



NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
ONE STATE STREET
NEW YORK, NEW YORK 10004

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In the Matter of: : No. 2020-0003-C

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, :

Respondent. :

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STATEMENT OF CHARGES AND NOTICE OF HEARING

TO THE ABOVE-NAMED RESPONDENT:

PLEASE TAKE NOTICE that a hearing will be held at the office of the New York State Department of Financial Services, One State Street, New York, New York 10004, 6th Floor, on the 6th day of April, 2020, at 10:00 a.m., and continuing thereafter day to day as determined by the Department, before a Hearing Officer to be appointed by the Superintendent of Financial Services, to determine whether RESPONDENT has committed defined violations of Insurance Law Article 24 by violating Insurance Law §§ 2102(a)(1)(A), 2102(e)(1), 2117(a), 2122(a)(2), whether a determined violation should be found with respect to unfair and deceptive marketing materials, and whether civil monetary penalties shall be imposed, injunctive relief ordered, and other appropriate relief granted as a result of such violation(s).

OVERVIEW

1. The New York State Department of Financial Services (the “Department”) is the insurance regulator in the State of New York. The Superintendent of Financial Services (“Superintendent”) bears the responsibility of ensuring the safety and soundness of New York’s insurance industry and promoting the reduction and elimination of fraud, abuse, and unethical conduct with respect to insurance participants. The Superintendent has the authority to conduct investigations, to bring enforcement proceedings, and to levy monetary penalties and order injunctive relief against parties who have violated the relevant laws and regulations.

2. The National Rifle Association of America (the “NRA” or “Respondent”) is a New York not-for-profit corporation.

3. For many years, the NRA has participated in offering to its members a number of insurance programs, including to its members in New York. The NRA explicitly endorses the programs and markets or helps market them to its members through various means, including through NRA-affiliated websites and email marketing.

4. In return for its participation in these programs, the NRA receives substantial compensation, including in the form of “royalties” that are based upon a percentage of the insurance premiums paid by its members. The royalty percentage varies by program; with respect to several programs, the NRA receives more than 20% of the insurance premiums paid by its members. Nationally, the NRA has been paid millions of dollars per year in royalties and other fees in connection with its insurance activities.

5. As discussed more fully below, under the New York Insurance Law, the NRA’s participation in endorsing and marketing the insurance programs, along with its receipt of compensation from those activities, means that the NRA has been acting as an insurance producer, thus requiring it to be licensed and regulated by the Department. Despite this, the NRA

is not now, and has never been, licensed by the Department in any capacity with respect to insurance. Operating as an insurance producer without a license and receiving compensation without being licensed each constitute violations of the New York Insurance Law.

6. The NRA's insurance activities have violated other insurance laws as well. For example, the NRA's Carry Guard program offered unlawful insurance coverage. Carry Guard was a program marketed primarily to firearm owners, in particular people who carried firearms with concealed carry permits. The insurance offered in connection with the program purported to cover, among other things, losses and costs associated with the aftermath of the purposeful use of the firearm, including defense costs in a criminal prosecution. Under New York law, however, except in circumstances not relevant here, insurance cannot be written to cover intentional acts or criminal defense costs.

7. In addition, many of the NRA-endorsed insurance programs, including Carry Guard, were placed in the excess line market in violation of the New York excess line insurance rules. The NRA's efforts to aid unauthorized insurers in marketing and solicitation of the programs violated the New York Insurance Law.

8. Moreover, in addition to the defined violations of the New York Insurance Law discussed above, this action also seeks an order determining that the NRA's marketing of its endorsed insurance products has been unfair and deceptive. Despite representing to its members that the NRA insurance programs were negotiated in order to obtain coverage "at the lowest possible cost" to its members, it is clear that the NRA members could have negotiated less expensive coverage for its members but for the fact that a substantial portion of the premiums paid by NRA members — sometimes exceeding 20% — was being paid to the NRA in the form

of royalties. Marketing materials relating to NRA-endorsed insurance programs wholly failed to disclose that the NRA was receiving royalties based on the amounts paid by its members.

9. The Department hereby brings an administrative proceeding against the NRA seeking to impose civil monetary penalties and injunctive relief with respect to the NRA's numerous violations of law, and an order determining that the NRA engaged in unfair or deceptive acts or practices.

LEGAL FRAMEWORK

Licensing Requirement for Insurance Producers

10. New York Insurance Law § 2102(a)(1)(A) provides that no person, firm, association or corporation may act as an insurance producer (among other things) in New York State unless authorized to do so by virtue of a license issued by the Department.

11. With certain exceptions not relevant here, an "insurance producer" is defined in Insurance Law § 2101(k) as "an insurance agent, title insurance agent, insurance broker, reinsurance intermediary, excess lines broker, or any other person required to be licensed under the laws of this state to sell, solicit or negotiate insurance."

