paid within in the first 60 days (64% of the total paid to date)**

# Hurricane Harvey Response

	15 Days	30 Days	40 Days	60 Days	90 Days
Field Assignments	50,494	61,821	64,959	66,543	68,167
Inspected	30%	72%	88%	97%	99%
Report Returned	22%	66%	86%	97%	99%

# Hurricane Harvey Response

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- **Internal Resources:**
  - 220 Call Center Reps
  - 354 Claims Examiners
  - 6 Remote sites processing claims
  - 3 Mobile Claims Centers in the affected area issuing advances and assisting customers
- **1,258 Field Adjusters**
- **Cycle Times (Average Days )**
  - FNOL to Inspection: 9.0
  - Inspection to Report Submission: 6.8
  - Report Received to Payment: 25.9

# Hurricane Harvey Customer Experience

- **Positive Customer Response to the Field Adjusters (with some exceptions)**
- **Overall very positive TDI Complaint Rate, especially compared to Ike (0.21% verses 1.16%)**

Customer Service Scores (5.0 scale)	
Appointment was Timely	4.82
Adjuster was Professional	4.87
Adjuster listened to Customer	4.58
Customer was satisfied with overall handling	4.56
Overall Customer Service Survey	4.68
TWIA TDI Complaint Rate	0.15%

# TWIA Claims Process – Legal Framework

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- **TWIA's policy is a named-peril policy**
- **Sec. 2210.571. DEFINITIONS. In this subchapter:**
  - (2) "Claim" means a request for payment under an association policy.



# TWIA Claims Process – Legal Framework

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- **Sec. 2210.573. FILING OF CLAIM; CLAIM PROCESSING.**
- **(d) . . . not later than the later of the 60th day after the date the association receives a claim . . . the association shall provide the claimant, in writing, notification that:**
  - (1) the association has accepted coverage for the claim in full;
  - (2) the association has accepted coverage for the claim in part and has denied coverage for the claim in part; or
  - (3) the association has denied coverage for the claim in full.

# TWIA Claims Process – Legal Framework

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- **Notice will Address:**
  - What damages are accepted
  - How much we will pay
  - What damages are denied
  - Why those damages are not covered
  - Damages we observed, but which were not claimed

# Accepted Claims - Appraisal

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- **Sec. 2210.574. DISPUTES CONCERNING AMOUNT OF ACCEPTED COVERAGE.**
  - (b) If a claimant disputes the amount of loss the association will pay for a claim ... not later than the 60th day after the date the claimant receives the notice ... may demand appraisal ....
  - (f). . . A claimant that does not demand appraisal before the expiration of the . . . waives the claimant's right to contest the association's determination of the amount of loss the association will pay with reference to a[n] . . . accepted claim.

# Accepted Claims - Appraisal



John Polak, CPCU  
General Manager  
Texas Windstorm Insurance Association

Acting Commissioner  
Texas Department of Insurance  
333 Guadalupe  
Austin, TX 78701

September 7, 2017

Re: Extension of Claim Processing Deadlines

Through this letter, the Texas Windstorm Insurance Association ("TWIA") is requesting an extension of deadlines for claims processing as authorized by Texas Insurance Code § 2210.581<sup>1</sup>. This section states that "...the commissioner, on a showing of good cause, may by rule extend any deadline established under this subchapter." See Tex. Ins. Code § 2210.581(a). The extensions granted cannot exceed 120 days in the aggregate. Id. § 2210.581(b).

As of the date of this letter, TWIA has received approximately 50,000 claims arising from Hurricane Harvey. Approximately 95% of the claims have been made on TWIA's residential or mobile home policies, while the remaining 5% of claims have been made on TWIA's commercial

# Accepted Claims - Appraisal



John Polak, CPCU  
General Manager

In addition, Section 2210.574 gives a policyholder only 60 days to notify TWIA of a dispute over the amount TWIA pays on an accepted claim and to request appraisal. TWIA believes it is reasonable to anticipate a shortage of qualified contractors in the affected areas that will be able to promptly bid out the work for the damage TWIA accepts. It is also very likely that prices for labor and materials will fluctuate in the affected areas for some time. Therefore, a policyholder may not reasonably be able to dispute TWIA's payment determination for some time after the claim is processed. TWIA believes good cause exists for the Commissioner to extend the policyholder's deadline for raising disputes over TWIA's payment determination by 60 days.

