

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
HELENA, MONTANA

IN THE MATTER OF:) Case No. 2002-08
)
THE PROPOSED DISCIPLINARY) Consent Agreement
TREATMENT OF PAUL LYBECK and)
SAFECO INSURANCE COMPANY)
OF AMERICA,)
)
Respondents.)

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By Corporate Legal

I.

The Montana Insurance Commissioner (Commissioner), pursuant to the authority of the Insurance Code of Montana, Section 33-1-101, et seq., Mont. Code Ann. (2001), determines that there is reason to believe that the following allegations, if true, justify and support disciplinary treatment.

ALLEGATIONS

1. Paul Lybeck was the insurance producer for the [REDACTED]
2. He was the insurance producer for the renewal of the policy in 1997 and 1998 when American States Insurance Company insured the [REDACTED]; SAFECO bought American States in 1997.
3. In 1999 and 2000, the [REDACTED] was insured by SAFECO Insurance Company of America. Again, Lybeck was the insurance producer.
2. The property of the [REDACTED] is located in [REDACTED]
3. Paul Lybeck lives in North Dakota, has a North Dakota insurance producer license, but does not have a Montana non-resident insurance producer license.
4. SAFECO Insurance Company of America never filed an appointment of Paul Lybeck

with the Montana Department of Insurance.

CONCLUSIONS

1. The State Auditor is the Commissioner of Insurance pursuant to section 2-15-1903, Mont. Code Ann.
2. The insurance department is under the control and supervision of the Commissioner pursuant to section 33-1-301, Mont. Code Ann.
3. The Commissioner shall administer the Department of Insurance to protect insurance consumers pursuant to section 33-1-311, Mont. Code Ann.
4. SAFECO Insurance Company of America is in violation of section 33-17-236, Mont. Code Ann in that SAFECO Insurance Company of America did not file an appointment with the Montana Department of Insurance for the appointment of Paul Lybeck.

II.

SAFECO Insurance Company of America (SAFECO) stipulates and consents to the following:

- A. To pay a fine of \$3500.
- B. To comply with the insurance Code of Montana;
- C. To waive the right to a hearing on the allegations and by entering into this consent, SAFECO neither admits nor denies the allegations.
- D. That SAFECO states that it has read the foregoing Consent Agreement, that SAFECO knows and fully understands its contents and effect;
- E. SAFECO understands that the Consent Agreement is a part of the file, which is a public record. As a public record it may not be sealed.
- F. It is further understood that this Consent Agreement constitutes the entire agreement

between the parties, there being no other promises or agreements, either express or implied.

III.

Pursuant to the stipulation and consent of SAFECO, the Commissioner, under the authority of the Insurance Code of Montana and Section 2-4-603, MCA, hereby agrees that if the terms and conditions of this Consent Agreement are fully met, he will not initiate any civil or administrative action against SAFECO regarding the allegations contained therein pursuant to Sections 33-1-317 and 33-17-1001, MCA. In consideration for the Commissioner not initiating any civil or administrative action, SAFECO fully and forever releases and discharges the Office of the State Auditor and all State Auditor employees from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the above entitled administrative action.

Dated this 28 day of October, 2002.

RESPONDENT

SAFECO Ins. Co. of America
By: Walter McCollum
Its: Assistant Vice President

Subscribed and Sworn to before me this 28 day of October, 2002.

(SEAL)

[Signature]
Notary Public for the
State of Washington
Residing at Seattle, WA

[Signature]
Kevin F. Phillips
Staff Attorney

1 It is the intent of the legislature and the declared policy
2 of the state that occupational licensure be granted or revoked as
3 a police power of the state in its protection of the public
4 health, safety, and welfare pursuant to section 37-1-202, MCA.

5 Service of process is pursuant to section 33-1-314, MCA.

6 REASONS FOR ACTION

7 There is reason to believe that the following facts, if
8 true, justify and support such disciplinary treatment.

9 ALLEGATIONS

10 1. Paul Lybeck sold a SAFECO Insurance Company of America
11 (SAFECO) policy to insure the [REDACTED]

12 2. The property of the [REDACTED] is located in [REDACTED]
13 Montana.

14 3. Paul Lybeck lives in North Dakota, has a North Dakota
15 insurance producer license, but does not have a Montana non-
16 resident insurance producer license.

17 4. SAFECO never filed an appointment of Paul Lybeck with
18 the Montana Department of Insurance.

19 CONCLUSIONS

20 1. The State Auditor is the Commissioner of Insurance
21 pursuant to section 2-15-1903, Mont. Code Ann.

22 2. The insurance department is under the control and
23 supervision of the Commissioner pursuant to section 33-1-301,
24 Mont. Code Ann.

25 3. The Commissioner shall administer the Department of

1 Insurance to protect insurance consumers pursuant to section 33-
2 1-311, Mont. Code Ann.

3 4. Paul Lybeck violated section 33-17-201, Mont. Code Ann.,
4 in that he sold an insurance policy for coverage in Montana and
5 he was not licensed by the Montana Department of Insurance.

6 5. SAFECO is in violation of section 33-17-236, Mont. Code
7 Ann in that SAFECO did not file an appointment with the Montana
8 Department of Insurance for the appointment of Paul Lybeck.

9 STATEMENT OF RIGHTS

10 You are entitled to a hearing and to respond to this notice
11 and present evidence and arguments on all issues involved in this
12 case. You may have a formal hearing before a hearing examiner
13 appointed by the Commissioner. This is provided for by the
14 Montana Administrative Procedure Act, sections 2-4-60i, MCA, and
15 following, including Section 2-4-631, MCA. If you demand a
16 hearing, you will be given notice of the time, place and the
17 nature of the hearing. Pursuant to section 33-1-701, the hearing
18 shall be held within 45 days after receipt of the demand by the
19 commissioner, unless postponed by mutual consent.

20 You have a right to be represented by an attorney at any and
21 all stages of this proceeding.

22 If you want to resist the proposed action under the
23 jurisdiction of the Commissioner, you must so advise him within
24 fifteen (15) days of the date you receive this notice. You may
25 so advise him by writing to Kevin Phillips, Insurance Attorney,

1 State Auditor's Office, 840 Helena Ave, Helena, Montana 59604-
2 4009. While so advising Mr. Phillips, you should make clear
3 whether you demand a hearing, or whether you waive formal
4 proceedings and, if so, what informal proceedings you prefer for
5 handling this case. Pursuant to section 2-4-603(2), Mont. Code
6 Ann., you may not request to proceed informally if the action
7 could result in suspension, revocation or any other adverse
8 action against a professional license.

9 Should you request a hearing, you have the right to be
10 accompanied, represented, and advised by counsel. If the counsel
11 you choose has not been admitted to practice law in the state of
12 Montana, he or she must comply with the requirements of
13 Application of American Smelting and Refining Co., (1973), 164
14 Mont. 139, 520 P.2d 103.

15 CONTACT WITH INSURANCE COMMISSIONER'S OFFICE

16 If you have questions or wish to discuss this matter, please
17 contact Kevin Phillips, legal counsel for the State Auditor, 840
18 Helena Ave, Helena, MT, 59604-4009, (406)444-3496 or, within
19 Montana, (800)332-6148. If you are represented by an attorney,
20 please make any contacts with this office through your attorney.

21 POSSIBILITY OF DEFAULT


22 Failure to give notice or to advise of your demand for a
23 hearing or form of informal procedure within twenty (20) days,
24 will result in the entry of a default order imposing the
25 disciplinary sanctions against you and your license, all without

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any more notice to you, pursuant to 6.2.101, Administrative Rules
of Montana and the Attorney General's Model Rule 10, 1.3.214.

DATED this 11th day of April, 2002.

JOHN MORRISON
State Auditor and
Commissioner of Insurance

By: 
Kevin F. Phillips
Insurance Attorney


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CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING (LICENSE DISCIPLINE AND ADMINISTRATIVE FINE) to the following persons by depositing the same in the U.S. Mail, certified, return receipt requested, on this 12 day of APRIL, 2002.

TO: Paul Lybeck
P.O. Box 9034
Fargo, ND 58106-9034

SAFECO Insurance Company of America
John Hilderbrand
Managing Analyst, Northwest Region
SAFECO Ins. Co of America
4854 154th Place NE
Redmond WA 98052-9664



State Auditor's Office