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NOV 27 2023

*FW*

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Attorney General

Department of Insurance  
State of Idaho

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*Attorneys for Idaho Department of Insurance*

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE**

**STATE OF IDAHO**

IDAHO DEPARTMENT OF INSURANCE,

Complainant,

vs.

ADAM BERGER, an individual holding Idaho Non-Resident Producer License No. 9511497 and Idaho Non-Resident Surplus Lines Broker License No. 9511497,

Respondent.

Docket No. 18-4319-23

**ORDER OF DEFAULT**

The Director of the Idaho Department of Insurance (“Director”) having reviewed the record herein; and Adam Berger (“Berger”) who currently holds Idaho Non-Resident Producer License No. 9511497 and Idaho Non-Resident Surplus Lines Broker License No. 9511497, having been lawfully served the Verified Complaint and Notice of Right to Hearing (“Complaint”), a copy of which is attached hereto as Exhibit “A” and incorporated herein, and, as evident from the Affidavit of Michael Witry, having failed to file an answer thereto and having failed to request a hearing

regarding said Complaint; and the Director having found as a result thereof that Berger has waived his rights regarding the opportunity for hearing; and in consideration of the above;

IT IS HEREBY ORDERED that Idaho Non-Resident Producer License No. 9511497 and Idaho Non-Resident Surplus Lines Broker License No. 9511497 issued to Berger are REVOKED, effective immediately.

IT IS FURTHER ORDERED that Berger shall not be issued a new non-resident producer license or a non-resident surplus lines broker license under title 41, Idaho Code, for a period of five (5) years from the date of this Order, after which time, in the event Berger seeks a new non-resident producer license or Idaho non-resident surplus lines broker license, Berger must petition and show good cause why the prior revocations should not be deemed a bar to the issuance of any new Idaho insurance license.

IT IS FURTHER ORDERED that within thirty (30) days of the service date of this Order, Berger shall pay to the Idaho Department of Insurance an administrative penalty in the amount of \$25.00 for each day between April 2, 2023, and the date of this Order.

DATED this 27 day of November, 2023.

IDAHO DEPARTMENT  
OF INSURANCE



Dean L. Cameron,  
Director

### **NOTIFICATION REGARDING REPORTABLE PROCEEDINGS**

This is considered a reportable administrative proceeding. As such, it is a public record and is public information that may be disclosed to other states and reported to companies of which you are actively appointed. This information may be reported to other government agencies. Be aware that you may be required to disclose this proceeding on any license application, and you may be required to report this action to any and all states in which you hold a license.

### **NOTIFICATION OF RIGHTS**

This constitutes a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See Idaho Code § 67-5246(4).*

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal it by filing a petition for judicial review in the district court of the county in which: (1) the hearing was held; or (2) the final agency action was taken; or (3) the aggrieved party resides or operates its principal place of business in Idaho; or (4) the real property or personal property that was the subject of the agency decision is located. An appeal must be filed within twenty-eight (28) days of: (a) the service date of this final order, or (b) an order denying a petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See Idaho Code § 67-5273.* The filing of a petition for judicial review to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of November, 2023, I caused a true and correct copy of the foregoing ORDER OF DEFAULT to be served upon the following parties by the designated means:

Adam Berger 409 S. 83 <sup>rd</sup> Street Wes Des Moines, IA 50266-8519	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: <a href="mailto:berger.adamb@gmail.com">berger.adamb@gmail.com</a>
John Keenan Deputy Attorney General Idaho Department of Insurance 700 W. State St., 3 <sup>rd</sup> Floor PO Box 83720 Boise, ID 83720-0043	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: <a href="mailto:john.keenan@doi.idaho.gov">john.keenan@doi.idaho.gov</a>
Michael Witry Deputy Attorney General Idaho Department of Insurance 700 W. State St., 3 <sup>rd</sup> Floor PO Box 83720 Boise, ID 83720-0043	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: <a href="mailto:michael.witry@doi.idaho.gov">michael.witry@doi.idaho.gov</a>

  
KRISTINA R. WIETSTOCK

RAÚL LABRADOR  
Attorney General

MICHAEL WITRY, ISB #7960  
Deputy Attorney General  
Idaho Department of Insurance  
700 W. State Street, 3<sup>rd</sup> Floor  
PO Box 83720  
Boise, Idaho 83720-0043  
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[michael.witry@doi.idaho.gov](mailto:michael.witry@doi.idaho.gov)

**FILED**  
**OCT 26 2023**  
Department of Insurance  
State of Idaho

*Attorneys for Idaho Department of Insurance*

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE**  
**STATE OF IDAHO**

IDAHO DEPARTMENT OF INSURANCE,

Complainant,

vs.