As of the date of this letter, TWIA has received approximately 50,000 claims arising from Hurricane Harvey. Approximately 95% of the claims have been made on TWIA's residential or mobile home policies, while the remaining 5% of claims have been made on TWIA's commercial

# Disputed Claims

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- Disputed claims are in one of the two formal dispute resolution processes provided by statute – either appraisal or litigation
- Disputed claims amount to 2.04% of the claims filed
  - By comparison, the dispute ratio for Hurricane Ike was approximately 10%.

# Disputed Claims

Harvey Claims With Appraisal Invoked					
Total	Open/Pending	Appraisal Complete	Appraisal Process Stopped		
Appraisals	Appraisal In Process	Appraisal Award	Settled with Supplement	Withdrawn	Ineligible
1,453	647	17	671	117	1
	45%	1%	54%		

Harvey Claims With Notice of Intent or Lawsuit Served				
Total NoI / Suit	Notices of Intent Received	Notices of Intent Resolved	Lawsuits Received	Lawsuits Resolved
352	302	44	50	0

Thank You

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- **Questions?**



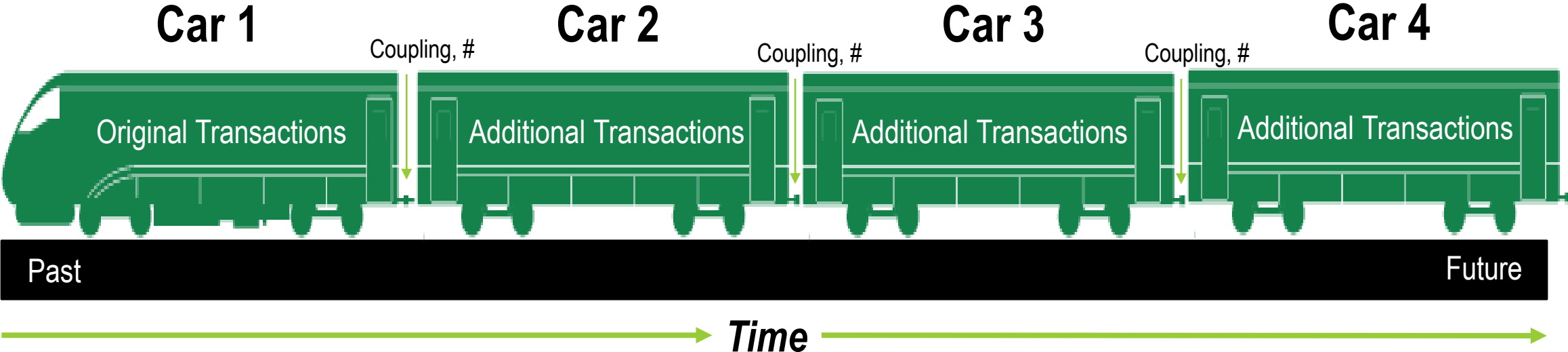
*Planes,  
Trains, and  
Blockchain*

## Speaker

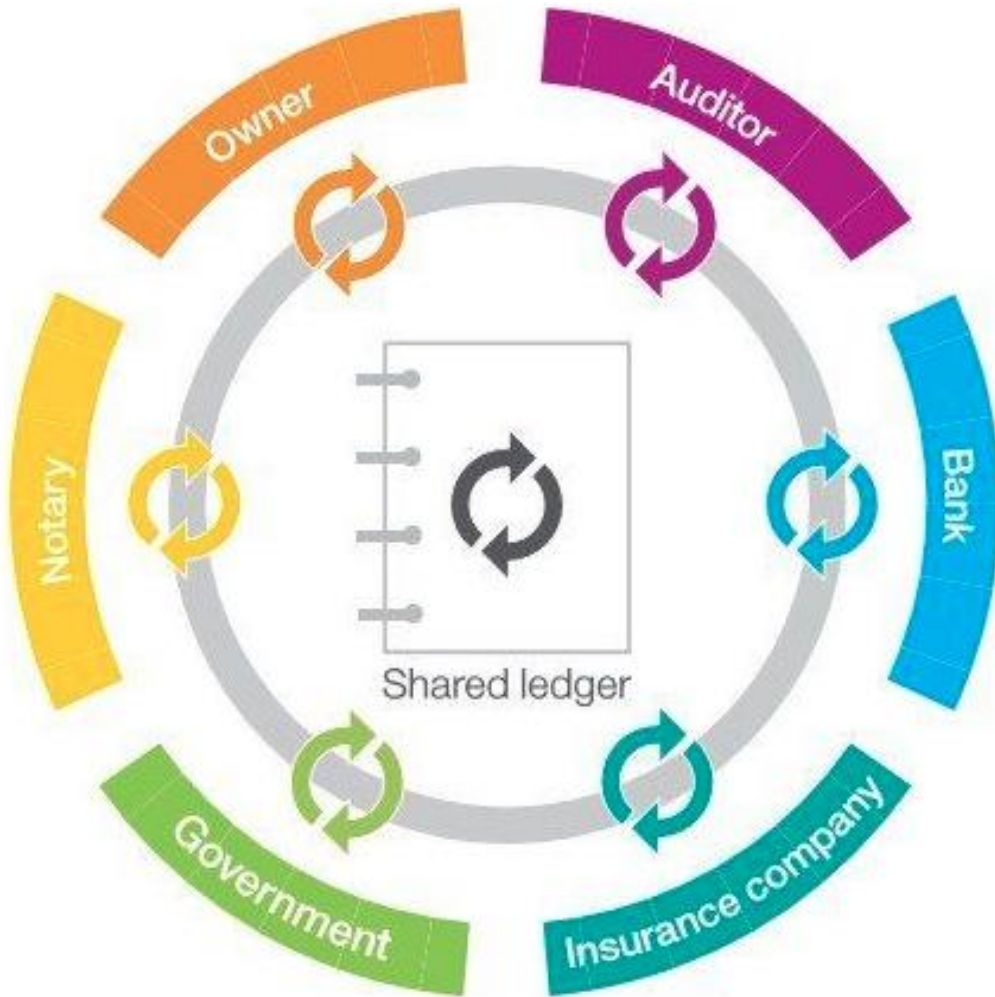


**Tara Mitchell, AINS, AFE, PMP**  
SLTX Vice President, ITS/CIO

# Understanding Blockchain



# Understanding Blockchain..... *Ability to exchange value*



- Blocks of Information “*linked together*”
- Existing ledger verifiable by all parties
- Global & De-centralized trust mechanism
- Sharing of Information
- 3<sup>rd</sup> Parties, i.e. banking, Paypal...not required for such transactions

