COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR'S OFFICE
HELENA, MONTANA

| | |
|---|---|
| IN THE MATTER OF THE PROPOSED AGENCY ACTION REGARDING THE INSURANCE PRODUCER LICENSE OF EUGENE LAVEY, LICENSE # 27042. | CASE NO. INS-2010-76<br><br>FINAL AGENCY DECISION, ORDER, AND NOTICE OF NECESSITY TO FILE EXCEPTIONS |

The Commissioner of Insurance and Securities, office of the Montana State Auditor (Commissioner), having reviewed and considered the matters set forth in the Application for Final Agency Decision submitted by the Department of Insurance (Department), by and through its legal counsel, Jameson C. Walker, the Notice of Entry of Default Judgment, and the complete record, the Commissioner issues the following:

## FINDINGS OF FACT

1. Eugene Lavey (Respondent) was an appointed insurance agent with Farmers Insurance Company (Farmers) during all relevant periods. Exhibit A, Farmers Letter and Referral File. Respondent sold Farmers insurance products and collected policyholders' premium payments at his office in Scobey, Montana. Exhibit A, Farmers Letter and Referral File.

2. As a mail-in agent, Farmers contractually required Respondent to deposit cash premium into an independent trust account. Exhibit B, Agent Appointment Agreement. *See also* Exhibit C, Farmers' Agency Operations Policies. The contract required Respondent to send a

check for the total cash amount collected and all other check collections to Farmers. Exhibit B, Agent Appointment Agreement. *See also* Exhibit C, Farmer's Agency Operations Policies. According to Respondent, Farmers required Respondent to perform this task within two days of receipt. Exhibit D, Affidavit of Neil Brunett, ¶ 9(f).

3. On April 22, 2009, Farmers audited Respondent's insurance records. Exhibit A, Farmers Letter and Referral File. He had not forwarded $22,448.00 in premium payments at that time. Exhibit A, Farmers Letter and Referral File.

4. Farmers' auditor found $13,510.30 in undeposited premium checks at Respondent's office. Exhibit A, Farmers Letter and Referral File. However, the remaining $8,937.70 could not be located and Respondent could not account for these missing funds. Exhibit A, Farmers Letter and Referral File.

5. The audit further revealed Respondent kept premium payments in his personal bank account and not in an independent trust account. Exhibit A, Farmers Letter and Referral File.

6. On May 17, 2009, Farmers terminated Respondent. Exhibit A, Farmers Letter and Referral File.

7. On November 11, 2009, the Department received a complaint from Farmers alleging Respondent misappropriated premium payments. Exhibit A, Farmers Letter and Referral File.

8. The Department assigned Investigator Neil Brunett (Brunett). Exhibit D, Affidavit of Neil Brunett, ¶ 2. Brunett relied on standard investigation methods, requesting information from Respondent, his insurance business, and Farmers. Exhibit D, Affidavit of Neil Brunett, ¶ 3.

9. On December 13, 2009, the Department's investigators interviewed Respondent. Exhibit D, Affidavit of Neil Brunett, ¶ 7. At the interview, Respondent admitted he deposited policyholders' premium payments into his personal banking account and he used premium

payments for his personal use, although he could not say the exact amount. Exhibit D, Affidavit of Neil Brunett, ¶ 7.

10. The Department obtained Respondent's personal bank records. Exhibit D, Affidavit of Neil Brunett, ¶ 8. The records revealed that between May 1, 2008, through April 30, 2009, Respondent personally used $56,514.55 in policyholders' premium on approximately 219 separate instances. Exhibit D, Affidavit of Neil Brunett, ¶ 8.

11. The Department's investigators conducted a follow-up interview on April 15, 2010. Affidavit of Brunett ¶ 9; *See also* Exhibit F, Interview of Eugene Lavey (April 15, 2010). Respondent stated that he was going through some mental health issues and was living outside his means. Exhibit D, Affidavit of Neil Brunett, ¶ 9(b). He again admitted he used policyholders' premium payments for personal use. Exhibit D, Affidavit of Neil Brunett, ¶ 9(a).

12. Respondent explained while he would immediately credit policyholders in Farmers' computer system, he would wait before forwarding the payments. Exhibit D, Affidavit of Neil Brunett, ¶ 9(c). He did this because he did not have enough funds to cover all outstanding premiums. Exhibit D, Affidavit of Neil Brunett, ¶ 9(d). Respondent admitted he used money coming in from newer payments to pay older amounts and this process continued until Farmers audited his records. Exhibit D, Affidavit of Neil Brunett, ¶ 9(e).

13. Respondent admitted he knew using policyholders' premium payments for personal use violated the Montana Insurance Code. Exhibit D, Affidavit of Neil Brunett, ¶ 9(g).

14. On or around June 29, 2010, the Department filed a Temporary Cease and Desist Order against Respondent, sending it by certified mail. Exhibit E, Temporary Cease and Desist Order (Jun. 29, 2010).

15. On or around June 30, 2010, Mary Lavey, owner of Lavey Insurance and Respondent's employer, accepted the certified mail as evidenced by the receipt. Exhibit F, Receipt of Certified Mail.

16. Respondent sent a letter to the department dated July 12, 2010. The letter stated, in part, that he did not own Lavey Insurance. Exhibit G, Letter to the Department (Jul. 12, 2010).

17. On or around July 28, 2010, the Department filed an Amended Temporary Cease and Desist Order and sent it to Respondent by certified mail. Exhibit H, Amended Temporary Cease and Desist Order (Jul. 28, 2010).

18. On or around July 30, 2010, Respondent accepted the certified mail, as evidenced by his signature on the receipt. Exhibit I, Receipt of Certified Mail.

19. Respondent failed to request a hearing within the 15 days provided in the Amended Temporary Cease and Desist Order.

20. A Request for Entry of Default was filed on October 28, 2010, and served upon Respondent.

21. Notice of Entry of Default was entered against the Respondent on October 28, 2010, and served upon Respondent.

Based upon the foregoing Findings of Fact, the Commissioner hereby makes the following:

## CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance (Commissioner) pursuant to Mont. Code Ann. § 2-15-1903.

2. The Department of Insurance (Department) is under the control and supervision of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

3. The Commissioner shall administer the Department to protect insurance consumers. Mont. Code Ann. § 33-1-311(3).

4. The Commissioner and the Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.

5. Pursuant to Mont. Code Ann. § 33-1-102(1), a person or entity may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*

6. Respondent violated Mont. Code Ann. § 33-1-1302(8) by purposely and knowingly misappropriating $56,514.55 of policyholders' premium payments on approximately 219 separate occasions for his personal use.

7. Respondent violated Mont. Code Ann. § 33-17-1102 by purposely and knowingly depositing $56,514.55 in premium payments on approximately 219 separate occasions into his personal bank account and not in a separate trust account.

## ORDER

From the foregoing Findings of Fact and Conclusions of Law, the Commissioner enters the following Order:

1. Respondent's insurance producer's license is revoked for the following violations:
   (a) purposely and knowingly misappropriating $56,514.55 of policyholders' premium payments on approximately 219 separate occasions for his personal use; and
   (b) purposely and knowingly depositing $56,514.55 in premium payments on approximately 219 separate occasions in his personal bank account and not in a separate trust account.

**NOTICE OF NECESSITY TO FILE EXCEPTIONS**

**(TO THESE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**WITHIN 30 DAYS OF THE DATE OF THIS DECISION)**

Pursuant to the Montana Administrative Procedure Act at Mont. Code Ann. § 2-4-623, adversely affected parties in this case have the opportunity to file written exceptions with supporting briefs and to present an oral argument to the Commissioner of Securities and Insurance or her designee. If a party does not file exceptions to the above Findings of Fact, Conclusions of Law and Order with the Office of the Commissioner of Securities and Insurance, Montana State Auditor, at 840 Helena Ave., Helena, MT 59601, within 30 days of the date of this decision, this will constitute a waiver of an adversely affected party's right to judicial review of this decision pursuant to Mont. Code Ann. § 2-4-702. Exceptions must be filed in order to exhaust all administrative remedies available to any party who believes he/she is aggrieved by this decision.

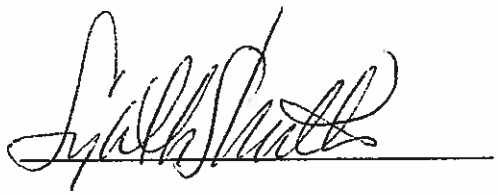
SO ORDERED this 10th day of November, 2010.

**MONICA J. LINDEEN**
Commissioner of Securities and Insurance
Office of the Montana State Auditor

## CERTIFICATE OF SERVICE

I do hereby certify I served a copy of the foregoing Final Agency Decision and Order upon all parties of record on the 16 day of November, 2010, by U.S. Mail or hand delivering a copy thereof to:

Eugene Lavey
308 Timmons St.
Scobey, MT 59263



FARMERS

2500 South 5th Ave
Pocatello, ID 83201
Bus. (208) 234-8297
Fax (208) 904-4660

November 11, 2009

Barbara van der Mars
Montana Department of Insurance
840 Helena Avenue
Helena, MT 59601

Dear Ms. van der Mars:

See the enclosed documents of an audit performed with former agent Eugene Lavey in which he could not account for over $8900.00 in cash payments. Since the audit, all monies due to the company have been paid back.

Please contact me at 208-234-8297 or by email at terry.tharp@farmersinsurance.com, if you have any questions.

Thank you,

Terry W. Tharp

Terry W Tharp
Senior Auditor
Farmers Insurance

EXHIBIT
A

# Referral File – Farmers

| | |
|---|---|
| Nature of Referral: | Misappropriations of Cash |
| Time Period of Misappropriation: | March 2009 – April 2009 |
| Total Dollar Amount Misappropriated and Reimbursed: | $8,937.70 |
| Location Occurrence Committed | Eugene Lavey<br>Farmers Insurance Agency<br>101 Main Street<br>Scobey, MT 59263<br>(406) 487-5012 |
| Reporting: | Terry Tharp<br>2500 South 5th Ave.<br>Pocatello, ID 83201<br>(208) 234-8297<br><br>Conducted audit/investigation, report preparation |

## Former Agent Information – Farmers

| | |
|---|---|
| Former Agent: | Eugene Lavey<br>aka Tip Lavey |
| Date of Birth: | 12/30/1959 |
| Agent's License # | 27042 |
| Driver's License # | MT 516929269 |
| Residence Address: | 109 Janus Street<br>Scobey, MT 59263 |
| Mailing Address: | Same |
| Business Address (current): | 101 Main Street<br>Scobey, MT 59263 |
| Phone Numbers: | (406) 487-2242 Home<br>(406) 487-5012 Work |
| Date Hired/Appointed | 12/1/1999 |
| Date of Termination: | 5/27/09 |

# Glossary of Terms – Farmers

**Agent's Credit Advice (ACA)**
The ACA program gathers premium payment information entered by the agent or their staff. This system is used to perform daily updates of policyholder receivable accounts, and an electronic reconciliation of premium payments collected to premium payments deposited to the Company-authorized bank account.

