

NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES

In the Matter of

LOCKTON AFFINITY, LLC and
LOCKTON COMPANIES, LLC

**SUPPLEMENTAL CONSENT ORDER UNDER
ARTICLES 21, 23 AND 34 OF THE INSURANCE LAW**

Lockton Affinity, LLC, on behalf of each of its separate operating series, one of which, Lockton Affinity Series of Lockton Affinity, LLC, is the successor entity to Lockton Risk Services, Inc. (“Lockton Affinity”), Lockton Companies, LLC, on behalf of each of its separate operating series (“Lockton Companies”) (together, Lockton Affinity and Lockton Companies, “Lockton”), and the New York State Department of Financial Services (the “Department”) (collectively, the “Parties”) are willing to resolve the matters described herein without further proceedings.

WHEREAS, the Parties entered into a Consent Order on May 2, 2018 (the “2018 Consent Order”), pursuant to which Lockton conducted a Compliance Review and, since May 2, 2018, has reported to the Department on the results of the Compliance Review;

WHEREAS, as a result of the Compliance Review, Lockton has identified to the Department certain additional violations of New York laws and regulations, which are set forth below in the “Violations” section of this Supplemental Consent Order (the “Additional Violations”);

NOW THEREFORE, to resolve this matter without further proceedings, pursuant to Articles 21, 23 and 34 of the Insurance Law, Lockton Affinity, Lockton Companies, and the Department hereby stipulate and agree as follows:

VIOLATIONS OF LAW AND REGULATIONS

1. Lockton Affinity compensated certain unlicensed entities, in violation of Insurance Law § 2116.

2. Lockton acted for and aided unauthorized insurers in connection with these insurers issuing policies in New York State, or otherwise issuing policies covering insureds whose home state is New York, that provided coverage that may not be offered in the New York State excess line market, including punitive damage coverage, psychological counseling expenses, and defense coverage in a criminal proceeding in violation of Insurance Law § 2117, except that unlike the policies addressed in the 2018 Consent Order, none of the policies covered by this Supplemental Consent Order were specific to firearm usage that provides liability coverage for bodily injury or property damage from use of a firearm, or for liability coverage for bodily injury or property damage expected or intended from the insured's standpoint to extend beyond those occasions where bodily injury results from the use of reasonable force to protect persons or property.

3. Lockton procured from unauthorized insurers impermissible group policies covering insureds whose home state is New York, as neither Insurance Law Article 34 nor Insurance Regulation 135 (11 N.Y.C.R.R. § 153) authorize the insurers to write the group property/casualty insurance procured by Lockton Affinity and Lockton Companies.

4. Lockton Affinity advertised the financial condition of unauthorized insurers, in violation of Insurance Law § 2122(a)(1).

5. Lockton Affinity called attention to unauthorized insurers by issuing advertising materials that reference the unauthorized insurers by name, in violation of Insurance Law § 2122(a)(2).

6. Lockton failed to properly secure declinations from authorized insurers, in violation of Insurance Law § 2118(b)(3).

7. Lockton failed to make the required disclosure and obtain the required writing when an insured was an exempt commercial purchaser, in violation of Insurance Law § 2118(b)(3)(F).

8. Lockton Affinity failed to properly pay excess line premium taxes with respect to certain group policies, in violation of § 2118(d).

SETTLEMENT PROVISIONS

Civil Monetary Penalty

9. Lockton shall pay a civil monetary penalty to the Department pursuant to Articles 21, 23 and 34 of the Insurance Law in the amount of \$400,000.00. Lockton shall pay the entire amount within ten days of executing this Consent Order. Lockton agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order. Lockton further agrees that it will not claim, seek, or receive indemnification of the civil monetary penalty from any other person or entity. This provision is not intended, and shall not be construed, to prohibit Lockton affiliates from funding inter-company transfers to Lockton.

Remediation

10. To the extent not previously submitted in connection with the 2018 Consent Order, Lockton shall submit a plan for remediation of any of the Additional Violations identified by Lockton.

11. All other terms and conditions of the 2018 Consent Order remain in full force and effect.

12. Lockton agrees that if the Department makes a determination that any sponsor of an affinity group illegally marketed an affinity-type policy sold or underwritten by Lockton that includes criminal defense coverage that may not be offered in New York, Lockton will not enter into any agreement or program with the sponsor to sell, underwrite, or otherwise participate in any affinity-type insurance program involving any line of insurance to be issued or delivered in New York State.

Breach of Consent Order

13. If the Department believes Lockton Companies or Lockton Affinity to be in material breach of this Supplemental Consent Order, the Department will provide written notice to Lockton Companies and/or Lockton Affinity and Lockton Companies and/or Lockton Affinity (as the case may be) must, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

14. The Parties understand and agree that Lockton Companies' and/or Lockton Affinity's failure to make the required showing within the designated time period shall be presumptive evidence of such party's breach. Upon a finding that Lockton Companies and/or Lockton Affinity has breached this Supplemental Consent Order, the Department has all the remedies available to it under the New York Insurance and Financial Services Laws, and any other law, and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Waiver of Rights

15. The Parties understand and agree that no provision of this Supplemental Consent Order is subject to review in any court or tribunal outside the Department.

Parties Bound by the Consent Order

16. This Supplemental Consent Order is binding on the Parties, as well as any successors and assigns. This Supplemental Consent Order does not bind any federal or other state agency or any law enforcement authority.

17. No further action will be taken by the Department against Lockton arising out of the Additional Violations.

18. Notwithstanding any other provision contained in this Supplemental Consent Order, the Department may undertake action against Lockton for transactions or conduct to the extent that transactions or conduct of that type were not disclosed by Lockton to the Department in connection with the Compliance Review.

Notices

19. All notices or communications regarding this Supplemental Consent Order shall be sent to:

For the Department:

Hadas Jacobi
Assistant Deputy Superintendent
for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Megan Prendergast
Deputy Superintendent for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Connor Mealey
Attorney and Excelsior Fellow
New York State Department of Financial Services
One State Street
New York, NY 10004

For Lockton Companies, LLC:

William Humphrey
Secretary
Lockton Companies
444 West 47th Street
Kansas City, MO 64112

Scott A. Edelman
Milbank, Tweed, Hadley & McCloy
28 Liberty Street
New York, NY 10005

Andrew R. Holland
Sidley Austin
787 Seventh Avenue
New York, NY 10019

For Lockton Affinity, LLC:

William Humphrey
Secretary
Lockton Affinity
444 West 47th Street
Kansas City, MO 64112

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Milbank, Tweed, Hadley & McCloy
28 Liberty Street
New York, NY 10005

Andrew R. Holland
Sidley Austin
787 Seventh Avenue
New York, NY 10019

Miscellaneous

20. Each provision of this Supplemental Consent Order shall remain effective and enforceable until stayed, modified, suspended, or terminated by the Department.

21. No promise, assurance, representation, or understanding other than those contained in this Supplemental Consent Order has been made to induce any party to agree to the provisions of the Supplemental Consent Order.

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IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 31st day of January, 2019.

LOCKTON COMPANIES, LLC, on behalf of each of its separate operating series,

By: 
WILLIAM HUMPHREY
Secretary

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: _____
MARIA T. VULLO
Superintendent of Financial Services

LOCKTON AFFINITY, LLC, on behalf of each of its separate operating series,

By: 
WILLIAM HUMPHREY
Secretary


By: _____
MATTHEW L. LEVINE
Executive Deputy Superintendent for Enforcement

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