12. With certain exceptions not relevant here, an "insurance broker," in turn, is defined in Insurance Law § 2101(c) as:

any person, firm, association or corporation who or which for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or selling, any insurance or annuity contract or in placing risks or taking out insurance, on behalf of an insured other than himself, herself or itself or on behalf of any licensed insurance broker

13. The terms "soliciting," "negotiating," and "selling" are defined in Insurance Law §§ 2101(o), 2101(m), and 2101(n), respectively. Insurance Law § 2101(o) defines "solicit" or "solicitation" as "attempting to sell insurance or asking or urging a person to apply for a

particular kind of insurance from a particular licensed insurer, fraternal benefit society or health maintenance organization.”

14. Non-licensees may not be compensated for making a referral to a licensed broker or agent unless the non-licensee’s referral “does not include a discussion of specific insurance policy terms and conditions” and “the compensation for referral is not based upon the purchase of insurance by such person.” Insurance Law §§ 2114(a)(4), 2115(a)(1), 2116.

15. In addition to the general requirement that an insurance producer be licensed, the law also prohibits any person who is required to be licensed by the Department and is not so licensed from accepting any commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in New York State. Insurance Law § 2102(e)(1).

16. Insurance Law § 2102(g) provides that any person, firm, association or corporation who or that violates any provision of Insurance Law § 2102 shall be subject to a penalty not to exceed five hundred dollars for each transaction.

Excess Line Insurance Provisions

17. Generally, insurers are licensed by the Department to provide specific types of insurance to New York consumers. These authorized insurers are regulated and examined by the Department, among other things, to ensure solvency and adherence to consumer protection standards.

18. In situations in which insurance cannot be obtained through an authorized insurer, however, insurance can be obtained through an “excess line” insurer. Excess line insurers are not licensed by the Department and so are considered unauthorized insurers in New York State. Excess line insurers are permitted to do business in New York, however, through an excess line broker for certain types of insurance coverage specified in New York Law and Regulations and

under prescribed rules. Unless another exemption applies, however, an insurance policy may only be procured from an excess line insurer after an excess line broker has obtained declinations of coverage from three authorized insurers in New York for each insured.

19. Insurance Law § 2122(b) provides that “no insurance producer or other person, shall, by any advertisement or public announcement in this state, call attention to any unauthorized insurer or insurers.”

20. The solicitation of insurance in New York by an unauthorized insurer, other than by mail from outside New York, is unlawful, and acting for or aiding the unauthorized insurer — including by any party that solicits such insurance — constitutes a violation of New York Insurance Law § 2117(a).

21. Insurance Law § 2117(g) provides that any person, firm, association or corporation violating any provision of Insurance Law § 2117 shall, in addition to any other penalty provided by law, forfeit to the people of this state the sum of five hundred dollars for each transaction.

Prohibitions on Types of Coverage Offered

22. New York Insurance Law also specifies what acts can and cannot be covered by insurance in New York State.

23. New York Insurance Law § 1101(a) defines an insurance contract as an agreement between an insurer and an insured where the insurer must confer a benefit to the insured upon the happening of a fortuitous event which is an event or failure of an event that is “to a substantial extent beyond the control of either party.” Accordingly, New York Courts and the Department have determined that insurance cannot indemnify for punishment for intentional wrongdoing particularly when the insured intended the injury at issue.

24. Pursuant to Insurance Law § 1116(a)(3), legal services insurance may not be written in New York State except by an authorized insurer and in conjunction with a prepaid legal plan or liability insurance policy. Moreover, insurance defense coverage in a criminal proceeding is entirely prohibited in New York State except with regard to the indemnification of officers and directors of corporations. 11 NYCRR Part 262.

25. Participation in the solicitation of insurance coverage that violates these provisions on behalf of an unauthorized insurer constitutes a violation of New York Insurance Law § 2117(a), subjecting the violator to a penalty of five hundred dollars for each transaction, pursuant to Insurance Law § 2117(g).

Types of Violations and Initiation of Hearings

26. The term “defined violation” is defined to mean the commission by a person of an act prohibited by a series of enumerated statutes. Each of the violations of the Insurance Law described above is so enumerated. Insurance Law § 2402(b).

27. Pursuant to Insurance Law § 2402(c), the term “determined violation” means “any unfair method of competition or any unfair or deceptive act or practice, which is not a defined violation but is determined by the superintendent pursuant to section two thousand four hundred five of this article to be such method, act or practice.”

28. Section 2430 of the Insurance Law provides that “[n]o person shall engage in this state in any trade practice constituting a defined violation or a determined violation as defined herein.”

29. Section 2405(a) of the Insurance Law authorizes the superintendent to bring a statement of charges and initiate a hearing “[w]henver the superintendent has reason to believe that a person has committed or is committing a defined violation or has been or is engaging in

any method of competition, or any act or practice, which could become a determined violation” and that a proceeding is in the public interest.

FACTUAL ALLEGATIONS

NRA’s Affinity Insurance Offerings

30. Since at least 2000, the NRA has worked with the Kansas City Series of Lockton Companies, LLC to offer a variety of insurance products to NRA members, their families, and affiliated businesses through the NRA Endorsed Insurance program. Under this program, NRA members were offered property, liability, health, and life insurance that, they were told, were researched, negotiated and endorsed by the NRA.

31. The NRA Endorsed Insurance program was managed by Kansas City Services of Lockton Companies, LLC and offered insurance products underwritten by a variety of insurers. A separate Lockton entity, Lockton Affinity, LLC (formerly Lockton Risk Services, Inc.), a subsidiary of Lockton Companies, LLC (collectively, “Lockton”), acted as the broker for property and casualty products, and another entity, A.G.I.A, Inc. (“A.G.I.A”), acted as the broker for life and health products.

32. The NRA and Lockton marketed these products through websites, mailings, emails and other methods, representing that “[t]he NRA and the Insurance Program administrators work closely together in all aspects of the insurance programs, negotiating the most comprehensive coverage at the lowest possible cost to you, and producing enrollment materials that make it easy for you to select and purchase appropriate insurance coverage.”

The Carry Guard Program

33. In 2016, the NRA partnered with Lockton to create what would become the “Carry Guard” insurance program.

34. Between approximately April 1, 2017, and November 17, 2017, Carry Guard insurance was marketed and sold throughout the United States, including in the State of New York. During that period, approximately 680 Carry Guard insurance policies were issued to New York residents.

35. The Carry Guard insurance policies were placed through New York’s excess line market. Pursuant to written agreements with Lockton, the Illinois Union Insurance Company served as the underwriter for the Carry Guard program, providing insurance policies to individuals who purchased Carry Guard insurance. Illinois Union Insurance Company is a subsidiary of Chubb Ltd. and held itself out to the public simply as “Chubb.” (Illinois Union and Chubb, Ltd. will be referenced herein as “Chubb.”) Chubb is an unauthorized insurer in New York but is eligible, under certain circumstances, to write excess line insurance in the State.

36. From approximately April 1, 2017, to November 17, 2017, the NRA’s website, www.nracarryguard.com, described the Carry Guard program as follows:

NRA Carry Guard is a two-pronged program. It was created to provide dynamic, state-of-the-art insurance protection to those who legally defend themselves with a firearm, and to offer an elite, one-stop training option. The insurance provides a cutting-edge set of features that will help gun owners mitigate the potentially costly financial and legal consequences flowing from armed encounters, even if they did everything right.

37. The NRA website further described the Carry Guard program as “the only membership carry program developed and supported by the National Rifle Association, the most

powerful civil rights organization in American history.” The website further stated that Carry Guard was “created by the NRA.”

38. Additional promotional materials disseminated by the NRA stated:

Why do I need Carry Guard? Although millions of Americans are prepared to use a firearm in self-defense, very few families can withstand the financial consequences that may come next. The legal fees to clear your good name could be enormous. Likewise, the costs of defending and potentially losing a civil lawsuit could cripple your finances for the rest of your life. And many homeowners’ policies have severe limitations or exclusions related to intentional acts such as self-defense.

These materials carried a legend at the bottom of the page: “NRA CARRY GUARD™ Insurance Program Administered by Lockton Affinity, LLC • D/B/A/ Lockton Affinity Insurance Brokers, LLC.”

39. Despite the fact that the NRA did not possess an insurance producer license from the Department, the NRA nonetheless engaged in substantial marketing and solicitation in connection with the Carry Guard program. For example (and without limitation):

- a. The NRA caused its primary marketing vendor, Ackerman McQueen, to create and place television commercials on cable television and to broadcast NRA-produced videos promoting the Carry Guard program on YouTube;
- b. The NRA directly solicited participation in the Carry Guard program through mass e-mail marketing deployed by the NRA itself, direct mail, banner ads, and articles in NRA publications;
- c. In promotional emails deployed by the NRA, Wayne LaPierre, the NRA’s Chief Executive and Executive Vice President, advised consumers that “you can get [Carry Guard] protection for just pennies a day – less than the price of a postage stamp.” He also advised consumers that Carry Guard coverage involved up to \$1 million of insurance protection against civil lawsuits, immediate access to supplemental funds for bail, attorney retainer fees and other criminal defense costs, up to \$150,000 in criminal liability reimbursement upon an acquittal, and automatic protection for a spouse at no extra cost;
- d. Dana Loesch, then a spokesperson for the NRA, featured prominently in Carry Guard advertising. In one email deployed by the NRA, Ms. Loesch explained that the benefits of Carry Guard insurance include between \$250,000 and \$1 million in

insurance, depending on the level of coverage chosen, civil defense legal fees, and supplemental payments for bail, bonds, legal retainer fees, and lawful replacement of your legally possessed firearm;