**Agent**
Farmers' agents are not employees. They are independent contractors who are appointed to represent one or more of the Farmers' companies. They are recruited, trained and managed by District Managers.

**Co/Banking**
The Co/Banking account is a deposit only bank account owned Farmers Insurance Group. Agents have deposit access only and are required to deposit premium monies into this account.

**Premium Trust Account**
Agents maintain a personal bank account to be used for the sole purpose of holding customer premiums in trust. No other funds should be kept in this account.

A Farmers agent would maintain this account for two reasons:

- To deposit an insured's premium payment for a non-Farmers policy. The agent, in turn, writes a check to the outside company for the premium.

- The agent is located more than seven miles from a Company-authorized bank. To minimize handling or processing errors, the agent deposits all cash premium collections into their trust account, and then write a check for the total cash amount collected. The agent mails the premium trust account check with all other check collections to one of the Company-authorized banks (use premium trust account check since cash should not be mailed). The agents are required to complete this process daily.

## INFORMATION REGARDING FARMERS PROCEDURES

The following describes in general terms how Farmers Insurance Group of Companies' system of premium remittance operates for payments through the agency force.

There are a number of training programs offered by the company for agents, many of which are mandatory. Farmers' agents must operate in accordance with the terms of their agency contract and company policy and procedures as well as all applicable state insurance codes.

Our agents are paid a commission on a monthly basis. The agent does not withhold commissions from premium remittance. Thus, the agent is to remit 100% of the premium they collect on behalf of Farmers Insurance Group of Companies.

When an insured pays a new business or renewal premium at an agency, the agent or his office assistants must prepare a receipt. There are only two types of receipts that can be used, and they are as follows:

1. Three-part, carbonized, sequentially numbered receipt – Manual.
    a. The Agent maintains the original receipt, which is kept with the Agent's Credit Advice (ACA) recap.
    b. The insured is given the second part of the receipt
    c. The Agent maintains the third copy of the receipt in the insured's file.
2. Computer-generated receipt – via the computer.
    a. Payment is input directly into the computer and a system-generated receipt number is assigned.
    b. The agent may then print and sign a copy of the receipt, then provide it to the insured.

The insured is given immediate credit when the receipt is entered on the Agents Credit Advice and submitted through the agency computer.

At the end of the day, the agent is to close his Agents Credit Advice (ACA). Once the ACA has been closed:

- The premium payments recorded on the ACA are immediately applied to the indicated policies.
- The agent is to deposit all check and cash premium payments to their Co-Banking Account. The amount to be deposited is documented on the ACA recap.

Farmers maintain company-owned bank accounts at three large banking institutions (Bank of America, Wells Fargo and US Bank) for the sole purpose of transmitting premium payments to the company. Every agent has been provided with a Farmers Insurance – For Deposit Only endorsement stamp, the agent only has deposit authority.

If the agent does not operate within seven miles of a branch of one of the three banking institutions listed above, the agent will be considered a mail-in agent and will maintain a Trust Account for use in remitting premium. The agent will deposit all cash premium in the Trust Account, then issue a Trust Account check which will be mailed with all the insured's checks to a Co-Banking Account. From this point, the premium transmission process is the same. Suspect Lavey was considered a mail-in agent.

The Co-Banking account is essentially a "zero" balance account with the agency's collections going in daily. Farmers Home Office sweeps funds deposited to the Co-Banking Account approximately three days after the ACA is closed. Home Office does reconciliation of the Co-Banking Account.

When there is a reported premium shortage, all sources are searched for payment.

- If it is determined that the payment did not arrive, but there is sufficient documentation to verify that a payment was made, the money is journaled to the policy from the company's "suspense" account.
- If the policy bills on Farmers EasyPay®, the money is journaled to the Farmers EasyPay® account from the company's "suspense" account.
- If the payment did not arrive due to a misappropriation of funds, the Accounting department issues a check to reimburse the "suspense" account. In any case, Farmers' first priority is to make sure the insured receives the coverage for which they paid.

This information is provided only as a general explanation as to how Farmers premiums are processed. More specific, detailed information will be provided upon request.

## Summary of Investigation

Former agent Lavey was responsible for monetary misappropriation of $8,937.70 in cash premium payments from 89 insureds for Farmers Insurance. The monetary misappropriation occurred from March 2009 through April 2009. As an agent, until his termination on May 27, 2009, the former agent was authorized to accept customer payments. The former agent also had a fiduciary responsibility to apply the premium to the insureds' policies and remit all premium payments to Farmers Insurance.

In April 2009, Auditing received notices of late premium deposits for former agent Lavey indicating that over $15,000 had not been remitted to Farmers Insurance. An investigation was initiated, and on 4/22/09, Auditor Terry Tharp visited the Lavey agency in Scobey, Montana. The former agent could not account for over $22,448 in company premium at that time. The insureds had already received full policy credits for the amounts paid; however, the former agent did not remit the premium to Farmers. The former agent had no explanation as to the location of the missing premium funds. For the total amount of $22,448 in missing premium ($ 8,937.70 was in cash payments, $13,510.30 was in check payments). None of the insureds' checks had been negotiated, so Farmers Insurance was able to obtain replacement checks from the insureds, thus only the cash premium payments were considered misappropriated.

The former agent was asked if he uses any other bank accounts for Farmers business, to which he replied he did not. The former agent was presented with copies of personal checks drawn on Daniels-Sheridan Federal Credit Union that were also recently used to remit premium monies to Farmers. The checks were titled "Lavey and Associates" and included insured's names listed on the memo line. The former agent would not comment on this information or answer any additional questions regarding this bank account. The former agent Lavey provided us copies of the last two bank statements to his FCU bank account.

In completing our research, we identified copies of checks drawn on Lavey's trust account which were used to remit insureds premium payments to Farmers. Former agent Lavey also provided a current statement from Independence Bank titled "Lavey Trust" that showed a $22.55 balance for the current and prior month. Neither account had sufficient funds to cover the missing premium.

Former agent Lavey was asked for the past ACA deposit slips, which he is required to maintain, but he could not produce these records. Former agent Lavey stated that his staff person worked part-time and was at home getting Lavey's records up to date. A call was placed to the staff person and she stated that she was not currently updating Lavey's ACA records, in fact, she has never taken any financial records home, and everything is given to former agent Lavey. Again, the former agent was asked for the missing deposit slips or the unremitted premiums, to which he answered he was not aware of their whereabouts.

Five days after the field visit to former agent Lavey's office, Lavey remitted the missing monies to Farmers Insurance.

Based on the facts presented to Farmers Home Office, Lavey's agency contract was terminated for embezzlement effective May 27, 2009.

# Statement

Date: 04/22/2009

Time: 12:25:07 PM

Location: 101 Main Street Scobey, MT 59263

Statement: My name is Agent Eugene Tip Lavey (70-12-03). I was appointed with Farmers Insurance in December 1999. My work address is 101 Main Street Scobey, MT 59263. My work phone number is [redacted]. My home address is 109 Janus Street Scobey, MT 59263. My home phone number is [redacted]. DOB: [redacted]. SSN: [redacted]. MT DLN: [redacted] Today the auditor came into my office to do a financial audit of my agency. At that moment, I wanted to leave my office because I knew the auditor was here to check on ACAs that were not sent in yet. We went to my parent's house to check on my Dad for a short time like about 2 minutes, as my Mom called to say he was having chest pains. He was in the yard doing yard work and appeared fine. We left their house and returned to the office. I was asked if I had an open ACA, which I printed and gave to the auditor. ACA 407 was missing a check for CJ Bird account number CJ87975 for $152.00. It is temporarily missing and I will find it. I was asked about a trust account of which I stated I have not used since December of 2008. I gave the auditor a recent copy of the statement that showed a balance of $22.55 and the previous month;' balance was also $22.55. I was asked if I used another bank account for Farmers Insurance business to which I replied I did not. I was then asked for the deposit receipts for the bank deposits of 2009. I looked for several minutes and could not locate any. I called my Mother, who sometimes works for me, and she came down to the office. She looked for several minutes and could not find any recent bank deposit receipts, naming the ones for January through April of this year. She also stated, "what is this business about your Dad having chest pains". The auditor instructed me that my mother could leave the office. I was asked about the situation of my Dad having chest pains and I now admit that was a story, as I wanted to just get out of office to think about this situation. I continued to look for the receipts and then found some in the front desk under a tray. They appeared to be the ones from 2009. Then I was asked about the other bank account at Daniel Sheridan FCU. I stated I use this for business expenses. I was then presented with copies from Lavey and Associates checking account that shows checks written to Farmers or Prematic for customer's payments. I was then asked again for the deposit receipts and could not produce them. I was asked again for the ACA money and could not produce that either. I then stated that I would get all the payments missing from ACA 309 to 407, for the total amount of $22,448.32, caught up and in the mail tonight or tomorrow with copies of the insureds checks and will send the auditor proof of this via fax.

---

**I have read the above statement and it is true to the best of my knowledge.**

Statement By: Eugene "Tip" Lavey

Signed: _____ Date: 4/22/09

Witnessed By: Terry Tharp

Signed: _____ Date: 4/22/09

---

## Summary of Evidence

Former agent Lavey was responsible for misappropriating $8,937.70 in cash premium payments from 89 insureds that were intended for Farmers Insurance. The monetary misappropriation occurred from March 2009 through April 2009. The evidence is as follows:

1. ACA History Chart - Chart summarizing the cash that is a portion of the total ACA completed where premiums were not remitted to Farmers Insurance as required. Copies of the ACA Summaries from the chart (the ACA summaries show the premium collected and the insureds that made the payments). NOTE: The check payments noted on the ACA Summaries were either reversed or remitted to Farmers Insurance, only the cash payments were misappropriated. There is no evidence any of the check payments were misappropriated.

