

JAN 18 2013

DEPT OF INSURANCE  
BY 

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

In the Matter of:

**PACIFIC WHOLESALE INS. BROKERS,  
LLC,**  
(Arizona License # 190355)  
**and HARRELL, STEPHEN DAVIS**  
(Arizona License # 1014488)  
(NPN 9182587)

**No. 12A-178-INS**

**FINAL ADMINISTRATIVE DECISION**

Respondents.

**FINDINGS OF FACT**

1. Pacific Wholesale Ins. Brokers, LLC ("Pacific Wholesale") is, and at all times material, a Georgia-domiciled company licensed in Arizona as a non-resident with authority as a property insurance producer, casualty insurance producer, and surplus lines broker, Arizona license number 190355. Pacific Wholesale's property and casualty lines of authority expired on December 12, 2012, and its surplus lines broker line of authority expired on August 21, 2012.

2. Pacific Wholesale's address of record is: 4501 Circle 75 Pkwy, #F6200, Atlanta, GA 30339 (business and mailing).

3. Stephen Davis Harrell ("Harrell") is, and at all times material, licensed in Arizona as a non-resident with authority as a property insurance producer and casualty insurance producer, Arizona license number 1014488. Harrell's license expires on May 31, 2015.

4. Harrell's addresses of record are: 4501 Circle 75 Pkwy SE, Suite F6200, Atlanta, GA 30339-6098 (business and mailing); and 615 Elm St., Roswell, GA 30075-4904 (residence).

1           5.     Harrell is the designated producer for Pacific Wholesale within the meaning of  
2 A.R.S. § 20-285(C)(3).

3           6.     On or about October 19, 2012, the Surplus Lines Association of Arizona  
4 ("SLA") provided a Surplus Lines Delinquent Tax Report to the Department and to Pacific  
5 Wholesale showing that Pacific Wholesale owed \$36,661.24 in delinquent taxes and  
6 penalties ("DTR000672"). Pacific Wholesale had 30 days to appeal DTR000672.

7           7.     On or about October 22, 2012, the SLA provided a Surplus Lines Delinquent  
8 Tax Report to the Department and to Pacific Wholesale showing that Pacific Wholesale  
9 owed \$2,444.08 in delinquent taxes and penalties ("DTR000675"). Pacific Wholesale had  
10 30 days to appeal DTR000675<sup>1</sup>.

11          8.     On or about October 25, 2012, Pacific Wholesale notified the Department of  
12 its discovery of an unintentional premium and surplus lines tax shortage in its Premium  
13 Trust Account ("Pacific Wholesale's October 25 letter"). In lieu of immediate payment of  
14 the shortage, Pacific Wholesale offered a Promissory Note and/or payment plan<sup>2</sup>. Pacific  
15 Wholesale also asked the Department to waive all late fees and penalties.

16          7.     On or about October 25, 2012, the Department responded to Pacific  
17 Wholesale's letter requesting full payment of DTR000672 by November 2, 2012, and  
18 payment of all other premium tax amounts owed. The Department also stated that it did  
19 not consider Pacific Wholesale's October 25, 2012 letter to constitute an appeal of the  
20 amounts owed.

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24 <sup>1</sup> As of October 22, 2012, Pacific Wholesale's total surplus lines tax delinquency equaled  
\$39,105.32.

25 <sup>2</sup> Pacific Wholesale proposed a payment plan of \$500.00 per month from January, 2013  
26 through August, 2013 and then \$1,000.00 per month until the balance was paid.

1           8.     As of this date, Pacific Wholesale has not appealed DTR000672 or  
2 DTR000675 and has not complied with the Department's request to pay DTR000672 and  
3 all other premium tax amounts owed.

4           9.     As of this date, Pacific Wholesale owes \$50,517.06 in unpaid premium tax,  
5 inclusive of the amounts specified on DTR000672 and DTR000675, consisting of

6           a.     \$1,228.83, based on 3% of the \$40,961.00 in surplus lines insurance  
7 premiums and fees for policies that Pacific Wholesale procured between January 1  
8 and June 30, 2012, for which Pacific Wholesale did not file with the Department a  
9 statement of surplus lines insurance business ("Statement") as required by A.R.S.  
10 § 20-415 or remit premium tax as required by A.R.S. § 20-416.

11           b.     \$24,110.10, based on 3% of the \$803,670.00 in surplus lines  
12 insurance premiums and fees for policies that Pacific Wholesale procured between  
13 July 1 and December 31, 2011, for which Pacific Wholesale did not file with the  
14 Department a Statement or remit premium tax.

