

RECEIVED
INSURANCE DEPARTMENT

2019 JUL 26 PM 1:17 BEFORE THE INSURANCE COMMISSIONER
OF THE
ADMIN HEARINGS OFFICE COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
PENNSYLVANIA COMPENSATION	:	77 P.S. §§ 1035.4 and 1035.7
RATING BUREAU	:	
30 South 17 th Street, Suite 1500	:	
Philadelphia, PA 19103	:	
	:	
Respondent.	:	Docket No. CO19-03-008

CONSENT ORDER

AND NOW, this 26th day of July, 2019, 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. §§ 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 Order 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 Pennsylvania Compensation Rating Bureau, and maintains its address at 30 South 17th Street, Suite 1500, Philadelphia, PA 19103-4007.
- (b) Respondent is, and at all times relevant hereto has been, a licensed Commonwealth of Pennsylvania entity and is authorized to propose workers' compensation loss costs on behalf of insurance companies operating throughout Pennsylvania.
- (c) Respondent must comply with any applicable filing provisions in Pennsylvania statutes pursuant to which Respondent is proposing workers' compensation loss costs.
- (d) Respondent is required by Pennsylvania statutes to timely file an annual filing for the provision for claim payments (hereinafter, "annual loss cost filing") with the Department.
- (e) Every workers' compensation insurer is required by Pennsylvania statutes to annually submit a report of its workers' compensation loss experience

(hereinafter, “annual loss cost data report”) to Respondent. Each insurer’s annual loss cost data report is based on the insurer’s aggregate financial data.

- (f) Respondent received a 2016 annual loss cost data report from BrickStreet Mutual Insurance Company (BrickStreet) on April 13, 2017 (hereinafter, the “2016 BrickStreet Report”).
- (g) Respondent failed to properly reconcile the data within the 2016 BrickStreet Report and did not discover it contained materially overstated losses of approximately \$120,000,000.00.
- (h) Respondent submitted an annual loss cost filing to the Department on November 22, 2017, having an effective date of April 1, 2018 (hereinafter, the “April 1, 2018 Loss Cost Filing”).
- (i) Respondent failed to establish sufficient internal actuarial department checks and balances to ensure that the April 1, 2018 Loss Cost Filing contained accurate data prior to submitting the April 1, 2018 Loss Cost Filing to the Department.
- (j) The inclusion of the materially overstated BrickStreet losses in the April 1, 2018 Loss Cost Filing resulted in excessive loss costs being approved by the Department.

- (k) In September, 2018, Respondent conducted an internal review and discovered (a) that the 2016 BrickStreet Report contained materially overstated losses as described in Finding 3(g) above, and (b) that most of the loss costs in the April 1, 2018 Loss Cost Filing, therefore, also were excessive.
- (l) The April 1, 2018 Loss Cost Filing impacted most workers' compensation rates throughout the Commonwealth.
- (m) Respondent received a 2017 annual loss cost data report from BrickStreet Mutual Insurance Company (BrickStreet) on October 9, 2018, (hereinafter, the "2017 BrickStreet Report").
- (n) Respondent submitted an interim loss cost filing to the Department on November 13, 2018, having an effective date of January 1, 2019, to correct the data error identified in Finding 3(h) above (hereinafter, the "January 1, 2019 Interim Loss Cost Filing").
- (o) Respondent decided to exclude the data in the 2017 BrickStreet Report from the January 1, 2019 Interim Loss Cost Filing because BrickStreet's filing was late and Respondent had concerns over BrickStreet's data integrity.
- (p) Respondent failed to establish sufficient internal actuarial department checks and balances to ensure that the January 1, 2019 Interim Loss Cost Filing had been

accurately prepared prior to submitting the January 1, 2019 Interim Loss Cost Filing to the Department, necessitating corrections.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner makes the following Conclusions of Law:
- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
 - (b) Pursuant to 77 P.S. § 1035.4(a)(1) workers compensation insurance rates may not be excessive or inadequate; or unfairly discriminatory.
 - (c) Respondent's activities described in paragraph 3(g) through 3(j) above led to the charging of excessive rates in violation of 77 P.S. § 1035.4(a)(1).
 - (d) Pursuant to 77 P.S. § 1035.7(d)(1) every rating organization shall develop and file rules reasonably related to the recording and reporting of data pursuant to the uniform statistical plan.
 - (e) Respondent's activities described in paragraph 3(g) through 3(j) constitutes a failure to properly administer the uniform statistical plan.