**Agent's Credit Advice History Chart**

| Multiple Customer Shortages | | | |
|---|---|---|---|
| ACA # | ACA Date | Cash | Total ACA Amount |
| 0309 | 3/20/09 | $1152.22 | $1,317.09 |
| 0310 | 3/25/09 | 934.90 | 1,141.15 |
| 0311 | 3/27/09 | 336.84 | 693.54 |
| 0312 | 3/30/09 | 0 | 733.82 |
| 0313 | 4/2/09 | 719.30 | 1,728.89 |
| 0401 | 4/3/09 | 2768.87 | 4,552.10 |
| 0402 | 4/8/09 | 1474.12 | 3,072.75 |
| 0403 | 4/10/09 | 0 | 305.90 |
| 0404 | 4/15/09 | 250.00 | 2,273.36 |
| 0405 | 4/16/09 | 440.95 | 2,707.06 |
| 0406 | 4/17/09 | 108.51 | 108.51 |
| 0407 | 4/22/09 | 752.00 | 3,814.15 |
| Total Deposits | | $8937.70 | $22,448.32 |

**Note: The total amount of unremitted premium (both check and cash) was $22,448.32. However, since the check payments were not negotiated and were replaced by the insureds, only the cash portion, $8,937.70, was considered misappropriated and has been reimbursed. All ACA documentation is enclosed.**

1. ACA History Chart - Chart summarizing all of the premiums stolen.

The Chart's columns are as follows:

1. ACA# - The agency opens a new ACA every day a premium payment is received by the agency. The agency assigns an individual number to each ACA. The first two digits are the month, i.e., "03" for March, and the second two digits are sequential throughout the month.

2. ACA Date – This is the date that the ACA Summary is closed and the premium is credited to the insured's policies. Either the ACA is closed manually by the agency or automatically by the ACA program (if the ACA is not manually closed within 48 hours of being opened, it is automatically closed by the ACA system).

3. Cash – Represents the total amount of cash premiums in Lavey's possession.

4. Total ACA Amount – The total amount of premium payments recorded on the individual ACA that was missing in both cash and checks at the time of the audit.

# FARMERS INSURANCE GROUP OF COMPANIES
# AGENT APPOINTMENT AGREEMENT

Between Eugene T Lavey (hereinafter called the "Agent") and FARMERS INSURANCE EXCHANGE TRUCK INSURANCE EXCHANGE FIRE INSURANCE EXCHANGE, MID-CENTURY INSURANCE COMPANY FARMERS NEW WORLD LIFE INSURANCE COMPANY, and _____ all hereinafter collectively called the "Companies"

The Agent accepts appointment by the Companies as an agent of and for the Companies in District No 70-12 in the State of Montana, effective December 16, 1999 and continuing until terminated by either party as provided herein, under the following mutually agreed upon terms and conditions

A The Companies agree in consideration of the Agent's agreements

1 To pay new business and service commissions or any other commission to the Agent in accordance with commission schedules as established by the Companies and in effect on the effective date of a commission transaction

2 To arrange for Group Life and Comprehensive Medical Insurance plans and pay a portion of the premium if the Agent elects to apply for coverage under these plans The balance of the premium will be paid by the Agent if covered under these plans

3 To provide approved Company manuals, forms and policyholder records necessary to carry out the provisions of this Agreement

4 To provide advertising assistance (Ad-Aid) as provided by the Ad-Aid programs as established by the Companies

5 To make available to the Agent education and sales training programs developed by the Companies

B The Agent agrees in consideration of the Companies' agreements

1 To sell insurance for the Companies and to submit to the Companies every request or application for insurance for the classes and lines underwritten by the Companies and eligible in accordance with their published Rules and Manuals All business acceptable to the Companies and written by the Agent will be placed with the Companies

2 To provide the facilities necessary to furnish insurance services to all policyholders of the Companies including, but not limited to, collecting and promptly remitting monies due the Companies, receiving and adjusting claims within the Agent's authority, notifying the Companies of all claims beyond that authority and servicing all policyholders of the Companies in such a manner as to advance the interests of the policyholders, the Agent and the Companies
The location of the Agent's office cannot unduly interfere with the business established by another Agent

3 To permit authorized representatives of the Companies to review and examine agency records for the purpose of verifying compliance with this Agreement

4 To provide a fidelity bond in favor of the Companies The Agent may either participate in the blanket fidelity bond arranged by the Companies by paying the applicable premium, or the Agent may obtain a separate fidelity bond acceptable to the Companies, at the Agent's expense, with a minimum limit of $10,000

EXHIBIT
B

C This Agreement terminates upon the death of the Agent and may be terminated by either the Agent or the Companies on three (3) months written notice

If the provisions of this Agreement are breached by either the Agent or the Companies, the Agreement may be terminated by the other party on thirty (30) days written notice This Agreement may be terminated immediately by mutual consent or by the Companies for the following reasons

1 Embezzlement of monies belonging to the Companies

2 Switching insurance from the Companies to another carrier

3 Abandonment of the Agency

4 Conviction of a felony

5 Willfull misrepresentation that is material to the operation of the Agency

D In the event this Agreement is terminated by the Companies, the Agent may within ten (10) days of receiving the notice of termination request a review of the termination by a termination review board

The termination review board will be composed of

1 An Agent of the Companies selected by the terminated Agent, such Agent must be a member of the President's Council from the same Region as the terminated Agent,

2 The Regional Manager or a representative of said Regional Manager, and

3 A third party to be mutually selected by the other two members of the board

The Review Board will convene within twenty (20) days of the request by the Agent at the Regional Office or such other convenient place selected by the Regional Manager

The Board will submit a summary of the hearing and its recommendations to the Executive Home Office

The chief executive officer and staff will review the summary and recommendations, reach a decision and promptly advise the Agent of that decision

E If this Agreement is terminated, the Agent shall be entitled to first year commissions which become payable over the next twelve months following termination for Farmers New World Life business written prior to termination and payment of those commissions will be after the completion of the twelve months The Agent shall also be entitled to new business commissions less new business chargebacks for business written prior to termination in the Companies other than Farmers New World Life

No service commissions will be payable to the Agent after termination of the Agreement

F The Agent or the Agent's heirs may sell all or any part of this Agency to a member(s) of the Agent's immediate family at any time, provided the purchaser is acceptable to the Companies, and provided the sale price does not exceed the proportionate share of the "Contract Value" (as hereinafter defined) of the Agency

G In the event of termination of this Agreement, and there is no sale pursuant to paragraph F, the Companies will pay Contract Value to the Agent or heirs in the manner hereinafter set out In the event termination is because of embezzlement, there is no Contract Value

CONTRACT VALUE

Contract Value is based upon (1) the amount of service commissions paid to the Agent on active policies during either the six month or twelve month period immediately preceding termination, (2) the number of policies in the Agent's active code number, (3) the number of years of continuous service as an Agent for the Companies immediately prior to termination

If the Agent has less than fifty policies in an active code number, there is no Contract Value, otherwise Contract Value will be computed for each Company in accordance with the following schedules on either a six month or twelve month basis, whichever is higher

Years of Service

Six Month Commissions

| Number of Active Policies | First 5 Yrs | Next 5 Yrs | Next 5 Yrs | Over 15 Yrs |
|---|---|---|---|---|
| | % | % | % | % |
| 50-500 | 50 | 100 | 150 | 200 |
| 501-1000 | 100 | 150 | 200 | |
| 1001-1500 | 150 | 200 | | |
| Over 1500 | 200 | | | |

Twelve Month Commissions

| | First 5 Yrs | Next 5 Yrs | Next 5 Yrs | Over 15 Yrs |
|---|---|---|---|---|
| | % | % | % | % |
| 50-500 | 25 | 50 | 75 | 100 |
| 501-1000 | 50 | 75 | 100 | |
| 1001-1500 | 75 | 100 | | |
| Over 1500 | 100 | | | |

Active policies are all policies registered in an Agent's code number except those policies assigned to the Agent's 500 and 800 series code numbers

UNDERWRITING CONTRACT VALUE BONUS

An Agent who meets the underwriting bonus qualifications established by the Companies will be awarded an Underwriting Contract Value Bonus in accordance with programs and schedules published from time to time by the Companies Entitlement to the Underwriting Contract Bonus will be evidenced in certificates issued to qualifying Agents annually These certificates shall state said bonus in terms of percentages and shall be fully vested when received, based on the Contract Value at the time of termination, in accordance with the bonus program Upon vesting, the percentage of Underwriting Contract Value Bonus will inure to the benefit of the Agent, his heirs and assigns, and may not be reduced

The Underwriting Contract Value Bonus will be paid in accordance with this paragraph G However, where there is a sale pursuant to paragraph F, said Bonus will be paid to the selling Agent in one lump sum

Contract Value and amounts payable as an Underwriting Contract Value Bonus will be paid in not less than three equal installments and at not less than six month intervals However, when an Agent dies or becomes totally disabled, or Contract Value is $5,000 or less, the Agent may elect to receive Contract Value and amounts payable as an Underwriting Contract Value Bonus, in one lump sum

The Agent may elect to receive Contract Value in three or more equal annual installments, the first to be paid upon termination If the Agent so elects, the Companies will pay simple interest on any unpaid balance of Contract Value at a rate equal to the rate paid by Farmers New World Life Insurance Company on its premium deposit fund at the time any installment becomes due

H The Agent agrees to transfer and assign all of the Agent's interest under this Agreement and Agency (including, at the request of the Companies, any interest in the telephone numbers and leased or rented office location) to the Companies at the time of payment or tender of payment to the Agent pursuant to Paragraph G of this Agreement The Agent agrees to accept tender of Contract Value and further agrees that for a period of one year following the date of payment or tender of payment the Agent will neither directly or indirectly solicit, accept, or service the insurance business of any policyholder of record in the agencies of this district as of the date of payment or tender of payment

I The Agent acknowledges that all manuals, lists and records of any kind (including information pertaining to policyholders and expirations) are the confidential property of the Companies and agrees they shall not be used or divulged in any way detrimental to the Companies and shall be returned to the Companies upon termination of the Agency

J Nothing contained herein is intended or shall be construed to create the relationship of employer and employee, rather, the Agent is an independent contractor for all purposes

The time to be expended by the Agent is solely within the Agent's discretion, and the persons to be solicited and the area wherein solicitation shall be conducted is at the election of the Agent

The Agent shall, as an independent contractor, exercise sole right to determine the time, place and manner in which the objectives of this Agreement are carried out, provided only that the Agent conform to normal good business practice, and to all State and Federal laws governing the conduct of the Companies and their Agents

K This Agreement shall take the place of any previous "Agent's Appointment Agreement" between the Agent and the Companies, however, any existing written addendums to such Agent's Appointment Agreement and/or any other existing supplementary written agreements between the Companies and the Agent shall remain in force, and any reference therein to "Agent's Appointment Agreement" shall be related and applied to this Agreement

No change, alteration or modification of this Agreement may be made unless it is in writing and signed by the Agent and an authorized representative of the Companies

FARMERS INSURANCE EXCHANGE TRUCK INSURANCE EXCHANGE, FIRE INSURANCE EXCHANGE MID-CENTURY INSURANCE COMPANY, FARMERS NEW WORLD LIFE INSURANCE COMPANY, and

