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INSURANCE DEPARTMENT

2008 APR -3 AM 10: 54

ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
TOWER INSURANCE COMPANY OF NEW YORK 120 Broadway, 31st Floor New York, NY 10271	:	77 Purdons Statutes, Sections 997(a) and 1038.1(e)
	:	Title 34, Pennsylvania Code, Section 129.106
	:	
Respondent.	:	Docket No. CO08-03-006

CONSENT ORDER

AND NOW, this 3rd day of April, 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.

FINDINGS OF FACT

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

(a) Respondent is Tower Insurance Company of New York, and maintains its address at 120 Broadway, 31st Floor, New York, NY 10271.

(b) At all times herein, Respondent has been a licensed insurer in the Commonwealth of Pennsylvania and is authorized to write workers' compensation insurance.

(c) Respondent is required by Pennsylvania Statutes to timely file an annual report of "Accident and Illness Prevention Services" (AIPS) to the Pennsylvania Department of Labor and Industry by June 1st of each year.

(d) In February, 2007, Respondent was issued a Warning Letter for failure to file its AIPS Report by the June 1st deadline in 2006.

(e) On October 31, 2007, Respondent did file its AIPS Report with the Pennsylvania Department of Labor and Industry after being notified by the Department, which was one hundred and fifty-two (152) days late.

CONCLUSIONS OF LAW

4. 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) 77 Purdons Statutes, Section 1038.1(e), requires any insurer writing workers' compensation insurance in the Commonwealth to maintain or provide accident and illness prevention services and at least once each year, each insurer must submit to the Department detailed information on the type of accident prevention services offered or provided to the policyholders, including the amount of money spent on accident prevention, the number and qualifications of field safety representatives, the number of site inspections, the accident prevention services contracted for, the premium size of the risks, and evidence of the effectiveness in accident prevention.

(c) Respondent's activities described above in paragraphs 3(d) through 3(e) constitutes failure to timely submit the accident and illness prevention report, in violation of 77 Purdons Statutes, Section 1038.1(e).

(d) Respondent's violation of 77 Purdons Statutes, Section 1038.1(e), is punishable under 77 Purdons Statutes, Section 1038.1(f): Failure to maintain or provide the accident prevention services required by this section shall constitute a continuing civil violation for each day the accident prevention services are not maintained or provided. Each day of noncompliance with this section is a separate violation. All fines recovered under this section shall be paid to the Department and deposited into the Workmen's Compensation Administration Fund.

(e) 77 Purdons Statutes, Section 997(a), provides that any insurer licensed to transact workmens compensation insurance in this Commonwealth that fails to submit any report under the Workers Compensation Act, may be subject to license revocation or suspension by the Insurance Commissioner.

(f) Respondent's activities described above in paragraphs 3(d) through 3(e) constitutes failing to timely submit a required report, in violation of 77 Purdons Statutes, Section 997(a).

(g) Title 34, Pennsylvania Code, Section 129.106 mandates, by June 1st of each year, annual reporting by licensed insurers regarding accident and illness prevention services being maintained or provided to policyholders.

ORDER

5. 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 Five Thousand Dollars ($5,000.00) to the Commonwealth of Pennsylvania. This penalty shall be made payable to the Commonwealth of Pennsylvania, and directed to Ginny Marquart, 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.

6. 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.

7. 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.

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 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: TOWER INSURANCE COMPANY OF NEW YORK, Respondent

President / Vice President

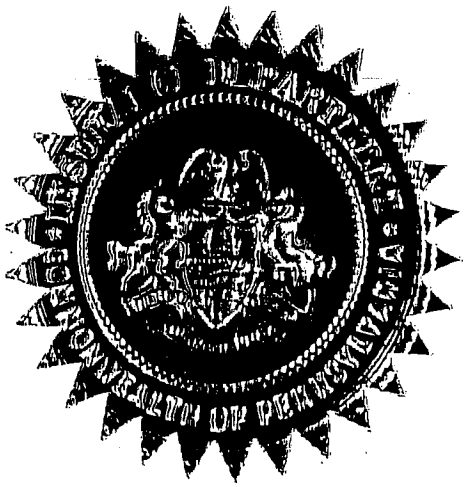
Secretary / ~~Treasurer~~

COMMONWEALTH OF PENNSYLVANIA
By: Randolph L. Rohrbaugh
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 6th day of July 2007, Randolph L. Rohrbaugh, 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.



Joel S. Ario
Insurance Commissioner