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Attorney for Insurance Department

BEFORE THE STATE AUDITOR, EX-OFFICIO COMMISSIONER OF INSURANCE
FOR MONTANA

IN THE MATTER OF:)	
)	CASE NO.: INS-2008-27
MONTANA FARMERS UNION)	
INSURANCE AGENCY, INC.)	
300 River Drive North)	
Great Falls, MT 59403)	
)	
NORTHSTAR INSURANCE GROUP,)	
LLC)	
300 River Drive North)	NOTICE OF PROPOSED AGENCY
Great Falls, MT 59403)	DISCIPLINARY ACTION AND
)	OPPORTUNITY FOR HEARING
LEBARON & CARROLL, CDI)	
1350 East Southern)	
Mesa, AZ 85204)	
)	
WESTERNWORLD FINANCIAL RISK)	
MANAGEMENT, LLC, POLARIS)	
INTERNATIONAL INSURANCE)	
COMPANY LTD)	
2118 Central SE, #116)	
Albuquerque, NM 87106)	
)	
DESHAW INSURANCE AGENCY)	
LYLE DESHAW, individually and in his)	
capacity as an insurance producer and)	
agency)	
)	
JOHN or JANE DOES 1-5,)	
Respondents.)	

Staff of the Insurance Department of the office of the State Auditor as Commissioner of Insurance of the state of Montana (Department), pursuant to the authority of the Montana Insurance Code, § 33-1-101, et seq., Mont. Code Ann. (2007), proposes to the Commissioner that he take specific action against MONTANA FARMERS UNION INSURANCE AGENCY, INC. (MFUIA), NORTHSTAR INSURANCE GROUP, LLC (Northstar), LEBARON & CARROLL, CDI (LeBaron) WESTERNWORLD FINANCIAL RISK MANAGEMENT, LLC, (Westernworld), POLARIS INTERNATIONAL INSURANCE COMPANY, LTD, (Polaris), DESHAW INURANCE AGENCY and LYLE DESHAW (DeShaw), and as many as five John or Jane Does for violations of the Montana Insurance Code. The Commissioner has authority to take such action under the provisions of §§ 33-1-102, 33-1-301, 33-1-311, 33-1-317, 33-1-318, 33-1-1302, MCA (2007).

In particular, the Department's staff is recommending specific action against MFUIA, Northstar, LeBaron, Polaris, Westernworld and DeShaw, and any John or Jane Does found, including imposition of appropriate restitution amounts, imposition of appropriate fines pursuant to the provisions of the Montana Insurance Code, as well as any equitable relief deemed appropriate.

Service of process is made pursuant to § 33-1-314, Mont. Code Ann. (2007).

REASONS FOR ACTION

There is reason to believe that the following facts, if true, justify and support specific disciplinary action.

ALLEGATIONS

1. On or about September 18, 2007, the Montana Insurance Department (Department) received a complaint from Walt Anseth (Anseth) of the Montana Department of

Agriculture (Agriculture) on behalf of certain Montana grain farmers. The complaint alleges that Olson Trading Company (Olson) was required to purchase a surety bond in favor of the Montana Department of Agriculture for activity as a commodity warehouse dealer for each of the Montana grain farmers who stored grain with Olson. Olson did purchase a surety bond through Montana insurance producer Lyle DeShaw (DeShaw) of the DeShaw Agency in Plentywood, Montana. However, when a claim was made against the bond in August of 2006, no bond existed.

2. DeShaw is a properly licensed Montana insurance agent affiliated with the DeShaw Agency authorized to sell property and casualty, and vehicle lines of insurance. The DeShaw Agency is a properly licensed Montana insurance agency. DeShaw is not appointed with Polaris International Insurance Company, Ltd. (Polaris.)

3. Montana Farmers Union Insurance Agency, Inc. (MFUIA) is a duly licensed Montana insurance agency. MFUIA is wholly owned by Farmers Union Mutual Insurance Company (FUMIC.) MFUIA is not appointed with Polaris. DeShaw is not affiliated with MFUIA.

4. Northstar Insurance Group, LLC (Northstar) is a properly licensed Montana insurance agency organized under Arizona law. FUMIC owns 49 % of Northstar. DeShaw was not affiliated with Northstar at the time the Olson surety policy was purchased. Northstar is not appointed with Polaris. Northstar is not affiliated with MFUIA, but they have common management.

5. LeBaron and Carroll, CDI, (LeBaron) is a properly licensed Montana insurance agency organized under Arizona law. DeShaw is not affiliated with LeBaron. LeBaron is not appointed with Polaris. LeBaron is not affiliated with MFUIA, but is part owner of Northstar.