15           c.     \$3,793.44, based on 3% of the \$126,448.00 in surplus lines insurance  
16 premiums and fees for policies that Pacific Wholesale procured between January 1  
17 and June 30, 2011, for which Pacific Wholesale did not file with the Department a  
18 Statement or remit premium tax.

19           d.     (\$2,850.42), based on 3% of the \$77,337.00 in surplus lines insurance  
20 premiums and fees for policies that Pacific Wholesale procured between July 1 and  
21 December 31, 2010, which resulted in \$2,320.11 of premium taxed owed for the  
22 period, less the amount of \$5,170.53, which was part of Pacific Wholesale's  
23 \$7,125.12 payment with check 17108 dated November 18, 2011, which was  
24 received by the Department on or about November 25, 2011. Pacific Wholesale's  
25 payment was not accompanied by the Statement required by A.R.S. § 20-416, but  
26 instead, was accompanied by a document entitled, "Pacific Wholesale Insurance

1 Brokers – [30],” included as **Exhibit A**. The Department allocated Pacific  
2 Wholesale’s tax payment based on the transactions identified on Pacific Wholesale’s  
3 document.

4 e. \$181.68, based on 3% of the \$191,215.67 in surplus lines insurance  
5 premiums and fees for policies that Pacific Wholesale procured between January 1  
6 and June 30, 2010, which resulted in \$5,736.47 in premium tax owed for the period,  
7 less the \$5,554.79 that Pacific Wholesale paid with its Statement for the period,  
8 which the Department received on August 10, 2010. On September 10, 2010,  
9 Pacific Wholesale reported to the SLA an additional transaction that was effective  
10 during the period involving \$6,056.00 in premium for which Pacific Wholesale did not  
11 file an amended Statement or pay the additional \$181.68 in premium tax.

12 f. \$18,810.00, based on 3% of the \$1,402,373.00 in surplus lines  
13 insurance premiums and fees for policies that Pacific Wholesale procured between  
14 July 1 and December 31, 2009, which resulted in \$42,071.19 of premium taxed  
15 owed for the period, less the amount of \$23,261.19 that Pacific Wholesale paid with  
16 its Statement for the period, which the Department received on March 19, 2010. On  
17 August 16, 2010, Pacific Wholesale reported to the SLA an additional transaction  
18 that was effective during the period involving \$627,000.00 in premium for which  
19 Pacific Wholesale did not file an amended Statement or pay the additional  
20 \$18,810.00 in premium tax.

21 g. \$251.01, based on 3% of the \$247,244.00 in surplus lines insurance  
22 premiums and fees for policies that Pacific Wholesale procured between January 1  
23 and June 30, 2009, which resulted in \$7,417.32 of premium taxed owed for the  
24 period, less the following amounts: \$5,162.73 that Pacific Wholesale paid with its  
25 Statement for the period, which the Department received on August 31, 2009;  
26 \$1,954.59 from Pacific Wholesale’s payment dated November 18, 2011, with check

1 17108, for transactions detailed on **Exhibit A**; a transfer of \$48.99 from another  
2 period, which the Department entered on November 9, 2011, shown in **Exhibit B**.

3 h. \$1,546.29, based on 3% of the \$845,076.00 in surplus lines insurance  
4 premiums and fees for policies that Pacific Wholesale procured between July 1 and  
5 December 31, 2008, which resulted in \$25,352.28 of premium taxed owed for the  
6 period, less \$23,982.33 that Pacific Wholesale paid with its Statement for the period,  
7 which Pacific Wholesale filed on June 11, 2009, and the Department received on  
8 June 15, 2009; \$63.75 from Pacific Wholesale's payment dated November 18, 2011,  
9 which check 17108, for transactions detailed on **Exhibit A**; and (\$240.09), which the  
10 Department transferred to other periods as shown in **Exhibit B**.

11 i. \$3,401.13, based on 3% of the \$337,068.00 in surplus lines insurance  
12 premiums and fees for policies that Pacific Wholesale procured between January 1  
13 and June 30, 2008, which resulted in \$10,112.04 of premium taxed owed for the  
14 period, less the following amounts: \$6,454.56 that Pacific Wholesale paid with its  
15 Statement for the period, which Pacific Wholesale filed and the Department received  
16 on August 29, 2008; \$65.25 from Pacific Wholesale's payment dated November 18,  
17 2011, which check 17108, for transactions detailed on **Exhibit A**; and, a transfer of  
18 \$191.10 from another period, which the Department entered on November 9, 2011,  
19 shown in **Exhibit B**.

