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## BEFORE THE INSURANCE COMMISSIONER MEANINGS OF FIGURE OF THE COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:

JOHN G. B. ALLEN : Sections 611-A(11) and (20) of 1143 Scarborough Lane : Act 147 of 2002 (40 P.S. §§310.11)

Woodbury, MN 55121-9195

Section 1615(a) of the Surplus Lines Act, Act of May 17, 1921, P.L. 682 added by the Act of December 18, 1992, P.L. 1519 (40 P.S. § 991.1615)

Respondent. : Docket No. CO03-11-009

#### CONSENT ORDER

AND NOW, this 6th day of January, 2004, 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 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, <u>supra</u>, 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 John G. B. Allen, and maintains his address at 1143 Scarborough Lane, Woodbury, Minnesota 55121-9195.
  - (b) Respondent, at all times herein, has been a licensed insurance producer but did not possess a surplus lines license.
  - (c) Pertinent to a Consent Order, Docket No. CO00-03-026, Respondent was placed under the supervision of the Pennsylvania Insurance Department for five years on April 26, 2001, for the unlicensed sale of surplus lines insurance to eight Pennsylvania policyholders between May 19, 1997 and January 1, 1999.

- (d) Between June 1, 2001 and May 30, 2002, Respondent procured surplus lines insurance for four policyholders that were domiciled in, or maintained addresses in Pennsylvania: Dyberry Fireworks, Honesdale; Castiglione Fireworks Display, Analomink; China Lifht Oriental, New Castle; and David Twiss, Clarks Summit.
  - (e) The surplus lines insurance for the four policyholders were procured while Respondent was employed by Dolliff, Incorporated, St. Louis Park, Minnesota, a co-Respondent of the aforementioned Consent Order.
- (f) Neither Respondent, nor Dolliff, Incorporated, possessed licensing in Pennsylvania to procure surplus lines insurance on behalf of policyholders.
- (g) On August 22, 2003, the Pennsylvania Surplus Lines Association confirmed that no filings were received for the aforementioned insurance policies.
- (h) On October 3, 2003, Dolliff, Incorporated, provided documents showing

  Dyberry Fireworks was insured as follows: Stratford Insurance Company,

  policy GL00002360-D97, effective June 5, 2001; and Landmark American

  Insurance Company, policy #TER004105, effective June 1, 2002.

- (i) On October 3, 2003, Dolliff, Incorporated, provided documents showing Castiglione Fireworks Display was insured as follows: Stratford Insurance Company, policy #GL00002360-D88, effective May 30, 2001; Caliber One Insurance Company, policy #CAL000159201-D88, effective June 30, 2001; and Royal Surplus Insurance Company, policy #TER004130, effective April 27, 2002.
- (j) On October 3, 2003, Dolliff, Incorporated, provided documents showing China Light Oriental was insured as follows: Landmark American Insurance Company, policy #TER004039, effective December 2, 2001.
- (k) On October 3, 2003, Dolliff, Incorporated, provided documents showing David Twiss was insured as follows: Landmark American Insurance Company, policy #TER004049, effective April 10, 2002.
- (1) On October 28, 2003, Respondent confirmed he was employed by Dolliff, Incorporated, when the aforementioned surplus lines policies were procured and did so with the knowledge and consent of Dolliff, Incorporated.
- (m) Respondent confirmed that the policies were procured through John W.

  Tesseyman, III, Tesher Corporation of Tyler, Texas, who possessed no

  Pennsylvania licensing.

#### CONCLUSIONS OF LAW

- 4. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner concludes and finds the following Conclusions of Law:
  - (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance

    Department.
  - (b) Section 611-A(11) of Act 147 of 2002 prohibits a licensee from knowingly accepting insurance business which was sold, solicited or negotiated by a person who is not licensed as an insurance producer (40 P.S. § 310.11).
  - (c) Respondent's activities described above in paragraphs 3(c) through 3(h) constitute doing business with an unlicensed producer, in violation Section 611-A(11) of Act 147 of 2002 (40 P.S. § 310.11).
  - (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(h) violate Section 611-A(20) of Act 147 of 2002.
- (f) Respondent's violations of Sections 611-A(11) and (20) of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2003 (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 each violation of the Act;
  - (iii) an order to cease and desist; and
  - (iv) any other conditions as the Commissioner deems appropriate.
- (g) 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).
- (h) Respondent's activities described above in paragraphs 3(c) through 3(h) constitute transacting surplus lines insurance without being properly licensed.

- (i) Respondent's violations of Section 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**

- 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 and Conclusions of Law.
  - (b) Respondent shall pay a civil penalty of Seven Thousand Dollars (\$7,000.00) to the Commonwealth of Pennsylvania. This penalty shall be made payable to the Commonwealth of Pennsylvania, and directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1311 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 act of insurance producer, company, etc.,

  their employees and officers, including but not limited to testifying as a witness
  against any of the aforesaid entities, their employees and officers in any
  enforcement proceeding brought against same.
- (d) 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, or (ii) any other 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 five (5) 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 5(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 5(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.
- 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, 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, <a href="supraction-needed-need
- 7. Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy 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, <u>supra</u>, 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 Deputy Insurance
Commissioner. Only the Insurance Commissioner or the duly authorized Deputy
Insurance Commissioner 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 Deputy Insurance Commissioner.

BY:

JOHN G.B. ALLEN, Responden

RANDOLPH L. ROHRBAUGH

Deputy Insurance Commissioner Commonwealth of Pennsylvania

# BEFORE THE INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA

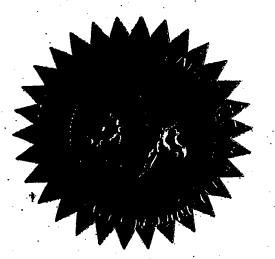
IN RE:

The Act of April 9, 1929, P.L. 177, No. 175, known as The

Administrative Code of 1929

AND NOW, this \_29 day of \_April\_, 2002, 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.



M. Drane Koken
Insurance Commissioner