- e. The NRA heavily promoted the Carry Guard program at its 2017 “Carry Guard Expo” and its annual meeting;
- f. The NRA operated the website “www.nracarryguard.com,” which was an important marketing portal for the Carry Guard program;
- g. The NRA promoted Carry Guard insurance on its main website, www.nra.org, which, among other things, featured an NRA spokesperson making claims such as, “We’re proud to have developed the one carry membership program that stands above all others – NRA Carry Guard”; and “I will never carry a gun without carrying this”; and
- h. “Pop-up” internet advertising for the Carry Guard program featured NRA spokespersons.

40. Pursuant to its written agreement with Lockton, the NRA was responsible for all costs of marketing the Carry Guard program.

41. The written agreement with Lockton also provided that the NRA was to receive compensation in connection with the Carry Guard program that included, among other things, a royalty amount of 21.92% of the premium collected by Lockton from NRA members who purchased the insurance, along with certain profit-sharing revenues. Although the Carry Guard program was discontinued in New York after only a few months, approximately 680 Carry Guard insurance policies were issued to New York residents, and the NRA received royalties on those sales.

42. The Carry Guard program provided insurance coverage that may not legally be offered in New York State, specifically: (a) defense coverage in a criminal proceeding that is not permitted by law; (b) liability coverage for bodily injury or property damage expected or intended, from the insured’s standpoint, in an insurance policy limited to use of firearms and that

was beyond the use of reasonable force to protect persons or property; and (c) coverage for expenses incurred by the insured for psychological counseling support.

43. Chubb was doing an insurance business without a license in violation of Insurance Law § 1102 with regard to the Carry Guard program, both because the required three declinations from authorized insurers had not been obtained for each insured and because the program included coverage that was not permissible under New York law. Notwithstanding that, the NRA's marketing materials specifically called attention to Chubb, an unauthorized insurer, in violation of the New York Insurance Law. According to the marketing and promotion website for the Carry Guard Program, www.nracarryguard.com, for example, the Carry Guard Program "is backed by insurance leader Chubb" and is underwritten by a group within Chubb, "the world's largest publicly traded property and casualty insurance company."

Other NRA-Endorsed Insurance Programs

44. From in or about 2000 through 2019, the NRA also solicited or aided Lockton and A.G.I.A. in soliciting numerous additional insurance products (the "Other NRA Programs"). Those products included, among others, the following policies sold to new and existing NRA members, including in the State of New York:

- a. "Retired Law Enforcement Officer Self-Defense Insurance," which provided coverage for criminal and civil defense costs, bodily injury, and damage caused by the use of a firearm;
- b. "ArmsCare Plus Firearms Insurance," which provided coverage for legal firearms and attached accessories against loss, damage, flood, fire, and theft (including theft from a locked vehicle);
- c. "Firearms Instructor Plus Liability Insurance," which provided coverage for injuries or damage the insured causes while acting as an instructor during a lesson, medical expenses up to \$5,000, legal expenses from lawsuits related to the injuries or damage, and professional liability coverage that protects the member from allegations of negligent training;

- d. “Personal Firearms Protection Insurance,” which provided coverage for any unintentional injuries or damage an insured causes while hunting or trapping on public or private land, shooting in competitions, or shooting at private shooting ranges, with a firearm, air gun, bow and arrow, or trapping equipment, and coverage for lawsuit defense costs;
- e. “Gun Collector Insurance,” which provided coverage for certain firearms and their attached accessories against loss, damage, fire, and theft (including theft from a locked vehicle);
- f. “Gun Club Insurance,” which provided coverage for loss or damage to any assets the gun club rents, leases or owns, coverage for general liability plus medical payments, coverage for claims of false advertising, and optional coverage for business income, boiler and machinery, glass, computers, valuable papers and records, and accounts receivable;
- g. “Hunt Club Insurance,” which provided coverage for hunt clubs and the landowners to protect against injury and damage, provided host liquor coverage, and provided hired and non-owned auto coverage. In addition, an insured could select coverage for “personal and advertising,” products/completed operations, and medical expenses up to \$5,000 for any one person;
- h. “NRA Business Alliance Insurance,” which provided coverage for a firearms-related business, including coverage for loss or damage to any assets the insured business rents, leases or owns, coverage for general liability plus medical payments, coverage for claims of false advertising, gunsmith coverage, and optional coverage for business income, boiler and machinery, glass, computers, valuable papers and records, and accounts receivable;
- i. “Gun Show Insurance,” which provided coverage for the insured’s liability arising out of the insured’s occupation as a gun show promoter; and
- j. “Home-Based Federal Firearms License Insurance” for gun dealers and gunsmiths, which provided coverage for the insured’s business location, equipment and tools, and gear entrusted to the insured by the insured’s clients, against theft, damage and other loss, and provides general liability coverage, including products/completed liability to insure the insured’s finished work against later claims.

