

Office of Administrative Hearings

1700 West Washington, Suite 602 - Phoenix, Arizona 85007
Telephone (602)-542-9826 FAX (602)-542-9827

Fife Symington
Governor

Cliff Vanell
Director

December 13, 1996

John King, Director
Department of Insurance
2910 North 44th Street, #210
Phoenix, AZ 85018-7256

ATTN: Curvey Burton

Re: 96A-144-INS, 96A-145-INS, 96A-146-INS, 96A-147-INS

**SAFECO LIFE INSURANCE COMPANY,
FIRST NATIONAL INSURANCE COMPANY OF AMERICA,
GENERAL INSURANCE COMPANY OF AMERICA,
SAFECO INSURANCE COMPANY OF AMERICA,**

Petitioners.

Dear Mr. King:

Please find the decision of the Office of Administrative Hearings for the above entitled matter.

Sincerely,



Cliff J. Vanell
Director



Mission Statement: We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation.

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matters of

4 **SAFECO LIFE INSURANCE COMPANY,**

5 **FIRST NATIONAL INSURANCE**
6 **COMPANY OF AMERICA,**

7 **GENERAL INSURANCE COMPANY OF**
8 **AMERICA,**

9 **SAFECO INSURANCE COMPANY OF**
10 **AMERICA,**

11 Petitioners.

No. 96A-144-INS
No. 96A-145-INS
No. 96A-146-INS
No. 96A-147-INS

RECOMMENDED DECISION
OF ADMINISTRATIVE
LAW JUDGE

14

HEARING: December 10, 1996

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16 **APPEARANCES:** Petitioners: Stephen D. Collier, Assistant Secretary
17 Arizona Department of Insurance: Patrick Irvine, Assistant
18 Attorney General

19 **ADMINISTRATIVE LAW JUDGE:** Lorna B. Pederson
20

21
22 Petitioners captioned above (the "Petitioners") appeal from the assessments of
23 additional retaliatory tax and penalties imposed by the Department of Insurance (the
24 "Department") for calendar year 1995. Based upon the entire record, the following
25 recommended Findings of Fact, Conclusions of Law, and Order are submitted.

26 ...

27 ...

28 ...

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30 ...

Office of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, Arizona 85007
(602) 542-9826

FINDINGS OF FACT

1
2 1. Petitioners are insurance companies domiciled in the State of Washington.
3 The Petitioners each filed 1995 annual reports with the Department. A Retaliatory Fees
4 and Taxes Worksheet used to calculate and report retaliatory tax was attached to the
5 annual report. This worksheet is used to compare the fees, assessments and taxes
6 imposed under the laws of the state of incorporation (in this case, Washington) with
7 those imposed under the laws of Arizona. The amounts on the worksheet are then
8 used to compute the retaliatory tax due.

9 2. Item number 5 on the worksheets for life insurers using Form E-163¹ requests
10 amounts paid in Washington and Arizona for "company agent license fees" and refers
11 to footnote #1, which states:

12 Insurers domiciled in the following states must complete 5a
13 through 5c: Alabama, Arkansas, Connecticut, Kansas,
14 North Carolina, North Dakota, Ohio, Oklahoma, South
15 Carolina, South Dakota, Utah, and West Virginia. All other
16 insurers are exempt from retaliation for agent license fees
17 only.

18 3. Although Washington was not listed among the states from which the insurers
19 were instructed to complete this section on company agent license fees, Petitioners
20 nevertheless completed that portion of the worksheet and included agent license fees in
21 its retaliatory tax calculation. Because Arizona agent license fees were higher than the
22 Washington agent license fees, inclusion of the agent license fees in the calculation
23 had the affect of reducing the amount of the retaliatory tax Petitioners owed.

24 4. The Department audited the Petitioners' 1995 returns and determined they
25 had incorrectly included the agent license fees. The Department issued assessments
26 for additional retaliatory taxes, as well as penalties.²

27 ¹ In the case of non-life insurers using Form E-164, item number 6.

