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NOVEMBER 23, 2004

BULLETIN NO. 13-2004

TO: ALL PRODUCERS AND INSURANCE COMPANIES
FROM: ARKANSAS INSURANCE DEPARTMENT
SUBJECT: PRODUCER COMPENSATION
EFFECTIVE DATE: NOVEMBER 23, 2004

In light of the recent "bid-rigging" allegations against one of the nation's top brokers, the Arkansas Insurance Department wants to remind insurance producers of their compensation limitations and obligations. As you may know, New York Attorney General Elliot Spitzer recently filed a complaint against the world's largest insurance broker, Marsh & McLennan Companies, Inc. ("Marsh"), alleging that Marsh cheated corporate clients by rigging bids and collecting huge fees from major insurance companies for directing business to the insurers. Mr. Spitzer maintains that Marsh steered business toward certain insurers at designated prices and would then solicit false or inflated quotes from other insurers to give the appearance of real competition for the business.

Obviously, rigging bids or providing clients with false or inflated quotes to eliminate true competition is illegal. In Arkansas, these actions would clearly be considered a fraudulent insurance act under our insurance code. The Arkansas Insurance Department has begun a general investigation of the insurance practices of Arkansas insurance brokers and insurance companies to determine whether or not similar activities are happening in Arkansas. For those of you who have received the Letters of Inquiry, please note that the Department has granted an extension, and the responses are now due on December 15, 2004. In addition, FMAAs are not required to provide a response.

Although the investigation will not target agents, all insurance producers have existing compensation requirements and limitations under the Arkansas Insurance Code. Arkansas Code Ann. § 23-66-310, for example:

1. With some specified exceptions, a person cannot willfully collect as premium or charge for insurance any amount in excess of the premium or charge contained in the insurance policy.
2. A property and casualty agent may charge a fee in addition to the premium for a policy in accordance with the carrier's rate filings as long as:
 - a. Each fee is separately disclosed on the billing statement and delivered to the insured; and
 - b. The sum of the fees and commission does not exceed twenty percent (20%) of the total gross premium for the contract.

A producer's compensation should never negatively influence his/her recommendations to insurance consumers. New Rule and Regulation 82 (compliance date July 15, 2005) will require insurers and insurance producers to implement standards and procedures to ensure that senior citizens are provided with annuity products that are suitable for the consumer. Arkansas Code Annotated § 23-66-307 requires life and accident and health insurance producers to exercise professional discretion and good faith when making sales presentation and recommendations to clients.

With respect to brokers, while a broker certainly falls within the definition of an "insurance producer" under Arkansas' Producer Licensing Model Act (see Ark. Code Ann. §23-64-501), brokers are distinguished from other insurance producers in that instead of representing the insurer, a broker represents an insured or prospective insured (client) with whom the broker transacts insurance and from whom the broker may also receive a fee. Although a broker is legally the agent of the insured, in some instances, a broker may also receive compensation for the same

transaction from an insurer or another insurance producer. Special compensation disclosure requirements, therefore, appear in order for insurance producers acting as brokers.

The Department plans to promulgate a regulation based on an NAIC Model Law that is currently in the drafting phase. This Model will likely contain disclosure requirements for brokers.

The Department expects insurance producers to comply with the requirements outlined above. We will not tolerate an insurance producer placing his or her own financial or other interest above that of his or her client.

In contrast to the way a broker functions in the Fortune 500 insurance market, in issuing this Bulletin, the Department recognizes the way an insurance brokerage license is frequently used in Arkansas is in accessing indirectly (through another insurance producer or insurer) a particular insurance market for which service the Arkansas licensed broker may receive no compensation whatsoever from the client.

All insurance companies licensed in Arkansas are directed to provide copies of this Bulletin to their Arkansas resident appointed producers.

Any questions should be referred to the Legal Division at (501) 371-2820.

(signed by Mike Pickens)

MIKE PICKENS
COMMISSIONER

11-23-04
DATE