



**GUIDELINES ON CARRIER/VENDOR FEEDBACK
FOR AGENTS AND BROKERS**

December 1, 2006

There are times when insurance agents and brokers want to individually share their views with carriers or vendors (referred to each as a “Company”) about important industry and business issues. This sometimes arises in response to a Company’s request for feedback, and sometimes it is initiated by the agent or broker. Whether triggered by changes in Company business plans or practices, legal or regulatory developments, or other factors, there are some basic guidelines to follow to avoid potential violations of antitrust and other laws. These guidelines apply to all communications with Companies, regardless of the method of communication (*e.g.*, in person, by phone, by email, by letter or in a chat room/blog), and regardless of who initiated the communication. If a situation arises that is not covered by these guidelines or if you have questions about the application of these guidelines to a specific situation, you should seek legal counsel on what is permissible before acting so that inadvertent actions do not create unintended liability.

1. DETERMINE YOUR VIEWS INDEPENDENTLY

It is important that you make your own decisions about whether a Company’s plans and practices affect your business in a positive or negative way. Do not discuss with other agents or brokers your independent response to a Company’s plans or practices in a way that may influence what other agents or brokers may choose to do. It is essential that you maintain the independence of your decision. Even the appearance that your response was decided with other agents or brokers creates antitrust risk.

2. COMMUNICATE YOUR VIEWS INDIVIDUALLY

Once you have determined your response, if any, to a Company, you should individually communicate your position only with that Company, and not with other agents, brokers or Companies. There are two reasons that any communication should be made directly with the Company: (i) it ensures that there is no appearance of any type of anticompetitive coordinated action with other agents and brokers; and (ii) it ensures that the message you intend to convey is not inadvertently misconstrued by someone else on your behalf.

3. EXPLAIN YOUR VIEWS FROM A BUSINESS PERSPECTIVE

Be factual and logical – not emotional. Your comments are likely to have the most impact when they are made constructively and incorporate a business rationale for your position.

4. ASK FOR WHAT YOU WANT

Consider suggesting possible solutions to any concerns you share with the Company to create a win-win situation. Your practical and creative approaches to problems may be very helpful to the Company, and if adopted, to you as well.

5. PARTICIPATE IN GROUP MEETINGS RESPONSIBLY

Agents and brokers may come together in industry-sponsored meetings or Company-sponsored events. The guidelines for participation in each type of meeting differ, and there also are some guidelines that apply to all meetings with other agents and brokers.

- a. Industry-sponsored meetings: Company plans and practices may be discussed at state and local association meetings, regional/state meetings, or other industry-sponsored events. These discussions should be limited to information that is publicly-available or provided by the Company, and is factual in nature. You should not discuss with other agents and brokers the specific impact that the Company plans and practices may have on your business or your individual response to the Company, if any. You also should not attempt to persuade others to align their views with yours or influence their response in any way. In addition, be careful to limit your discussions at these meetings to topics and points that don’t raise antitrust issues. (See guideline 6., below, for specific types of information that should not be discussed.) Finally, keep in mind

that meetings do not need to be “official” for these guidelines to apply; discussions in informal environments raise the same antitrust concerns.

- b. Company-sponsored meetings: You also may attend Company rallies or agent council meetings with other agents and brokers where the Company is seeking feedback about its plans or practices. While it is permissible to provide the Company with requested feedback, be careful not to engage in additional discussions with other agents and brokers that could lead to the conclusion that you are coordinating with one another about your respective responses to the Company’s plans or practices. This could raise antitrust concerns (such as a group boycott), even though the discussion was initiated originally by the Company.
- c. All meetings with other agents and brokers: Because meetings with other agents and brokers (who may be your competitors) by their very nature may raise antitrust concerns, no matter who sponsors them, there are several steps you can take to minimize your risk: (i) encourage the use of a written agenda, prepared by the meeting organizer/sponsor, that outlines what will be discussed; (ii) recommend that someone prepare meeting minutes and request a copy for your files; do not take individual notes of the meeting; (iii) if you are concerned that the meeting raises antitrust issues, leave the meeting immediately and seek legal counsel; terminate your participation in a memorable way so that others will recall your actions and departure; and (iv) you can suggest that counsel be present at any meeting that involves potentially competitively sensitive information or raises concerns about coordinated action against a Company. Group activity has been inferred from things as subtle as a wink or a nod.

6. AVOID DISCUSSING COMPETITIVELY SENSITIVE INFORMATION

It is important to comply with federal and state antitrust and unfair trade practice laws at all times, including in association or other business meetings and private conversations. The antitrust laws prohibit discussions or agreements (express or implied, formal or informal) with other agents or brokers about commission rates or practices, prices, or other competitively-sensitive information to the extent such discussions affect prices or the availability of products/services. In addition, you may not discuss or agree to divide customers or any other part of the market. You may discuss publicly-available information and historical data, but should not discuss any current or future information on any competitively sensitive subjects.

7. DO NOT SERVE OR SEEK A LEADER OF THE PACK

Negative views about an issue can lead to a belief that change may be achievable by working as a group. In the context of meetings, discussions, and decisions about Company plans and practices, activities to directly or indirectly encourage others to “talk with their feet” by moving their business or “joining the crowd” in a way that is harmful to the Company’s business is not permitted under the federal and state antitrust and/or unfair competition laws.

8. DO NOT THREATEN THE LOSS OF BUSINESS FROM OTHERS

Do not let the adage that “there is power in numbers” cause you to threaten the Company with losing business from others whose actions you do not control. Groups of individuals and businesses cannot act together in a way that is harmful to the Company’s business, such as organizing a boycott, without implicating the federal and state antitrust and/or unfair competition laws.

9. DO NOT HARM THE COMPANY’S REPUTATION

Frustration about a Company’s plans or practices should not lead to sharing information about the Company with others that is untrue or harmful to the Company. You should not participate in rumor mills or speculation that disparages a Company.

10. DO NOT VIOLATE APPLICABLE LAWS AND REGULATIONS

In addition to the insurance laws, you need to adhere to all other laws that apply to everyone in how they conduct themselves. For example, do not slander or libel any Company or engage in other unfair business practices.

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