RECEIVED
INSURANCE DEPARTMENT
06 OCT 19 AM 11:13
ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
SPORTS & FITNESS	:	Section 611-A(20) of 147 of 2002
INSURANCE CORPORATION	:	(40 P.S. § 310.11)
214 Key Drive	:	
Madison, MS 39110	:	Section 1615 of the Surplus Lines
	:	Act, Act of May 17, 1921, P.L.
	:	682, added by the Act of
	:	December 18, 1992, P.L. 1519
	:	(40 P.S. § 991.1615)
	:	
Respondent.	:	Docket No. CO06-04-037

CONSENT ORDER

AND NOW, this 19th day of October, 2006 this Order is hereby issued by the Deputy Insurance Commissioner 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 it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S.A. §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 Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

(a) Respondent is Sports and Fitness Insurance Corporation and maintains its address at 214 Key Drive, Madison, Mississippi 39110.

(b) Respondent is, and at all times relevant hereto has been, a licensed non-resident insurance producer but it possesses no surplus lines license in the Commonwealth of Pennsylvania.

(c) During 2004 and 2005, Respondent procured approximately fifty 50 surplus lines policies from Alea North America Specialty Insurance Company ("Alea") for Pennsylvania policyholders although it did not possess a Pennsylvania surplus lines license.

(d) Respondent ceased to procure for Pennsylvania customers surplus lines policies from Alea in 2005 following Alea's change in status as an admitted carrier in Pennsylvania.

(e) Respondent had entered a contractual arrangement with, and relied upon, Island Financial Insurance Corporation ("Island Financial") to serve as its surplus lines agent in Pennsylvania and other states, and to assist Respondent in procuring surplus lines insurance in compliance with the laws and regulations of the respective states, including Pennsylvania.

(f) Respondent submitted its surplus lines filings to the Pennsylvania Insurance Department and associated taxes to the Pennsylvania Department of Revenue through Island Financial Insurance Corporation, a non-resident surplus lines licensee, although the Department determined that Island Financial had not participated in the procurement of the insurance.

(g) Respondent maintains no employees, assets or representatives (with the exclusion of Island Financial), nor does it conduct any sales or marketing activities within Pennsylvania.

(h) During March, 2006 and subsequently, Respondent has confirmed the foregoing Facts to the Department's investigator, but Respondent has not admitted, and does not admit that it intentionally or otherwise violated the

laws of Pennsylvania and avers that it enters into this Consent Order as a matter of business expediency and to avoid the expenditure of resources of a protracted administrative proceeding and to preserve its rights against third parties.

CONCLUSIONS OF LAW

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

(a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

(b) 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).

(c) Respondent's activities described above in paragraphs 3(c) through 3(f) demonstrate lack of fitness, competence or reliability, in violation Section 611-A(20) of Act 147 of 2002.

(d) Respondent's violations of Section 611-A(20) of Act 147 are punishable by the following, under Section 691-A of Act 147 of 2003 (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 every violation of the Act;

(iii) an order to cease and desist; and

(iv) any other conditions as the Commissioner deems appropriate.

(e) Section 1615 of the Surplus Lines Act prohibits any agent or broker licensed by the Department to transact surplus lines insurance unless such agent or broker is licensed as a surplus lines agent.

(f) Respondent's activities described above in paragraphs 3(c) through 3(f) constitute transacting surplus lines insurance without being properly licensed.

(g) Respondent's violations of Sections 1615 of the Surplus Lines Act are punishable by the following, under Section 1625(b) of the Insurance Company Law:

(i) imposition of a penalty not exceeding $1,000 for the first offense and $2,000 for each succeeding offense.

ORDER

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

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

(b) Respondent shall pay a civil penalty of Fifteen Thousand Dollars ($15,000.00) to the Commonwealth of Pennsylvania. This penalty shall be made payable to the Commonwealth of Pennsylvania, and directed to Sharon L. Fraser, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than thirty (30) days after the date of the Consent Order.

(c) Respondent's certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) penalty or restitution payment has not been made, (ii) any terms of this Order have not been complied with, or (iii) any complaint against Respondent is accurate and a

statute or regulation has been violated. The Department's right to act under this section is limited to a period of three (3) years from the date of this Order.

(d) Respondent 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 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.

(e) At the hearing referred to in paragraph 5(d) of this Order, Respondent shall have the burden of demonstrating that it is worthy of a license.

(f) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(c) above, and Respondent 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 certificates and licenses shall be revoked.

6. In the event the Deputy Insurance Commissioner 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 Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner 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 Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy

Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

BY: SPORTS & FITNESS
INSURANCE CORPORATION, Respondent

President / ~~Vice President~~

asst. Secretary / ~~Treasurer~~

RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania