

Louisiana Horsemen's Benevolent & Protective Association, Inc.

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June 15, 2013

As president of Louisiana Horsemen's Benevolent and Protective Association 1993, Inc. ("1993, Inc."), I'm sending this today because of concerns I have with our workers' compensation insurance program. Last week, the trustees of the Horsemen's Workers' Compensation Insurance Trust ("Insurance Trust") voted to change the agent of record with Midlands Insurance, a wholesale broker through whom the excess insurance and out-of-state coverage is obtained. Before I go into my concerns, let me give you a brief history of the program.

The original program utilized Horsemen's Insurance Alliance, SPC ("HIA"), a captive insurance company set up in the Cayman Islands. The captive structure gave protection to the members (trainers) of the program in case the program failed. As originally structured, 1993, Inc. obtained a workers' compensation insurance policy from AIG/Chartis which insured all claims beginning with the first dollar of loss. AIG/Chartis then reinsured the coverage with HIA under an arrangement whereby HIA was responsible for all claims except claims in excess of \$300,000 and claims in excess of an aggregate stated amount. The policy which AIG/Chartis issued to 1993, Inc. contained a LRRRP endorsement. This endorsement allowed AIG/Chartis to go back into prior policy years and retroactively recalculate the premium after the fact. In order to secure HIA's obligations under the reinsurance and 1993, Inc.'s obligations under the LRRRP endorsement, 1993, Inc. was forced to provide AIG/Chartis with an ever-increasing amount of letters of credit. We were also forced to pay AIG/Chartis hundreds of thousands of dollars in additional retroactive premiums and related taxes for policy years that had already ended. Over the last year and a half, we paid AIG/Chartis \$320,000 in additional retroactive premiums.

When the new Board of Directors of 1993, Inc. and I took office in 2011, we were presented with a renewal quote from AIG/Chartis that would have forced us to increase the per-start fee to more than \$120 (currently, the per-start fee is \$55). We negotiated with AIG/Chartis through two different brokers in an attempt to get the premium reduced to a manageable per-start fee, but had no success. We also attempted unsuccessfully to find another company to write the insurance previously underwritten through AIG/Chartis. Finally, we met with Louisiana's Commissioner of Insurance, Jim Donelon, and his staff to discuss alternative ways of maintaining workers' compensation insurance coverage for our members.

Joining us in the meetings with Commissioner Donelon and his staff was John O'Brien. John is an insurance agent with Arthur J. Gallagher & Company ("Gallagher"), one of the country's largest insurance brokers. John was familiar with the concept of an insurance trust from having worked with two (Restaurant and Home Builders) of the four insurance trusts then in existence in Louisiana. At John's suggestion, we presented the insurance trust concept to Commissioner Donelon's staff and, following a series of meetings with Commissioner Donelon's staff, John and legal counsel, we received approval to form an insurance trust.

The Insurance Trust was formed in July 2011 and provided the in-state workers' compensation insurance trust for the 2011-2012 and 2012-2013 policy years. The Insurance Trust functions as a self-insurance trust, meaning that it provides the coverage similar to how an insurance company provides coverage. To prevent any single claim or group of claims from bankrupting the Insurance Trust, the Insurance Trust purchased an excess insurance policy through New York Marine and General Insurance Company ("NY MAGIC"). The policy was obtained by Gallagher through Midlands Insurance, a large wholesale broker. The out-of-state coverage, which provides first-dollar coverage, was added to the excess policy issued by NY MAGIC. Gallagher, represented by John O'Brien, handled the renewal of the excess policy with Midlands Insurance and NY MAGIC for the 2012-2013 policy year.

The Insurance Trust is a vital part of our workers' compensation insurance program. The Insurance Trust has many advantages over the captive concept, not the least of which is that all funds are kept in the United States. Because Cayman Island laws differed from United States law, HIA is required to undergo not one, but two annual audits. One audit is conducted in accordance with Cayman Island insurance laws and the second is conducted in accordance with Louisiana insurance laws. In addition, HIA was required to hold an annual meeting. Because United States tax laws effectively prohibited HIA from holding its annual meeting in the United States, it had to hold its annual meeting at a foreign destination. This led to abuses by former management of 1993, Inc. who turned what was essentially a two night business trip into a week-long excursion to a vacation resort. By switching to the Insurance Trust, we have saved the cost of the foreign travel. We are currently phasing down the business of HIA and will soon no longer have to undergo the Cayman Island audit. We have also eliminated the letters of credit requirement for all business written since the Insurance Trust was formed in July 2011.

When the Insurance Trust was set up, it was only the fifth insurance trust in the state. Since then, two of the original four trusts (Used Car and Tow Truck operators) then in existence were taken over by the Commissioner of Insurance due to financial issues. The Commissioner of Insurance is continuing to monitor all of the remaining insurance trusts, including our Insurance Trust, for financial stability and compliance with Louisiana insurance laws.

