



June 3, 2019

Office of the Insurance Commissioner  
ATTN: Hearings Unit  
PO Box 40255  
Olympia, WA 98504-0255

Re: Demand for Hearing OIC Order #'s: 19-0113 and 19-0254

To Whom It May Concern:

Please accept this Demand for Hearing in the above referenced Order #'s. As each of these Orders are interrelated, I am filing this demand for both Orders at the same time.

Each of these orders accuse my company of various violations and therefore impose fines, back taxes, etc. I have summarized my objections to these accusations in the attached documents. If upheld, these violations will have lasting impact on my company in other insurance and non-insurance jurisdictions due to the nature and wording of the accusations themselves.

It will be my objective in this hearing to see the violations and fines dropped in this matter with the understanding that we agree not to conduct business in WA under the contested business structure and get preapproval from the WA OIC of a new business structure meeting their new interpretations moving forward.

My contact information is as follows:

Mark Gilmartin  
President  
International Hole In One Association  
6195 Ridgeview Ct., Suite A  
Reno, NV 89519  
Email: [gilmartin@hioi.com](mailto:gilmartin@hioi.com)  
Phone: 775-828-4653

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Gilmartin", written in a cursive style.

Mark Gilmartin  
President



State of Washington  
 Office of the Insurance Commissioner  
 Hearings Unit  
 PO Box 40255  
 Olympia WA 98504-0255  
 5000 Capitol Boulevard  
 Tumwater, WA 98501  
 (360) 725-7002 FAX (360) 664-2782  
 HearingsU@oic.wa.gov

# Demand for Hearing

Please type or print in ink. Attach a copy of the Order or correspondence in dispute and all documents supporting your demand. This Demand for Hearing can be mailed, faxed, hand-delivered or emailed to the Hearings Unit at the address above. For OIC Demands, please provide contact information for all other interested parties and their representatives.

|   |                                  |   |
|---|----------------------------------|---|
| <b>1 Requesting Party</b> (required information)            |                                  |   |
| Name/Business Name<br>International Hole In One Association |                                  | OIC Case/Order No.<br>19-0113 and 19-0254 |
| Street Address<br>6195 Ridgeview Ct., Suite A               |                                  | City, State, Zip<br>Reno, NV, 89519       |
| Telephone Number<br>775-828-4653                            | Fax Number                       |   |
| Contact Person<br>Mark Gilmartin                            | Telephone Number<br>775-828-4653 | Email Address<br>gilmartin@hioi.com       |

|  |            |                  |
|--|------------|------------------|
| <b>2 Authorized Representative/Attorney for Requesting Party</b> |            |                  |
| Last Name  | First      | M.I.             |
| Business Name  |            |                  |
| Street Address   |            | City, State, Zip |
| Telephone Number   | Fax Number | Email Address    |

|  |  |  |
|--|--|--|
| <b>3 Subject Matter of Demand for Hearing</b>                        |  |  |
| <input type="checkbox"/> Revocation or Denial of License             | <input type="checkbox"/> Revocation or Denial Certificate of Authority or Registration | <input checked="" type="checkbox"/> Cease and Desist Order |
| <input checked="" type="checkbox"/> Imposition of Fine/Consent Order | <input type="checkbox"/> Other _____   |  |

|   |            |                  |
|---|------------|------------------|
| <b>4 Additional Parties/Representatives</b> (for more parties and/or representatives, please attach additional pages) |            |                  |
| Last Name   | First      | M.I.             |
| Business Name   |            |                  |
| Street Address  |            | City, State, Zip |
| Telephone Number  | Fax Number | Email Address    |

|   |  |  |
|---|--|--|
| <b>5 Issues and Arguments</b>   |  |  |
| a. <b>Issues</b> – Briefly describe each issue or area of dispute that you wish us to consider. Attach additional pages if necessary. |  |  |
| See attached.   |  |  |

b. **Arguments** – Explain why each issue or area of dispute listed above should be decided in your favor. Attach additional pages if necessary. To the extent known, cite applicable rules, statutes, or cases in support of your arguments. Enclose copies of documents concerning your arguments including documents the Department previously requested from you that you have not yet provided.

See attached.

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**6 Signature**

Either the Requesting Party or the Attorney/Representative can sign this Demand for Hearing. However, if the Representative is submitting the Demand, contact information for the Requesting Party must be provided under Section 1 above and the Attorney/Representative's contact information must be provided in Section 2.