I the undersigned Agent, acknowledge that this Agreement was delivered to me 11/19/99 I have read it and wish to do business with the Farmers Companies on the terms set forth herein

By _____ Sr Marketing Specialist (Title) 12-08-99 Date

For the Companies

_____ AGENT 11/19/99 Date

# *AGENCY OPERATIONS*
# *TABLE OF CONTENTS*

Section 2 of 10


*AGENCY OPERATIONS* ..... 1

*TABLE OF CONTENTS* ..... 1

*AGENCY PREMIUM COLLECTIONS* ..... 2

- Definition of Cash ..... 2
- Federal and State Reporting Requirement for Cash Payment over $10,000 ..... 2
- Accepting Premium Payments ..... 3
- Acceptance of Counterfeit Currency ..... 3
- Third Party Checks and Claims Drafts ..... 3
- Outside or Third Party Premium Financing ..... 4
- CEA Premiums Collections (California Agents Only) ..... 4
- Accepting Refund Checks As Payment ..... 6
- Records Showing Payments Made To The Agency ..... 6
- Receipt Forms ..... 7
- Credit Card Transactions ..... 7
- Voiding Receipts ..... 7
- Key Points To Remember In Writing Receipts ..... 8
- Single Policy Receipts* ..... 9
- Dual Policy Receipts ..... 10
- Imprinting on Checks ..... 11
- Premium Trust Account Requirements ..... 12
- Reconciliation of Premium Trust Account ..... 13
- Preparing ACA Co/Banking Deposits ..... 14
- Mail-In Premium Deposits for the e-ACA Program ..... 14
- ACA Receipts Do Not Balance To The Deposit ..... 15

*FARMERS EASYPAY® BANK PLAN/ELECTRONIC FUNDS TRANSFER (EFT)* ..... 17

- Bank Routing and Account Information ..... 17




EXHIBIT
C

# AGENCY PREMIUM COLLECTIONS

The Agent's Credit Advice (ACA) Co/Banking Program enables you to enter most of your receipts into the e-ACA system, so that your customer's policies are credited for payment the day the e-ACA is closed and processed. It also provides information to help you reconcile your ACA to the bank deposit. With the exception of "Write Your Own" (WYO) Flood insurance payments, all insured remittances will be processed in an agent's office through this system. Refer to the e-ACA Co/Banking User Guide (SRN 32-7201) for a complete description of this program.

## Definition of Cash

Cash will be defined as all remittances in any form such as checks, money orders, credit card payments, and currency received from policyholders or other outside sources. All cash transactions and receipts must be:

- Subject to good cash control practices;
- Audited regularly if cash collection functions are delegated; and
- Properly secured.

## Federal and State Reporting Requirement for Cash Payment over $10,000

The Internal Revenue Service Code, Section 60501, requires a business to report the receipt of more than $10,000 in cash from one transaction or two or more related transactions. "Cash" is defined in this Section as coin and currency of the United States, or any foreign country, U.S. Treasury and Federal Reserve Notes, cashier's checks, banker's drafts, traveler's checks, and money orders. You do not need to report company checks or an individual's personal check.

Once a check payment of more than $10,000 is received, subsequent cash payments from the same person must be monitored for a period of one year. This requirement is to track total payments of greater than $10,000. A special record must be maintained and sent to the IRS for this purpose.

For payments of $10,000 or more, the person who receives the payment must complete IRS Form 8300. The completed form must be sent to the IRS and to the State Revenue Agency or tax authority, if applicable, within 15 days of receipt of the payments.

## Accepting Premium Payments

A receipt must be prepared for all premium payments accepted, whether currency, check, money order, or a company refund check. Receipts can be prepared manually or by using the e-ACA system. Refer to the e-ACA Co/Banking User Guide (SRN 32-7201) Section on printing receipts using AIMS. For policy payments received through the mail or left at the agency, issue a receipt indicating the day and time the payment is physically received by the agency. Mail a copy of the receipt to the insured.

Before accepting the policyholder's check or money order, you may make certain that it is completed correctly. (Note: Under the ACA Co/Banking Program, you are responsible for all uses of the e-ACA Program. Therefore, it is in your best interest to verify that ACA information is entered correctly before the e-ACA is closed.) Upon receipt of the check or money order, verify the following areas:

| ACCEPTING PREMIUM PAYMENTS | |
|---|---|
| 1 - Date | Is the current date shown? Postdated and backdated checks cannot be accepted with the e-ACA Program; thus, never accept backdated or postdated checks. |
| 2 - Proper Payee | Is the name of the company correct? If this is blank, write the appropriate company name on the payee line. If the insured makes the check payable to you, issue a receipt in the normal manner, You must, however, endorse the check or money order as "Pay to the order of Farmers Insurance Group," then place your signature below the endorsement, or use your ACA Co/Banking Endorsement Stamp, whichever is applicable. This will relieve you of the responsibility of acting in a banking capacity, as well as the liability for potential insufficient fund checks. |
| 3 - Amount | Does the written amount agree with the numerical amount? Contact the insured if any discrepancies are found. |
| 4 - Policyholder/Account Number | Verify that the check or money order has the insured's policy number or account number on the front of the check. |

## Acceptance of Counterfeit Currency

Since individuals who accept counterfeit currency (U.S. or Canadian paper) are responsible for any resulting loss, you may wish to purchase coverage to protect yourself against this situation. It is advised that you check with your commercial underwriting department for coverage availability within your state.

## Third Party Checks and Claims Drafts

Whenever possible, you should avoid accepting third party checks or claims drafts as premium payments. If, however, you are unable to avoid accepting a third party check or claims draft, refer to the e-ACA Co/Banking User Guide (SRN 32-7201) for information on how to handle.

## Outside or Third Party Premium Financing

Regarding outside or third party premium financing:

- Farmers agents are not authorized to sign any Power of Attorney assignment on behalf of the companies.
- The Farmers companies do not accept outside premium or alternative financing arrangements.

## CEA Premiums Collections (California Agents Only)

When you receive premiums for a CEA policy and the companion fire policy, you must receive two checks from the insured: one check for the fire policy and a second check, made payable to the California Earthquake Authority, for the CEA policy. Two separate receipts must also be issued. Do not combine the Farmers fire policy and CEA policy on the same receipt. Use form SRN 31-2022, CEA Premium Payment Receipt, to receipt the CEA premium. Separation of the companion policy from the CEA policy is essential to comply with the CEA rules and regulations. Refer to the Co/Banking User Guide for further instructions on how to enter CEA policies into the Co/Banking system.

Farmers "Write Your Own" (WYO) Flood Insurance

WYO Flood policies must be processed separately from other policies. You'll want to incorporate the following five components into your flood policy processing procedure; receipting flood premiums, endorsing flood premium checks; remitting or depositing flood premium checks; processing returned checks and retaining documents.

## Receipting Flood Premiums

Unlike other insurance premiums, WYO Flood premiums are not input through the Agents Credit Advice (e-ACA) system. Instead, transmit them to the Flood Service Center through the FloodWriter software, as explained below.

## Endorsing Flood Premium Checks

Have your WYO Flood customer make his or her check payable to the appropriate Farmers exchange or domestic company. When endorsing the check, do not use your ACA Co/Banking stamp. Instead, endorse the check manually, or use an endorsement stamp that includes the format below:

| |
|---|
| Deposit To (Bank Name) |
| Credit to Within Named Payee |
| Bank Account# |
| Agent Name |
| WYO Flood |

It is suggested that you purchase an endorsement stamp with this format if you anticipate a high volume of flood sales. It is important that ACA Co/Banking endorsement stamps are not used on the flood insurance payment checks.

## Remitting or Depositing Flood Premium Checks

You have a choice of either remitting the flood premiums directly to the Flood Service Center or establishing a separate trust account and depositing the premiums collected to this account. If you choose to deposit the funds into the separate trust account, the Flood Service Center will instruct its bank to electronically sweep the funds from the trust account within three days. To reduce the probability of a bank overdraft, premiums collected should be deposited on the day the policy information is transmitted to the Flood Service Center.

## Processing Returned Checks

Unlike the ACA Co/Banking program, you are responsible for handling any flood premium payment checks that are returned by your bank. If you are unable to collect funds on a flood premium payment, the Flood Service Center must be notified. Procedures for notification will be included in the package you receive from the Flood Service Center.

## Retaining Documents

Insurance regulations require that, as with all other policies, WYO Flood policies are filed at the agent's office. This includes all original documents and records transmitted electronically to the company or to its representatives through the FloodWriter software. You should also retain any information necessary to support your flood premium bank deposit and reconcile your trust account on a monthly basis.

## Accepting Refund Checks As Payment

If a refund check is received in your office, issue a receipt to the insured, then process as follows:

**Refund check received without the insured endorsement**

Do not write "Void" or deface the check in any manner. Send the check directly to the Service Center's cash & control department with a memo giving instructions on how the payment should be applied. For example, "apply to policy 9999-99-99 and reinstate" or "deposit back to policy to apply to balance due."

Refund check received with the insured's endorsement

Do not write "Void" or deface the check in any manner. Write "Pay to the order of Farmers Insurance Group" above the insured's signature, or use your ACA Co/Banking Endorsement Stamp, whichever is applicable. Preferably this should be written by the insured.

Refund check is incorrect or some way unacceptable

Do not write "Void" or deface the check in any manner. Send the check directly to the Service Center's cash & control department along with an explanatory memo.

## Records Showing Payments Made To The Agency

It is each agent's responsibility to: keep required records (including, but not limited to, receipt of money); and comply with their state's Statute of Limitations on how long they must maintain such records. Due to the varying statues within each state, it is the agent's responsibility to know the law.

## Receipt Forms

You must issue a receipt for every payment received. However, premiums collected for WYO Flood Insurance and Farmers New World Life are not to be entered in the e-ACA Co/Banking System. The receipt in the general life application will serve as acknowledgment of payment when left with the primary proposed insured.

You can print receipts in your office from the e-ACA system. This alleviates the need to handwrite receipts or maintain a separate record. You may also handwrite a preprinted receipt. (Note: California agents will also use form SRN 31-2022 to receipt CEA premium collections.)

To use the receipt generating capabilities of e-ACA, refer to the e-ACA Co/Banking User Guide (SRN 32-7201) for instructions.

If a handwritten receipt is used, then you will use the standard dual receipt form (4"X6", three part). The receipts are pre-numbered and must be issued in numerical order. There are two types of receipts:

1. **continuous style**, designed to be used in a counter top receipt machine; and
2. **pad style**. The SRN numbers are on the Agent's Order form (SRN 31-0051; 31-0351 in Texas).

Both types of receipt enable you to remit one or two premium payments from the same household on a single form. If you are remitting only one policy on a receipt, write "NONE" in the shaded area for the second policy.