28 ² The Department's assessment for Safeco Life Insurance Company reflects a refund due in the
29 amount of \$687.93. The assessments for First National Insurance Company of America,
30 General Insurance Company of America, and Safeco Insurance Company of America reflect

1 5. Petitioners filed an appeal of the assessments, pursuant to A.R.S. § 20-
2 220(A) stating they disagree with the audit reports. Petitioners assert it is appropriate
3 to include agent license fees on the worksheets for retaliatory tax based on language
4 found in A.R.S. § 20-230 which includes the fees upon the agents of insurers in the
5 calculation of retaliatory tax. Petitioners rely on a California Opinion of the Attorney
6 General, 67 Op. Atty. Gen. Cal., 84-402, 341 (1984) as support for its position. In this
7 published opinion, the California Attorney General states as follows:

8
9 The first question presented for resolution is whether the
10 insurance agent license fees paid in California by insurance
11 agents are includable in the retaliatory tax computations of
12 nondomestic insurers. We conclude that they are.

12 Petitioners state that the Department offered no explanation as to why only the states
13 listed in the footnote of the worksheet were allowed to include agent license fees.

14 6. The Department asserts that only in the states where insurers are required to
15 pay the license fees of their agents can the agent license fees be included in the
16 calculation of retaliatory tax. The Department did a survey of the various states and
17 determined that in certain states, the insurers paid the agent license fees. These states
18 were allowed to include the agent license fees in the retaliatory tax calculation,
19 pursuant to the instructions in the footnote on the Retaliatory Fees and Taxes
20 Worksheet. The Department argues that only agent license fees paid by the insurers
21 are actually "fees upon the agent of such insurers" within the statutory language of
22 A.R.S. § 20-230. Drawing a distinction between agent license fees paid by insurers
23 and those paid by the agents avoids the problem of potential duplication, argues the
24 Department, which could occur because many agents work for more than one
25 insurance company. It is the Department's position that in states such as Washington,
26 where the agent license is issued to the individual agent, and the agent, not the insurer,
27 pays the license fee, such fees are excluded from the calculation.

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29 additional tax and penalty due in the amount of \$7,769.72, \$27,183.18 and \$25,442.88,
30 respectively.

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CONCLUSIONS OF LAW

1. A.R.S. §20-230 provides that a retaliatory tax is charged upon insurers of other states doing business in Arizona if those other states impose greater taxes or fees upon insurers of Arizona doing business in those states. This statute provides as follows:

A. When by or pursuant to the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other material obligations, prohibitions or restrictions are imposed upon insurers of this state doing business, or that might seek to do business in such other state or country, **or upon the agents of such insurers**, which in the aggregate are in excess of such taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon similar insurers of such other state or foreign country under the statutes of this state, so long as such laws continue in force or are so applied, the same obligations, prohibitions and restrictions of whatever kind shall be imposed upon similar insurers of such other state or foreign country doing business in Arizona. . . .
(emphasis added)³

Similar acts exist in most states, and have been an essential feature of the system of state supervision of the insurance industry for more than a century. See *Pacific Mutual Life Insurance Company v. Bushnell*, 97 Ariz. 18, 396 P.2d 251 (1964). The basic purpose of Retaliatory Tax Acts is to equalize taxation of insurance companies. *Id.*

2. The issue to be decided here is whether agent license fees imposed upon and paid by insurance agents are to be included in the calculation of the retaliatory tax. The Attorney General of California analyzed this very issue and concluded that the

³ Although the language of the statute is complicated, it can be explained simply as follows: "To the extent the laws of the state of domicile impose greater obligations than the laws of Arizona, retaliatory tax is due." Response Memorandum, page 3. Similar provisions have been upheld against a constitutional challenge by the United States Supreme Court in *Western and Southern Life Insurance Company v. State Board of Equalization of California*, 451 U.S. 646, 101 S. Ct. 2070 (1981).

1 "literal language of the retaliatory tax law appears to be applicable to these fees." 67
2 Op. Atty. Gen. Cal., 84-402, 341 (1984). California's retaliatory tax provision is
3 contained in the California Constitution and is very similar to the retaliatory tax law in
4 Arizona.⁴ The opinion of the California Attorney General explained the basis for
5 including agent license fees in the retaliatory tax computation as follows:

6
7 The rationale for including such fees in the retaliatory tax
8 computation (placing them on both the California and the
9 foreign state sides of the equation) is that they represent a
10 governmental economic burden upon the business of
11 insurance within each state. They are mandatory, with
12 payment a condition precedent directly related to the
13 conducting of the business of insurance. If these fees were
14 not part of the equation, states would be free to leave the
15 gross premiums tax as is and raise the insurance agent
16 license fees to whatever limit without the threat of retaliation.