**Requesting Party:**

\_\_\_\_\_  
Signature

Mark Gilmartin

\_\_\_\_\_  
Name (please print or type)

6/4/19

\_\_\_\_\_  
Date

President

\_\_\_\_\_  
Title

**Authorized Representative:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print or type)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## 5

### Issues and Arguments

- a. **Issues** – Briefly describe each issue or area of dispute that you wish us to consider. Attach additional pages if necessary.
- b. **Arguments** – Explain why each issue or area of dispute listed above should be decided in your favor. Attach additional pages if necessary. To the extent known, cite applicable rules, statutes, or cases in support of your arguments. Enclose copies of documents concerning your arguments including documents the Department previously requested from you that you have not yet provided.

### **WA OIC Accusation:** Acting as an Unauthorized Insurer

**International Hole In One Association (IHIOA) Issue and Argument:** The WA OIC has inquired about our business in 1993, 2000, 2004, 2014, and again in 2018. In response to each and every request, IHIOA has provided the WA OIC with a copy of our Master Contractual Liability Policy and Certificate of Participation for review. In 2014 we were told that new regulations pertaining to Risk Purchasing Groups (RPG) now require our policy form and rates to be filed and approved in WA although our RPG’s domicile state is NV. In response, our carrier at the time Everest National Insurance Company filed the policy for approval. It was the same policy form reviewed during previous WA OIC inquiries into our business. The form was subsequently disapproved because it failed to meet certain WA regulations pertaining to policies filed on admitted paper in WA (see SERFF Tracking #: EVST-129422611 attached). **None of the documented reasons for disapproval mentioned that the structure of our program (the use of a Contractual Liability Policy to insure the liability assumed within a commercial contract issued to our clients) would make us an “unauthorized insurer.”**

Due to the disapproval of our policy form on admitted paper, and with no mention once again of any “unauthorized insurer” violation, we were forced to turn to the surplus lines market for Contractual Liability Insurance for our association members and abandon the use of our RPG in WA therefore avoiding the new RPG regulations in WA requiring policy form approval. In 2015 we purchased the same policy form we have always had from a surplus lines carrier, Lloyds, and began doing business in WA again; selling commercial contracts to our association, not RPG, members that were fully insured by a Lloyds contractual liability policy.

The listing of a \$250,000 deductible on these policies was a Lloyds error at the time of issuance and was not caught by IHIOA until pointed out during the WA investigation. Lloyds has acknowledged their error, confirmed that they would have responded to a claim from first dollar, and is reissuing the policies without the deductible as proof of their original intent to this hearing. (see letter from Dave Harris attached)

This is the business structure we have been using nationwide since the inception of our business. This is the business structure used by the entire promotions industry nationwide. This is the business structure that we were instructed to use by numerous Departments of Insurance across the U.S. when we started our business. We have purchased virtually the same Master Contractual Liability Policy wording since the inception of our business and the WA OIC has

reviewed it on numerous occasions without ever mentioning that we are operating as an “unauthorized insurer.”

**It may be the WA OIC’s right to change their interpretation and regulation of our business. But it should not be their right to impose violations and fines without proper notification of change and reasonable time to comply with their new interpretation.**

All of the following accusations listed in these orders stem from the assumption that we were “acting as an unauthorized insurer” and issuing “insurance contracts” to our customers; which we were not. We sell promotions. These promotions contain goods, services, and prizes. Upon purchase of a promotion, we issue a commercial contract to our customer that obligates us to supply various goods and services and pay for the prizes that are won during the promotion. In order to guarantee our customers that we will live up to our contractual obligation to pay for the prizes, we purchase a Master Contractual Liability Insurance Policy that insures each and every one of our customers in the event that we do not live up to our contractual obligations.

**WA OIC Accusation:** Unpaid Taxes on Insurance Premiums

- The Company failed to pay taxes on the \$395,650 it collected in premiums. As of January 11, 2019, it owes \$10,814 in premium taxes, penalty, and calculated interest.

**IHIOA’s Issue and Argument:** We collected \$395,650 in “contract/certificate fees,” not premiums. Out of that figure only \$16,602.66 was premium collected and paid to Lloyds for Contractual Liability Insurance for our association members. Since it is a group policy that we purchased, and our group is domiciled in NV, the broker selling us the policy, not IHIOA, elected to pay the premium tax on this \$16,602.66 of actual premium to Nevada, not WA.