## Credit Card Transactions

Credit Card batches are opened and closed mechanically once a day at 3:00 p.m. (PST). Agents cannot manually close a Credit Card batch. Any Credit Card payment submitted after the 3:00 p.m. (PST) cut off time will create a new batch and will be included in the next days' mechanically opened batch.
Do not use your own Credit Card to make a payment on behalf of a customer. This is considered co-mingling of funds and is not permitted.

Farmers agents are responsible for the security of credit card information provided by customers.

## Voiding Receipts

Should you record the wrong date, time, policy number or amount of payment on the receipt, do not change or alter it. Void all three copies of the receipt by printing the work "VOID" in large letters across all copies. If applicable, staple all three copies of the receipt to a copy of the e-ACA screen print, and keep the receipt and e-ACA screen print in your files.

## Key Points To Remember In Writing Receipts

1. Record the exact time and date of collection on the receipt. Under no circumstances are you authorized to "Back Date" a receipt.

2. Give the name of the insured as it appears, or will appear on the policy record. Indicate address and zip code.

3. Check the exchange or company for which money is being received.

4. Fill in the state, policy numbers or Prematic®/Farmers EasyPay® account number, and amount collected.

5. Check the proper box to indicate whether payment is for a renewal, change in coverage, new business or reinstatement.

6. Check whether correspondence or an application is associated with this payment. This includes all correspondence and applications of any type in which money is collected and remitted.

7. Check proper type of collection box (if check - give check number and amount).

8. On outside of district collections, indicate the insured's state and district,

9. Sign the receipt under "Rec'd By."

10. Fill in your state, district and agent number.

11. Collect all three copies of the receipt if it is voided.

12. For Credit Card manual receipts, write the full credit card number on the receipt. Secure all of the information from the credit card that will be needed to ACA the payment. The entire credit card number, the name on the card, the expiration date, and the 3 or 4-digit verification security code is needed in order to process these payments.

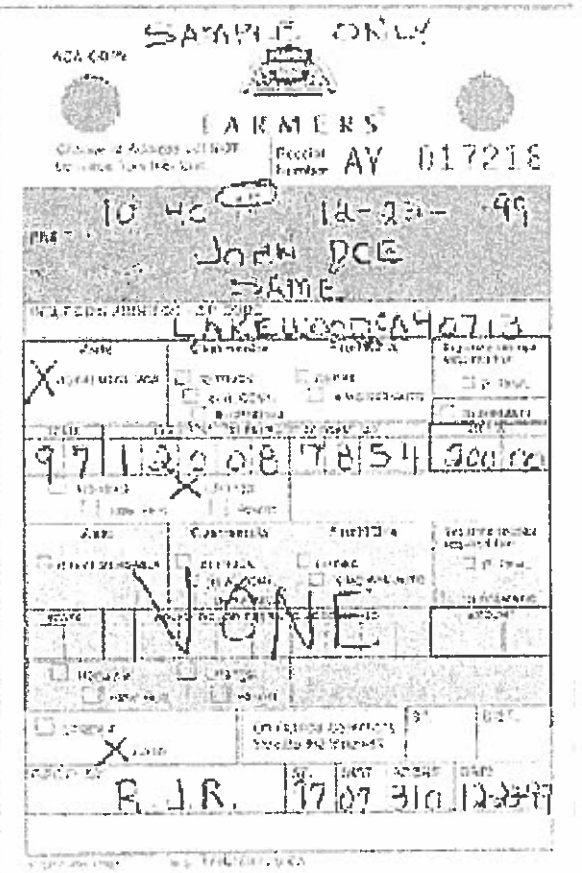
    **Important:** Once the credit card information has been correctly entered into the e-Agent system, all written records of the credit card including credit card number, expiration date, 3 or 4-digit verification security code, and copy of manual receipt, must be destroyed by the agent. Reasonable methods of document destruction include shredding so that the information destroyed cannot be read or reconstructed through any means.

## Single Policy Receipts*

When collecting premium on a single policy, keep the top white copy of the receipt along with a screen print of the e-ACA Summary Screen for your files. For agents without access to a computer, retain this copy with your copy of the ACA form SRN 31-1092.

Give the insured the second copy of the receipt. Place the third copy in the insured's file for future reference.

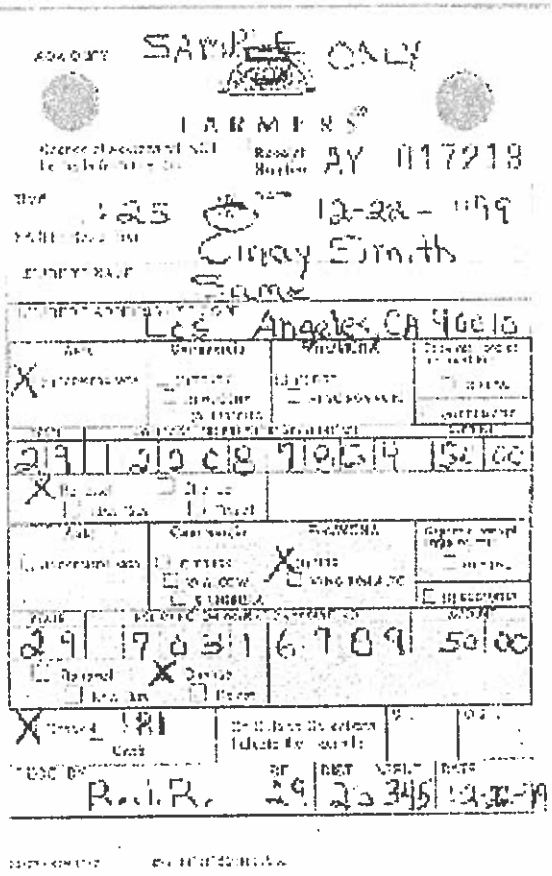
For single policy collections only, write the word "NONE" in the blue shaded area of the receipt form to indicate no collections have been made for a second policy.




*NOTE: Please remember that CEA payments must be sent by separate check and receipt.

## Dual Policy Receipts

Use the same procedure as the single policy collection, but fill in the information for the second policy in the shaded area.



## Imprinting on Checks

### Business Account Checks

For advertising purposes, agents may place "Farmers Insurance Group of Companies®," on business account checks only. However, in doing so, the name should not be used in a manner that might imply that Farmers guarantees the check, nor should any company designation appear directly above the signature line. (Acceptable illustrations are displayed below.) The name of the companies must not appear on the bank statement or account agreement.

### Trust Account Checks

The Farmers emblem, "Farmers Insurance Group of Companies®," or any company designation is not to be imprinted on trust account checks. (See Trust Account check example displayed next for proper designation of trust account.)

| The illustrations shown below are examples of acceptable imprinting that may appear on checks for advertising purposes. NOTE: Instruct the bank or check printing company to include the "®" service indicia (superscripted) with the registered service marks of the Farmers companies. | |
|---|---|
| **BUSINESS** ACCOUNT CHECK EXAMPLES | John Doe Agency<br>Farmers Insurance Group of Companies®<br>1739 Cordova Street<br>Los Angeles, CA 90010<br><br>or<br><br>John Doe Sales Representative<br>Farmers Insurance Group of Companies®<br>1739 Cordova Street<br>Los Angeles, CA 90010 |
| **TRUST** ACCOUNT CHECK EXAMPLE | John Doe<br>Premium Trust Account<br>1739 Cordova Street<br>Los Angeles, CA 90010 |

## Premium Trust Account Requirements

For payments not covered under the ACA Co/Banking System, it is appropriate for agents to maintain a Premium Trust Account. Insurance laws specify that all premiums received by agents be held in a fiduciary capacity. Your premium trust account must be opened as an "informal trust."

An "informal trust" exists when a written agreement has not been formally recorded. To open an informal trust, check the box on the signature card that designates the account as a "trust" as opposed to a business or personal account. The bank may require some proof that you are acting on behalf of Farmers Insurance Group. If so, a copy of your Agent's Appoint Agreement (contract) should be all that is necessary.

Opening a business or personal account and including the work "trust" in the account name is not sufficient to comply with insurance laws.

In most states, your account must not be interest bearing. These accounts should not be of the type that provides overdraft protection. Also, these accounts should not provide dividends, or be a type, which would be construed to be an investment in states where statutes so not permit these types of accounts. In states, which do permit interest-bearing accounts, the interest is to remain in the trust account for such contingencies as may arise in your business of receiving and remitting premiums

To prevent your bank from transferring funds from your personal or business account to cover returned items, make sure the bank does not associate your Premium Trust Account with any other accounts. If this occurs, not only will your other accounts be negatively affected, but you may not be notified of returned items or deposit errors in a timely manner.

Some banks, as a courtesy to their better customers, will pay an item that will cause an overdraft even if the customer does not have overdraft protection. The bank will recover the amount of the overdraft from the customer and charge a service fee. Inform your bank that you do not want this service, but would prefer to be informed when an insured's check is returned.

Since you may be making daily deposits, choose a bank that is convenient, easy to get to, and has banking hours that are compatible with your schedule. If possible, make your deposits during the bank's low volume time. Also, consider traffic flow and other inconveniences before choosing a bank.

## Reconciliation of Premium Trust Account

The Premium Trust Account must be reconciled every month in order to prevent unknown bank errors. Following are the suggested steps in reconciling your account:

1. Obtain a copy of the Premium Trust Account Bank statement as of the last day of the month.

2. Verify that all deposits recorded in your check register, or deposit book, are shown on the bank statement. Record into your check register, or deposit log, any deposits that appear on the bank statement but were not recorded in your records. Any deposits appearing in your check register which are not included on the bank statement, are considered "Deposits In Transit." Add the total of the "Deposits In Transit" back to the bank statement balance.

3. Verify that all checks issued from the trust account have been posted to your check register. Any checks, which do not appear on the bank statement, are considered "Outstanding checks." Subtract the total of the "Outstanding checks" from the bank statement balance.

4. Determine whether there are any miscellaneous charges (bank debits) or deposits (bank credits) on the bank statement. Record these items in your check register, or deposit log. If the miscellaneous charge or deposit is in error, immediately contact your bank representative to correct the error.

When the above steps have been completed, the bank balance in your check register should agree with the adjusted balance on the bank statement. Here is a suggested format to help you reconcile your account.

| | |
|---|---|
| Balance Per Bank Statement | _____ |
| Add: Deposits In Transit | _____ |
| Subtract: Outstanding Checks | _____ |
| Add/Subtract Misc. Adjustments | _____ |
| Adjusted Bank Statement Balance | _____ |

## Preparing ACA Co/Banking Deposits

Refer to the online ACA Co/Banking training course or the User Guide (SRN 32-7201) for detailed instructions concerning this system. Remember, it is extremely important that you use the proper deposit slips, specially ordered from our vendor, whenever making deposits to your Co/Banking account. To ensure that your deposit agrees with your ACA, we recommend that you:

- Run an adding machine tape on the manually prepared receipt copies, before you close your e-ACA. Remember to exclude any receipts for CEA. Verify that the total agrees with the Deposit Total shown on the e-ACA Summary Screen. This verification step will help detect any key entry errors that may have been made in the e-ACA system. If the totals agree, print a copy of the Summary Screen and retain with your receipt copies and deposit slips.

- Run an adding machine tape using the written amount shown on the insured's check. The check will be encoded with the written amount when the check is processed through the banking system. Verify that the total of the checks agree with the Deposit Total shown on the Summary e-ACA Screen. Identify any difference and correct.

- Run an adding machine tape on the deposit slip detail, after the deposit slip has been prepared. This verification step will ensure that you have written the check amount and currency totals correctly on the deposit slip. The total of the deposit slip must also agree with the Deposit Total shown on the e-ACA Summary Screen.

*Important Note:* Some Automatic Teller Machine (ATM) locations may be more convenient than your current bank location; furthermore, they may be available for use in making premium deposits. If you are interested in getting information on available ATM locations for making premium deposits, as well as obtaining an ATM card for this purpose, contact the cash and control department in the Service Center. Do not contact the bank directly, since only authorized Service Center staff are able to order ATM cards.

It is each agent's responsibility to remit cash in a timely and accurate manner. Any deposit made by the agent (at a branch, ATM, night drop or bank by mail) is subject to verification and posting by the bank. Agents should always retain adequate records to support the deposit.

## Mail-In Premium Deposits for the e-ACA Program

The Mail-In premium deposit program was developed for agents who are located more than seven miles from a company-authorized bank. To minimize handling or processing errors, the following guidelines should apply.

- Your Service Center's Marketing and Accounting departments must authorize Mail-In programs.
- Use three-part deposit slips, which include converted agent number, agent's name, address, bank and ABA information. These deposit slips are available at no cost from the Service Center, or by calling the vendor, TranSource, at (888) 750-4545.
- Deposit cash payments into your trust account, then write a check for the amount and send the check with your deposit. Do not send cash.
- Endorse checks with the appropriate endorsement stamp available from the Service Center. Be sure to include the ACA number in the designated space within the endorsement.
- List all checks individually and write the total in the appropriate area on the deposit slip. Verify deposit and ACA totals.

## ACA Receipts Do Not Balance To The Deposit

If the total of the receipts processed in the e-ACA system does not match the amount on the deposit (per the banks records) an overage or shortage may occur. The Service Center's cash & control department will send you an Agent's Credit Shortage Advice (SRN 73-0208) notifying you of the problem.

Upon receipt of form SRN 73-0208, determine what may have created the problem and take the necessary corrective action. Return the signed form SRN 73-0208 back to the cash & control department with an explanation of what created the overage or shortage, along with a copy of the deposit slip, deposit receipt and e-ACA Summary Screen. Possible problems and the needed corrective action are as follows:

| Overages | |
|---|---|
| Insured's policy was ACA'd for the wrong amount. (i.e. $100.00 rather than $125.00.) | Open a new ACA and enter the remaining amount due to policy. Close the ACA. Provide cash & control a copy of the e-ACA Summary Screen and the ACA number with your response. |
| Insured's cash collections were listed on the deposit slip incorrectly. | Verify the correct amount of the insured check using the written amount shown on the check. If the amount shown on the deposit slip is correct, open an e-ACA and apply the overage amount to the insured's policy. Provide cash & control with a copy of the e-ACA Summary Screen and the ACA number with your response. If the amount applied to the policy is correct, provide cash & control with a copy of the e-ACA Summary Screen, deposit slip and deposit receipt with your response. |
| An ACA was not processed. | Verify whether any of the following situations occurred.<br>ACA was not closed,<br>receipts were key entered in Test Mode rather than Production Mode, and<br>the receipt was not ACA'd.<br>Take the necessary corrective action such as closing the ACA, or reenter the receipts in Production Mode. Notify cash & control of the action taken, including a copy of the e-ACA Summary Screen and ACA number. |
| The grand total on the deposit slip shows an incorrect amount. | Provide cash & control with an explanation. To prevent this type of error from occurring, always run an adding machine tape on the deposit slip detail. |

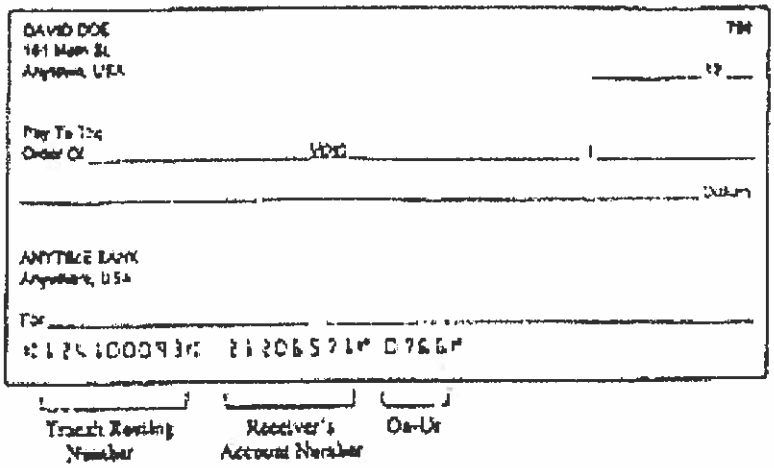
| Shortages | |
|---|---|
| Insured's cash collections are listed on the deposit slip incorrectly. | Supply cash & control an explanation identifying the insured, policy number and amount. |
| Insured's cash collections were omitted from the deposit. | Deposit the omitted cash collections on a separate deposit slip. Do not ACA the payment again. Provide cash & control with a copy of the deposit slip and receipt. |
| Insured's cash collections were ACA'd for the wrong amount (i.e. $180.00 rather than $150.00). | Provide cash & control with the insured's name and policy number. |
| Receipt was processed twice in the e-ACA System (either on the same ACA or different ACAs). | Provide cash & control with the insured's name, policy number and the ACA numbers involved. |
| Delay in depositing money to the Co/Banking Account. | Deposit all cash collections, which balance to the ACA, within one business day after the ACA is closed. |
| Missing Currency from the deposit. | Investigate whether the currency was deposited to the Co/Banking account. An ATM deposit receipt is not sufficient proof that the currency was deposited into the bank. It is recommended that a bank teller deposit all currency collections, so that it can be verified and properly receipted. Locate the missing currency, then deposit into the Co/Banking account on a separate deposit slip. Contact your auditing department if necessary. |
| Missing Deposit. | Investigate whether the deposit was made to the Co/Banking account. An ATM deposit receipt is not sufficient proof that the deposit was made. Verify that your converted agent number is printed correctly on the Co/Banking deposit slip. Contact your auditing department if necessary. |

# *FARMERS EASYPAY® BANK PLAN/ELECTRONIC FUNDS TRANSFER (EFT)*

A major benefit of the Farmers EasyPay® plan is the ability to set up an account and have the premium deducted automatically from a customer's checking or money market account to the Farmers Insurance Group of Companies® account. If an insured wishes to have their account on this EFT program, you will need to enter the ABA (American Bankers Association) and policy number in the Farmers EasyPay Electronic Fund Transfer Screen. Obtain this information from a copy of the insured's voided check. Do not use a deposit slip, since it frequently does not contain all of the needed information to ensure a successful EFT.

## Bank Routing and Account Information

MICR line is located at the bottom of checks.




Finding the information on the MICR line.

The MICR line of the check contains the three important fields of information, which will be used for the EFT:

**Transit Routing Number:**
This is usually the first group of numbers in the MICR line. Each transit-routing number must have nine digits. The ninth digit is a check digit that verifies the other eight have been input properly.

**Receiver's Account Number:**
This is the receiver's unique account number. There is no standard placement for the account number on the MICR line. Sometimes it is located to the immediate right of the transit-routing number, and the account number. In rare cases, the account number may even precede the transit-routing number.

**On-Us Field:**
It should be considered part of the receiver's account number, unless it is the same as the check serial number.

MICR Line symbols.

The MICR Line contains special symbols that help the user to identify each field of the information as follows:

**Transit-Routing Symbols.**
Placed before and after the transit-routing number.

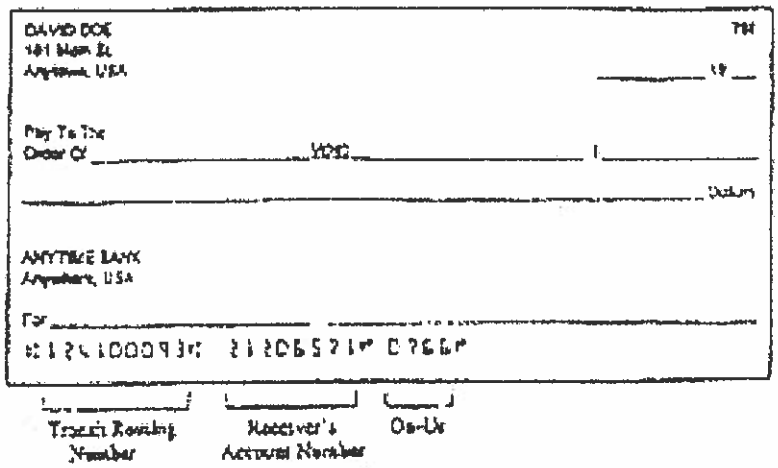
**On-Us Symbols.**
Identify data such as check serial numbers, type of transaction, etc.

**Dash Symbols.**
Considered part of the account number and should be entered as a hyphen (-) when you are transcribing the account number onto the Entry Detail Record.

Account Variations in the MICR Line.

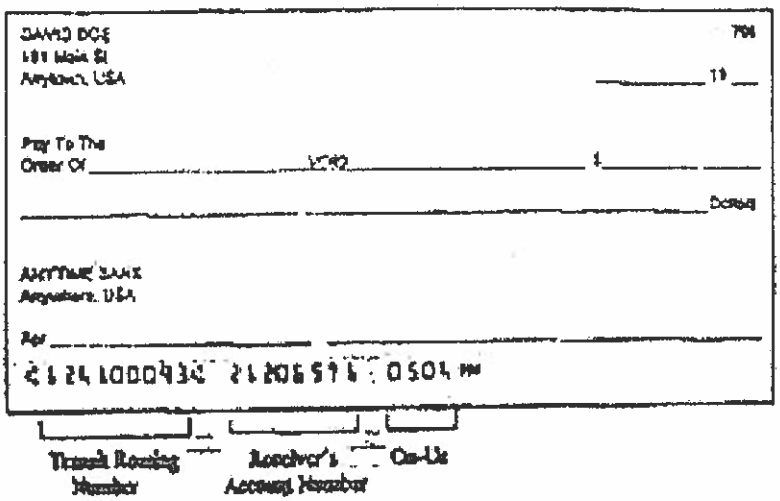
The transit-routing number is usually (but not always) the first group of numbers on the MICR line. However, there is no standard placement for the account number and the on-us fields. The following check samples show you how to pick out the account number in a variety of MICR lines.