17 . . .

18 Hence, we conclude that insurance agent license fees are
19 part of the aggregate governmental exaction placed directly
20 upon the business of insurance to be equalized under the
21 retaliatory tax law.

22 This opinion reasons that retaliatory tax laws are designed to equalize the regulatory
23 burdens on the insurance industry as a whole, not just the burdens on the insurer. This
24 interpretation also avoids the problem of states attempting to circumvent the purpose of
25 the retaliatory tax laws by shifting the regulatory burdens from the insurance companies
26 to the agents. The Department points out that the State of Arizona is not obligated to
27 follow the Attorney General opinion of the State of California. While this may be true,
28 the Department has offered no authority to refute the California Attorney General
29 opinion, and the analysis therein is persuasive.

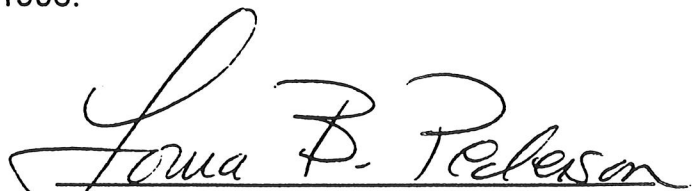
30 _____
⁴ The California law refers to "taxes, licenses and other fees, in the aggregate, directly imposed upon similar insurers, or upon the agents or representatives of such insurers." (emphasis added) Cal. Const, XIII, §28(f)

1 3. The Department determined that only agent license fees which were actually
2 paid by the insurers (as opposed to the agent) could be included in the calculation of
3 the retaliatory tax. The problem with the Department's position is that it is not evident in
4 the statutory language of A.R.S. § 20-230. The statute refers to certain regulatory
5 burdens "upon the agents of such insurers" and does not limit such obligations to those
6 actually paid by the insurers. The Department's interpretation would render the phrase
7 "or upon the agents of such insurers" meaningless, as the Petitioners point out,
8 because if the obligations are paid by the insurers, they are already included in the
9 phrase, "imposed upon insurers of this state." Such an interpretation should be avoided
10 as it is presumed that legislatures do not include in statutes provisions which are
11 redundant, void, inert and trivial. *State v. Edwards*, 103 Ariz. 487, 446 P.2d. 487
12 (1968). The plain meaning of the statute cannot be ignored. *Id.* Therefore, agent
13 license fees, whether paid by the insurance company or by the insurance agents,
14 should be included in the calculation of the retaliatory tax.

15 **RECOMMENDED ORDER**

16 Based upon the above, it is recommended that the Department's assessments of
17 additional retaliatory tax and penalties imposed for calendar year 1995 be abated.

18 Done this day, December 12, 1996.

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21 

22 LORNA B. PEDERSON
23 Administrative Law Judge

1 Original transmitted by mail this
2 13 day of December, 1996, to:

3 John King, Director
4 ATTN: Curvey Burton
5 Department of Insurance
6 2910 North 44th Street, #210
7 Phoenix, AZ 85018-7256

8 By Chris Crawford
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December 6, 1996

Lorna B. Pederson
Administrative Law Judge
Office of Administrative Hearings
1700 W. Washington, Suite 602
Phoenix, Arizona 85007



Re: SAFECO Insurance Co. Of America, Docket 96A-147
General Insurance Co. Of America, Docket 96A-146
Safeco Life Insurance Co., Docket 96A-144
First National Insurance Co. Of America, Docket 96A-145

REPLY MEMORANDUM

Dear Judge Pederson:

We have received the response memorandum from Mr. Patrick Irvine, Assistant Attorney General, dated November 15, 1996. Following is our reply to Mr. Irvine's response.

LEGAL BACKGROUND

Mr. Irvine addressed the legality of the retaliatory provision by referencing the United States Supreme Court decision in *Western and Southern Life Insurance Company v. State Board of Equalization of California*. I agree that this case upheld the constitutionality of California's retaliatory provision and we do not question the constitutionality of Arizona's retaliatory tax statute.