In connection with the renewal of the workers' compensation program for the 2013-2014 year, the trustees recently received renewal quotes. There are two parts to a quote. The first part consists of the premium for the excess coverage on in-state claims and the out-of-state coverage. The second part is the fee paid to the retail broker or agent who procures the coverage. In the past, the fee has compensated the agent or broker for the time and effort expended in obtaining the quote and negotiating the premium to an affordable level, dealing with AIG/Chartis on its retroactive premium adjustments for periods prior to July 2011, and assisting with the workers' compensation insurance program during the policy year.

Gallagher was the only company to provide a quote on the insurance for the 2013-2014 policy year. Gallagher had three quotes with the quote from Midlands Insurance having the lowest cost for insurance. This was after John had negotiated the premium down from \$540,000 to \$501,000 saving us \$39,000. Gallagher's fee was \$150,000, the same as it was for the 2012-2013 policy year. Andreini & Company, an insurance broker from California, also made a presentation. Andreini did not bring a single quote for insurance, claiming they were unable to find any insurer to quote. The only quote they made was to be the broker for a \$100,000 brokerage fee. However, their quote was based on their using the low bid that Gallagher obtained from Midlands Insurance.

Initially, the trustees instructed one of our employees to negotiate with Gallagher to get Gallagher's fee down to \$125,000. After negotiating the fee down to \$125,000, he reported that fact to Sam Breaux who is the Chairman of the Insurance Trust. Sam then said that \$125,000 wasn't low enough and he instructed our employee not to negotiate any further with Gallagher. Last Friday, the trustees of the Insurance Trust voted to change the agent of record with Midlands Insurance so that Andreini and not Gallagher would be the agent of record. The three trustees who supported the change (Sam Breaux, Tom Abbott and Arthur Morrell) said it was because they were saving \$25,000 on the brokerage fee. This past Sunday, John O'Brien offered to cut Gallagher's fee to \$75,000, but was told by Mr. Breaux it was too late and the trust would not consider his new bid. If it was all about money then why would they not consider the new bid?

As your President, I want to go on record and let you know I'm against the decision to change the agent of record. This decision was made with little thought on how this would affect 1993, Inc., who has the statutory responsibility for the workers' compensation insurance program. 1993, Inc. is responsible for providing the out-of-state coverage because the Insurance Trust is not authorized to act in other states. In addition, 1993, Inc. still has the responsibility for working with AIG/Chartis, which still holds approximately \$4,900,000 in letters of credit that must be renewed annually at a cost around \$40,000 per year. For the past two years, Gallagher has negotiated these issues with AIG/Chartis, as well as several other issues, all as part of its annual fee. It is unclear whether Andreini's quote includes representing 1993, Inc. and HIA in their dealings with AIG/Chartis and, if so, what skill sets Andreini possesses in this area. If Andreini's quote does not include these services, then 1993, Inc. will have to incur an additional expense to deal with the AIG/Chartis issues and the other issues that Gallagher previously handled. I am also concerned because Andreini was the broker who sold the original policy with the LRRRP endorsement that has cost us \$320,000 over the last year and a half in additional premiums for periods that ended three and four years ago.

After the trustees of the Insurance Trust voted to name Andreini as the agent of record, that forced an emergency meeting of the full board of 1993, Inc. as we now needed to discuss how the actions of the Insurance Trust would affect our responsibilities, including the out-of-state coverage. The board vote was a tie on whether to change agents on the out-of-state coverage. I broke the tie and voted not to change agents, even though giving the out-of-state coverage with Andreini might have saved the Insurance Trust an additional \$10,000 or so, since Andreini offered to reduce its fee by the amount of any commissions that it received on the out-of-state coverage.

I strongly disagree with how the three trustees of the Insurance Trust acted to take the quote obtained by Gallagher and give it to Andreini. Andreini did absolutely nothing to obtain this quote. In giving Gallagher's quote to Andreini, I am concerned that those three trustees may have exposed 1993, Inc. and the Insurance Trust to a lawsuit by Gallagher for the uncompensated use of its work product. I am also concerned because under this precedent, a broker need not expend any time and energy obtaining an insurance quote in order to get the business. If competing brokers do not have to obtain insurance quotes, there is no incentive for any broker to negotiate the lowest insurance premiums for our program. A broker only has to be concerned with quoting the lowest brokerage fee. Of course, the lower the brokerage fee, the less incentive and room there is for the broker to expend time and energy negotiating the lowest premium, representing us effectively in our dealings with AIG/Chartis, and assisting us in the program over the course of the policy year.

In closing, I want you to know that, as your President, I will always work to make sure we are doing everything properly and I will always look to improve the ways we operate. At this time I have great concerns about the way the Insurance Trust has gone about the business of obtaining the excess policy for next year. It is critical that politics be left out of the operations of the Insurance Trust and that the Insurance Trust operates in an exemplary fashion so as not to incur the disfavor of the Louisiana Department of Insurance.

A handwritten signature in cursive script that reads "Stanley Seelig".

Stanley Seelig
President, Louisiana HBPA