45. From in or about 2000 through 2018, approximately 28,005 insurance policies were procured by New York consumers through Lockton. From in or about 2011 through 2019, approximately 986 policies were procured by New York consumers through A.G.I.A.

46. Kansas City Series of Lockton Companies, LLC served as the project manager for the Other NRA Programs, and Lockton Affinity, LLC and A.G.I.A. served as insurance producers for those programs, carrying out such functions as marketing the insurance, binding the insurance, collecting and distributing premiums, and delivering policies to insureds.

47. Although it did not possess an insurance producer license from the Department, the NRA nonetheless engaged in marketing and solicitation with regard to certain of the Other NRA Programs, including directly soliciting the purchase of insurance by its members through mass e-mail marketing deployed by the NRA, direct mail, banner ads, articles in NRA publications, and publicizing the insurance programs on several NRA-affiliated websites, including www.nraendorsedinsurance.com, www.benefits.nra.org, www.mynrainsurance.com, and its main website, www.nra.org.

48. From in or about 2000 through 2019, the NRA directly solicited its members to purchase certain of the Other NRA Programs through its websites and regularly deployed mass e-mail marketing. The language used on the NRA's websites and in the NRA's mass e-mail campaigns for these insurance programs affirmatively encouraged NRA members to purchase NRA-endorsed insurance and discussed the terms and conditions of the coverage being offered, including, for example:

- a. "Make sure you have **the protection you need** for your valuable guns . . . if your firearms and accessories are worth more than \$2,500, upgrade your NRA member benefit No-cost ArmsCare Firearms Insurance to ArmsCare Plus Firearms Insurance. Your guns will be protected at full replacement value, which means you'll be paid the full cost of replacing your firearms in the event of a loss;"
- b. "Protect yourself from the unthinkable... If you are forced to use your firearm in an act of self-defense, your homeowner's insurance may not cover these claims. We recognize this gap in coverage and developed a plan to protect NRA members and their right to carry. The NRA Self-defense Insurance includes:
 - Bodily injury or property damage
 - Criminal defense reimbursement and civil suit damages

- Automatic coverage for spouse
 - Personal firearms protection coverage
 - And more... BUY NOW;”
- c. **“We ride shotgun for you.** At a time when liability suits are initiated with a quick snap of the fingers, the need for protection is real. Even if the claim is false, there is still the cost associated with defending it.
- Excess Personal Liability
 - New Self-Defense
 - Firearm Instructors Liability;” and
- d. **“Don't be caught without Health Coverage.** Do you have a gap in medical coverage? Do you have children that recently graduated or are no longer under your current plan? Don't take any chances! You can apply for the NRA Endorsed Short Term Medical Plan and keep yourself and your dependants [sic] covered for just dollars a day. Learn more! Enroll Online!”

49. The NRA was compensated handsomely for its participation in these insurance programs through royalties that were based on a percentage of the insurance premiums paid by NRA members. Those royalty percentages varied by program, but most ranged between 13.67% to 21.92% of the premium amounts received by Lockton. Nationwide, NRA received millions of dollars per year in royalties and profit-sharing payments in connection with the Other NRA Programs. With respect to New York consumers, the NRA received more than \$1.8 million from Lockton-administered programs in royalties and administrative fees between 2000 and 2019. On information and belief, the NRA also received additional royalties from A.G.I.A., as well as profit-sharing distributions from both Lockton and A.G.I.A.

50. The royalties and profit-sharing revenues collected by the NRA were impermissibly based, at least in part, on a percentage of premium collected on policies sold.

51. The NRA participated in marketing its insurance programs through websites, mailings, emails and other methods, repeatedly representing in those materials that “[t]he NRA and the Insurance Program administrators work closely together in all aspects of the insurance programs, negotiating the most comprehensive coverage at the lowest possible cost to you, and

producing enrollment materials that make it easy for you to select and purchase appropriate insurance coverage.”

52. The statement that the NRA and administrators negotiated insurance coverage “at the lowest possible cost to you” was materially false and misleading. In actuality, on information and belief, the NRA members could have received the same coverage at a significantly lower cost but for the fact that the NRA was taking for itself a very substantial portion of its members’ insurance premiums in the form of royalties — sometimes in an amount of more than 20% of the premiums paid.

53. This blatant misrepresentation was exacerbated by the fact that the vast majority of advertisements and other marketing materials for the NRA insurance programs failed to disclose the fact that the NRA was receiving such compensation.