20 j. \$3,164.55, based on 3% of the \$426,485.00 in surplus lines insurance  
21 premiums and fees for policies that Pacific Wholesale procured between July 1 and  
22 December 31, 2007, which resulted in \$12,794.55 of premium taxed owed for the  
23 period, less \$9,630.00 that Pacific Wholesale paid with its Statement for the period,  
24 which the Department received February 26, 2008.

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1 k. (\$3,119.55) relating to the period of January 1 through June 30, 2007,  
2 based on 3% of a \$103,985.00 adjusting entry that Pacific Wholesale filed with the  
3 SLA on August 20, 2010.

4 **CONCLUSIONS OF LAW**

5 1. The Director has jurisdiction over this matter.

6 2. Respondents' conduct, as alleged above, constitutes failing to file with the  
7 Director on or before the date specified in A.R.S. § 20-415, subsection B, a statement of all  
8 surplus lines insurance business covering Arizona single-state risks transacted by the  
9 broker during the period for which the statement is required to be filed, in violation of A.R.S.  
10 § 20-415(A).

11 3. Respondents' conduct, as alleged above, constitutes failing to remit a tax on  
12 the premiums on surplus lines insurance covering Arizona single-state risks subject to tax  
13 transacted by the broker as shown by the statement filed with the Director, in violation of  
14 A.R.S. § 20-416(A).

15 4. Respondent's conduct, as alleged above, constitutes a violation of Title 20 or  
16 Department rule, subpoena or order of the Director, within the meaning of A.R.S.  
17 § 20-295(A)(2).

18 5. Grounds exist for the Director to impose and collect a civil penalty of not more  
19 than twenty-five dollars against a broker for each day the report prescribed in A.R.S.  
20 § 20-408(A) is late, within the meaning of A.R.S. § 20-408(E).

21 6. Grounds exist for the Director to, deny, suspend for not more than twelve  
22 months, revoke or refuse to renew an insurance producer's license, or may impose a civil  
23 penalty or any combination of actions, within the meaning of A.R.S. § 20-295(A), (B) and  
24 (F).

25 ...

26 ...



1 Gerrie Marks, Director  
Mary Kosinski, Executive Assistant for Regulatory Affairs  
2 Kurt Regner, Assistant Director  
Scott Greenberg, Chief Operating Officer  
3 Steven Fromholtz, Licensing Administrator  
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**EXHIBIT A - REDACTED.** The document contains personal information that may be inappropriate for public disclosure, including names, addresses, contract numbers, amount requested by claimant, final determinations of claim amounts and calculated distribution amounts.

## EXHIBIT B

### Adjustments Entered November 9, 2011

<b>Transfer from taxes due 3/1/2009</b> <i>(for surplus lines insurance procured between 7/1/2008 and 12/31/2008)</i>	<b>(\$240.09)</b>
<b>Transfer to pay taxes due 9/1/2008</b> <i>(for surplus lines insurance procured between 1/1/2008 and 6/30/2008)</i>	<b>\$191.10</b>
<b>Transfer to pay taxes due 9/1/2009</b> <i>(for surplus lines insurance procured between 1/1/2009 and 6/30/2009)</i>	<b>\$48.99</b>

### EXHIBIT C: Summary of Tax and Penalties Due

Tax Due Date	Tax Due	Adjustments*	Adjusted Tax Due	Days Late**	Per Day Penalty	Total Penalty
8/15/2012	1,228.83		1,228.83	163	\$ 2.4577	400.61
2/15/2012	24,110.10		24,110.10	345	\$ 25.0000	8,625.00
9/1/2011	3,793.44		3,793.44	512	\$ 7.5869	3,793.44
3/1/2011	(2,850.42)	[B] 45.00 [C] 2,805.42	-			
9/1/2010	181.68		181.68	877	\$ 0.3634	181.68
3/1/2010	18,810.00		18,810.00	1,061	\$ 25.0000	18,810.00
9/1/2009	251.01		251.01	1,242	\$ 0.5020	251.01
3/1/2009	1,546.29		1,546.29	1,426	\$ 3.0926	1,546.29
9/1/2008	3,401.13	[C] (2,805.42)	595.71	1,607	\$ 1.1914	595.71
3/1/2008	3,164.55	[A] (3,119.55) [B] (45.00)	-			
9/1/2007	(3,119.55)	[A] 3,119.55	-			
3/1/2007	-		-			
<b>TOTAL</b>	<b>50,517.06</b>	<b>-</b>	<b>50,517.06</b>			<b>34,203.74</b>

\* Reallocation of overpaid tax to oldest underpaid tax.

\*\* Assumes tax payment on 1/25/2013.