Since we sell commercial contracts that are insured, not contracts of insurance, the contract/certificate fee we charge our customers also includes charges for non-insurance related promotion goods and services. It is not a contract of insurance and therefore RCW 48.18.170 should not apply.

**WA OIC Accusation:** False, Deceptive, and Misleading Advertisements

- The Company used the following false, deceptive, and misleading advertisements and representations in its brochure for Hole in One International:
  - Does not make clear that Hole in One International is merely a trade name and does not mention the legal entity, International Hole In One Association

**IHIOA’s Issue and Argument:** Hole In One International is a registered d.b.a. of International Hole In One Association, WA license # 996141 and that fact is also clearly stated on all contracts/certificates that we issue. (see attached)

- Falsely represents that coverage is underwritten in Washington State by Lloyd's.



**IHIOA's Issue and Argument:** Each and every contract/certificate we issued to WA consumers stated: "The performance of HIOI's prize reimbursement obligations under this Certificate of Participation is insured through Lloyd's of London under Policy #B6993SIG2018-0003." (see attached Certificate) That statement is 100% correct. IHIOA's contractual obligation to pay for the prizes won during the promotion was insured by Lloyds of London. If IHIOA had not lived up to its obligation Lloyds would have.

- And the Company used the following false, deceptive, and misleading advertisements and representations on its Hole in One International website:
  - Falsely represents that an insurer underwrites the coverage and fails to disclose this is not the case for Washington events.

**IHIOA's Issue and Argument:** Each and every contract/certificate we issued to WA consumers stated: "The performance of HIOI's prize reimbursement obligations under this Certificate of Participation is insured through Lloyd's of London under Policy #B6993SIG2018-0003." (see attached Certificate) That statement is 100% correct. IHIOA's contractual obligation to pay for the prizes won during the promotion was insured by Lloyds of London. If IHIOA had not lived up to its obligation Lloyds would have.

**WA OIC Accusation:** Policy Misrepresentations and Illegal Dealings in Premiums

- First, these certificates falsely represented that "[the Company's] prize reimbursement obligations . . . [are] insured through Lloyd's of London" and prominently featured the Lloyd's logo at the bottom. Based on these certificates, the Washington consumers would have falsely believed that they were covered by an authorized insurer.

**IHIOA's Issue and Argument:** Each and every contract/certificate we issued to WA consumers stated: "The performance of HIOI's prize reimbursement obligations under this Certificate of Participation is insured through Lloyd's of London under Policy #B6993SIG2018-0003." (see attached Certificate) That statement is 100% correct. IHIOA's contractual obligation to pay for the prizes won during the promotion was insured for the benefit of each and every customer by Lloyds of London. If IHIOA had not lived up to its obligation to pay, Lloyds would have.

- Second, the fee structure was false and misleading. Each certificate charged a "certificate fee" that was based on the number of contestants, hole in one prize value, and the length of the target par 3 hole. The fees are premiums that the consumers paid in exchange for the coverage. These fees do not make clear that the consumer is paying a 10% commission to the insurance producer and fees for the "free" items. For example, a Washington consumer paid \$895 for hole in one insurance. Out of that \$895, \$90 went to the producer for their commission, \$50 for signage, \$29 for tee prizes, \$20 for services, \$24 for shipping, and \$647.35 for the prize pack, and \$34.65 for the "premium." Per RCW 48.18.170, the entire fee is the premium, because it was non-negotiable, and the consumer paid the entire fee in exchange for coverage.

**IHIOA's Issue and Argument:** Since we sell commercial contracts that are insured, not contracts of insurance, the contract/certificate fee we charge our customers also includes charges for non-insurance related promotion goods and services. It is not a contract of insurance and therefore RCW 48.18.170 should not apply.

**In summary:** Moving forward we are willing to comply with WA's new interpretation and regulations our business/industry. We do not feel it is fair for the WA OIC to issue violations and fines that we have to carry forward on our business resume which will greatly affect us during the licensing process in other jurisdictions without first notifying us of their change in interpretation and giving us ample time to comply with the new regulations. It will be our objective in this hearing to see the violations and fines dropped in this matter with the understanding that we agree not to conduct business in WA under the contested business structure and get preapproval of a new business structure moving forward.