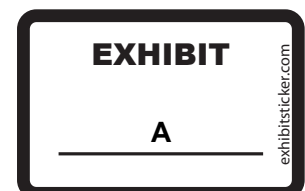
ADAM BERGER, an individual holding Idaho  
Non-Resident Producer and Surplus Lines  
Broker License NPN 9511497,

Respondent.

Docket No. 18-4319-23

**VERIFIED COMPLAINT AND  
NOTICE OF RIGHT TO HEARING**

COMES NOW, the staff of the Idaho Department of Insurance (“Department”), by and through its undersigned counsel, Deputy Attorney General Michael Witry, and does hereby give notice of verified allegations constituting violation(s) of Idaho law set forth below; notice that relief will be requested from the Director of the Department; a notice of the right to contest the allegations and requested relief; and the right to hearing to:



**ADAM BERGER**  
**Idaho Non-Resident Producer and**  
**Idaho Non-Resident Surplus Lines Broker License NPN 9511497**

The Department alleges the following facts and violations of title 41, Idaho Code, as itemized below. Respondent Adam Berger (“Respondent”) is further notified that within twenty-one (21) days after service of the Complaint, Respondent has the right to object to the allegations and requested relief by stating the basis for any objection and request that a hearing be scheduled, in writing to the Department. The Department will present an order to the Director seeking the relief described herein twenty-one (21) days following service of this *Verified Complaint and Notice of Right to Hearing* (“Complaint”) if no response is received from Respondent.

**JURISDICTION**

1. The Director of the Department has jurisdiction in the state of Idaho over matters involving insurance regulation and licensing in accordance with title 41, Idaho Code.

2. This administrative proceeding is brought under the provisions of Idaho Insurance Code, Idaho Code § 41-101 et seq., and Idaho Code §§ 41-210 and 41-213, which authorizes the Director to enforce the provisions of title 41 of the Idaho Code, including those governing Respondent’s activities as an insurance producer and surplus lines broker doing business in the state of Idaho, including, but not limited to, license revocation and the imposition of administrative penalties.

**RESPONDENT**

3. At all relevant times alleged herein, Respondent was an Iowa resident who was registered with the Department and held Idaho Non-Resident Insurance Producer License and Idaho Non-Resident Surplus Lines Broker License NPN 9511497, both issued on July 14, 2021, and expired on May 31, 2023.

## **CONTROLLING LAW**

4. Idaho Code § 41-1224(1)(a) and (d) provides that the Director may suspend or revoke any surplus line broker's license:

(a) If the broker fails to file his/her annual report or to remit the tax as required by this law; and

(d) For any other applicable cause for which a producer's license may be suspended or revoked.

5. Idaho Code § 41-1224(2) – (4) provides the following:

(2) The procedures provided by chapter 10, title 41, Idaho Code, for suspension or revocation of licenses shall apply to suspension or revocation of a surplus line broker's license *see* Idaho Code § 41-1016;

(3) Upon suspending or revoking the broker's surplus line license the director shall also suspend or revoke all other licenses of the same individual under this code; and

(4) No broker whose license has been so suspended or revoked shall again be so licensed until any fines or delinquent taxes owing by him have been paid, nor, in the case of revocation, until after expiration of one (1) year from date revocation became final.

6. Idaho Administrative Procedures Act ("IDAPA") 18.06.06.012 provides that each Broker will file an annual report with the Director by March 1st of each year, of surplus line business transacted during the previous calendar year on an approved form.

7. Idaho Code § 41-1230 provides that if any broker fails to file his/her annual report prior to the first day of April after the tax is due, the broker shall be liable for a fine of twenty-five dollars (\$25.00) for each day of delinquency commencing with the second day of April.

8. Idaho Code § 41-1016(5) provides that the Director shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by title 41, Idaho Code, against any person who is under investigation for or charged with a violation of title 41, Idaho Code or department rule, even if the person's license or registration has been surrendered or has

lapsed by operation of law.

## **COUNT I**

9. The foregoing paragraphs are realleged and incorporated as if set forth in full.

10. Respondent did not file an annual report of surplus lines business by March 1, 2023.

11. On March 30, 2023, the Department sent a notice of late filing to Respondent via his last known email address. No response was received from Respondent.

12. On July 10, 2023, the Department sent a second notice of late filing to Respondent via his last known home and business email addresses. No response was received from Respondent.

13. On July 28, 2023, the Department sent a demand letter to Respondent via certified mail to the last known address on file with the Department. No response was received from Respondent.

14. As of the undersigned date, Respondent has not filed his annual report of surplus lines business for 2022 as required.

15. Respondent has violated Idaho Code § 41-1224(a) by failing to file an annual report of surplus line business transacted during 2022 in violation of IDAPA 18.06.06.012.

