

RECEIVED  
INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

OCT 28 PM 12:23

ADMIN HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
	:	
MARSH USA, INC.	:	40 Purdons Statutes, Section
1166 Avenue of the Americas	:	310.11(20)
New York, NY 10036	:	
	:	40 Purdons Statutes, Section 991.1621
	:	
Respondent.	:	Docket No. CO08-07-012

CONSENT ORDER

AND NOW, this *28<sup>th</sup>* day of *October*, 2008, 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 it has received proper notice of its 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. Respondent neither admits nor denies the Findings of Fact or Conclusions of Law contained herein.

FINDINGS OF FACT

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

- (a) Respondent is Marsh USA, Inc., and maintains its address at 1166 Avenue of the Americas, New York, New York 10036.
- (b) Respondent is, and at all relevant times hereto has been, a licensed insurance producer and surplus lines licensee.
- (c) Respondent self-reported that it failed to remit Pennsylvania surplus lines premium taxes to the Pennsylvania Insurance Department. Respondent cooperated with the Department during the course of this investigation.
- (d) The total taxes owed was between \$1,027,210.39 and \$2,952,888.61. However, the results of ongoing litigation involving a Pennsylvania university hospital would determine if the difference was owed.
- (e) Respondent stated it had collected surplus lines taxes from some policyholders but not from others. Respondent further stated that, with respect to tax that is payable

pursuant to this Order but not yet collected from policyholders, Respondent would make the remittances itself until the money was collected.

(f) Respondent agreed that it would track surplus lines taxes and ensure the full taxes were collected and remitted as required by this Order.

(g) Respondent agreed that, going forward, it would make appropriate surplus lines filings to the Pennsylvania Insurance 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 Purdons Statutes, Section 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(c) through 4(e) violate 40 Purdons Statutes, Section 310.11.

- (d) Respondent's violations of 40 Purdons Statutes, Section 310.11(20) are punishable by the following, under 40 Purdons Statutes, Section 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) 40 Purdons Statutes, Section 991.1621 of the Surplus Lines Act requires a tax of three percent to be levied against insureds on all premiums charged, and for that tax to be collected by the licensee and remitted to the Pennsylvania Department of Revenue.
- (f) Respondent's activities described above in paragraphs 4(c) through 4(e) constitute failure to remit, and in some cases failure to collect and remit, the required three percent surplus lines premium tax, and violate 40 Purdons Statutes, Section 991.1621.
- (g) Respondent's violations of 40 Purdons Statutes, Section 991.1621 are punishable by the following, under 40 Purdons Statutes, Section 991.1625(b):
- (i) imposition of a penalty not exceeding \$1,000 for the first offense and \$2,000 for each succeeding offense.

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 Fifty Thousand Dollars (\$ 50,000.00) 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, Office 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 shall pay un-remitted taxes to the Pennsylvania Department of Revenue of \$1,027,210.39 within 60 days from the date of this order. Any additional amount of unpaid taxes determined as a result of ongoing litigation will be paid to the Pennsylvania Department of Revenue within 60 days from the date that such determination is made. Proof of restitution payment shall be

sent to Sharon L. Fraser, Office Manager, Bureau of Licensing and Enforcement,  
1227 Strawberry Square, Harrisburg, PA 17120.

(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 three (3) years from the date of this Order.

(e) 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.

(f) At the hearing referred to in paragraph 6(e) of this Order, Respondent shall have the burden of demonstrating that it 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 it 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.

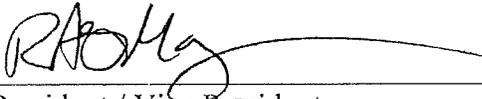
9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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.

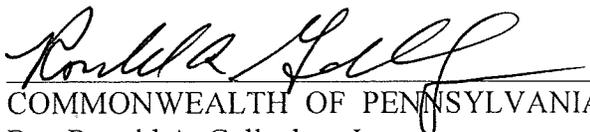
11. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

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: MARSH USA, INC., Respondent

  
\_\_\_\_\_  
President / Vice President  
Managing Director

\_\_\_\_\_  
Secretary / Treasurer

  
\_\_\_\_\_  
COMMONWEALTH OF PENNSYLVANIA  
By: Ronald A. Gallagher, Jr.  
Deputy Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The  
Administrative Code of 1929

AND NOW, this 22<sup>nd</sup> day of July, 2008, Ronald A.

Gallagher, Deputy Insurance Commissioner, is hereby designated as the Commissioner's  
duly authorized representative for purposes of entering in and executing Consent Orders.

This delegation of authority shall continue in effect until otherwise terminated by a later  
Order of the Insurance Commissioner.

  
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Joel S. Ario  
Insurance Commissioner