Mr. Irvine failed to provide legal authority for the question that *is* at issue, which is whether agent license fees that are not paid by or imposed on the insurer should be included in the retaliatory provision. The state of California has also addressed this issue in California Opinion of Attorney General, 0ag, 67 Op Atty Gen Cal, 84-402, 341 (1984). Since that opinion has such specific applicability to these facts I include it in full as follows:

"1. Insurance Agent License Fees

The first question presented for resolution is whether the insurance agent license fees paid in California by insurance agents are includable in the retaliatory tax computations of nondomestic insurers. We conclude that they are.



LBD
C.S. ENT'D DEC 09 '96

The specific fees at issue are: an original license application fee, a qualifying examination fee, and an annual license renewal fee. (§§ 1750- 1751.6.) The fees range up to \$31 each and are the legal obligations of the agents.[Footnote 4...Two other agent license fees, the insurance company agent "appointment" and "termination" fees, are chargeable to the insurer. (Section 1751.3)]. The literal language of the retaliatory tax law appears to be applicable to these fees. They constitute "taxes, licenses and other fees, in the aggregate ... directly imposed upon similar insurers, or upon the agents or representatives of such insurers." (Cal. Const. XIII, § 28, subd. (f).)

That these fees are regulatory in nature rather than revenue raising and are personal to the agent do not remove them from this express constitutional language.

The rationale for including such fees in the retaliatory tax computation (placing them on both the California and the foreign state sides of the equation) is that they represent a governmental economic burden upon the business of insurance within each state. They are mandatory, with payment a condition precedent directly related to the conducting of the business of insurance. If these fees were not part of the equation, states would be free to leave the gross premiums tax as is and raise the insurance agent license fees to whatever limit without the threat of retaliation. (See Pelletier, *supra*, pp. 255, 258-259.)

In a different context (the "in lieu" provision), the Supreme Court stated in *Hughes v. Los Angeles*, *supra*, 168 Cal. 764, 765:

"The distinction sought to be drawn in this case is that this particular license fee is not imposed upon the companies but upon the agents of the companies. This is true, but upon the other hand it is equally true that every insurance corporation must act through agents and can act only through agents, and that, therefore, in a direct and immediate sense a tax upon such agents for the right to do business is a tax upon the corporation's right to do business."

Consequently, inclusion of the fees in the retaliatory tax computation would be consistent with their treatment for purposes of the in lieu provision.

In the most relevant reported case of which we are aware, the Supreme Court of Ohio concluded that insurance agent license fees (imposed on the insurer) were includable when calculating the retaliatory tax obligations of nondomestic insurers. (*Indemnity Ins. Co. of North America v. Stowell* (1961) 172 Ohio St. 167 [174 N.E.2d 536, 539-541].)

Hence, we conclude that insurance agent license fees are part of the aggregate governmental exaction placed directly upon the business of insurance to be equalized under the retaliatory tax law. Those fees paid in California are to be balanced against those that would be paid under like circumstances in the foreign state by a California company (the "mirror image" approach) when calculating the retaliatory tax obligation of a nondomestic insurer."

Note that the California statute also includes the language "or upon the agent", the exact language used in A.R.S. Section 20-230. The California opinion letter explains eloquently that the retaliatory statutes are written with a view to the insurance industry as a whole, not just to the insurer itself.

FACTUAL BACKGROUND

We agree with Mr. Irvine's presentation of facts except for his comment that we ignored the instructions. We assumed that the agent license fee information was identical to the prior year (1994) and did not notice the small footnote reference to the explanation contained on another page. As we noted in our Opening Memorandum, the 1994 form specified that the fees should be included, whether they were paid by the insurer or the agents of such insurer. Since there has been no change in law we did not anticipate any change in the method of calculation. There was, in fact, no change in tax law and Mr. Irvine has not provided any explanation for the change in the Department's position from 1994 to 1995.

