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INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

2007 OCT 24 AM 10:26
ADMIN HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
	:	
SEABURY & SMITH, INC.	:	Sections 603-A and 611-A(20) of
1166 Avenue of the Americas	:	Act 147 of 2002 (40 P.S. §§310.3
New York, NY 10036	:	and 310.11)
	:	
	:	Sections 1612(d) and 1615(a) of
	:	the Surplus Lines Act, Act of May 17,
	:	1921, P.L. 682, <u>added by</u> the Act of
	:	December 18, 1992, P.L. 1519
	:	(40 P.S. §§ 991.1612 and 1615)
	:	
Respondent.	:	Docket No. CO07-01-002

CONSENT ORDER

AND NOW, this *24th* day of *October*, 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 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.

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 Seabury & Smith, Inc., and maintains its address at 1166 Avenue of the Americas, New York, New York 10036.
- (b) Respondent, at all relevant times herein, has been a licensed insurance producer. From February 29, 2004, Respondent possessed a Pennsylvania non-resident surplus license, number 55509.
- (c) Respondent has cooperated fully with the Department during the course of this investigation.

- (d) With effective dates during 2005 and 2006, Respondent procured approximately 24 surplus lines insurance policies from various insurers for Pennsylvania policyholders although its producers primarily involved in the applicable transactions did not possess proper Pennsylvania insurance licenses.
- (e) Respondent acknowledged the sales by producers from two branch offices, San Antonio, Texas, and Washington, District of Columbia, but submitting surplus lines filings of the three offices to the Pennsylvania Insurance Department.
- (f) Respondent provided copies of correspondence, including letters, facsimiles and electronic mailings, that showed no notable participation in the procurement of the policies by two identified surplus lines licensees, Steven C. Liston, Des Moines, and Kathryn A. Jacobson, Washington.
- (g) The surplus lines licensee for Respondent that made the filings to the Pennsylvania Insurance Department was Steven C. Liston, who represented himself as the producer of the 24 insurance policies.
- (h) Eight of the 24 surplus lines insurance policies procured by unlicensed producers in the Washington and San Antonio office were filed as accommodations with the Pennsylvania Insurance Department by Steven C. Liston.

- (i) Correspondence, including letters, facsimiles and electronic mailings, on the terms and conditions from insurers, retail producers and policyholders were generally forwarded to the unlicensed producers employed by Respondent rather than by the surplus lines licensees.
- (j) Correspondence, including letters, facsimiles and electronic mailings, sent by Respondent's producers did not include disclosure to the retail producers and policyholders that the surplus lines insurance was not protected by the Pennsylvania guarantee associations.
- (k) Twelve producers employed by Respondent possessed no Pennsylvania insurance licenses, while three producers possessed Pennsylvania non-resident producer licenses but no surplus lines license.
- (l) On December 1, 2006, Respondent was interviewed and acknowledged responsibility for not having its producers properly licensed for the procurement of surplus lines insurance in Pennsylvania, adding that it possessed internal procedures for the licensing of producers and directing them in compliance with the licensing requirements of state laws and regulations.

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) Section 603-A(a) of Act 147 of 2002 prohibits a person from selling, soliciting or negotiating a contract of insurance in this Commonwealth unless licensed as an insurance producer for the line of authority under which the contract is issued (40 P.S. § 310.3(a)).
- (c) Respondent's activities described above in paragraphs 3(c) through 3(k) violate Section 603-A(a) of Act 147 of 2003 (40 P.S. § 310.3).
- (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(k) violate Section 611-A(20) of Act 147 of 2002 (40 P.S. § 310.11), with respect to the placements that are the subject matter of this Order.

(f) Respondent's violations of Sections 603-A and 611-A(20) of Act 147 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 every violation of the Act;
- (iii) an order to cease and desist; and
- (iv) any other conditions as the Commissioner deems appropriate.

(g) Section 1612(d) of the Surplus Lines Act (40 P.S. § 991.1612(d)) requires that all surplus lines insurance issued shall state "The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Insurance Guaranty Association."

- (h) Respondent's activities described above in paragraphs 3(c) through 3(k) constitute issuing contracts of surplus lines insurance absent the notification that the insurance was not covered by the Pennsylvania Insurance Guaranty Association, in violation of Section 1612(d) of the Surplus Lines Act.
- (i) 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 (40 P.S. § 991.1615).
- (j) Respondent's activities described above in paragraphs 3(c) through 3(k) constitute transacting surplus lines insurance without being properly licensed.
- (k) Respondent's violations of Sections 1612 and 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

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-Five Thousand Dollars (\$25,000.00) 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, 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 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 6(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 6(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.

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.

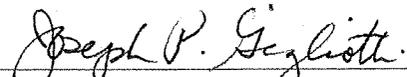
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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.

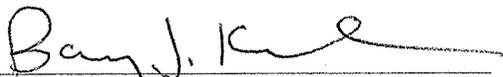
12. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or the duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law

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

BY: SEABURY & SMITH, INC., Respondent



President / Vice President



Secretary / Treasurer



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania