

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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ADMIN HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
	:	
ROBERT M. BODEN, JR.	:	Sections 611-A(7), (20) and 642-A
211 Huckleberry Road	:	of Act 147 of 2002 (40 P.S.
Indiana, PA 15701	:	§§ 310.11 and 310.42)
	:	
	:	Title 31, Pennsylvania Code,
	:	Section 37.42
	:	
Respondent.	:	Docket No. CO07-03-030

CONSENT ORDER

AND NOW, this 18th day of June, 2007, this Order is hereby issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that he has received proper notice of his rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

FINDINGS OF FACT

3. The Insurance Department finds true and correct each of the following Findings of Fact:

- (a) Respondent is Respondent is Robert M. Boden, Jr. and maintains his address at 211 Huckleberry Road, Indiana, Pennsylvania 15701.
- (b) Respondent is, and at all times relevant hereto has been, a licensed insurance producer.
- (c) Certified Insurance Management is an unlicensed entity, and is not registered by Respondent with the Pennsylvania Insurance Department as an alias or fictitious name.
- (d) Effective November 22, 2004, Respondent procured commercial lines insurance policy #CCP336544 from Century Surety Company through Burns

& Wilcox, Limited, the wholesale producer for Watkins Trucking Company, Indiana, Pennsylvania.

- (e) Per Respondent's invoice, Watkins Trucking Company paid \$8,634.40 on November 4, 2004, in premiums to Respondent who, in turn, failed to remit the premiums to Burns & Wilcox.
- (f) On January 7, 2005, Burns & Wilcox issued a notice of intent to cancel policy #CCP336544 on January 20, 2005, to Watkins Trucking Company because of non-payment of premiums.
- (g) Watkins Trucking Company contacted Respondent upon receipt of the notice of intent to cancel the policy, who subsequently remitted the premiums to Burns & Wilcox.
- (h) On February 25, 2005, Burns & Wilcox issued a notice of reinstatement for policy #CCP336544 to Watkins Trucking Company upon its receipt of premiums from Respondent.
- (i) Watkins Trucking Company confirmed the aforementioned information pertinent to policy #CCP336544.

- (j) On September 27, 2005, Respondent accepted an application from Watkins Trucking Company for the renewal of aforementioned commercial lines policy with Century Surety Company and invoiced the policyholder on November 22, 2005.
- (k) On November 29, 2005, Watkins Trucking Company paid \$8,165.00 to Respondent to procure the renewal policy.
- (l) Respondent failed to remit it to wholesale producer Burns & Wilcox and the renewal policy was not procured.
- (m) Upon learning that Respondent failed to remit the premiums through Burns & Wilcox, Watkins Trucking Company terminated its relationship with Respondent and procured the insurance through Charles P. Leach Agency
- (n) Upon establishing a relationship with Charles P. Leach Agency, Watkins Trucking Company remitted a second premium payment of \$8,165.00 on December 31, 2005, to Burns & Wilcox through that agency.
- (o) Charles P. Leach Agency procured policy #CCP399554, effective December 22, 2005, from Century Surety Company through Burns & Wilcox.

- (p) Respondent's failure to procure the renewal policy and remit the premiums resulted in a lapse of coverage between November 22 and December 22, 2005.
- (q) Watkins Trucking Company had no claims to submit during the period of the lapsed coverage.
- (r) Respondent made restitution to Watkins Trucking Company between February and August 2006 for policy #CCP399554.
- (s) Watkins Trucking Company confirmed the aforementioned information pertinent to policy #CCP399554.
- (t) Effective June 14, 2005, Respondent procured workers compensation policy #04532303 from the State Workers Insurance Fund for Watkins trucking Company.
- (u) Upon receipt of Respondent's invoice, dated May 12, 2005, Watkins Trucking Company paid \$11,552.00 in premiums to Respondent for the workers compensation insurance.
- (v) Respondent successfully remitted \$2,000.00 on Marion Center Bank cashier's check #4072, dated May 25, 2005, to the State Workers Insurance Fund.