16. Pursuant to Idaho Code §§ 41-1224(3) and (4), the Department seeks to revoke Respondent's Idaho Non-Resident Insurance Producer License and Idaho Non-Resident Surplus Lines Broker License NPN 9511497. Respondent shall not be so licensed until all fines and/or delinquent taxes owing by Respondent have been paid and until after expiration of one (1) year from the effective date of the Order of Revocation.

### **PRAYER FOR RELIEF**

Based on the foregoing facts and allegations, the Department prays for relief as follows:

1. For an Order revoking Respondent's Idaho Non-Resident Producer License and Idaho Non-Resident Surplus Lines License NPN 9511497;
2. Respondent shall not be so licensed under title 41, Idaho Code until all fines and/or delinquent taxes owing by Respondent have been paid and until after expiration of one (1) year from the effective date of the Order of Revocation.
3. For an Order imposing a fine against Respondent in the amount of \$25.00 for each day between April 2, 2022, and the date of the Order;
4. For such other and further relief as the Director deems just and necessary under the circumstances.

### **NOTIFICATION OF RIGHT TO HEARING**

#### **TO: RESPONDENT, ADAM BERGER:**

Pursuant to Idaho Code § 41-232A, you have the right to a hearing on this matter. In order to exercise this right, a written request for a hearing must be filed and served upon the Department within twenty-one (21) days after service of this Complaint. Failure to file and serve a written request for a hearing upon the Department within the 21-day time period shall be deemed a waiver of the opportunity for a hearing and to contest the allegations in the Complaint, pursuant to Idaho Code § 41-232A(2). If you fail to submit a timely written response to the allegations within 21 days of the service of this Complaint, a final order will be entered imposing the relief described above.

Any written request for a hearing shall be served on the Director of the Idaho Department of Insurance, addressed as follows:

Dean L. Cameron, Director  
Idaho Department of Insurance  
P.O. Box 83720  
Boise, ID 83720-0043

A copy shall also be provided to the Department's counsel in this matter at the following address:

Michael Witry  
Deputy Attorney General  
Idaho Department of Insurance  
P.O. Box 83720  
Boise, ID 83720-0043

In lieu of a hearing, this matter may be resolved by negotiation, stipulation, agreed settlement, or consent order, pursuant to Idaho Code § 67-5241(1)(c). Should you wish to discuss these options, please contact the undersigned deputy attorney general.

DATED this 26<sup>th</sup> day of October, 2023.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL



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MICHAEL WITRY  
Deputy Attorney General  
Attorneys for Idaho Department of Insurance

## VERIFICATION


STATE OF IDAHO    )  
                              )ss.  
County of Ada        )

I, Lynn Shelton, Premium Tax Specialist for the Idaho Department of Insurance, being first duly sworn, deposes and states as follows:

I am an authorized representative of the Complainant, Idaho Department of Insurance, in the above entitled action, and I have the authority to sign this verification on its behalf.

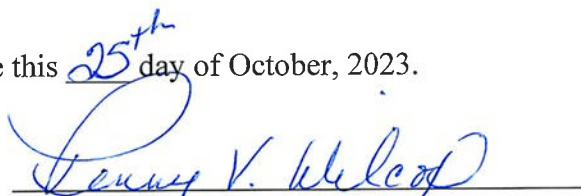
I have read the foregoing Verified Complaint and Notice of Right to Hearing and know the contents thereof. Under penalty of perjury pursuant to the laws of the State of Idaho, verify that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED this 25<sup>th</sup> day of October, 2023.

  
Lynn Shelton, APIR  
Idaho Department of Insurance

SUBSCRIBED AND SWORN to before me this 25<sup>th</sup> day of October, 2023.

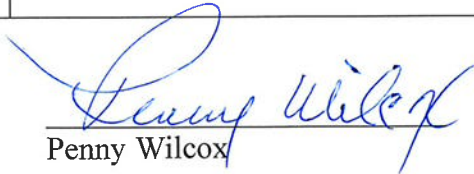


  
NOTARY PUBLIC, State of Idaho  
Residing at: Ada County  
My Commission Expires: 07/02/2027

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of October, 2023, I caused a true and correct copy of the foregoing VERIFIED COMPLAINT AND NOTICE OF RIGHT TO HEARING to be served upon the following parties by the designated means:

Adam Berger 409 S. 83 <sup>rd</sup> Street Wes Des Moines, IA 50266-8519	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: <u>berger.adamb@gmail.com</u>
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Michael Witry Deputy Attorney General Idaho Department of Insurance 700 W. State St., 3 <sup>rd</sup> Floor PO Box 83720 Boise, ID 83720-0043  <i>Counsel for Department of Insurance</i>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: <u>michael.witry@doi.idaho.gov</u>

  
Penny Wilcox