CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of HARTFORD ACCIDENT AND INDEMNITY COMPANY, HARTFORD CASUALTY INSURANCE COMPANY, HARTFORD FIRE INSURANCE COMPANY, HARTFORD INSURANCE COMPANY OF THE MIDWEST HARTFORD UNDERWRITERS INSURANCE COMPANY, Respondents.	File No. NC-06091566 NOTICE OF NONCOMPLIANCE PURSUANT TO CALIFORNIA INSURANCE CODE SECTION 1858.1 ORDER TO SHOW CAUSE PURSUANT TO C.I.C. § 1065.1 ET SEQ.

TO: HARTFORD ACCIDENT AND INDEMNITY COMPANY, HARTFORD CASUALTY INSURANCE COMPANY, HARTFORD FIRE INSURANCE COMPANY, HARTFORD INSURANCE COMPANY OF THE MIDWEST, HARTFORD UNDERWRITERS INSURANCE COMPANY:

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NOTICE OF NONCOMPLIANCE PURSUANT TO CALIFORNIA INSURANCE CODE SECTION 1858.1[1]

Respondents at all relevant times have been insurers licensed by the Department to transact insurance in this state.

1. Superior Access Insurance Services is a California licensed fire and casualty broker-agent and "producer" of insurance. The word "producer" is an industry term of art that refers to both insurance agents and insurance brokers. Insurance agents and insurance brokers both transact insurance by soliciting, negotiating, and/or executing insurance contracts. However, insurance agents (as defined in sections 31 and 1621) differ from insurance brokers (as defined in sections 33 and 1623).[2] Whether a producer is an agent or a broker depends on the nature of the producer's relationship with the insurance company with which the producer places a particular client. A producer acts as an insurance agent in a particular transaction when it is appointed as an insurance agent pursuant to section 1704. A producer acts as an insurance broker when it transacts insurance on behalf of the insured but not on behalf of the insurance company.[3] Superior Access is an appointed agent of Respondents and acts as such.

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[1] All statutory references are to the California Insurance Code, unless otherwise indicated.

[2] § 31 ""Insurance agent" means a person authorized, by and on behalf of an insurer, to transact all classes of insurance other than life insurance. …"

§ 33 ""Insurance broker" means a person who, for compensation and on behalf of another person, transacts insurance other than life with, but not on behalf of, an insurer."

§ 1621 "An insurance agent is a person authorized by and on behalf of an insurer to transact all classes of insurance, except life insurance. The term "insurance agent" as used in this chapter does not include a life agent as defined in this article."

§ 1623 "An insurance broker is a person who, for compensation and on behalf of another person, transacts insurance other than life insurance with, but not on behalf of, an insurer. Every application for insurance submitted by an insurance broker to an insurer shall show that the person is acting as an insurance broker. If the application shows that the person is acting as an insurance broker and is licensed as an insurance broker in the state in which the application is submitted, it shall be presumed, for licensing purposes only, that the person is acting as an insurance broker. Nothing in this section is intended to affect any rights or remedies otherwise available under the law."

[3] An insurance broker may not transact insurance on behalf of an insurer in any manner, with two exceptions. A broker can handle premium or deliver evidence of coverage on behalf of an insurer. Section 1732.

2. A producer may not charge or collect a fee in addition to the premium for placing insurance with an insurer for which the producer is acting as an insurance agent. This prohibition derives from several legal principles:

(a) Under California case law, all payments by policyholders that are a part of the price of insurance, including all fees paid to an insurance agent, are deemed constructively received by the insurer, i.e. they are considered premium.

(b) Property and casualty premium rates must be approved by the Department, per section 1861.01(c) (sections 11735(a) and (c) for workers' compensation policies). When a fee that is in addition to the premium (i.e. which fee has not been approved by the Department as part of an insurer's rate filing) is received by an agent and imputed to the insurer, the insurer effectively will have charged and collected more premium than permitted under its approved rate.

(c) Property and casualty premium rates may not be unfairly discriminatory, per section 1861.05(a). When one agent charges and collects a fee, and another agent of the same insurer selling the same type of policy either charges and collects no fee or a different fee, the insurer effectively will have charged unfairly discriminatory rates.

(d) Insurance premium is taxable by the State. When an agent collects a fee, and that fee is not reported as premium by the insurer for which the agent was acting, the insurer will fail to pay its proper premium tax.

3. From at least January 1, 2002, Respondents willfully permitted Superior Access to collect fees from Respondents' policyholders. These fees were in addition to the premium Respondents were entitled to charge based on Respondents' approved rates. Respondents constructively received the fees, which fees are therefore premium. Respondents did not receive the Department's prior approval to collect or have Superior Access collect these fees. Exhibit 1 comprises policyholders in San Francisco who paid fees.

4. By permitting Superior Access to charge and collect fees, Respondents constructively charged and collected premium in excess of the rates approved for them by the Department, in violation of section 1861.01(c).

5. Because Superior Access charged fees of varying amounts, Respondents' insureds were subjected to unfair rate discrimination, in violation of section 1861.05(a). Respondents willfully or negligently permitted the rate discrimination to occur.

6. The facts alleged in paragraphs 1 – 6 establish that Respondents willfully used a rate, rating plan or rating system in violation of Chapter 9 of Part 2 of Division 1 of the Insurance Code, and provide grounds for a fine of $10,000 for each policy in which Respondents permitted a fee to be charged by Superior Access, pursuant to section 1858.07(a).

ORDER TO SHOW CAUSE PURSUANT TO C.I.C. § 1065.1 ET SEQ.

7. Paragraphs 1 – 6 are realleged and incorporated into this Order to Show Cause.

8. Section 11735(a) requires workers compensation insurers to file with the Department all rates that are to be used in the State. Section 11735(c) provides that an insurer may use a rate in excess of its filed rate only if it notifies the Department in advance on a policy-by-policy basis. Respondents failed to request or receive Department approval to exceed their filed rate.

9. By permitting Superior Access to charge and collect fees on workers compensation policies, Respondents constructively charged and collected premium in excess of the rates approved for them by the Department, in violation of sections 11735(a) and (b).

10. Respondents failed to report the fees collected by Superior Access as premium on the insurance premium tax returns it filed pursuant to Revenue and Taxation Code section 12302, and failed to pay tax on those fees.

11. The facts alleged in paragraphs 1 – 10 establish that Respondents have conducted their business and affairs in a manner that is hazardous to policyholders and the public, and constitute grounds for the Commissioner to issue an Order, pursuant to sections 1065.1 and/or 1065.3, requiring Respondents to:

a. Refrain from permitting their agents to charge a fee for a transaction of insurance;

b. Reimburse the Department for its costs in investigating and prosecuting this matter, in the amount to be established at hearing, but which amount to date is

$5,000;

c. Refund all fees illegally collected by Superior Access and constructively received by Respondents;

d. File amended insurance premium tax returns with the Department, Controller, and Board of Equalization, and remit owed tax to the Controller, reporting as premium all fees illegally collected by Superior Access and constructively received by Respondents that cannot be refunded due to an inability to locate the policyholder.

Dated: April 3, 2006

CALIFORNIA DEPARTMENT OF INSURANCE

By /s/
Jon A. Tomashoff, CPCU
Senior Staff Counsel

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