Related Enforcement Actions

54. The Department has reached settlements with other participants in the NRA-endorsed insurance programs. On May 2, 2018, the Department settled with Lockton for violations of the Insurance Law stemming from the Carry Guard program and certain of the Other NRA Programs, resulting in, among other things, a civil monetary penalty of \$7 million. On May 7, 2018, the Department settled with Chubb Group Holdings Inc. for violations of the Insurance Law stemming from the Carry Guard program, resulting in, among other things, a civil monetary penalty of \$1.3 million. On December 20, 2018, the Department settled with a number of Lloyd’s underwriters for violations stemming from certain of the Other NRA Programs, resulting in, among other things, a civil monetary penalty of \$5 million.

SPECIFICATION OF CHARGES

CHARGE I

RESPONDENT VIOLATED INSURANCE LAW § 2102(a)(1)(A)

55. The allegations set forth in paragraphs 1 to 54 above are repeated and realleged as if fully set forth herein.

56. Insurance Law § 2102(a)(1)(A) provides that no person, firm, association, or corporation shall act as an insurance producer in this state without having authority to do so by virtue of a license issued and in force pursuant to the provisions of the Insurance Law.

57. On multiple occasions between 2000 and 2018, the NRA acted as an unlicensed insurance producer in the State of New York with respect to Carry Guard and substantially all of the Other NRA Programs. In 2019, the NRA continued to act as unlicensed insurance producer in the State of New York with respect to policies procured through A.G.I.A.

58. At no time during the relevant period did the NRA have a license to act as an insurance producer in the State of New York.

59. The NRA repeatedly participated in marketing and solicitation with regard to Carry Guard and the Other NRA Programs, including with respect to New York consumers. Depending upon the program, the NRA did so through mass e-mail marketing deployed by the NRA, direct mail, banner ads, articles in NRA publications, and publicizing the insurance programs on NRA-affiliated websites, among other methods. These solicitations urged NRA members to purchase the insurance programs at issue and/or discussed the terms and conditions of the insurance coverage.

60. The NRA received compensation for its involvement in these programs in the form of royalties and profit-sharing payments that was based on a percentage of premiums for the insurance sold to New York consumers.

61. Insurance Law § 2102(g) provides that any person, firm, association or corporation that violates any provision of Insurance Law § 2102 shall be subject to a penalty not to exceed five hundred dollars for each transaction. On information and belief, during the relevant period, the NRA acted as an unlicensed insurance producer with respect to at least 28,000 policies in the State of New York.

CHARGE II
RESPONDENT VIOLATED INSURANCE LAW § 2102(e)(1)

62. The allegations set forth in paragraphs 1 to 61 above are repeated and realleged as if fully set forth herein.

63. Insurance Law § 2102(e)(1) prohibits any person who is required to be licensed by the Department and is not so licensed from accepting any commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in New York State.

64. For the reasons discussed in the allegations concerning Charge I, above, the NRA operated as an insurance producer in the State of New York but was not licensed to do so.

65. On multiple occasions between 2000 and 2018, the NRA received royalties from Lockton with respect to Carry Guard and substantially all of the Other NRA Programs in New York in the approximate amount of \$1.8 million. The NRA also received an unknown amount of additional royalties from A.G.I.A. between 2011 and 2019, as well as additional profit-sharing distributions and administrative fees from both Lockton and A.G.I.A. The royalties and profit-sharing were based on a percentage of premiums for the insurance sold to New York consumers.

66. Insurance Law § 2102(g) provides that any person, firm, association or corporation who or that violates any provision of Insurance Law § 2102 shall be subject to a penalty not to exceed five hundred dollars for each transaction. On information and belief, during the relevant period, the NRA acted as an unlicensed insurance producer and received a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in New York State with respect to at least 28,000 policies.

CHARGE III
RESPONDENT VIOLATED INSURANCE LAW § 2117(a)

67. The allegations set forth in paragraphs 1 to 66 above are repeated and realleged as if fully set forth herein.

68. Insurance Law § 2117(a) provides that no person, firm, association, or corporation shall in this state act as agent for any insurer which is not licensed or authorized to do an insurance business in New York state, in the doing of any insurance business in New York state or in soliciting, negotiating, or effectuating any insurance, or shall in New York state act as insurance broker in soliciting, negotiating or in any way effectuating any insurance, or in placing risks with, any such insurer, or shall in New York state in any way or manner aid any such insurer in effecting any insurance.

69. On multiple occasions between 2000 and 2018, the NRA aided an unauthorized insurer by marketing, soliciting, administering, and facilitating the provision of Carry Guard and many of the Other NRA Programs in connection with impermissible excess line policies.

70. Chubb, the insurer with respect to the Carry Guard program, is not and has never been an authorized insurer in the State of New York with respect to the insurance coverages at issue in this matter.