AGENT LICENSING FEES IMPOSED ON AND PAID BY THE AGENTS, NOT THE INSURER, SHOULD NOT BE INCLUDED IN A CALCULATION OF THE INSURER'S RETALIATORY TAX

Retaliation for only License Fees IMPOSED ON AND PAID BY the Insurer

Neither Mr. Irvine's narrative under this caption nor the caption itself included any citation of authority as to why "imposed on and paid by" the insurer is a condition for the application of the retaliatory provision. Mr. Irvine states on page 4 of his reply:

"A.R.S. Section 20-230 provides that Arizona will impose the same obligations on foreign insurers that the insurer's state of domicile places on an Arizona insurer doing business in that state. Such obligations include taxes and fees imposed upon insurers of this state, 'or upon the agents of such insurers.' A license fee is certainly one of the obligations contemplated by the retaliatory statute. An agent license fee may be paid, however, by the insurer or the agent, and the statute imposing the obligation may not specify which is legally obligated to pay. In many states the agent is individually responsible for obtaining and renewing the license, and the agent may do work for a number of insurers, none of which have any responsibility for the licensing fee. On the other hand, some insurers only work with their own employee agents or agents who represent only one insurer, so-called captive agents. These insurers may pay the licensing fees for their own agents."

On page 6, Mr. Irvine completes this thought with the following comments:

"The footnote included on the 1995 forms reflects the Department's determination that some states require insurers to pay the licensing fees of their agents. Those states are listed in the footnote, and insurers from those states do include such fees in their calculation. Depending on whether the license fee in the other state is more or less than

that charged in Arizona, the inclusion of the fees may be beneficial or detrimental to the insurer's retaliatory tax calculation. The Department has determined, however, that states not listed in the footnote do not impose agent licensing fees on the insurers, so such fees are excluded from the calculation."

Again, Mr. Irvine fails to include any authority for the Department's position that only insurers from states that impose the agent license fees on the insurers can include the fees in the retaliatory calculation. He ignores significant interpretative authority from several states, one of which I cited above in my reply to his legal arguments, in which the courts have determined that the intention of retaliation is to equalize taxation of the insurance *Industry*. This includes taxes and fees imposed on and paid by insurance agents.

Mr. Irvine argues that the law was written with the intention of only retaliating for amounts "imposed and paid by the insurer". However, if this was true then there would have been no added thought from including the phrase "or upon the agents of such insurers" in the statute. The fees imposed and paid by insurers would be includeable in retaliation without the reference to agents.

The Clause, "or upon the agents" was intended to retaliate for Premium Tax on Agents

Mr. Irvine attempts to explain why the clause "upon the agents of such insurers" was included in the statute on page 5 as follows:

"The question, therefore, is whether the statutory reference to any obligation "upon the agents of such insurers" requires retaliation for agent licensing fees imposed by other states. The clause in the statute was apparently intended to prevent other states from seeking to avoid retaliation by shifting burdens from insurers to their agents. For example, if another state decided to impose a premium tax of 5%, but did not want to subject its domestic insurers to retaliation in states such as Arizona which impose a lesser rate, it might exempt insurers from the tax, but impose it on the agents dealing with the insureds. The statute permits Arizona to ignore this subterfuge, and retaliate against insurers of that state as if Arizona insurers were taxed at 5%."

Mr. Irvine has explained that the clause will result in retaliation when there is a premium tax imposed on the agents! However, an agent license fee is just as much a burden on the privilege of conducting the insurance business as is the premium tax. Including agent's license fees helps to ensure that states can't circumvent the retaliatory provisions by imposing higher fees on agents. The assertion that this clause refers only to a premium tax imposed on agents is an unreasonable conclusion.

Problem of Duplication

Mr. Irvine added a final argument that there is potential duplication when applying the Department's latest retaliation format as follows:

"If agent license fees are included in the calculation, there is also the problem of

potential duplication. For example, if each of the four Petitioners use the same agents in Arizona, should each be able to claim the full \$49.50 (or \$42.60) license fee paid by that agent, even though an individual agent would only pay the fee once? This difficulty highlights the fact that the license fee is an obligation of the agent, not the insurer, and the obligation is separate from the agent's relationship with the insurer. In other words, the fee is not paid by the agent as the insurer's agent, but by the agent on his or her own behalf, and therefore the language of A.R.S. Section 20-230 does not include it."