- (f) Violations of 77 P.S. §§ 1035.4 and 1035.7 are punishable by the following under 77 P.S. § 1035.20: \$500 fine per violation; and suspension or revocation of a rating organizations license.

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 activities described herein in the Findings of Fact 3(g) through 3(j).
- (b) Respondent shall conduct a review of its internal controls, operations and business practices to determine necessary changes to Respondent's operations to comply with Pennsylvania insurance law.
- (c) The review referenced in paragraph 5(b) above shall be conducted by a third-party approved by the Department and shall culminate in a written report by said third-party.
- (d) The cost and expenses of the review referenced in paragraph 5(b) above shall be borne entirely by Respondent.

- (e) The written report referenced in paragraph 5(c) above shall be shared with the Department and Respondent's Governing Board within ten (10) days of receipt of such report. The confidentiality provisions of section 905 of the Insurance Department Act of 1921 (Act of May 17, 1921, P.L. 789, No. 285 (40 P.S. §§ 323.5)) shall apply to such report.
- (f) Respondent shall adopt the recommendations contained in the written report referenced in paragraph 5(c) above, unless it demonstrates to the Department, in the Department's sole discretion, that any recommendations are unduly burdensome or contrary to law or Department policy.
- (g) Within twenty-four (24) months of the date of this Order, or within an earlier time determined at the sole discretion of the Deputy Insurance Commissioner, the Department shall initiate an examination of Respondent pursuant to Article IX of the Act of May 17, 1921, P.L. 789, No. 285 (40 P.S. §§ 323.1, et Seq.) hereinafter, "Article IX").
- (h) The scope of the examination referenced in paragraph 5(g) above shall be inclusive of all of Respondent's operations and may consider any such matters that the Deputy Insurance Commissioner, in his sole discretion, determines relevant to Respondent's operations.

- (i) The cost of the examination referenced in paragraph 5(g) above shall be borne exclusively by Respondent.
- (j) Respondent shall implement any recommendations contained in an examination report adopted by the Deputy Insurance Commissioner by order pursuant to Article IX as a result of the examination referenced in paragraph 5(g) above, following the conclusion of the proceedings required and permitted by Article IX.

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 may pursue any and all legal remedies available, including but not limited to the following: The Deputy Insurance Commissioner may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Deputy Insurance Commissioner may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, *supra*, or other relevant provision of law.

7. Alternatively, in the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Insurance 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.

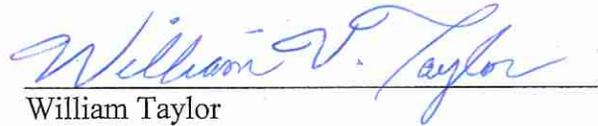
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order by the Insurance Department.

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 a duly authorized Deputy Insurance Commissioner 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 Deputy Insurance Commissioner.

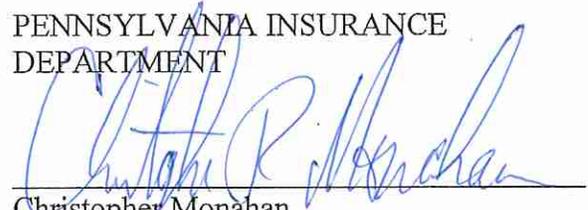
12. The signatory hereto on behalf of Respondent is duly authorized to execute this Consent Order and, by so doing, to bind Respondent to the terms hereof.

BY: PENNSYLVANIA COMPENSATION
RATING BUREAU, Respondent



William Taylor
President

BY: PENNSYLVANIA INSURANCE
DEPARTMENT



Christopher Monahan
Deputy Insurance Commissioner