# Currency Types

## Cryptocurrency



## Traditional Currency

\$, €, £, ¥

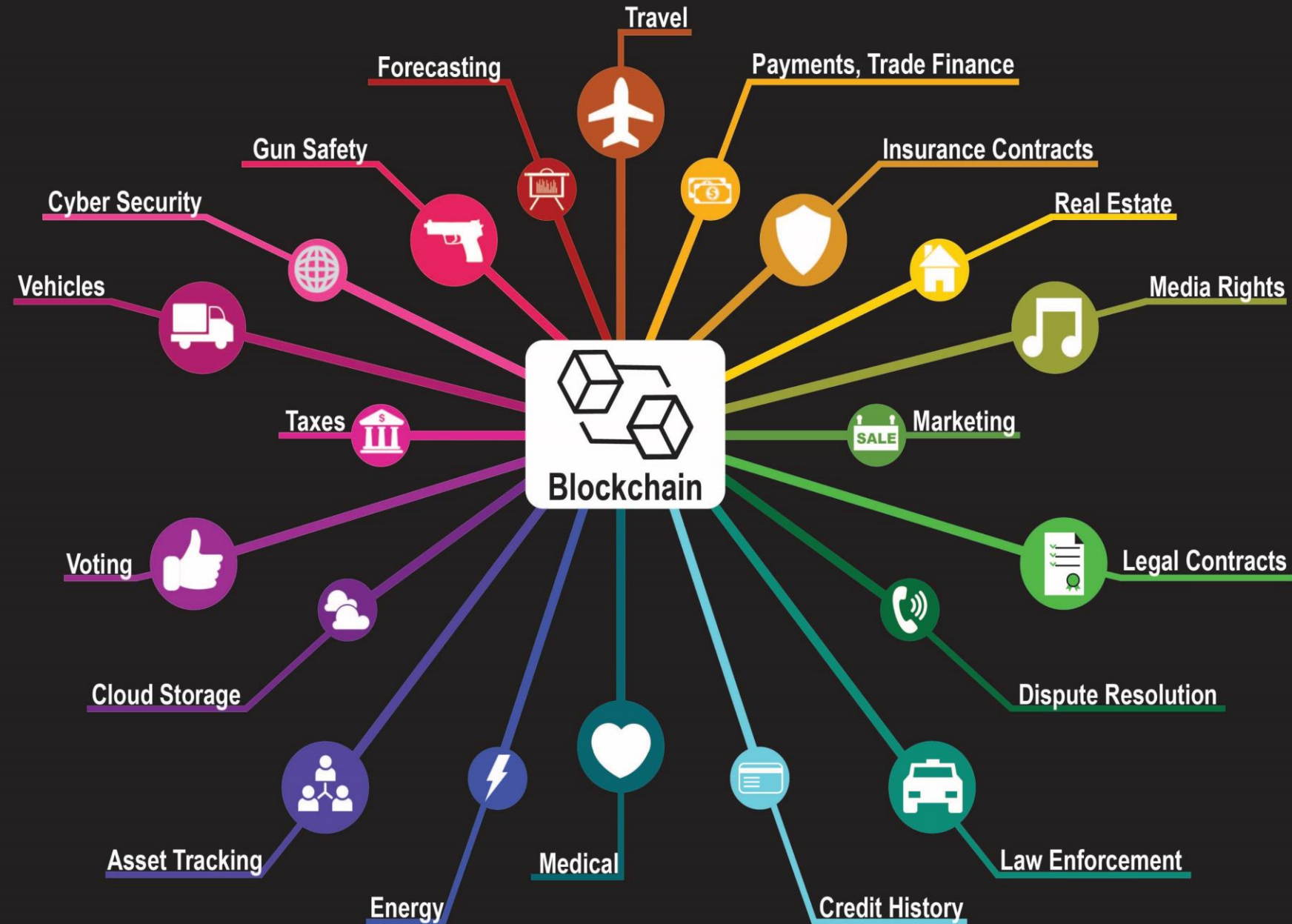
Ripple

ethereum

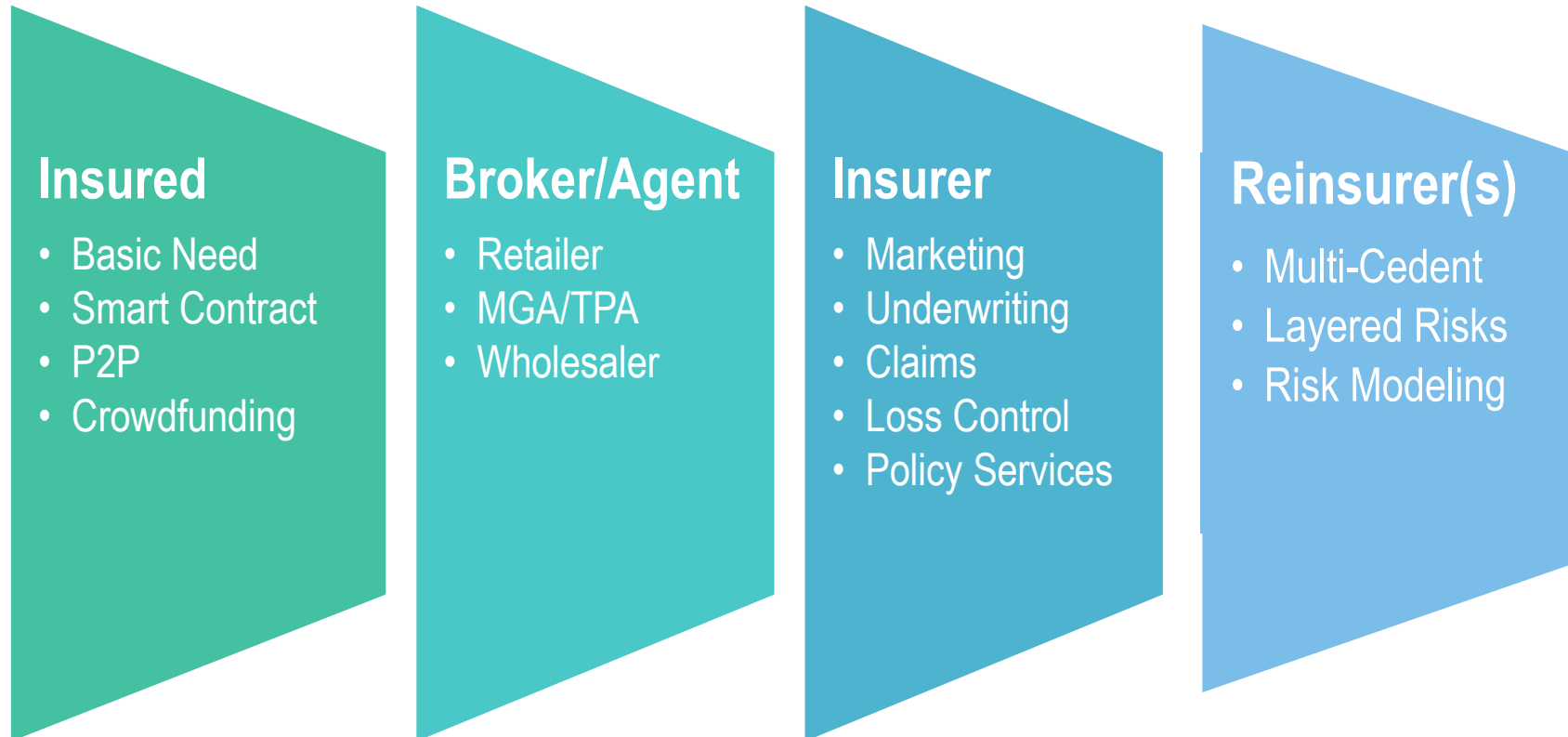
bitcoin

# Blockchain

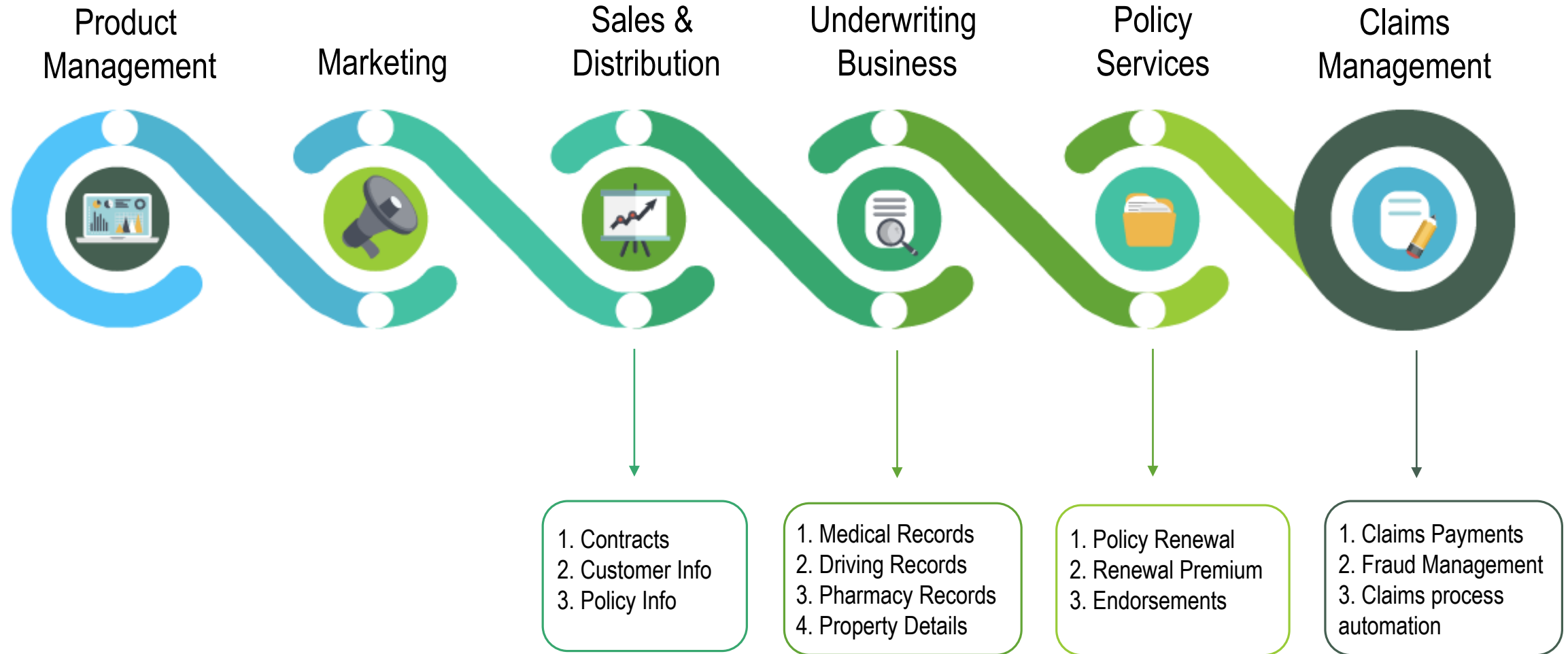
## *Other Business Examples*



# Blockchain – Various Insurance Roles



# Blockchain Distribution