71. Lloyd's, the insurer with respect to many of the Lockton-administered Other NRA Programs, is not and has never been an authorized insurer in the State of New York with respect to the insurance coverages at issue in this matter.

72. The NRA's efforts to market, solicit and facilitate the sale of insurance policies issued by such unauthorized insurers thus violated Insurance Law § 2117(a).

73. In addition, there is an independent and sufficient basis for violations of Insurance Law § 2117(a) with regard to the Carry Guard program and at least a number of Other NRA Programs, including without limitation the Self-Defense Program, the Retired Officer Self-Defense Program, and Second Call Defense. Those programs provided coverage for, among other things, criminal defense costs and intentional conduct, in violation of Insurance Law §§ 1101(a) and 1116(a)(3) and 11 NYCRR Part 262. As a result, Chubb and Lloyd's were not authorized to sell such insurance, and the NRA's efforts to market, solicit and facilitate such insurance violated Insurance Law § 2117(a).

74. Insurance Law § 2117(g) provides that any person, firm, association or corporation violating any provision of Insurance Law § 2117 shall, in addition to any other penalty provided by law, forfeit to the people of this state the sum of five hundred dollars for each transaction. On information and belief, during the relevant period, the NRA aided an unauthorized insurer by marketing, soliciting, administering, and facilitating an unauthorized insurer in New York State with respect to at least 28,000 policies.

CHARGE IV
RESPONDENT VIOLATED INSURANCE LAW § 2122(a)(2)

75. The allegations set forth in paragraphs 1 to 74 above are repeated and realleged as if fully set forth herein.

76. Insurance Law § 2122(a)(2) provides that no insurance producer or other person, shall, by any advertisement or public announcement in this state, call attention to any unauthorized insurer or insurers.

77. For the reasons discussed in connection with the allegations in Charge III, above, Chubb was at all relevant times an unauthorized insurer.

78. Notwithstanding that, in the marketing and promotion website for Carry Guard, www.nracarryguard.com, among other marketing materials, the NRA stated that the Carry Guard program “is backed by insurance leader Chubb” and is underwritten by a group within Chubb, “the world’s largest publicly traded property and casualty insurance company.”

CHARGE V
RESPONDENT ENGAGED IN UNFAIR AND DECEPTIVE ACTS AND PRACTICES
WARRANTING THE FINDING OF A DETERMINED VIOLATION

79. The allegations set forth in paragraphs 1 to 78 above are repeated and realleged as if fully set forth herein.

80. The NRA participated in marketing its insurance programs through websites, mailings, emails and other methods, repeatedly representing in those materials that “[t]he NRA and the Insurance Program administrators work closely together in all aspects of the insurance programs, negotiating the most comprehensive coverage at the lowest possible cost to you, and producing enrollment materials that make it easy for you to select and purchase appropriate insurance coverage.”

81. The statement that the NRA and administrators negotiated insurance coverage “at the lowest possible cost to you” was materially false and misleading. In actuality, on information and belief, NRA members could have received the same coverage at a significantly lower cost but for the fact that the NRA was taking for itself a very substantial portion of its members’

insurance premiums in the form of royalties — sometimes in an amount of more than 20% of the premiums paid.

82. This blatant misrepresentation was exacerbated by the fact that the vast majority of advertisements and other marketing materials for the NRA insurance programs failed to disclose that the NRA was receiving such compensation.

83. The NRA's misrepresentations about the cost of its insurance programs and its failures to disclose in its marketing materials the fact that it receives compensation in connection with endorsing certain insurance products constitute unfair or deceptive acts or practices.

PLEASE TAKE NOTICE THAT, as a result of these charged violations, the Department is seeking the following relief:

- a) The imposition of civil monetary penalties against respondent with respect to those violations in which such penalties are authorized (*i.e.*, Charges I, II, and III);
- b) An order directing Respondent to cease and desist all activity that constitutes defined violations, as defined in Insurance Law § 2402(b) (*i.e.*, Charges I, II, III, and IV);
- c) A determination that the NRA's marketing of its insurance programs constitutes unfair or deceptive acts or practices and thus constitutes a "determined violation" under Insurance Law § 2402(c) (*i.e.*, Charge V); and
- d) Such other relief as is deemed just and appropriate.

PLEASE TAKE FURTHER NOTICE THAT:

(A) Respondent is a person within the meaning of § 2402 of the Insurance Law, and as such, is within the jurisdiction of the Department for purposes of this hearing, which is brought against the Respondent pursuant to Article 24 of the Insurance Law.

(B) According to the records of the Department, Respondent is not licensed as an insurance producer in this State.

(C) This Notice of Hearing and Statement of Charges is issued to Respondent pursuant to § 2405 of the Insurance Law and §§ 305 and 306 of the Financial Services Law, and notice of the hearing is given to Respondent in accordance with § 304 of the Financial Services Law.

