

JAN 20 1995

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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In the Matter of
PACIFIC INDEMNITY COMPANY,
Petitioner.

By
Docket No. 8182

ORDER

Petitioner Pacific Indemnity Company ("Pacific"), NAIC No. 20346, a California property and casualty insurance company, holds a certificate of authority issued by the Director of the Arizona Department of Insurance (the "Department").

On July 21, 1993, the Department issued an audit report to Pacific requesting Pacific's payment of retaliatory taxes of \$9,044. The retaliatory tax payment sought from Pacific stemmed from the inclusion of a fee paid by Pacific in California to appoint, renew or terminate agents in 1992.

Pacific responded that agency appointments and terminations, and not the appointment, renewal or termination of agents, fell within the scope of Arizona's retaliatory tax law. Thus, Pacific requested an administrative hearing pursuant to A.R.S. §20-161 to challenge all but \$76 of the retaliatory tax assessment.

Pacific uses the "American Agency System," under the terms of which Pacific contracts with independent insurance agencies, which in turn solicit business for Pacific. An independent insurance agency operating under this contract may represent several insurance companies in addition to Pacific. An agency may employ individuals to act as insurance solicitor or agents on behalf of Pacific and the other insurers

1 represented by the agency. Pacific does not control the
2 decisions of independent agencies to appoint, renew or terminate
3 insurance solicitors or agents.

4 California law distinguishes between an insurer which
5 appoints an agent, and an insurer which appoints an agency,
6 leaving the agency free to employ individuals to act as the
7 agency's agents. Under California law, an insurer using the
8 "American Agency System" pays initial appointment fees and
9 termination fees to appoint or later terminate an agency. An
10 insurer does not pay an annual renewal fee for agency
11 appointments, nor do insurers pay any appointment, renewal or
12 termination fees for the employee agents of an appointed agency.

13 Under Arizona retaliatory tax law, Pacific's use of
14 the "American Agency System" subjects Pacific to retaliation
15 only for the appointment and termination of an agency. During
16 1992, Pacific appointed three agencies and terminated one
17 agency. Therefore, the maximum retaliatory tax due is 4 times
18 \$19, a total of \$76. The Department has recalculated the
19 assessment owed by Pacific, and concluded that Pacific remains
20 liable for the follows:

21	Net Retaliatory Tax Due	\$ 40.52
22	Penalty Due	4.05
	Interest Due	<u>9.26</u>
23	Total Outstanding Assessment	\$ 53.83

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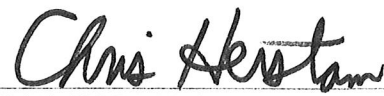
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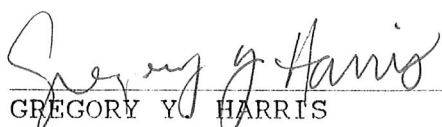
THEREFORE, IT IS ORDERED:

Within 30 days of the date of this Order, Pacific shall pay the Total Outstanding Assessment of \$53.83 to the Department.

DATED this 20th day of January, 1995.



CHRIS HERSTAM
Director of Insurance



GREGORY Y. HARRIS
Chief Administrative Law Judge

COPY of the foregoing mailed/delivered this 20th day of January, 1995, to:

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