

LAWRENCE G. WASDEN
Attorney General

JOHN C. KEENAN (ISB No. 3873)
Deputy Attorney General
Idaho Department of Insurance
700 West State Street
P.O. Box 83720
Boise, ID 83720-0043
Telephone: (208) 334-4283
Fax: (208) 334-4298
john.keenan@doi.idaho.gov

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Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:

HOLE IN WON LLC, a state of Connecticut
limited liability company,

RESPONDENT.

Docket No. 18-3527-18

**CEASE AND DESIST ORDER
AND NOTICE**

TO: HOLE IN WON LLC, a state of Connecticut limited liability company;
DAVID KLEIN, owner; and CHRISTIAN VALENZUELA, owner:

Pursuant to the authority granted to the Director of the Idaho Department of Insurance ("Department") by the Idaho Insurance Code, title 41, Idaho Code, in particular section 41-213(1)(a), in addition to the Administrative Procedures Act, title 67, chapter 52, Idaho Code, the Director of the Department issues this CEASE AND DESIST ORDER without prior notice but with the opportunity for hearing based upon the following:

IDAHO LAW

Idaho law defines the term “insurance” as a “contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies.” Section 41-102, Idaho Code. The transaction of insurance includes any of the following:

- (1) Solicitation and inducement.
- (2) Preliminary negotiations.
- (3) Effectuation of a contract of insurance.
- (4) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.
- (5) Mailing or otherwise delivering any written solicitation to any person in this state by an insurer or any person acting on behalf of the insurer for fee or compensation.

Section 41-112, Idaho Code. No person shall act as an insurer and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the Director. *See*, section 41-305, Idaho Code.

In addition, no person in the state of Idaho shall sell, solicit, or negotiate insurance unless that person is licensed as a producer in accordance with title 41, chapter 10, Idaho Code.

Idaho Code § 41-213(1)(a) authorizes the Director to issue an order requiring a person to cease and desist from engaging in any act or practice constituting a violation of the Idaho Insurance Code.

Idaho Code § 67-5247 provides that an agency may act through an emergency proceeding in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

RESPONDENT

1. HOLE IN WON LLC (“HOLE IN WON”) is a state of Connecticut domestic limited liability company. According to records on file with the Connecticut Secretary of State, HOLE IN WON has a business address of Radcliffe House, Radcliffe Street, St. Johns, Antigua Barbuda, 06820, Antigua, Barbuda, and a mailing address of 25 13 Old Kings Highway, Darien, CT 06820, which mailing address is corrected per the United States Postal Service website zip code lookup to 25 Old Kings Hwy N., Ste. 13, Darien, CT 06820-4608. Records on file with the Connecticut Secretary of State identify the owner of HOLE IN WON as DAVID KLEIN. The website for HOLE IN WON (www.hole-in-won.com) lists the company’s principals as DAVID KLEIN, owner, and CHRISTIAN VALENZUELA, owner. The website also provides an email contact address of vp@hole-in-WON.com.

FINDINGS OF FACT

2. On or about August 1, 2017, an Idaho resident that sponsored a golf tournament entered into an insurance contract with HOLE IN WON to insure a charity disc golf tournament. The tournament took place on August 12, 2017. The insurance premium was \$500.00 and was paid via credit card online at www.hole-in-won.com.

3. The purpose of the contract was to insure a certain prize, which was to be given under certain contractual conditions in the event one of the participants in the tournament hit a hole-in-one. The value of the prize was in the form of a vehicle valued at \$13,000.00. The Idaho resident also purchased signage and logos from www.hole-in-won.com.

4. The prize and the charity disc golf tournament were advertised to the general public.

5. On the date of the tournament, one of the contestants hit a hole-in-one.

6. Under the contract referenced hereinabove, HOLE IN WON assumed the risk of the paying the prize as agreed.

7. HOLE IN WON failed to fulfill its obligation under the insurance contract in question.

8. At the time HOLE IN WON entered into the contract with the Idaho resident, HOLE IN WON was engaged in the transaction of insurance in the state of Idaho without a subsisting certificate of authority issued by the Director of the Department; and, in the alternative, HOLE IN WON and its owners, principals, employees and agents were not properly licensed as a producer as issued by the Director of the Department.

9. Due to the fact that HOLE IN WON failed to pay the loss suffered and the fact that HOLE IN WON is not properly authorized to enter into such contracts in the state of Idaho, immediate and timely action is necessary to prevent further harm to the public and to take immediate steps to prevent HOLE IN WON from doing any further unlicensed activity within the state of Idaho.

CONCLUSIONS OF LAW

10. Based on the facts as set forth above, the Director concludes as a matter of law that:

- a. HOLE IN WON is engaged in the business and transaction of insurance as defined in sections 41-102 and 41-112, Idaho Code; and
- b. HOLE IN WON does not possess a certificate of authority as required under section 41-305, Idaho Code;
- c. HOLE IN WON is not properly licensed as a producer as required under section 41-1004, Idaho Code;

- d. HOLE IN WON is operating as an unauthorized insurer and immediate action is needed to prevent present and future damage and further abuse;
- e. HOLE IN WON is not registered with the office of the Idaho Secretary of State, and has no apparent offices nor a registered agent located in the state of Idaho; and,
- f. Immediate action is necessary to avoid further harm to the citizens of the state of Idaho and any other participants in charitable tournaments that would otherwise engage HOLE IN WON as providing insurance for a hole-in-one contest. By entering a Cease and Desist Order, the undersigned is fulfilling his duty under section 41-213(1)(a), Idaho Code, and acting in the best interest of the public, by requiring HOLE IN WON to cease and desist from the prohibited acts stated herein. As the law provides for immediate due process after entry of a cease and desist order by giving HOLE IN WON a timely opportunity to be heard on the Cease and Desist Order and issues related thereto, it is appropriate to enter the Cease and Desist Order.