6. Westernworld Financial Risk Management, LLC (Westernworld) is not properly licensed to conduct the business of insurance in Montana. Westernworld is not authorized to conduct the business of insurance anywhere in the United States. Westernworld appears to be a Managing General Agent (MGA) for Polaris pursuant to the provisions of § 33-2-1501 (10), MCA. However, Westernworld is not authorized to conduct business as an MGA pursuant to the requirements of Title 33, Chapter 2, Part 16, MCA. MFUIA is not affiliated with Westernworld, nor is it contractually obligated to Westernworld. Northstar is not affiliated with Westernworld, nor is it contractually obligated to Westernworld. LeBaron is not affiliated with Westernworld, nor is it contractually obligated to Westernworld. DeShaw is not affiliated with Westernworld, nor is it contractually obligated to Westernworld.

7. Polaris does not have a subsisting certificate of authority to provide surety insurance in Montana. Polaris does not have a certificate of authority to provide any line of insurance in Montana. Polaris is not authorized to conduct the business of insurance anywhere in the United States. Northstar is not appointed with Polaris. DeShaw is not appointed with Polaris. LeBaron is not appointed with Polaris

8. In or near September of 2004, DeShaw told Olson he could not obtain a surety bond for Olson through DeShaw's normal appointments. DeShaw was sent to Northstar by his contacts at MFUIA. Northstar indicated to DeShaw it could obtain the requisite surety bond through its contacts at LeBaron. LeBaron had contacted Westernworld in its role as an MGA to obtain the surety policy. Westernworld provided the insurer, Polaris, to LeBaron which then provided the insurer to Northstar.

9. Olson provided a business check to DeShaw made out to Northstar dated September 17, 2004 for the purchase of the surety bond. Northstar retained its commission from

Olson's \$1,080 premium payment and forwarded a check in the amount of \$756 to Westernworld. DeShaw also received a commission for this sale.

10. Westernworld sent Olson a surety bond from Polaris, indicating on the policy that Polaris could be contacted by mail sent in care of Westernworld. DeShaw signed the declarations page from Polaris. Westernworld's representative, Ed Benton (Benton) received and cashed the first premium check from Northstar.

11. In an email dated December 13, 2005, DeShaw and LeBaron's employee Beverly Ellison (Ellison) discussed the renewal of Olson's surety bond. Then a check was deposited into Northstar's bank account from Olson for \$1,080 on or about March 9, 2006. There is no concomitant debit to Northstar's account indicating any premium was issued to Westernworld, Polaris, LeBaron, or DeShaw.

12. In a document dated August 8, 2006, Agriculture entered into a "Voluntary Cessation of Commodity Dealer License" with Olson. Then Agriculture made a claim on the Polaris bond because Olson had gone out of business still owing the grain farmers for the grain purchased by Olson. Agriculture made the claim on the bond to LeBaron. LeBaron then discovered the premium payment sent by Olson had not been forwarded to Polaris or Westernworld.

13. After Agriculture's August 2006 claim, Northstar issued a check for the \$1,080.00 payable to Olson. This check was sent to DeShaw who held the check until late 2008.

14. LeBaron paid the claim from Agriculture with its errors and omissions coverage. The check was received by Agriculture on or about May 13, 2008.

Based on the foregoing allegations, the Department submits the following:

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance pursuant to § 2-15-1903, MCA.
2. The insurance department is under the control and supervision of the Commissioner pursuant to § 33-1-301, MCA.
3. A person may not transact any business of insurance in Montana or a business relative to a subject resident, located or to be performed in Montana without complying with the applicable provisions of the Montana Insurance Code pursuant to the provisions of § 33-1-102, MCA.
4. A person may not sell insurance for an insurer without first being appointed to represent that company pursuant to the provisions of § 33-17-236, MCA.
5. A person may not sell insurance in Montana without first being duly licensed pursuant to the provisions of § 33-17-101, *et seq.*, MCA.
6. A person may not transact insurance in Montana without first obtaining a subsisting certificate of authority pursuant to the provisions of § 33-2-101, MCA.
7. A person may not act as a managing general agent for an insurer without first being licensed as an insurance producer pursuant to the provisions of § 33-2-1601, MCA.
8. Respondents DeShaw, MFUIA, Northstar, LeBaron and Westernworld violated the provisions of § 33-17-236, MCA, by implying an appointment with Polaris through their respective roles in the sale of the surety bond to Olson when no such appointment existed.
9. Respondent Polaris violated the provisions of § 30-2-101, MCA, by transacting insurance when it provided an insurance contract to Olson in September 2004 without first obtaining a subsisting certificate of authority.

10. Westernworld violated the provisions of § 33-2-1601, MCA, by acting as a managing general agent as defined at § 33-2-1501 (10), MCA, without being properly licensed to do so.