Channels





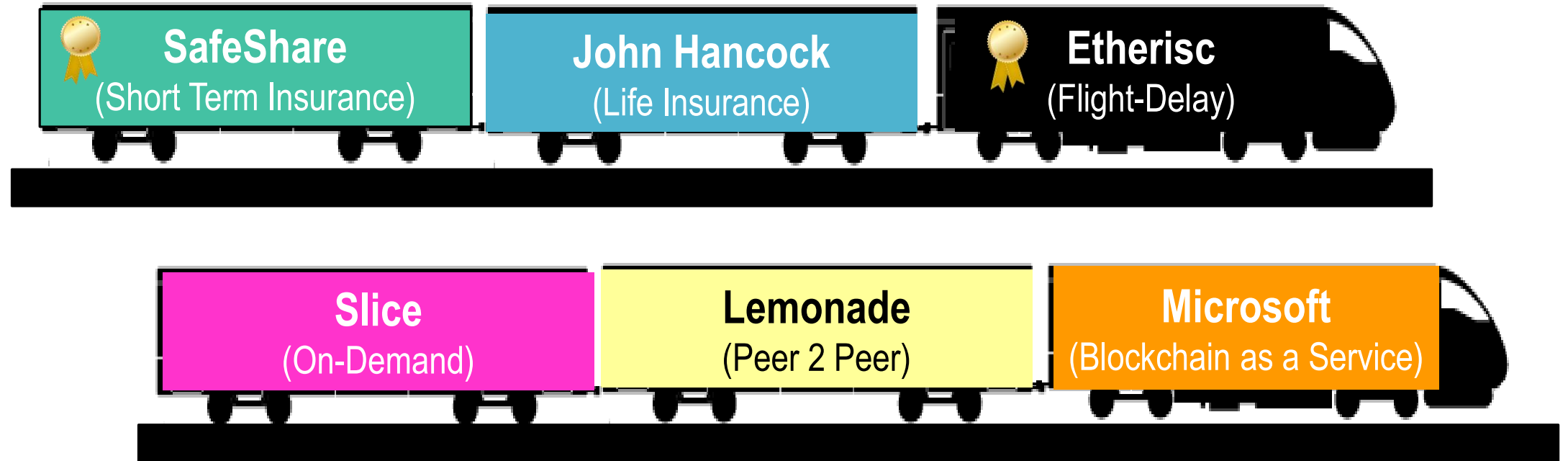
**BLOCKCHAIN**







# On the Horizon...



*“To Fee or  
Not to Fee...”*

*that IS the  
question!”*

# Guest Speakers



**Rick Brown**  
Attorney  
Law Offices of Richard Brown



**Jeff Klein**  
Attorney  
McIntyre & Lemon



**Dennis Burden**  
VP, Director, Surplus Lines Tax  
Lockton Companies, LLC

# SESSION OBJECTIVES

- Lack of uniformity or ambiguity of state laws & regulations
- Understanding permissible fees/broker fees
- “Reasonable” fees, by retailer and wholesaler
- How they are treated, i.e. taxed in each state
- Implications and/or Distribution System
  - Retailer / **S/L Wholesaler** / Insurer



