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Insurance Division Enforcement Tools

Testimony of
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For the record, my name is Teresa Miller. I am the Acting Insurance Division Administrator of the Department of Consumer and Business Services. I am here today to testify about the enforcement mechanisms and tools of the Insurance Division.

There are three primary sources from which the Insurance Division initiates enforcement actions: Complaints from the public, referrals from law enforcement or government agencies, and investigations and analysis conducted by the Division.

By far, most enforcement actions begin as a result of a consumer complaint received by the Division. In 2008, the Division received approximately 4,000 complaints and 15,000 questions. Consumers make complaints to the Division through a variety of means, via toll free telephone number, online complaint form, dedicated email address, and in person.

Our consumer advocates are typically the first to handle complaints received by the public. Our consumer advocates all have experience working in the insurance industry and are very effective in resolving complaints to the benefit of consumer. In 2008 alone, our consumer advocates were able to recover approximately \$2 million for consumers.

Once a consumer advocate receives a complaint, he/she conducts any necessary follow up with the consumer and then forwards the complaint to the insurer or agent for a statutorily mandated response. Failure of the insurer or agent to respond to the complaint can result in enforcement action and administrative sanctions, which I will discuss later. Through consumer advocacy and as a result of the effective working relationships we have developed with our stakeholders, our consumer advocates frequently obtain excellent results for consumers even under circumstances where no clear violation of the Insurance Code exists.

For example, an insurer, through a telephone solicitation, sold two insurance policies to a disabled woman. The consumer later regretted the purchase and contacted the Division. Though there wasn't necessarily a violation of the Insurance Code, the insurer cancelled the policies and refunded the consumer's money upon receipt of our complaint letter.

Another example involves a complaint we received from a consumer regarding the value the insurer placed on his totaled vehicle. The valuation report the insurer used for the vehicle did not contain all of the vehicle's options. One of our advocates forwarded a list of additional options to the insurer, and as a result, the insurer paid the consumer an additional \$966.

In cases where it is apparent that an agent or an insurer has committed a violation of the Insurance Code, our consumer advocates forward the complaint files to our investigators or market analysts depending upon the type of complaint. In 2007, the Insurance Division initiated approximately 800 investigations.

Investigators typically handle violations committed by insurance agents, while market analysts typically handle violations committed by insurers. Because agents are often licensed in multiple jurisdictions, our investigators work closely with insurance commissions in other states. In addition, they monitor law enforcement and administrative actions taken against agents throughout the country, because such actions, when taken against Oregon licensed agents, can constitute violations of the Oregon Insurance Code. As with consumer complaints, agents and insurers are statutorily mandated to cooperate with Insurance Division investigations. Failure to cooperate with an investigation can result in enforcement action and administrative sanctions. The Insurance Division also has the authority to issue administrative subpoenas to compel the sworn testimony of licensed agents. Depending upon the severity of the violation and the circumstances of the case, the Insurance Division may simply educate the agent about the law and the violation,

issue a warning letter, or refer the case for enforcement action and administrative sanctions.

Violations of the Insurance Code committed by insurers are typically investigated by the Division's market analysts. As noted previously, insurers are statutorily mandated to cooperate with these investigations, or they can face administrative sanctions. Market analysts look for patterns of activity in the market or in the conduct of a particular insurer. If for example, a market analyst determines that an insurer has failed to adequately pay claims for a mandated procedure, the Division frequently requests insurers to re-process and pay the claims as required by the Code. Other enforcement tools available to market analysts include interviews, desk exams, targeted exams, policy and procedure review, and interrogatories. Again, depending upon the severity of the violation and the circumstances of the case, the Division may require the insurer to develop a corrective action plan or may forward the case on for additional enforcement action.

Like investigators, market analysts also work closely with the commissions of other states. They also work closely with the NAIC, the National Association of Insurance Commissioners.

When an insurer or an agent fails to cooperate with the Division or the severity of the complaint warrants it, the Division has a variety of formal and informal administrative enforcement tools at its disposal:

- The Division may assess a civil penalty of up to \$1,000.00 per offense committed by an individual and up to \$10,000.00 per offense committed by a company (ORS 731.988). These penalties are paid to the general fund;
- The Division may require an individual or company to pay as a civil penalty, the amount of profit made as a result of the Insurance Code violation (ORS 731.988). These civil penalties are paid to the general fund as well;
- The Division may issue a cease and desist order requiring the individual or company to terminate conduct that is in violation of the Code. Violation of the terms of a cease and desist order can result in additional fines and administrative action (ORS 731.252);
- The Division may refuse to issue or renew a license, place an agent on probation, suspend an agent license, or revoke such a license (ORS 744.074);

- The Division may place an insurer under supervision, allowing the Division to monitor the activities of the insurer; the Division may revoke an insurer's certificate of authority, prohibiting it from conducting business in Oregon; or the Division may seek judicial authority to take further action to rehabilitate, conserve, or liquidate the insurer (ORS 734.043 and ORS Chapter 34); and
- The Division may refer an agent or insurer to law enforcement for criminal prosecution or to the Department of Justice for judicial enforcement of administrative actions (ORS 731.992 and 731.258);

One of the Division's most important tools, however, is the Division's ability to enter into stipulated orders with insurers and agents. Though the Division does not have authority to order it, the Division may require insurers and agents to pay restitution and may regulate future conduct when there is a stipulation to do so. Using stipulated orders, the Division can also require agents and insurers to alter business practices that while not necessarily violations of the Code, are clearly not in the best interests of our consumers.

A primary example of the power of the stipulated order involves the case of Bankers Life and Casualty. After an extensive investigation, the Insurance Division determined that Bankers had made several unsuitable annuity sales to seniors. Under the stipulated order, Bankers is required to change the way it sells annuities, to refund the money it received from several seniors, and to pay a \$150,000.00 fine. Additionally, the order requires Bankers to contract with an independent auditor to review additional annuity sales in order to determine whether such sales were suitable. Also, pursuant to the terms of the order, the Division has authority to subject future annuity sales to greater scrutiny. Many of the provisions of the order, including the requirement that Bankers contract with an independent auditor, that future sales be subject to greater scrutiny, and that Bankers pay restitution, would not have been available to the Division without a stipulation.

I appreciate the opportunity to speak with you about the Insurance Division's enforcement tools. I'm happy to answer any questions you might have.