Based on the foregoing findings of fact and conclusions of law, the Director enters the following order:

ORDER TO CEASE AND DESIST

NOW, THEREFORE, acting pursuant to the public interest and Idaho Code § 41-213(1)(a), it is hereby **ORDERED** that HOLE IN WON LLC, its principals, including but not limited to DAVID KLEIN, owner, and CHRISTIAN VALENZUELA, owner, and its management, officers, employees, agents and successors, immediately **CEASE AND DESIST** from operating or functioning in any way as an INSURER in the state of Idaho without first being licensed and obtaining a certificate of authority, as defined and as required under Title 41, Chapter 3, Idaho Code; and

IT IS FURTHER ORDERED that HOLE IN WON LLC, its principals, including but not limited to DAVID KLEIN, owner, and CHRISTIAN VALENZUELA, owner, and its management, officers, employees, agents, and successors, immediately CEASE AND DESIST from operating or functioning in any way as a PRODUCER in the state of Idaho without first being duly licensed, as defined and as required under Title 41, Chapter 10, Idaho Code, or other applicable sections of the Idaho Insurance Code, Title 41, Idaho Code, and the rules promulgated thereunder.

NOTICE

HOLE IN WON LLC IS HEREBY NOTIFIED that this Cease and Desist Order is a final order of the Director, subject to the Respondent's right to timely file a **motion for reconsideration** or a **request for hearing**. Pursuant to §§ 41-232 and 67-5246, Idaho Code, the Respondent may file a motion for reconsideration of this Cease and Desist Order or a request for hearing within fourteen (14) days of the service of this Order.

Any hearing and subsequent proceedings in this matter will be conducted in accordance with Title 41, Chapter 2, of the Idaho Code and the Idaho Administrative Procedure Act, Idaho Code § 67-5201, *et seq.*

If the Respondent timely files a **motion for reconsideration**, the Department will dispose of such motion within twenty-one (21) days of its receipt, or the motion will be considered denied by operation of law, pursuant to Idaho Code § 67-5246(4).

If the Respondent timely files a **request for hearing**, the Respondent will be notified of the date, time and place of the hearing, as well as the name of the presiding officer. At the hearing, the Respondent will be entitled to enter an appearance, introduce evidence, examine and

cross-examine witnesses, make arguments, and generally participate in the conduct of the proceedings. The Respondent may also be represented by legal counsel at its own expense.

Any motion for reconsideration or request for hearing must be timely made in writing, addressed to:

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, Idaho 83720-0043

With a copy sent to:

John C. Keenan
Deputy Attorney General
Idaho Department of Insurance
P.O. Box 83720
Boise, Idaho 83720-0043

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this Final Order may appeal from such order to the district court by filing a petition in the district court of the county in which:

- a. a hearing was held;
- b. the final agency action was taken;
- c. the party seeking review of the order resides, or
- d. the real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days: (a) of the issuance of this Order, (b) of the issuance of an order denying a motion for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. Idaho Code § 67-5273(2). The filing of an appeal to the district court does not itself stay the effectiveness of enforcement of the order being appealed.

IT IS SO ORDERED.

DATED and EFFECTIVE this 10 day of August, 2018.

STATE OF IDAHO
DEPARTMENT OF INSURANCE

A handwritten signature in black ink, appearing to read "Dean L. Cameron", written over a horizontal line.

DEAN L. CAMERON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 10th day of August 2018, caused a true and correct copy of the foregoing CEASE AND DESIST ORDER AND NOTICE to be served upon the following by the designated means:

David Klein
HOLE IN WON LLC
Radcliffe House
Radcliffe Street
St. Johns Antigua Barbuda, 06820
Antigua, Barbuda
vp@hole-in-WON.com

- ☐ first class mail
- ☐ certified mail
- ☐ hand delivery
- ☐ via facsimile
- ☒ via email

HOLE IN WON LLC
25 13 Old Kings Highway
Darien, CT 06820

- ☒ first class mail
- ☐ certified mail
- ☐ hand delivery
- ☐ via facsimile
- ☐ via email

HOLE IN WON LLC
25 Old Kings Highway N., Ste. 13
Darien, CT 06820-4608

- ☒ first class mail
- ☐ certified mail
- ☐ hand delivery
- ☐ via facsimile
- ☐ via email

Connecticut Insurance Department
Katharine L. Wade, Commissioner
P.O. Box 816
Hartford, CT 06142-0816

- ☒ first class mail
- ☐ certified mail
- ☐ hand delivery
- ☐ via facsimile
- ☐ via email

John C. Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

- ☐ first class mail
- ☐ certified mail
- ☒ hand delivery
- ☐ via facsimile
- ☐ via email


Pamela Murray
Assistant to the Director