# RETAILERS' PERSPECTIVES.....



- Customer (insured) facing
- Retailer license evidence, as required by wholesaler
- Forms submitted electronically/online, fax, as required by wholesaler
- Retailer provides disclosure of any excess and surplus lines “statutorily required notices” to insurance buyer, including statutorily-required SL notices

# WHOLESALEERS' PERSPECTIVES.....

- Collect stamping fee/assessments, and in some states, SL tax, as well as remit to “Home State”
- Record/file/audit policies
- Some Wholesale broker fees are taxed
- Wholesale brokers may charge “reasonable” fees without limitation, except for FL (\$35 cap)
- Wholesalers’ agreements with Retailers & Insurers or such “markets”, whom they access
- May be affected by Retailers’ client fees and commissions
- Require Retailers to provide license evidence/verification

# INSURERS' PERSPECTIVES.....

- No rules limiting what a surplus lines insurer may charge, including Florida
- Should not duplicate fees that other parties have already charged
- Ability to audit records, negotiate new terms based on changes with P&L, financial capacity, M&A, reinsurance treaties
- (Suggestion) Wholesalers should review their agreements with insurers

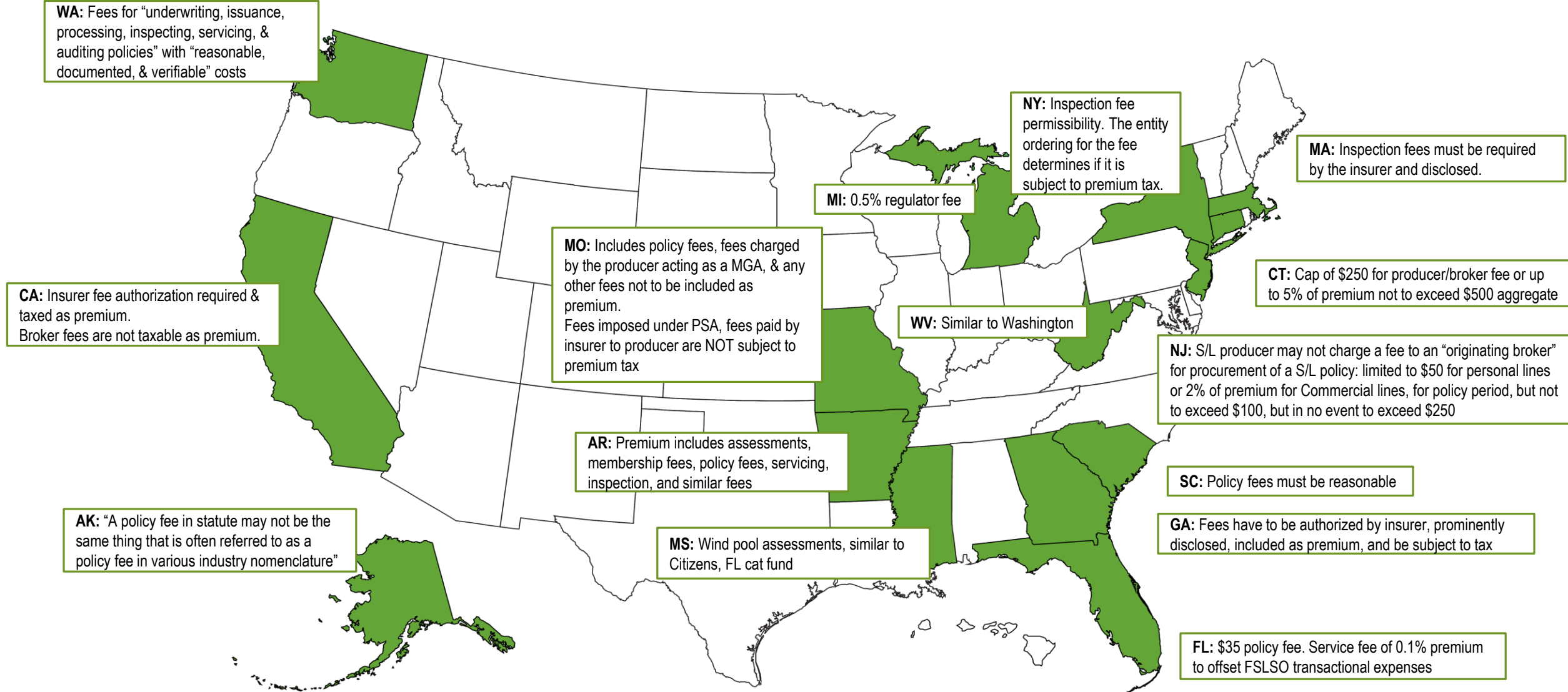
# OTHER MATTERS

- Sophisticated Insureds
  - Full Disclosure - directly/indirectly
- Necessity of Reasonable Fees
  - However/whomever imposed
- Myriad of Fees
- Company Fees vs Broker (producer) Fees
  - Varying tax treatment
  - Insurer-imposed fees are sometimes part of the premium, (in some states)
- Underwriting expense fees and disclosures





# US REGULATIONS



# US REGULATIONS

State	Statute/Regulation
<b>Alaska</b>	Distinction between premium, policy fees and broker fees: “a policy fee in statute may not be the same thing that is often referred to as a policy fee in various industry nomenclature”
<b>Arkansas</b>	Premium includes assessments, membership fees, policy fees, servicing, inspection and similar fees
<b>California</b>	Insurer has to authorize the Surplus Lines Broker to retain any fees but if it does, it has to be considered part of the premium base. Fees not taxable as premium: those solely for benefit of broker and not remitted to the insurer.
<b>Connecticut</b>	Cap of \$250 fee for producer and SL broker fee, or alternatively, a fee of up to 5% of premium not to exceed \$500 in aggregate
<b>Florida</b>	\$35 policy fee. To whom does the cap apply? Service fees to offset FLSLO transactional expenses, 0.1% of premium
