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THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
(Unlimited Jurisdiction)

THE FOUNDATION FOR TAXPAYER AND
CONSUMER RIGHTS,

Plaintiff,

v.

FIREMAN'S FUND INSURANCE
COMPANY, and DOES 1 through 50,
inclusive,

Defendants.

Case No. CGC 04-435911

COMPLAINT FOR VIOLATION OF (1)
INSURANCE CODE §1861.02(b); (2)
INSURANCE CODE § 1861.16; AND (3)
BUSINESS & PROFESSIONS CODE
§ 17200, et seq.

CASE MANAGEMENT CONFERENCE SET

PLAN 1 APR 01 2005 9:02AM

DEPARTMENT 212

ENDORSED
FILED
OCT 29 2004
GORDON PARK-LI, Clerk
Deputy Clerk
DE LA VEGA-NAVARRO, Rossaly

1 Plaintiff THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS (FTCR), by its
2 attorneys, brings this action on behalf of the general public of the State of California against Fireman's
3 Fund Insurance Company ("Fireman's Fund") and Does 1 through 50 (collectively "Fireman's Fund" or
4 "defendants"). Plaintiff makes the following allegations on knowledge, information and belief, formed
5 after an inquiry reasonable under the circumstances:
6

7 NATURE OF ACTION

8 1. Plaintiff brings this action on behalf of the general public and for injunctive relief and
9 restitution under California Insurance Code §§ 1861.02 and 1861.16,¹ and California Business &
10 Professions Code § 17200, et seq.

11 2. Plaintiff seeks redress from defendants' unlawful, unfair and deceptive business practice
12 of refusing to offer and/or sell Good Driver Discount automobile insurance policies to eligible
13 applicants (hereinafter, "statutory Good Drivers").

14 3. Proposition 103, the insurance reform initiative approved by California voters in 1988,
15 requires insurers to offer and sell automobile policies at a discounted rate to any driver meeting the
16 statutory definition of a "Good Driver."

17 4. Fireman's Fund engages in the ongoing business practice of denying certain statutory
18 Good Drivers automobile insurance coverage to which they are entitled under Proposition 103.
19 Fireman's Fund sells insurance through insurance agents appointed by Fireman's Fund pursuant to
20 Insurance Code section 1704(a). By virtue of these appointments, pursuant to Insurance Code section
21 1731, these agents are deemed to be acting as insurance agents in selling insurance to the public. Thus,
22 Fireman's Fund is vicariously liable for the acts of these agents.

23 5. These agents engage in screening risks for Fireman's Fund by tailoring their submissions
24 of insurance applications to "target markets" specified by Fireman's Fund, and thereby refusing to
25 submit applications for automobile insurance made by certain statutory Good Drivers. This practice is
26 an unlawful and unfair business practice.

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28 ¹ All statutory references made herein refer to the California Insurance Code, unless otherwise indicated.

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STANDING

6. Proposition 103 authorizes the public to enforce the provisions of Proposition 103, which include sections 1861.02 and 1861.16. Specifically, section 1861.10(a) provides that "any person" may both "enforce any provision of" Proposition 103 and "initiate or intervene in any proceeding permitted or established pursuant to" both Proposition 103 and any other provision of chapter 9 of the Insurance Code. Plaintiff thus has standing to bring its first and second causes of action against Defendants pursuant to section 1861.10.

7. In addition, Proposition 103 extended the reach of other California laws to the insurance industry, including laws that are outside the jurisdiction of the Commissioner. Insurance Code section 1861.03(a) provides that the Cartwright Act and the Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.) apply to the insurance industry.

8. Plaintiff has standing to bring its Third Cause of Action pursuant to Insurance Code sections 1861.03 and 1861.10 and Business and Professions Code section 17200, et seq.

JURISDICTION AND VENUE

9. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, article VI, section 10, because this case is a cause not given by statute to other trial courts.

10. This Court has jurisdiction over defendants because they are either corporations organized under the laws of the State of California or foreign corporations or associations authorized to do business in California and registered with the California Secretary of State. Defendants do sufficient business in California, have sufficient minimum contacts with California or otherwise intentionally avail themselves of the laws and markets of California, through the promotion, sale, marketing and distribution of their services in California, to render the exercise of jurisdiction by the California courts permissible.

11. Venue is proper in this Court because Fireman's Fund sells insurance in San Francisco through agents located there and appointed by Fireman's Fund pursuant to Insurance Code section 1704(a). Fireman's Fund has committed substantial unlawful and unfair acts complained of in this

1 County. In addition, defendants have received substantial compensation in this County as a result of
2 their business activities here.

3 THE PARTIES

4 12. Plaintiff The Foundation for Taxpayer and Consumer Rights (FTCR) is a 501(c)(3) non-
5 profit, non-partisan public benefit corporation organized in 1985 to represent the interests of
6 consumers. FTCR is dedicated to the promotion of insurance reform and the protection of the interests
7 of all insurance consumers in matters before the Legislature, the courts and the Department of
8 Insurance. FTCR is particularly focused on the enforcement and implementation of Proposition 103.
9 FTCR acts to defend, enforce and implement the provisions of the initiative and other consumer
10 protection measures enacted for the benefit of consumers and policyholders. To that end, FTCR is well
11 situated to address Proposition 103-related issues, having initiated and participated in rate proceedings
12 and rulemaking processes designed to implement the initiative's reforms.

13 13. Defendant Fireman's Fund Insurance Company is a California corporation with its
14 principal place of business in Novato, California. Fireman's Fund is at all times mentioned herein a
15 business enterprise engaged in the business of insurance in San Francisco and throughout California

16 14. The true names and capacities of the defendants sued herein as Does 1 through 50 are
17 presently unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will amend
18 this Complaint to allege the true names and capacities of these defendants when they have been
19 determined. Each of the fictitiously named defendants is responsible in some manner for the conduct
20 alleged herein. The Doe defendants are private individuals, associations, partnerships, corporations or
21 institutions who participated in the wrongful conduct alleged herein in ways which are unknown to
22 plaintiff at this time. Some or all of the Doe defendants may be residents of the State of California.

23 GENERAL ALLEGATIONS

24 15. Fireman's Fund is in the business of providing various lines of insurance to California
25 consumers through a network of appointed agents for whom Fireman's Fund has filed notices of
26 appointment with the Insurance Commissioner in accordance with Insurance Code section 1704.
27 Fireman's Fund's does not sell insurance policies directly to the public, but instead relies exclusively on
28

1 its agents to take applications and submit the completed applications to Fireman's Fund for approval
2 and underwriting.

3 16. Fireman's Fund provides its agents with a description of "target markets" that Fireman's
4 Fund desires to reach through its sales. Fireman's Fund also provides financial incentives to its agents
5 that encourage them to submit only applications that fall within Fireman's Fund's "target markets."
6 This "target market" practice is followed even where the rejected applicant is legally entitled to
7 purchase a Good Driver Discount policy.

8 **Insurance Code Section 1861.02(b)(1): Right to Good Driver Discount Policy.**

9 17. Insurance Code section 1861.02(b)(1) provides in part that "[a]n insurer shall not refuse
10 to offer and sell a Good Driver Discount policy to any person who meets the standards of this
11 subdivision." A statutory Good Driver is therefore legally entitled to purchase such a policy "from the
12 insurer of his or her choice." Because of Fireman's Fund's procedures and guidelines regarding its
13 "target markets," appointed agents of Fireman's Fund as a general business practice do not submit
14 certain insurance applications for statutory Good Drivers to Fireman's Fund, resulting in violations of
15 Insurance Code section 1861.02(b)(1).

16 **Section 1861.16(b): Duty of Insurer and Insurer's Agent to Offer Good Driver Discount Policy.**

17 18. Insurance Code section 1861.16(b) requires that insurance agents or representatives
18 offer, and that insurers sell, Good Driver Discount policies to all statutory Good Drivers. Fireman's
19 Fund's procedures described herein result in their agents' refusal to offer and Fireman's Fund's failure to
20 sell Good Driver Discount policies in violation of section 1861.16(b).

21 19. Fireman's Fund's business practices alleged in this complaint are ongoing and continue
22 to date.

23 **FIRST CAUSE OF ACTION**

24 (Violation of Insurance Code section 1861.02(b))

25 20. Plaintiff repeats and realleges all of the allegations contained in the previous paragraphs
26 of this Complaint as though set forth in full herein.

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28. Section 1861.16(b) provides that, "an agent...representing one or more insurers having common ownership or operating in California under common management or control shall offer, and the insurer shall sell, a good driver discount policy to a good driver from an insurer within that common ownership, management or control group, which offers the lowest rates for that coverage." Thus, under 1861.16 an insurer, or an agent or representative of an insurer, cannot refuse to offer and the insurer must sell a Good Driver Discount policy to a statutory Good Driver.

29. Defendants and their agents or representatives have failed to offer and/or sell automobile insurance policies to statutory Good Drivers who do not fall within Fireman's Fund's target markets.

30. Defendants have thereby violated the mandate of section 1861.16 that any insurer, or any agent or representative offering or preparing premium quotations on behalf of an insurer, offer and sell a Good Driver Discount policy of that insurer to statutory Good Drivers.

THIRD CAUSE OF ACTION

(Violation of California Business and Professions Code § 17200, et seq.)

31. Plaintiff repeats and realleges all of the allegations contained in the previous paragraphs of this Complaint as though set forth in full herein.

32. Business and Professions Code section 17200, et seq., prohibits acts of unfair competition, including any "unlawful, unfair or fraudulent business act or practice."

33. Defendants' practices are unlawful because they violate Insurance Code sections 1861.02(b) and 1861.16 as alleged above. Defendants' practices are alternatively unfair because their conduct violates the spirit of sections 1861.02(b) and 1861.16 and has the same effect as a violation of those statutes. Defendants' conduct is ongoing and continues to this date.

34. Defendants have therefore violated Business and Professions Code section 17200, et seq.

PRAYER FOR RELIEF

Wherefore, plaintiff, on behalf of the general public, prays for judgment and relief against defendants as follows:

A. Plaintiff seeks a temporary, preliminary and/or permanent order of this Court:
(1) ordering defendants to refrain from denying any statutory Good Driver who seeks automobile

1 insurance through a Fireman's Fund agent such insurance as must be provided under section
2 1861.02(b), (2) ordering defendants to require their appointed agents to submit all applications by
3 statutory Good Drivers for automobile insurance to Fireman's Fund, (3) enjoining defendants from
4 conducting their businesses through the unlawful and unfair business acts and practices as described in
5 this Complaint, and (4) ordering defendants to immediately cease offering financial or other incentives
6 to their agents to encourage the practices and policies deemed unlawful or unfair;

7 B. Plaintiff seeks a temporary, preliminary and/or permanent order for injunctive
8 relief requiring defendants to undertake an immediate public information campaign to inform members
9 of the general public as to their prior practices and notifying affected members as to changes to
10 defendants' policies;

11 C. Plaintiff seeks an order of the Court requiring defendants to make restitution of
12 all monies wrongfully obtained as a result of the wrongdoing alleged in this Complaint, including all
13 revenues and profits derived by defendants as a result of the unlawful, unfair or fraudulent business acts
14 or practices as alleged above;

15 D. Reasonable costs of suit and attorneys' fees pursuant to Insurance Code section
16 1861.10(b) and Code of Civil Procedure section 1021.5.

17 E. Such other and further relief as the Court may deem necessary or appropriate.

18 Dated: October 29, 2004

Respectfully submitted,

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20 HARVEY ROSENFELD
PAMELA PRESSLEY
LAWRENCE M. MARKEY, JR.
21 THE FOUNDATION FOR TAXPAYER AND
CONSUMER RIGHTS

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26
27 BY: 

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