

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

RECEIVED
INSURANCE DEPARTMENT
2007 MAR 16 PM 1:01

ADMIN HEARINGS OFFICE

IN RE: : ALLEGED VIOLATIONS:

Gerber Life Insurance Company : Sections 4 and 5 of the Unfair Insurance
1311 Mamaroneck Avenue White : Practices Act, Act of July 22, 1974,
Plains, New York, 10605. : P.L. 589 (40 P.S. §§ 1171.4, 1171.5);

Elite Brokerage Services, Inc. : 31 Pa. Code §§89.473, 89.474
191 Sheree Blvd. :
Suite 201 :
Exton, PA 19341 :

Respondents : Docket No. CO07-03-012

CONSENT ORDER

AND NOW, this 16th day of MARCH 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. Respondents hereby admit and acknowledge that they have received proper notice of their rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. §101 et seq., or other applicable law.

2. Respondents hereby waive all rights to a formal administrative hearing in this matter, and agree 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.

3. Respondents neither admit nor deny the Findings of Fact or Conclusions of Law contained herein, nor do they admit to violating Pennsylvania insurance laws.

FINDINGS OF FACT

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

- a) Respondent, Gerber Life Insurance Company ("Gerber"), is located at 1311 Mamaroneck Avenue White Plains, New York, 10605.
- b) During all times relevant to the matters addressed in this Consent Order, Gerber was, and is, an insurer authorized to issue stop loss insurance in the Commonwealth of Pennsylvania.
- c) Respondent Elite Brokerage Services, Inc. ("Elite") is a managing general underwriter for Gerber, located at 191 Sheree Blvd. Suite 201, Exton, Pennsylvania 19341.

- d) Effective on or around January 1, 2005, Elite issued a stop-loss policy on behalf of Gerber to Nassau Employees Benefits Trust (“NEBT”), a multiple employer welfare arrangement (“MEWA”) that self-insured its participating employers’ accident and health insurance plan. This includes AllStaffing Inc. (“ASI”), a professional employer organization (PEO) which participated in NEBT’s illegal, self-insured health plan. See, In re: Stanley Costello and AllStaffing, Inc. C006-10-003.
- e) Prior to issuing the stop-loss policy to NEBT, Elite, as Gerber’s representative, did not perform sufficient due diligence to ensure that the underlying plan was not an illegal MEWA operating as an unlicensed insurer.
- f) Since that time, Pennsylvania consumers, as well as consumers in other states, including New Jersey, participating in ASI and NEBT have incurred substantial unpaid claims that remain unfunded and unreimbursed to date.
- g) Gerber and Elite have cooperated in the Department’s investigation of this matter.

CONCLUSIONS OF LAW

5. 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) Respondents are subject to the jurisdiction of the Pennsylvania Insurance Department.

b) Issuing a stop loss policy to a self-insured MEWA gives rise to violations under the following provisions of Pennsylvania insurance laws:

i) Sections 4 and 5 of the Unfair Insurance Practices Act ("UIPA") (40 P.S. §§1171.4, 1171.5) and potential sanctions and remedies under Sections 9 and 11 of the UIPA (under 40 P.S. §§1171.9, 1171.11) and;

(ii) 31 Pa. Code §89.473 (requiring stop loss insurers to ensure that the underlying plan is a legitimate self-funded plan and not a self-insured or partially insured multiple employer welfare arrangement) and 31 Pa. Code §89.474 (providing that stop loss may only be issued to valid single employer self-funded ERISA qualified plans).

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondents consent to the following:

a) Respondents shall cease and desist the activities and violations described above and any further violations of Pennsylvania insurance laws.

b) Respondent Gerber shall be liable for, and pay as soon as practicably possible:

i) all legitimate unpaid claims relating to the underlying NEBT Plan for plan period January 1, 2005 through December 31, 2005, subject to all co-payments, deductibles and other adjustments permitted under the NEBT Plan or applicable law or regulation;

ii) reimbursement to Mahoning Valley Nursing Home ("Mahoning Valley") for all legitimate, covered claims that Mahoning Valley already paid on behalf of its employees that participated in the NEBT Plan, upon presentation by Mahoning Valley of documentation of its prior payment of

such claims; and

- iii) reimbursement to any participant in the NEBT Plan who has already paid a legitimate claim covered by the NEBT Plan, provided that a) there are insufficient funds in the NEBT Plan as determined by the Independent Fiduciary of the NEBT Plan and b) the participant provides documentation of such prior payment to Gerber.

- c) In the event that Gerber defaults on any required payment or reimbursement, above, Elite shall be the payer of second resort and, upon notice of Gerber's non-payment, promptly cover and pay such claims and reimbursements.

- d) Respondent Elite shall pay a civil penalty in the amount of \$32,750 to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania and should be directed to Sharon L. Fraser, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of the execution of this Consent Order by the Department.

- e) Respondents shall fully cooperate with the Employee Benefit Security Administration (EBSA) and the Independent Fiduciary of NEBT Plan in the execution of his duties relating to his position thereof, including but not limited to providing such documents and information as they may request.

- f) Respondents shall fully cooperate with the Department and any and all other state or federal authorities in any civil, criminal, or regulatory investigation, inquiry, hearing and any other action or proceeding against any person or entity identified in this Consent Order, their principals, or any other person or entity related to any of the matters addressed herein. Cooperation includes but is not limited to providing any testimony or documentary evidence that is requested by the Department or other state or federal authority.

- g) Respondent Elite's license(s) 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 Elite 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 this Order.

- h) Respondent Elite specifically waives its 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 Elite 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.

- i) At the hearing referred to in paragraph 6(h) of this Order, Respondent Elite shall have the burden of demonstrating that it is worthy of an insurance license.

- j) In the event Respondent Elite's certificates and licenses are suspended pursuant to paragraph 6(g) above, and Respondent Elite either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that it is worthy of a license, Respondent's suspended licenses shall be revoked.

7. 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, it may, in its discretion, pursue any and all legal remedies available to the Department, including but not limited to the following: the Insurance Department may enforce the

provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Insurance 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.

8. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order the Insurance 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 provisions of law.

9. In any such enforcement proceeding, Respondents 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.

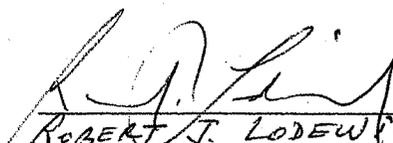
10. Respondents hereby expressly waive any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. 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 parties hereto.

12. This Order shall be final upon execution by the Insurance Department.

Only the Insurance Commissioner or his duly authorized delegee is authorized to bind the Insurance Department with respect to the matters addressed herein, and this Consent Order is not effective until executed by the Insurance Commissioner or his delegee.

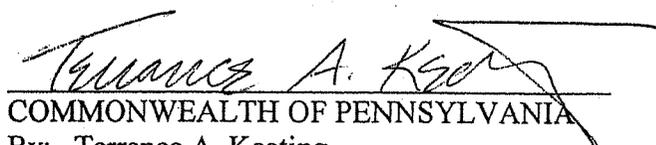
BY:



ROBERT J. LODEWICK
V.P. & GENERAL COUNSEL, title
On behalf of Gerber Life Insurance Company



Russell R. Naylor, President
On behalf of Elite Brokerage Services, Inc.



COMMONWEALTH OF PENNSYLVANIA
By: Terrance A. Keating
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