<b>Georgia</b>	Fees are ok but need to be part of premium. Have to be authorized by carrier, included in premium and subject to SL premium tax and prominently disclosed.
<b>Massachusetts</b>	Inspection fees must be required by insurer and disclosed. Query: what is a reasonable “markup” to offset administrative expenses and policy servicing? Wholesalers and retailers?
<b>Michigan</b>	Has a 0.5% “regulatory fee”
<b>Mississippi</b>	Many wind pool type assessments similar to Florida Cat Fund and Citizens
<b>Missouri</b>	Fees include policy fees, fees charged by producer acting as MGA, and any other fees and not be included as premium. If fees imposed pursuant to a producer service agreement, fees paid by insurer to producer are NOT subject to premium tax. Is this conflicting?
<b>New Jersey</b>	Prohibits a Surplus Lines producer from charging a fee to an “originating broker” for negotiation/procurement of a surplus lines policy: limited to \$50 for Personal Lines, and for Commercial Lines 2% of premium, for policy period, but not to exceed \$100; but in no event to exceed \$250
<b>New York</b>	Inspection fee permissibility. Depends on who is ordering it and then that determines whether it is subject to premium tax
<b>Rhode Island</b>	Broker fees must be reasonable to cover underwriting expenses of agent/broker and must be fully disclosed directly or indirectly (via another licensed producer) to the insured
<b>South Carolina</b>	Policy fees must be “reasonable”. What constitutes “reasonable”? Is there a given “market rate”?
<b>Washington</b>	Licensee may charge fees for “underwriting, issuance, processing, inspecting, servicing and auditing policies”. But service must be required by the SL insurer and must have been actually provided by producer. Also, cost must be “reasonable, documented and verifiable”.
<b>West Virginia</b>	Similar to Washington

# SESSION FINAL THOUGHTS

- Disclosure is everything
- *Suggested Best Practice* - Broker Fee Agreement (BFA) between Retailer & Wholesaler
  - Broker compensation;
  - Policy servicing; and
  - Risk management, loss control etc.
- Opportunities with BFA fee agreement
  - Match provision of insurance products and services with client expectations
  - “One-stop shopping”, and in some cases
  - One source/form of compensation
- Follow such terms and practices to avoid disputes and regulatory issues
- Comprehension of statutes and regulatory compliance
- Macro level tool exploration/development of a centralized navigation system
- Develop a think-tank and perhaps, a continuation at next SLLG session

***Questions, Comments, and/or Observations***