## VARIATION 1



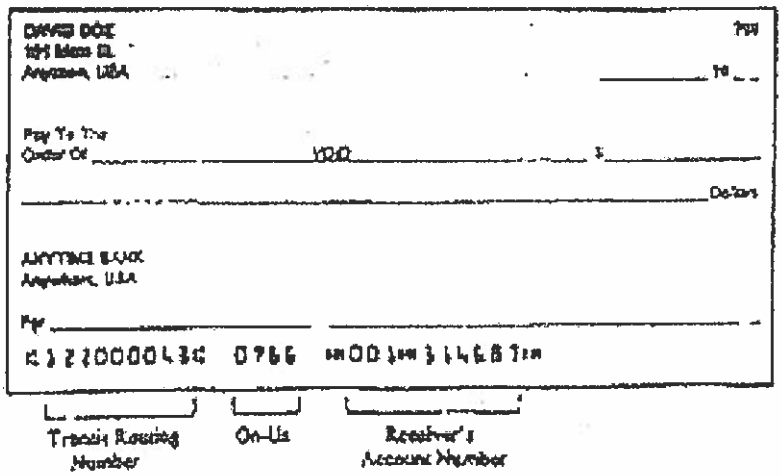

For Variation 1, the account number should be transcribed as 21206571. Note that the on-us field follows the account number and matches the check number; therefore, it is not part of the account number.

## VARIATION 2




For Variation 2, the account number should be transcribed as 212065710504. Note that the on-us field follows the account number and does not match the check number. Therefore, it is included as part of the account number. Also, note that the spaces in the MICR line between the account number and the on-us field are ignored.

## VARIATION 3




For Variation 3, the account number should be transcribed as 001-314687. Note that the on-us field matches the check number. Therefore, it is not part of the account number.

**JAMESON C. WALKER**
Office of the Commissioner of
Securities and Insurance
840 Helena Avenue
Helena, Montana 59601
(406) 444-2040

Attorney for the Department of Insurance

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

| | |
|---|---|
| IN THE MATTER OF THE PROPOSED AGENCY ACTION REGARDING THE INSURANCE PRODUCER LICENSE OF EUGENE LAVEY, LICENSE # 27042. | CASE NO. INS-2010-76<br><br>AFFIDAVIT OF NEIL BRUNETT |

STATE OF MONTANA )
: ss.
County of Lewis and Clark )

NEIL BRUNETT, being first duly sworn, deposes and says:

1. I am an investigator for the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI).

2. On or around November 11, 2009, the CSI received a complaint from Farmers Insurance Company (Farmers) alleging Eugene Lavey (Lavey) misappropriated policyholders' premium payments. The CSI assigned me to investigate the case.

3. I conducted my investigation using standard investigation methods by requesting information from Respondent, his insurance business, and Farmers.

EXHIBIT
tabbies D

4. My initial investigation revealed that Lavey had a Montana producer's license, #27042, and was an appointed insurance producer with Farmers.

5. As part of his duties, Lavey sold Farmers insurance products and collected policyholders' premium payments at his office in Scobey, Montana.

6. Lavey was a mail-in agent for Farmers, meaning he was contractually required to send all checks and a check for the total cash amount collected to Farmers.

7. On or around December 13, 2009, I interviewed Lavey at his office in Scobey, Montana. Lavey admitted he deposited policyholders' premium payments into his personal banking account and he used these premium payments for his personal use, although he could not say the exact amount.

8. Following the interview, I acquired Lavey's personal banking account records. My review of these documents showed that between May 1, 2008, through April 30, 2009, Lavey personally used $56,514.55 in policyholders' premium on approximately 219 separate instances.

9. I conducted a second interview of Lavey on April 15, 2010. Lavey stated:

   a.) He used policyholders' premium payments for personal use.

   b.) He was going through some mental health issues and was living outside his means.

   c.) While he would immediately credit policyholders in Farmers' computer system, he would wait before forwarding the payments.

   d.) He did this because he did not have enough funds to cover all outstanding premiums.

e.) He used money coming in from newer payments to pay older amounts and this process continued until Farmers audited his company.

f.) He understood that he was to mail-in premium within two days to Farmers.

g.) He knew using policyholders' premium payments for personal use violated the Montana Insurance Code.

Dated this 15 day of October, 2010.

Neil Brunett
Investigator
Office of the Commissioner of Securities and Insurance

SUBSCRIBED AND SWORN to before me this 15th day of October, 2010, by Neil Brunett.

SYBIL L. SHULTS
NOTARY PUBLIC for the
State of Montana
Residing at East Helena, Montana
My Commission Expires
January 1, 2014

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | CASE NO. INS-2010-76 |
| Eugene Lavey, in his capacity as an insurance producer, License # 27042 | ) | TEMPORARY CEASE AND DESIST ORDER |
| Respondent. | ) | |

The State Auditor in her capacity as Commissioner of Securities and Insurance of the State of Montana (Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, hereby issues the following allegations of fact, proposed conclusions of law, order and notice of right to a public hearing:

## ALLEGATIONS OF FACT

1. Eugene "Tip" Lavey (Lavey) owns the Lavey Insurance Agency at 308 Timmons St., Scobey, MT 59263.

2. Starting on December 1, 1999, Lavey was an appointed insurance agent with Farmers Insurance Company (Farmers). He sold Farmers insurance products and collected policyholders' premium payments at his office.

3. As a mail-in agent, Farmers contractually required Lavey to deposit premium into an independent trust account. The contract required Lavey to send a check for the total cash amount



EXHIBIT E

collected and all other check collections to an approved co-owned bank account. Farmers required Lavey to perform this task within two days upon receipt.

4. On April 22, 2009, Farmers audited Lavey's insurance company largely because he had not forwarded $22,448.00 in premium payments.

5. Farmers' auditor found $13,510.30 in un-deposited premium checks at Lavey's office. The remaining $8,937, however, could not be located and Lavey could not account for these missing funds.

6. Furthermore, the audit revealed Lavey kept premium payments in his personal bank account and not an independent trust account.

7. On May 17, 2009, Farmers terminated Lavey.

8. On November 11, 2009, the Office of the Commissioner of Securities and Insurance (CSI) received a complaint from Farmers alleging Lavey misappropriated premium payments.

9. CSI assigned Investigator Neil Brunett (Brunett). Brunett relied on standard investigation methods, requesting information from Mr. Lavey, Lavey Insurance Agency, and Farmers.

10. On December 13, 2010, CSI investigators interviewed Lavey at his Scobey office. There, Lavey admitted he deposited policyholders' premium payments into his personal banking account and he used premium payments for his personal use, although he could not say the exact amount.

11. CSI obtained Lavey's personal bank records. The records revealed that between May 1, 2008, through April 30, 2009, Lavey personally used $56,514.55 in policyholders, premium on approximately 219 separate instances.

12. CSI investigators conducted a follow-up interview on April 15, 2010. Lavey stated that he was going through some mental health issues and was living outside his means. He again admitted he used policyholders' premium payments for personal use.

13. Lavey explained while he would immediately credit policyholders in Farmers' computer system, he would often wait several weeks before forwarding the payments. He did this because he did not have enough funds to cover all outstanding premiums. Lavey admitted he used money coming in from newer payments to pay older amounts and this process continued until Farmers audited his company.

14. Lavey admitted he knew using policyholders' premium payments for personal use violated the Montana Insurance Code.

15. Lavey is still an insurance agent operating out of his office in Scobey, Montana.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. § 33-1-101, *et seq*.

2. Pursuant to Mont. Code Ann. §§ 33-1-1302(8) and 45-6-301(6), a person commits the offense of theft when the person purposely or knowingly is involved in the misappropriation of insurance premiums or proceeds.

3. Lavey violated Mont. Code Ann. § 33-1-1302(8) by purposely and knowingly misappropriating $56,514.55 of policyholder's premium payments, on approximately 219 separate occasions, for his personal use.

4. Pursuant to Mont. Code Ann. § 33-17-1102, all insurance premiums received by an insurance producer must be held in a separate trust account and an insurance producer may not divert or appropriate the funds or any portion of the funds to the insurance producer's own

use. An insurance producer who purposely or knowingly diverts or misappropriates insurance premiums commits theft.

5. Lavey violated Mont. Code Ann. § 33-17-1102 by purposely and knowingly depositing $56,514.55 in premium payments, on approximately 219 separate occasions, into his personal bank account.

## ORDER

Pursuant to Mont. Code Ann. § 33-1-318, it appears to the Commissioner that the above-named Respondent committed acts constituting violations of the Insurance Code of Montana, including acts constituting insurance theft and misappropriation. Therefore, the Commissioner hereby orders Respondent to cease and desist any actions or activity wherein Respondent acts in violation of the Insurance Code of Montana.

Pursuant to Mont. Code Ann. § 33-17-1001(d), the Commissioner suspends Respondent's insurance license. The Commissioner furthermore orders Respondent to cease and desist any actions or activity wherein Respondent acts as an insurance agent within the State of Montana.

## NOTICE

Respondent is notified that the Commissioner has issued this order temporarily ordering him to cease and desist violating the insurance code and acting as an insurance agent. If Respondent wishes to contest the allegations herein, he shall make a written request for a hearing to Jameson C. Walker of this office within 15 days of receipt of this order. The hearing shall then be held within 20 days of the Commissioner's receipt of the hearing request unless otherwise agreed by the parties. **If no hearing is requested within 15 days of receipt of this order by Respondent, and the Commissioner orders none, this cease and desist order shall become permanent.**

Should Respondent request a hearing, he has the right to be accompanied, represented and advised by counsel. If the counsel Respondent chooses has not been admitted to the practice of law in the State of Montana, he or she must comply with the requirements of ***Application of American Smelting and Refining Co.,*** 164 Mont. 139, 520 P.2d 103 (1973), and ***Montana Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil,*** 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

DATED this 28TH day of June, 2010.