Most states that include agent fees in the retaliation calculation provide for the calculation in this same fashion. There is sometimes duplication, but only to the extent the agencies service all the same insurers. This is often not the case. In addition, the state of Arizona enjoys the benefit of duplication when the rate of the home state of an insurer is higher than Arizona. Therefore, on an overall basis, this duplication does not necessarily result in a net detriment to Arizona.

CONCLUSION

The Arizona statute at Section 20-230 provides that retaliatory tax is computed by comparing the taxes and fees charged in the domestic state of foreign insurers to the taxes and fees charged in Arizona. The language of the statute refers to the "fees, fines, penalties, licenses, deposit requirements or other material obligations...imposed upon insurers...*or upon the agents of such insurers...*". The SAFECO family of insurers prepared and completed the 1995 premium tax forms with the license fees of their agents included in the retaliatory calculation.

Without any change in law, the Department has revised its retaliatory calculation regarding agent license fees three years in a row. Without any authoritative citation, the Department's latest position interprets the statute to exclude fees not imposed on the insurer. The Department has ignored significant authority by the attorney general of California and the courts of several other states that interpret the clause to include various agent fees, whether imposed on the agent or the insurer.

I maintain that the new footnote change made to the 1995 form is not consistent with the statute. Our filing position based on the prior year form was both prudent and reasonable. At the very least, the imposition of an understatement penalty would be punitive.

Very Truly Yours,



Stephen D. Collier
Assistant Secretary

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:

No. 96A-146-INS

**GENERAL INSURANCE COMPANY
OF AMERICA,**

ORDER GRANTING CONTINUANCE

Petitioner.

A request to continue the hearing in this matter dated September 27, 1996 was received from Patrick Irvine, the representative for the Department of Insurance (the "Department"). The representative for the Petitioner, Stephen D. Collier, is unable to attend the hearing on the scheduled date and agrees and joins in the request for continuance. Based on the above, the request to continue is granted.

The hearing has been rescheduled to December 10, 1996 at 1:30 p.m. at the **Office of Administrative Hearings, 1700 West Washington, Suite 602, Phoenix, Arizona.**

Pursuant to the parties' desire to submit written memoranda prior to the rescheduled hearing, the following schedule has been set for submissions:

Opening Memorandum - due October 25, 1996

Response Memorandum - due November 15, 1996

Reply Memorandum - due December 6, 1996

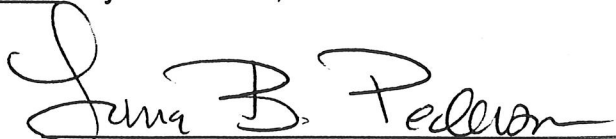
The parties are advised to keep their memoranda limited to no more that 20 pages. It is also requested that each party provide this office with copies of all cases cited in the memoranda.

It appears that it may be appropriate to consolidate the memoranda and hearing in this matter with other matters noticed for hearing by the State of Arizona Department of Insurance, including: Safeco Life Insurance Company, No. 96A-144-INS; First National Insurance Company of America, No. 96A-145-INS; and Safeco Insurance Company of America, No. 96A-147-INS. If the parties submit consolidated memoranda

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1700 West Washington, Suite 602
Phoenix, Arizona 85007
(602) 542-9826

1 for some or all of these related matters, this Office will consolidate the hearing
2 accordingly.

3
4 ORDERED and DATED this 1st day of October, 1996.

5
6 

7 LORNA B. PEDERSON
8 Administrative Law Judge

9 Copy mailed this 1 day of
10 October, 1996, to:

11 John King, Director
12 Attn: Curvey Burton
13 Arizona Department of Insurance
14 2910 North 44th Street, #210
15 Phoenix, AZ 85018-7256

16 Patrick Irvine
17 Assistant Attorney General
18 1275 West Washington
19 Phoenix, AZ 85007-2926

20 Stephen D. Collier
21 Assistant Secretary
22 Safeco Life Insurance Co.
23 Seattle, Washington 98185

24
25 By 

SEP 10 1996

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY CLB



1 In the Matter of:)
 2)
 3 General Insurance Company) Docket No. 96A-146
 4 of America,)
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On August 13, 1996, General Insurance Company of America (Petitioner) filed a demand for hearing pursuant to A.R.S. § 20-161(B) to contest the audit of its 1995 retaliatory tax obligations pursuant to A.R.S. § 20-230. A copy of the demand for hearing is attached to this Notice of Hearing and incorporated by reference.