(D) Your attention is directed to a statement in plain language, attached hereto as Appendix A, summarizing the provisions of 23 NYCRR Part 2. **This statement contains important information concerning your rights and the Department's hearing procedures and should be read carefully.** A copy of 23 NYCRR Part 2 will be furnished upon request.

(E) Interpreter services shall be made available to deaf persons, at no charge.

(F) Should you fail to appear at the time and place set forth above, or at any subsequent date fixed for the hearing, the hearing will proceed as scheduled and may result in the following:

- i. The issuance of a report by the Superintendent finding defined violations of Article 24 of the Insurance Law and the issuance of an order upon the Respondent requiring it to cease and desist from engaging in defined violations;
- ii. The issuance of a report by the Superintendent making a determination that the NRA's marketing of its insurance programs constitutes unfair or deceptive acts or

practices and thus constitutes a “determined violation” under Insurance Law

§ 2402(c); and

iii. The assessment of monetary fines against the Respondent pursuant to Insurance Law

§§ 2102(g) and 2117(g).

Dated: New York, New York

February 4, 2020

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

By:


KEVIN R. PUVALOWSKI

Senior Deputy Superintendent

Consumer Protection and Financial Enforcement


KATHERINE A. LEMIRE

Executive Deputy Superintendent

Consumer Protection and Financial Enforcement

SERWAT FAROOQ

HADAS JACOBI

Of Counsel

One State Street

New York, New York 10004

(212) 709-5578

APPENDIX A



NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
ONE STATE STREET
NEW YORK, NEW YORK 10004

SUMMARY OF HEARING PROCEDURES

Summary of Hearing Procedures for Adjudicatory Proceedings as Set Forth in 23 NYCRR 2, as Required by section 301.3 of the State Administrative Procedure Act.

1. The Hearing will be conducted and administered in compliance with the State Administrative Procedure Act and the Financial Services Law and regulations promulgated thereunder and will be held before an impartial hearing officer who will make a Report of findings and recommendations to the Superintendent.
2. You must be ready and prepared with your evidence to present your case on the hearing date.
3. You may be represented by an attorney at the hearing. In the event you do not have an attorney, you may appear on your own behalf, a member of the partnership may appear on behalf of the partnership, or an authorized officer of an entity may represent that entity.
4. You may file a written answer to notice of action or proposed action. If you do so, it should be delivered at least two (2) days before the hearing date to the New York State Department of Financial Services ("Department") official who signed the notice of action or proposed action.
5. You may present evidence and have witnesses testify at the hearing. If you believe a witness will not appear voluntarily and you do not have an attorney representing you, you may request the Superintendent, a Deputy Superintendent, the hearing officer assigned to hear the matter, or any employee of the department authorized by the Superintendent to furnish you with a subpoena to compel the witness' attendance. If the subpoena is issued to you, the service of the subpoena upon the witness and payment of all required fees is your responsibility.
6. All parties are entitled to discovery of the evidence intended to be introduced at the hearing.
7. All witness will be sworn or give an affirmation.

8. The rules of evidence are not the same as those in a court of law. Evidentiary and burden of proof issues are governed by Financial Services Law section 305(e) and State Administrative Procedure Act section 306.
9. The burden of proof is substantial evidence.
10. Prior to the commencement, a hearing may be postponed upon your written request if there is a good reason why the hearing should not begin on the scheduled date. To request a postponement you should contact the Department official who signed the notice of action or proposed action.
11. A hearing in progress may be adjourned by the hearing officer at your request if you can give a good reason and support your request with written evidence as the hearing officer deems appropriate.
12. If you do not appear or are not represented at the hearing, the hearing will take place as scheduled and a decision on the charges will be made. The decision may result in the revocation or suspension of your license(s) and the denial of any pending applications, and such other action as may be permitted by law, including the imposition of monetary fines.
13. If you do not appear at a hearing and a decision against you is issued, the hearing may be reopened upon a written application, if you satisfy the hearing officer that there are valid reasons for your failure to appear or your failure to request an adjournment or postponement and you have a meritorious case. If you do appear at the hearing and the decision is made against you, the hearing may be reopened on written request to the hearing officer if you can show newly discovered evidence or a compelling reason for such reopening. The application to reopen must be made within one-hundred and twenty (120) days from the date of the Superintendent's decision.
14. You may request a copy of the hearing officer's report and an opportunity to comment on it in writing before the Superintendent acts on the report. The request must be made to the hearing officer on the record prior to the close of the hearing.
15. Once a decision is made against you, you may, if you wish, take an appeal to the courts. This appeal must be made within one-hundred and twenty (120) from the date the decision was effective. It should be emphasized that your right to take an appeal is not connected in any way with your right to reopen the hearing as described in section 13, and an application to reopen does not extend your time to take an appeal to the courts.