MONICA J. LINDEEN
Commissioner of Securities and Insurance

ROBERT W Moon

BY: Robert W. Moon
Deputy Insurance Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 29th day of June, 2010, by US mail, certified, first-class postage paid, to the following:

Eugene Lavey
308 Timmons St.
Scobey, MT 59263

Joan Barsness

**SENDER: COMPLETE THIS SECTION**

- ☑ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☑ Print your name and address on the reverse so that we can return the card to you.
- ☑ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

EUGENE LAVEY
308 TIMMONS ST
SCOBEY MT 59263

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature
X [signature] ☐ Agent ☐ Address

B. Received by (Printed Name) C. Date of Deliv
6-30-1

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandi
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7009 0080 0002 4375 4452

PS Form 3811, February 2004 Domestic Return Receipt Attn. Jameson Walker 102595-02-M-1

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

MONICA J LINDEEN
COMMISSIONER OF SECURITIES & INSURANCE
OFFICE OF THE STATE AUDITOR
840 HELENA AVENUE
HELENA MT 59601

EXHIBIT
F

07/12/2010

RECEIVED
STATE AUDITORS
OFFICE
HELENA, MONTANA
2010 JUL 15 A 9:44

TO THE COMMISIONER OF SECURITIES AND INSURANCE
RE: CASE INS-2010-76

IN RESPONSE TO THE LETTER THAT I RECEIVED FROM YOUR OFFICE THERE ARE A NUMBER OF ENTRIES THAT ARE INCORRECT.
FIRST I HAVE NEVER OWNED LAVEY INSURANCE IN ANY PART. I OWNED FARMERS INSURANCE GROUP OF COMPANYS AND THAT IS WHERE I HAD MY APPOINTMENT. THE BUSINESS OF LAVEY INSURANCE AS RECORDED BY THE STATE OF MONTANA BELONGED TO EUGENE AND MARY LAVEY.
IT WAS NOT STATED CLEARLY THAT THE AMOUNT SPECIFIED WAS A CUMALATIVE AMOUNT OF MANY SMALLER AMOUNTS.
IT STATES THAT AMOUNTS DEPOSITED IN LAVEYS PERSONAL ACCOUNT WHERE UNACCOUNTED FOR FOR SEVERAL WEEKS. ALL FUNDS WERE ACCOUNTED FOR WITHIN DAYS WITH THE LONGEST BEING 21 DAYS.IT DOES NOT STATE THAT THE DEPOSIT THAT WAS MISSING AT THE TIME OF THE AUDIT BY FARMERS WAS ACCOUNTED FOR THAT DAY AND DEPOSIT SLIPS WERE PROVIDED TO FARMERS THAT DAY BY FAX.
IT SHOULD ALSO BE KNOWN THAT FARMERS USED THE FACT THAT LAVEY SHOULD BE REPORTED TO THE STATE OF MONTANA IN AN EXTORTION LIKE WAY DEPENDING ON HOW MUCH HELP THAT LAVEY PROVIDED THE NEW AGENT.
I NOW HAVE NOTHING. I HAVE NO JOB. NO SOURCE OF INCOME. NEGLIGIBLE CHANCES FOR EMPLOYMENT. AN EBARASSMENT TO MY FAMILY. I HAVE TO THE BEST OF MY ABILITY PROVIDED NEIL BRUNETT WITH ALL CORRECT ANSWERS WITH CLEARNESS AND TRUTHFULNESS.

TIP LAVEY

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

| | | |
|---|---|---|
| IN THE MATTER OF:<br><br>Eugene Lavey, in his capacity as an insurance producer, License # 27042<br><br>Respondent. | ) | CASE NO. INS-2010-76<br><br>TEMPORARY CEASE AND DESIST ORDER |

The State Auditor in her capacity as Commissioner of Securities and Insurance of the State of Montana (Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, hereby issues the following allegations of fact, proposed conclusions of law, order and notice of right to a public hearing:

## ALLEGATIONS OF FACT

1. Eugene "Tip" Lavey (Lavey) owns the Lavey Insurance Agency at 308 Timmons St., Scobey, MT 59263.

2. Starting on December 1, 1999, Lavey was an appointed insurance agent with Farmers Insurance Company (Farmers). He sold Farmers insurance products and collected policyholders' premium payments at his office.

3. As a mail-in agent, Farmers contractually required Lavey to deposit premium into an independent trust account. The contract required Lavey to send a check for the total cash amount

Box 625
Scobey, MT
59263

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL™

7008 2810 0000 9377 6817

UNITED STATES POSTAL SERVICE

1000

59601

U.S. POSTAGE
PAID
SCOBEY, MT
59263
JUL 14, 10
AMOUNT
$5.54
00049754-22

State Auditor Monica J. Lindeen
Ins-1 Securities Commissioner
840 Helena Ave.
Helena, MT 59601

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | CASE NO. INS-2010-76 |
| Eugene Lavey, in his capacity as an insurance producer, License # 27042 | ) | AMENDED TEMPORARY CEASE AND DESIST ORDER |
| Respondent. | ) | |

Based upon recently discovered facts regarding Respondent's ownership of the insurance agency, the State Auditor in her capacity as Commissioner of Securities and Insurance of the State of Montana (Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, hereby issues an amended allegations of fact, proposed conclusions of law, order and notice of right to a public hearing:

## ALLEGATIONS OF FACT

1. Eugene "Tip" Lavey (Lavey) was an appointed insurance agent with Farmers Insurance Company (Farmers) starting on December 1, 1999. Lavey sold Farmers insurance products and collected policyholders' premium payments at his office in Scobey, Montana.

2. As a mail-in agent, Farmers contractually required Lavey to deposit premium into an independent trust account. The contract required Lavey to send a check for the total cash amount collected and all other check collections to an approved co-owned bank account. Farmers required Lavey to perform this task within two days upon receipt.



EXHIBIT H

3. On April 22, 2009, Farmers audited Lavey's insurance company. He had not forwarded $22,448.00 in premium payments at that time.

4. Farmers' auditor found $13,510.30 in un-deposited premium checks at Lavey's office. The remaining $8,937, however, could not be located and Lavey could not account for these missing funds.

5. Furthermore, the audit revealed Lavey kept premium payments in his personal bank account and not an independent trust account.

6. On May 17, 2009, Farmers terminated Lavey.

7. On November 11, 2009, the Office of the Commissioner of Securities and Insurance (CSI) received a complaint from Farmers alleging Lavey misappropriated premium payments.

8. The CSI assigned Investigator Neil Brunett (Brunett). Brunett relied on standard investigation methods, requesting information from Mr. Lavey, his insurance business, and Farmers.

9. On December 13, 2009, the CSI's investigators interviewed Lavey. At the interview, Lavey admitted he deposited policyholders' premium payments into his personal banking account and he used premium payments for his personal use, although he could not say the exact amount.

10. The CSI obtained Lavey's personal bank records. The records revealed that between May 1, 2008, through April 30, 2009, Lavey personally used $56,514.55 in policyholders' premium on approximately 219 separate instances.

11. The CSI investigators conducted a follow-up interview on April 15, 2010. Lavey stated that he was going through some mental health issues and was living outside his means. He again admitted he used policyholders' premium payments for personal use.

12. Lavey explained while he would immediately credit policyholders in Farmers' computer system, he would wait before forwarding the payments. He did this because he did not have enough funds to cover all outstanding premiums. Lavey admitted he used money coming in from newer payments to pay older amounts and this process continued until Farmers audited his company.

13. Lavey admitted he knew using policyholders' premium payments for personal use violated the Montana Insurance Code.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. § 33-1-101, *et seq.*

2. Pursuant to Mont. Code Ann. §§ 33-1-1302(8) and 45-6-301(6), a person commits the offense of theft when the person purposely or knowingly is involved in the misappropriation of insurance premiums or proceeds.

3. Lavey violated Mont. Code Ann. § 33-1-1302(8) by purposely and knowingly misappropriating $56,514.55 of policyholders' premium payments on approximately 219 separate occasions for his personal use.

4. Pursuant to Mont. Code Ann. § 33-17-1102, all insurance premiums received by an insurance producer must be held in a separate trust account and an insurance producer may not divert or appropriate the funds or any portion of the funds to the insurance producer's own

use. An insurance producer who purposely or knowingly diverts or misappropriates insurance premiums commits theft.

5. Lavey violated Mont. Code Ann. § 33-17-1102 by purposely and knowingly depositing $56,514.55 in premium payments on approximately 219 separate occasions into his personal bank account.

## ORDER

Pursuant to Mont. Code Ann. § 33-1-318, it appears to the Commissioner that the above-named Respondent committed acts constituting violations of the Insurance Code of Montana, including acts constituting insurance theft and misappropriation. Therefore, the Commissioner hereby orders Respondent to cease and desist any actions or activity wherein Respondent acts in violation of the Insurance Code of Montana.

Pursuant to Mont. Code Ann. § 33-17-1001(d), the Commissioner revokes Respondent's insurance license. The Commissioner furthermore orders Respondent to cease and desist any actions or activity wherein Respondent acts as an insurance producer, including the negotiation, sale, or solicitation of insurance within the State of Montana.

## NOTICE

Respondent is notified that the Commissioner has issued this order temporarily ordering him to cease and desist violating the insurance code and acting as an insurance agent. If Respondent wishes to contest the allegations herein, he shall make a written request for a hearing to Jameson C. Walker of this office within 15 days of receipt of this order. The hearing shall then be held within 20 days of the Commissioner's receipt of the hearing request unless otherwise mutually agreed upon by the parties. **If no hearing is requested within 15 days of**

**receipt of this order by Respondent, and the Commissioner orders none, this cease and desist order shall become permanent.**

Should Respondent request a hearing, he has the right to be accompanied, represented and advised by counsel. If the counsel Respondent chooses has not been admitted to the practice of law in the State of Montana, he or she must comply with the requirements of ***Application of American Smelting and Refining Co.,*** 164 Mont. 139, 520 P.2d 103 (1973), and ***Montana Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil,*** 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

DATED this 28TH day of July, 2010.

MONICA J. LINDEEN
Commissioner of Securities and Insurance

ROBERT W MOON

BY: Robert W. Moon
Deputy Insurance Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 29th day of July, 2010, by US mail, certified, first-class postage paid, to the following:

Eugene Lavey
308 Timmons St.
Scobey, MT 59263

JOAN BARLEEN

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature
X [signature] ☐ Agent ☐ Addres

B. Received by (Printed Name) Eugene Lavy

C. Date of Deliv 7/30/0

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

1. Article Addressed to:

EUGENE LAVY
308 TIMMONS ST
SCOBEY MT 59263

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandi
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7009 0080 0002 4375 4469

PS Form 3811, February 2004 Domestic Return Receipt Attn: Jamieson Walker 102595-02-M-1

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

MONICA J LINDEEN
COMMISSIONER OF SECURITIES & INSURANCE
OFFICE OF THE STATE AUDITOR
840 HELENA AVENUE
HELENA MT 59601

RECEIVED
STATE AUDITORS
OFFICE
HELENA, MONTANA
A 9:37

EXHIBIT
I