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INSURANCE DEPARTMENT

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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
ROBERT J. BROWN	:	40 P.S. §§ 310.11(20), 310.78(b) and
556 Hawarden Road	:	1171.5(a)(10)(i)
Springfield, PA 19064	:	
	:	
	:	
Respondent.	:	Docket No. CO11-02-003

CONSENT ORDER

AND NOW, this *13<sup>th</sup>* day of *September*, *2011*, 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.

3. Without admitting the allegations of fact and conclusions of law contained

herein, Respondent specifically denies that he violated any law or regulation of the Commonwealth.

FINDINGS OF FACT

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

- (a) Respondent is Robert J. Brown, and maintains his address at 556 Hawarden Road, Springfield, PA 19064.
- (b) Respondent is, and during all times relevant herein was, a licensed insurance producer with a resident individual license #348360, that expires on February 13, 2013.
- (c) Respondent, during all times relevant herein was, Assistant Vice President and Claims Manager and was employed by USI Mid-Atlantic, Incorporated (hereinafter, USI).
- (d) In March, 2005, USI presented an insurance policy to the insured, Bristol Township, Pennsylvania (hereinafter, Bristol) from the insurer, Zurich American Insurance Company (hereinafter, Zurich).

- (e) The effective policy period of the Bristol policy referenced in (d) above was March 1, 2005 through March 1, 2006.
- (f) At the time the Bristol policy referenced in (d) above was presented, Bristol officials verbally stated their desire to reject Uninsured (hereinafter, UM) and Underinsured (hereinafter, UIM) coverage.
- (g) At the time the Bristol policy referenced in (d) above was presented, Freda J. Batipps, USI Account Manager for the Bristol policy (hereinafter Batipps) along with another USI agent, gave blank UM and UIM waiver forms to Bristol officials for their signature and date to reject the UM and UIM coverage referenced in (f) above as required by Title 75, Pennsylvania Consolidated Statutes – Subchapter C – Uninsured and Underinsured Motorist Coverage.
- (h) During all times relevant herein, Batipps failed to timely obtain valid, signed and dated UM and UIM waiver forms from insured Bristol, as required by 75 Pennsylvania Consolidated Statutes, referenced in (g) above.
- (i) In August, 2005, two Bristol police officers were seriously injured in an on-duty auto accident when they were struck by an intoxicated and uninsured motorist.

- (j) Respondent, in October, 2005, was advised by Batipps of the injury to the Officers.
- (k) Respondent, in October, 2005, was advised by Batipps that the Bristol officials had verbally rejected UI and UIM coverage, but that neither Bristol nor USI could find signed and dated copies of the UM and UIM waiver forms.
- (l) Respondent, in October, 2005, instructed Batipps to keep him advised of the progress of attempts to locate signed and dated UM and UIM waiver forms.
- (m) Respondent, in November, 2005 and again in January, 2006, was advised by Batipps that new blank UM and UIM waiver forms were sent by e-mail to Bristol with instructions to sign, date and return the UM and UIM waiver forms as soon as possible so the forms could be forwarded to Zurich.
- (n) Respondent, in January, 2006, was advised by Batipps that she received by email UM and UIM waiver forms referenced in (m) above from Bristol that had been signed and backdated to March 1, 2005.
- (o) Respondent, in January, 2006, was also advised by Batipps that the backdated UM and UIM waiver forms referenced in (m) above had been forwarded to

Zurich by email.

- (p) Accordingly, Zurich denied the coverage for the claim.
- (q) Not until November 2006, and only after discovering that the UM and UIM waiver forms were backdated, did Zurich pay the officers UM and UIM claim in full.
- (r) Respondent, on February 26, 2009, was arrested by the Bucks County, Pennsylvania Detectives and charged with numerous felonies and misdemeanors.
- (s) Respondent failed to report his arrest referenced in (r) above to the Department.
- (t) On April 23, 2010, all of the criminal charges against Respondent were dismissed and Respondent reported the dismissal to the Department.

#### 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) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) 40 P.S. § 310.11(20) 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.
- (c) Respondent's activities described above in paragraphs 4(h) through 4(s) violate 40 P.S. § 310.11(20).
- (d) 40 P.S. § 310.78(b) requires that within 30 days of being charged with criminal conduct, a licensee shall report the charges to the Department. The licensee shall provide the Department with a copy of the criminal complaint, information or indictment, a copy of the order resulting from any pretrial hearing, and a report of the final disposition of the charges.
- (e) Respondent's activities described above in paragraphs 4(r) and 4(s) violate 40 P.S. § 310.78(b).
- (f) Respondent's violations of Sections 310.11(20) and 310.78(b) are punishable by the following, under 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.
- (g) 40 P.S. § 1171.5(a)(10)(i) holds that misrepresenting policy provisions relating to coverage at issue constitutes unfair claim settlement or compromise practices.
- (h) Respondent's activities described above in paragraphs 4(h) through 4(o) violate 40 P.S. § 1171.5(a)(10)(i).
- (i) Respondent's violations of 40 P. S. §§ 1171.5(a)(10)(i) are punishable by the following, under 40 P.S. §§1171.8, 1171.9 and 1171.11:
- (i) an order requiring Respondent to cease and desist from engaging in such violation and/or, if such violation is a method of competition, act or practice defined in Section 5 of this Act, suspension or revocation of Respondent's license(s);
  - (ii) commencement of an action against Respondent for the following civil

penalties:

- (1) for each method of competition, act or practice defined in Section 5 and in violation of the Act which Respondent knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000.00) for each violation, not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) in any six month period;
- (2) for each method of competition, act or practice defined in Section 5 and in violation of this Act which Respondent did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000.00) for each violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000.00) in any six month period;
- (3) for each violation of an Order issued by the Commissioner pursuant to Section 9 of the Act, while such Order is in effect, a penalty of not more than ten thousand dollars (\$10,000.00).

ORDER



6. 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 pay a civil penalty of Twenty Thousand Dollars (\$20,000.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Fraser, Manager, Bureau of Licensing and 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 will assist to the best of his ability the Pennsylvania Insurance Department in conducting investigations and prosecution of any licensed or unlicensed entity performing the business of insurance including, but not limited to, any public adjuster, insurance producer, company, etc., their employees and officers, including but not limited to testifying as a witness relative to any of the aforesaid entities, their employees and officers in any civil

or administrative action involving same.

- (d) Respondent's 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 this section is limited to a period of ten (10) years from the date of this Order.
- (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 6(e) of this Order, Respondent shall have the burden of demonstrating that he is worthy of a license.
- (g) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 6(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

license, Respondent's suspended certificates and 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, 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.

8. 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.


9. 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.

10. Respondent hereby expressly waives 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 the parties hereto.

12. 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 J. BROWN, Respondent

  
COMMONWEALTH OF PENNSYLVANIA  
By: RONALD A. GALLAGHER, JR.  
Deputy Insurance Commissioner