11. Respondents DeShaw, Northstar, LeBaron and Westernworld violated the provisions of § 33-2-104, MCA, by soliciting, negotiating or effectuating insurance for Polaris, including collecting premiums, when Polaris was not authorized to transact insurance business in Montana.

12. Respondents DeShaw, Northstar, LeBaron and Westernworld violated the provisions of § 33-18-212, MCA, by collecting premiums for a company that was not properly licensed to transact business insurance in Montana.

13. Respondents Westernworld and Polaris committed insurance fraud in violation of § 33-1-1202, MCA, by presenting or causing to be presented a materially false insurance declarations page to insurance producers DeShaw, Northstar and LeBaron for the purpose of obtaining money in the form of premium payments. The materially false information includes the assertion of fact that Polaris and/or Westernworld were authorized to transact insurance business in Montana.

14. Respondents DeShaw, MFUIA, Northstar, LeBaron, and Westernworld committed insurance fraud in violation of § 33-1-1302, MCA, when in the course of offering and selling the commodity bond to Olson they misrepresented the material fact that they were authorized to transact insurance business on behalf of Polaris with reckless indifference as to whether that fact was true and with the intention of causing another person (Olson) to rely on the misrepresentation resulting in detriment to Olson.

15. Respondents DeShaw, MFUIA, Northstar, and LeBaron acted in breach of their producers licenses by failing to comply with the provisions of the Montana Insurance Code (§ 33-1-101, *et seq.*, MCA), in violation of § 33-17-1001 (1) (c), MCA.

16. Respondents DeShaw, MFUIA, Northstar, and LeBaron acted in breach of their producers licenses when, in the conduct of the affairs under those licenses, they were incompetent, untrustworthy and a source of injury and loss to the public through their joint and severable failure to investigate whether Polaris was an insurer authorized to do business in Montana, in violation of § 33-17-1001 (1) (f), MCA.

RELIEF SOUGHT

1. Order all Respondents to cease and desist their actions in violation of the Montana Insurance Code.

2. Order all Respondents to pay restitution to their Montana customer who was harmed by their actions of the Montana Insurance Code, including 10% interest from the date of the wrongdoing, pursuant to § 33-1-1302, MCA.

3. Order Respondents to pay fines not to exceed \$5,000 for each identifiable violation of §§ 33-1-1202, 33-1-1302, 33-2-101, 33-2-104, 33-17-236, 33-17-1001, 33-18-212, Mont. Code Ann., pursuant to § 33-1-317, MCA.

4. Any other such relief allowed by law or required by justice.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to:

1. Issue a cease and desist order barring all Respondents from further violations of the Act;

2. Order all Respondents to pay administrative fines in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter;

3. Order all Respondents to pay restitution to their Montana customers harmed by the Respondents' actions of in violation of the Montana Insurance Code in an amount and upon such terms and conditions, including the statutory 10% per annum interest on the losses incurred, as supported by the evidence and determined at hearing of this matter; and

4. Take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana investors.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, §§ 2-4-601, Mont. Code Ann. and following, including § 2-4-631, Mont. Code Ann. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, Special Assistant Attorney General, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to § 2-4-603(2), Mont. Code Ann., you may not request to

proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license.

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

CONTACT WITH INSURANCE COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)-444-2040 or, within Montana, (800)-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure by Respondents to give notice or to advise of Respondents' demand for a hearing or informal procedure within 15 days, will result in the entry of a default order imposing the disciplinary sanctions against Respondents, without further notice to Respondents, pursuant to § 6.2.101, ARM and the Attorney General's Model Rule 10, § 1.3.214, ARM.

DATED this 4th day of December 2008.

JOHN MORRISON
State Auditor and ex-officio
Commissioner of Insurance

By: Roberta Cross Guns
Roberta Cross Guns
Special Assistant Attorney General

CERTIFICATE OF SERVICE

This is to certify that on this 4th day of December, 2008, a copy of the foregoing was served upon the following persons pursuant to the provisions of § 33-1-314, MCA, by depositing a copy of the action in the U.S. Mail, certified, return receipt requested, postage prepaid, addressed to:

Montana Farmers Union Insurance Agency
PO Box 2169
Great Falls, MT 59403-2169

Lyle DeShaw
DeShaw Agency
920 W. 1st Avenue
Plentywood, MT 59254

Northstar Insurance Group
PO Box 2169
Great Falls, MT 59403-2169

LeBaron & Carroll, CDI
1350 E. Southern
Mesa, AZ 85204

Westernworld Financial Risk Management
2118 Central SE
Albuquerque, NM 87106

Polaris International Insurance Company, Ltd.
2118 Central SE
Albuquerque, NM 87106



State Auditor's Office