- (w) Respondent attempted to remit \$6,284.00 on check #626, dated June 10, 2005, to the State Workers Insurance Fund, however, the check was returned for non-sufficient funds and not subsequently honored.
- (x) Respondent attempted to remit \$6,284.00 on check #656, dated July 7, 2005, to the State Workers Insurance Fund, however, the check was returned for non-sufficient funds and not subsequently honored.
- (y) Of the \$11,552.00 in premium payments made to Respondent by Watkins Trucking Company, only \$2,000.00 could be positively identified as having been remitted to the State Workers Insurance Fund by Respondent, leaving a difference of \$9,552.00 in premium unremitted or not returned to Watkins Trucking Company.
- (z) Pertinent to Respondent's failure to ensure premiums were remitted to the State Workers Insurance Fund, Watkins Trucking Company assumed making premium payments to the State Workers Insurance Fund.
- (aa) Watkins Trucking Company confirmed the aforementioned information pertinent to policy #04532303.
- (bb) During the course of the investigation, Respondent paid \$6,452.00 of \$9,552.00 owe to Watkins Trucking Company, leaving a balance of \$3,100 owed by Respondent as restitution.

- (cc) Invoices and certificates of insurance submitted to Watkins Trucking Company by Respondent were under the name of Certified Insurance Management.
- (dd) On September 21, 2006, Respondent asserted he was not experiencing fiduciary or similar problems with other policyholders.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department concludes and finds the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Section 611-A(7) of Act 147 of 2002 prohibits a licensee from using fraudulent, coercive or dishonest practices or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this Commonwealth or elsewhere.
- (c) Respondent's activities described above in paragraphs 3(c) through 3(cc) violates Section 611-A(7) of Act 147 of 2002.

- (d) Section 611-A(20) of Act 147 of 2002 prohibits a licensee from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure (40 P.S. § 310.11).

- (e) Respondent's activities described above in paragraphs 3(c) through 3(cc) violates Section 611-A(20) of Act 147 of 2002.

- (f) Section 642-A of Act 147 of 2002 prohibits any producer from fraudulently appropriating, taking, disposing of, withholding, lending, investing or otherwise using any money received in the capacity of an insurance producer without the consent of the insurer (40 P.S. § 310.42).

- (g) Respondent's activities described above in paragraphs 3(c) through 3(cc) violates Section 642-A of Act 147 of 2002 (40 P.S. § 310.42).

- (h) Respondent's violations of Sections 611-A(7), (20) and 642-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):
 - (i) suspension, revocation or refusal to issue the certificate of qualification or license;
 - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for each violation of the Act;

- (iii) an order to cease and desist; and
- (iv) any other conditions as the Commissioner deems appropriate.

- (i) Title 31, Pennsylvania Code, Section 37.42, Fictitious Names, requires certificates and licenses to accurately reflect the name of the individual agent or broker and indicate if fictitious names in which the agent or broker transacts the business of insurance are on file with the Department. Fictitious names used by an agent or broker to do insurance business shall be registered with the Department of state and will be provided by the Department upon request.
- (j) Respondent's activities described above in paragraphs 3(c) through 3(cc) violates Title 31, Pennsylvania Code, Section 37.42.

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.

(b) Respondent shall make restitution to Watkins Trucking Company in the amount of \$9,217.00 within 30 days from the date of this Order.

Respondent shall make restitution to persons other than Watkins Trucking Company if the Insurance Department identifies such persons and determines that restitution is owed to them by Respondent. Proof of restitution payment shall be provided to the Insurance Department by Respondent.

(c) All licenses/certificates of Respondent to do insurance business are hereby revoked.

(d) If Respondent should ever become licensed in the future, his certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) any terms of this Order have not been complied with, or (ii) any complaint against Respondent is accurate and a statute or regulation has been violated. The Department's right to act under (ii) above is limited to a period of five (5) years from the date of issuance of such certificates and licenses.

(e) Respondent specifically waives his right to prior notice of said suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondent by certified mail, return receipt requested, notification of said suspension,

which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of Respondent's written request.

- (f) At the hearing referred to in paragraph (e) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance certificate and license.
- (g) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(d) above, and Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that he is worthy of a certificate and license, Respondent's suspended certificates and licenses shall be revoked.

6. In the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

7. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

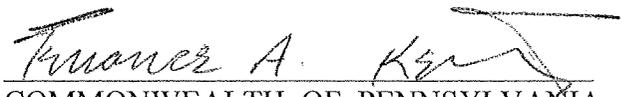
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law

contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

BY: 
ROBERT M. BODEN, JR., Respondent


COMMONWEALTH OF PENNSYLVANIA
By: Terrance A. Keating
Deputy Chief Counsel