PLEASE TAKE NOTICE, that pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") §§ 20-161 through and including 20-165 and 41-1061 et seq., the above-captioned matter will be heard before the Director of Insurance of the State of Arizona (the "Director"), or his duly designated representative, on the 3rd day of October, 1996 at 1:30 o'clock p.m., at Office of Administrative Hearings, 1700 West Washington, Suite 602, Phoenix, Arizona.

Motions to continue this matter shall be made in writing to the Hearing Officer named herein, not less than five (5) business days prior to the date set for the hearing. A copy of any motion to continue shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of Administrative Hearings.

A.R.S. § 20-164 entitles any person affected by this hearing to appear in person and by counsel, to be present during the

9/12/96. CLP
L&P

1 giving of all evidence, to have a reasonable opportunity to
2 inspect all documentary evidence, to examine witnesses, to
3 present evidence in support of his or her interests, and to have
4 subpoenas issued by the Director to compel attendance of
5 witnesses and production of evidence in the person's behalf.

6 Questions concerning issues raised in this Notice of Hear-
7 ing should be directed to Assistant Attorney General Pat Irvine
8 (602) 542-1719, 1275 West Washington, Phoenix, Arizona 85007.

9 NOTICE OF APPLICABLE RULES

10 On January 23, 1992, the Arizona Department of Insurance
11 adopted A.A.C. R20-6-101 through R20-6-115, setting forth the
12 rules of practice and procedure applicable in contested cases
13 before the Director. The hearing will be conducted pursuant to
14 these rules.

15 Persons with disabilities may request reasonable accommoda-
16 tions such as interpreters, alternative format, or assistance
17 with physical accessibility. Requests for accommodations must
18 be made with 72 hours prior notice. If you require accommoda-
19 tions, please contact Richard Brinton at 912-8460.

20 WHEREFORE, after hearing, the Director may affirm or reverse
21 the subject tax assessment, in whole or in part.

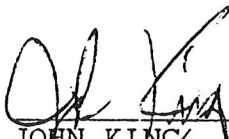
22 Pursuant to A.R.S. § 20-150, the Director of Insurance
23 delegates the authority vested in the Director of Insurance of
24 the State of Arizona, whether implied or expressed, to the
25 Director of the Office of Administrative Hearings or his
26 designee to preside over the hearing of this matter as the
27 Administrative Law Judge, to make written recommendations to the
28 Director of Insurance consisting of proposed findings of fact,

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proposed conclusions of law, and a proposed order. This delegation does not include a delegation of the authority of the Director of Insurance to make the order on hearing or other final decisions in this matter.

Pursuant to Arizona Revised Statutes § 41-1092.01, your hearing will be conducted by the Office of Administrative Hearings, an independent agency. Please find enclosed a copy of the procedures to be followed.

DATED this 10th day of September, 1996.



JOHN KING
Director of Insurance

COPY of the foregoing mailed/delivered this 10th day of September, 1996, to:

Charles R. Cohen, Deputy Director
Gary Torticill, Assistant Director/Chief Examiner
Kelly Stephens, Deputy Assistant Director
Shelby Cuevas, Legal Analyst
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Stephen D. Collier, Assistant Secretary
Safeco Insurance Companies
Safeco Plaza
Seattle, Washington 98185

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General Insurance Company of America
Safeco Plaza
Seattle, Washington 98185

Curvey Walters Burton
Curvey Walters Burton

August 8, 1996

Russell Young
State of Arizona
Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, AZ 85018-7256

Re: General Insurance Company of America (NAIC # 24732)

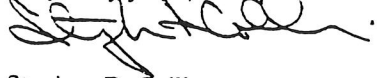
Dear Mr. Young:

This letter is regarding the audit of the 1995 Retaliatory Tax for General Insurance Company of America. According to the audit, amounts included on line 6.a. through 6.c.(agent license fees) were not allowed as retaliatory items. We disagree with your audit report for reasons mentioned below. Also note that the return instructions are confusing with regard to footnote #1 which refers to items 5a. through 5c. The return line numbers relating to agent license fees are numbered 6a. through 6c. In addition, the purpose and meaning of this footnote remains unclear as no explanation is given as to why states mentioned in this footnote are the only states to complete lines 6a. through 6c. We believe Washington domiciled insurers should also complete these lines.

