

**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

**ILLINOIS UNION INSURANCE
COMPANY,**

Unauthorized Insurer.

Order No. 19-0017

ORDER TO CEASE AND DESIST

Pursuant to RCW 48.02.080 and RCW 48.15.023, the Insurance Commissioner of the state of Washington (“Insurance Commissioner”) orders the above-named unauthorized insurer, and its officers, directors, trustees, employees, agents, and affiliates to immediately cease and desist from:

- A. Soliciting, underwriting or transacting any insurance business in Washington State that relates to the Carry Guard Personal Firearms Liability Insurance program (“Carry Guard”);
- B. Making, issuing, or circulating, or causing to be made, issued or circulated any misrepresentation in the terms of the Carry Guard policy, or the benefits or advantages promised thereby in Washington; and
- C. Making, publishing, or disseminating any false, deceptive, or misleading representation or advertising about the Carry Guard policy in Washington.

BASIS:

1. Illinois Union Insurance Company (“Illinois Union” or “the Company”) is a foreign property and casualty insurer, domiciled in Illinois, and a part of the Chubb Ltd. Group (“Chubb”). It is an unauthorized insurer (i.e. an insurer that issues surplus line coverage pursuant to Chapter 48.15 RCW). The Surplus Lines Association of Washington (“SLAW”) lists Illinois Union as an active carrier.

2. The Insurance Commissioner received letters from the Governor of the state of New York and the Superintendent for the New York State Department of Financial Services in August, 2018. The New York officials’ letters raised concerns about whether Illinois Union, the underwriter of the National Rifle Association of America (“the NRA”)’s Carry Guard insurance

program, provides indemnification for criminal acts. The Insurance Commissioner previously determined that the NRA was acting as an unlicensed producer by soliciting the Carry Guard Program.

3. In August 2018, Illinois Union responded through counsel to the Insurance Commissioner's investigator. Illinois Union wrote that there is no coverage under the Carry Guard policy for an act that is found to be illegal or intentionally caused unless it is an "act of self-defense." The Carry Guard policy defines an "act of self-defense" as "the act of defending one's person, or other persons who may be threatened, or one's property when you use or threaten to use a 'legally possessed firearm' as may be authorized by any applicable local, state, federal, or provincial laws of the state or jurisdiction within which the 'bodily injury' or 'property damage' occurs." Illinois Union stated in part:

[I]f a criminal investigation is initiated there is no coverage under the Carry Guard Policy once the insured is convicted or pleads guilty even if the insured had claimed that her act constituted lawful self-defense under Washington law. If the insured is acquitted by reason of self-defense or the charges are dismissed, the insured can seek reimbursement of uncompensated defense costs and related costs up to the policy limits after the fact. The Carry Guard Policy also provides for an initial advance of a relatively small percentage of available limits to assist with initial costs of defense and related costs while the question of lawful self-defense is being resolved.

4. Illinois Union provided all versions of the Carry Guard policy that were issued to Washington consumers. The policy affords an upfront portion of the policy limit for covered costs and expenses related to criminal defense even if the insured subsequently pleads guilty or is convicted. Illinois Union explained, however, that in the event of a coverage question (e.g. payments made to an individual prior to a guilty plea or conviction), Illinois Union would handle the claim under a reservation of rights, and seek recoupment. There is no policy language, however, to support recoupment of these payments or a retroactive denial of coverage. Illinois Union's representation that it would seek recoupment from the insured in the event of a guilty plea or conviction is not supported by the policy language, and is a misrepresentation of the policy provisions.

5. In September 2018, Illinois Union further responded through counsel, confirming that the Carry Guard policy does not include language regarding recoupment. Illinois Union also wrote, "As noted in the prior response dated August 30, 2018, if coverage is in question, the claim

will be handled under a reservation of rights and Illinois Union will seek, consistent with its usual practice, recoupment.” However, based on actual policy language, Illinois Union would afford partial coverage for an intentional, illegal act by making payments for covered costs and expenses up to the 20% limit, even if the act is subsequently found to be a crime.

6. Illinois Union indicated that it gave notice on October 26, 2017 to Lockton Affinity, LLC (“Lockton”), the surplus lines broker, of termination of Illinois Union’s involvement with the Carry Guard Program. Two (2) years advanced notice was required pursuant to the agreement between Illinois Union and Lockton for termination. As a result, Illinois Union will continue to issue Carry Guard policies until October 26, 2019. After October 26, 2019, the Illinois Union will no longer issue Carry Guard policies and existing policies will be non-renewed at the end of their policy periods.

7. Illinois Union confirmed that there have been no claims filed against a Carry Guard policy in Washington. Additionally, the Company has had minimal claims related to the program, with a national loss ratio of 0.5% in 2017, and a national loss ratio of 0.01% in 2018.

8. 811 Carry Guard policies were sold to Washington consumers; 255 of those policies were later cancelled. Total consideration paid by Washington consumers was \$259,060.31, with \$102,284.28 net premium realized by Illinois Union.

9. It is against public policy to insure against liability arising from the intentional infliction of injury committed by the insured on the person of another. *Am. Home Assur. Co. v. Cohen*, 124 Wn.2d 865, 871, 881 P.2d 1001 (1994); *Grange Ins. Co. v. Brosseau*, 113 Wn. 2d 91, 98, 776 P.2d 123 (1989). The Carry Guard policies promised to provide the first 20% of defense costs, without an adjudicated successful claim of self-defense, reservation of rights, or provision for recoupment of such costs in the event of a guilty plea or conviction. Such provision is against the aforementioned public policy and is unenforceable.

10. By promising to include coverage for intentional injuries of others by an insured, which is contrary to public policy and is unenforceable, without providing for or disclosing in the insurance policy a provision for reservation of rights or other means of recouping costs following a guilty plea or conviction, the Company misrepresented the insurance benefits it would provide to the Washington consumers it contracted with, thereby violating RCW 48.30.040 and RCW 48.30.090. By asserting that the Company would seek recoupment, from an insured for up-front defense costs in the event of a guilty plea or conviction, where the policy language supports no

such recoupment, the Company has engaged in misrepresentation, thereby violating RCW 48.30.040 and RCW 48.30.090. By engaging in a transaction that violates Chapter 48.30 RCW, the Company violated RCW 48.15.025 and RCW 48.15.030, and thereby RCW 48.15.020(1). These violations justify the issuance of this Order to Cease and Desist under RCW 48.02.080(3) and RCW 48.15.023(5)(a).

11. Any violation of the terms of this Order by the Company will render the violator subject to the full penalties authorized by RCW 48.02.080, RCW 48.15.023(5)(a), and other applicable sections of the Insurance Code of the state of Washington.

The Company has the right to demand a hearing in accordance with RCW 48.04.010, WAC 284-02-070, and WAC 10-08-110.

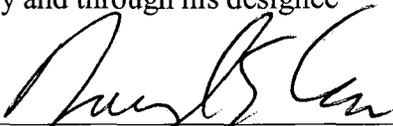
This Order shall remain in effect subject to the further order of the Insurance Commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY AND IS ENTERED at Tumwater, Washington, this 15th day of January, 2019.



MIKE KREIDLER
Insurance Commissioner

By and through his designee



DARRYL E. COLMAN
Attorney Manager
Legal Affairs Division

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing ORDER TO CEASE AND DESIST on the following individual in the manner indicated:

John Robert Marlow
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Courtesy copy provided to:
Melvin N. Sorensen
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*By email and by depositing in the U.S. mail via
state Consolidated Mail Service with proper
postage affixed.*

Dated this 15th day of January, 2019, in Tumwater, Washington.



JOSH PACE

Legal Assistant
Legal Affairs Division