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FILED
DEC 17 2019
Department of Insurance
State of Idaho

Attorneys for the Department of Insurance

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:

JASON A. WITTHUN

Nonresident Surplus Lines Broker License
No. 629671 and Nonresident Producer
License No. 629647

Docket No. 18-3700-19

**STIPULATION AND MOTION TO
SET ASIDE DEFAULT;
FINAL ORDER**

COMES NOW the staff of the Idaho Department of Insurance (the "Department") and Jason A. Witthun ("Witthun") and hereby stipulate and move the Director of the Idaho Department of Insurance (the "Director") for an order setting aside the Order of Default entered in this matter on November 19, 2019, on the following basis.

BACKGROUND

1. As reflected by the record in this matter, on October 10, 2019, the Department served a Verified Complaint and Notice of Right to Hearing ("Complaint") on Witthun by first class mail at his address of record in Honolulu, Hawaii. The Department's Complaint sought

revocation of Witthun's Idaho insurance licenses based on Witthun's failure to timely file an annual report of all surplus lines business transacted by him during calendar year 2018, as required by Idaho Code § 41-1228.

2. Prior to initiating such formal action, the Department attempted to contact Witthun by mail to allow him the opportunity to voluntarily surrender his Idaho insurance licenses, as more particularly described in the Complaint.

3. On or about October 21, 2019, the Department's Complaint mailed to Witthun's Honolulu address was returned by the United States Postal Service, reflecting a new address for Witthun at an apartment in Las Vegas, Nevada. On the same date, the Department re-served its Complaint by first class mail to the Las Vegas apartment.

4. Pursuant to Idaho Code § 41-232A, Witthun had twenty-one (21) days, or until November 12, 2019, to request a hearing on the Department's Complaint.

5. The Department, having received no response or request for hearing from Witthun, submitted an Order of Default for the Director's consideration, revoking Witthun's Idaho surplus lines broker license and producer license and imposing a fine of \$25 per day for failing to file the annual report.

6. The Director entered the Order of Default on November 19, 2019. As reflected by the certificate of service, the Order of Default was served on Witthun by first class mail to his Las Vegas apartment, as well as to a new business address of record, also in Las Vegas.

7. On December 5, 2019, Witthun contacted counsel for the Department, stating that he received the Order of Default through his employer in Las Vegas, and further stating that to date he had not received the Complaint or Order of Default mailed to his Las Vegas apartment nor

the Department's earlier correspondence offering the opportunity to voluntarily surrender his Idaho licenses.

AGREEMENT

8. Based upon the foregoing, the Department and Witthun hereby stipulate and agree as follows:

a. That the Order of Default entered in this matter on November 19, 2019, be set aside; and

b. That Witthun admits to failing to file an annual report for calendar year 2018, in violation of Idaho Code § 41-1228(1); and

c. That Witthun shall be permitted to voluntarily surrender his Idaho Nonresident Surplus Lines Broker License No. 629671 and Idaho Nonresident Producer License No. 629647, to which end Witthun has executed and submitted herewith voluntary surrender forms; and

d. That Witthun shall not be eligible to apply for any license authorized under title 41, Idaho Code, for a period of five (5) years from the date of entry of the Director's Final Order approving this Stipulation; and

e. That in the event Witthun applies for a license under title 41, Idaho Code, after the expiration of such five-year period, he shall be required to show good cause why the violation of Idaho Code § 41-1228(1) shall not be deemed a bar to the issuance of a new license; and

f. That the Department waives the \$25-per-day fine previously assessed against Witthun, pursuant to Idaho Code § 41-1230, for failure to file an annual report for calendar year 2018.

9. The parties agree that this is a full and final settlement of the issues raised in the Department's Complaint, and enter into this Stipulation freely and voluntarily, after having had the opportunity to consult with counsel of their choice, and with full understanding of the legal consequences of this Stipulation and the Final Order approving this Stipulation..

10. By entering into this Stipulation, the parties knowingly and voluntarily waive any rights they may have to dispute the issues of fact and law raised in the above-entitled matter, including but not limited to the rights afforded by Idaho Code § 41-232A, which provides for the right to a hearing, and the right to seek judicial review or appeal the Final Order entered herein.

11. Witthun understands that this Stipulation and the Final Order approving this Stipulation shall be reported to the Regulatory Information Retrieval System ("RIRS") maintained by National Association of Insurance Commissioners ("NAIC"), and that Witthun may be required to disclose this proceeding on license applications and may be required to report this action to other jurisdictions in which he holds an insurance license.

12. This Stipulation embodies the entire agreement between the Department and Witthun, and there are no agreements, understandings, representations or warranties that are not expressly set forth herein.

13. This Stipulation is subject to approval by the Director and shall become effective and binding upon the Department and Witthun upon such approval. Should the Director decline to approve this Stipulation, the Department and Witthun shall retain all their rights, claims and/or defenses, and any factual and/or legal admissions made by Witthun herein shall be withdrawn.

AGREED this 12 day of December, 2019.


JASON A. WITTHUN

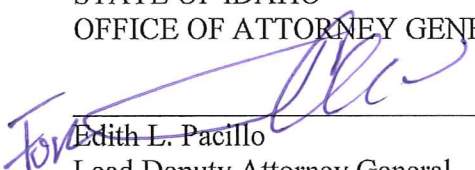
AGREED this 16 day of December, 2019.

STATE OF IDAHO
DEPARTMENT OF INSURANCE


WESTON TREXLER
Deputy Director

Approved as to form.

STATE OF IDAHO
OFFICE OF ATTORNEY GENERAL


Edith L. Pacillo
Lead Deputy Attorney General
Attorney for the Idaho Department of Insurance

FINAL ORDER

The Director having considered the foregoing Stipulation and Motion, and having reviewed the completed voluntary surrender forms executed by Jason A. Witthun, and finding that good cause appears therefor,

IT IS HEREBY ORDERED that the foregoing Stipulation and Motion of the parties is approved; and

IT IS FURTHER ORDERED that the Order of Default entered in this matter on November 19, 2019, is SET ASIDE; and

IT IS FURTHER ORDERED that Jason A. Witthun's voluntary surrender of Idaho Nonresident Surplus Lines Broker License No. 629671 and Idaho Nonresident Producer License No. 629647 is ACCEPTED; and

IT IS FURTHER ORDERED that Witthun shall not apply for any license authorized under title 41, Idaho Code, for a period of five (5) years from the date of entry of this Final Order; and

IT IS FURTHER ORDERED that, in the event Witthun applies for a license under title 41, Idaho Code, after the expiration of such five-year period, he shall be required to show good cause why the violation of Idaho Code § 41-1228(1) shall not be deemed a bar to the issuance of a new license; and

IT IS FURTHER ORDERED that the \$25-per-day fine authorized by Idaho Code § 41-1230 for Witthun's failure to file an annual report for calendar year 2018 is WAIVED.

IT IS SO ORDERED.

DATED AND EFFECTIVE this 17 day of December, 2019.

STATE OF IDAHO
DEPARTMENT OF INSURANCE



DEAN L. CAMERON
Director

NOTIFICATION OF RIGHTS

This is 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 motion for reconsideration within twenty-one (21) days of its receipt, or the motion will be considered denied by operation of law. See Idaho Code § 67-5246(4).

Any such motion for reconsideration shall be served on the Director of the Idaho Department of Insurance, addressed as follows:

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

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may file a petition for judicial review in the district court of the county in which:

- i. A hearing was held;
- ii. The final agency action was taken;
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho; or
- iv. The real property or personal property that was the subject of the agency action is located.

A petition for judicial review must be filed within twenty-eight (28) days of: (a) the service date of this final order, (b) the service of an order denying motion for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a motion for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of a petition for judicial review 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 17th day of December, 2019, I caused a true and correct copy of the foregoing fully executed STIPULATION AND MOTION TO SET ASIDE ORDER OF DEFAULT; FINAL ORDER to be served upon the following by the designated means:

Jason A. Witthun
Arthur J. Gallagher & Co.
777 N. Rainbow Blvd.
Las Vegas, NV 89107-1185
Jason_Witthun@ajg.com

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

Edith L. Pacillo
Lead Deputy Attorney General
Idaho Department of Insurance
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Pamela Murray