It is appropriate for us to include agent license fees on lines 6a. through 6c. based on language found in the statutes. Arizona Revised Statute Section 20-230 states that "When by or pursuant to the laws of any other state or foreign country any premium or income or other taxes,are imposed upon insurers of this state doing business, or that might seek to do business in such other state or country, or upon the agents of such insurers,, the same obligations, prohibitions and restrictions of whatever kind shall be imposed upon similar insurers of such other states or foreign country doing business in Arizona." The Washington retaliatory statute under Section 48.14.040 has retaliatory language similar to that of Arizona and states that "If pursuant to the laws of any other state or country, any taxes, licenses, fees, deposits, or other obligations or prohibitions, in the aggregate,imposed by the laws of this state upon like foreign or alien insurers and their agents and solicitors, are imposed on insurers of this state and their agents doing business in such other state or country, a like rate, obligation or prohibition may be imposed by the commissioner, as to any item or combination of items involved.....". Copies of the Arizona and Washington sections on retaliation are attached. Since both Arizona and Washington statutes retaliate for obligations imposed on both insurers and agents, it is appropriate for General Insurance Company, a Washington domiciled company, to include agent license fee information on lines 6a. through 6c. of the Arizona retaliatory section of the premium tax return.

The audit indicates additional taxes of \$22,652.65 and a penalty of \$4,530.53 are due. Enclosed is our check in the amount of \$22,652.65 which we are paying under protest. We wish to request a hearing as provided under A.R.S. 20-161(B) to contest the additional tax and penalty. In addition, regardless of the outcome of the hearing, we maintain that our interpretation of the law was prudent and that there is "reasonable cause" for the underpayment of tax. Therefore, we respectfully request that the penalty proposed be abated.

Very truly yours,

Stephen D. Collier
Assistant Secretary

Office of Administrative Hearings
1700 West Washington, Suite 602 - Phoenix, Arizona 85007
Telephone (602)-542-9826 FAX (602)-542-9827

Fife Symington
Governor

Cliff Vanell
Director

Request for Hearing

Date: 9/9/96
To: Mario Guevara
Case Management Supervisor
From: PAT IRVINE



PLEASE GIVE THE FOLLOWING INFORMATION. THE CASE CANNOT BE SET PENDING RECEIPT. YOUR TRANSMISSION FORM WILL BE RETURNED IF NOT COMPLETED.

1) Caption: (please indicate in the exact form how the caption should read. DO NOT FORGET THE DOCKET NUMBER. IT MUST CONFORM WITH OAH PROCEDURES):

GENERAL INSURANCE COMPANY)
OF AMERICA,) No: 96A-146 -INS
Petitioner.) STATUTORY DEADLINE: 9/12/96

- 2) Check one: contested case (agency action not taken, pending hearing)
 appealable agency action (appeal from agency action)
- 3) Date regulated party requested hearing 8/9/96
- 4) Requested date and time of hearing BY OR BEFORE 10/15/96
- 5) Approximate predicted length of hearing: 2 HOURS
- 6) Approximate number of witnesses, if known: 2

FOR USE BY OAH ONLY: Assigned ALJ: LORNA B. PEDERSON
Assigned Date, Time and Location: 10/3/96 @ 1:30 @ OAH

9/9/96
Mario,
PLEASE SCHEDULE THIS HEARING ON THE SAME DATE AS DOCKET NOS. 96A-144, 96A-145 and 96A-147. THANKS.

Curvey



Mission Statement

The Office of Administrative Hearings will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation.

Fife Symington
Governor

Cliff Vanell
Director

You have received a FAX transmittal from Fax Number (602) 542-9827.

Date: 9/10/96

FAXED BY: Mario H Zuevara AT (602) 542-9826.

Transmitted to the attention of
Curvey Burton
fax 912-8452

Number of Pages including cover page 6

Comments:
5 confirmed requests for hearings

If all pages were not received, please contact the OAH.



MESSAGE CONFIRMATION

09/10/96 11:12
ID=ADMIN HEARINGS

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT	
09/10	02'13"	602 912 8452	CALLING	06	OK	0000