

RECEIVED

OCT 25 2011

MIKE WINSOR
Office of the Commissioner of Securities
and Insurance, Montana State Auditor (CSI)
840 Helena Avenue
Helena, MT 59601
(406) 444-2040

Attorney for the CSI

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

IN THE MATTER OF YOLANDA)	CASE NO.: INS-2010-127
PASTOR, f.k.a. YOLANDA MIERZWA;)	
IRENE PASTOR f.k.a. IRENE MIERZWA;)	NOTICE OF PROPOSED AGENCY
and MARK KRAWCZYK,)	ACTION AND OPPORTUNITY FOR
)	HEARING
Respondents.)	
)	
)	

Staff of the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), by and through counsel, and pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, et seq. (Code), is proposing the Commissioner take specific action against the above-named Respondents for violating the Code. The Commissioner of Securities and Insurance, Montana State Auditor (Commissioner) has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-311, 33-1-314, 33-1-317, 33-1-1202, and 33-1-315.

Specifically, staff is proposing, pursuant to Mont. Code Ann. § 33-1-317, that the Commissioner impose a fine not to exceed \$25,000.00 for each violation of the Montana Insurance Code for all Respondents, in addition to all other penalties imposed by the laws of Montana. Additionally, staff proposes that the Commissioner require the Respondents to make

restitution to Blue Cross Blue Shield of Montana (BCBSMT), the victim who sustained financial losses.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action.

ALLEGATIONS OF FACT

1. Yolanda Paster, f.k.a. Yolanda Mierzwa is the daughter of Irene Paster, f.k.a. Irene Mierzwa. Irene Paster is the spouse of Mark Krawczyk.

2. At all times material hereto, Yolanda Mierzwa Pastor and Irene Pastor were the principals or members of Construction Services Unlimited and Big Sky ICF Supply, LLC.

3. Beginning on July 1, 2006, BCBSMT provided small employer group health insurance coverage (group policy) to the following individuals purported to have been full-time employees of Construction Services Unlimited and then later Big Sky ICF Supply, LLC:

- a. Yolanda Paster;
- b. Irene Paster;
- c. Mark Krawczyk;
- d. Anna Delikat;
- e. Paul Denis; and
- f. Gitty Goldstein.

4. The group policy was originally purchased through Construction Services Unlimited, and then later through Big Sky ICF Supply, LLC.

5. In order to be eligible for coverage under the group policy, members were required to be full-time employees who worked a minimum of 40 hours per week.

6. The individuals listed in ¶ 3 above represented to BCBSMT that they were full-time employees who worked 40 hours per week.

7. Big Sky ICF Supply LLC was involuntarily dissolved by the Secretary of State on December 4, 2007.

8. BCBSMT paid out \$12,038.59 in claims to the listed individuals pursuant to the group policy.

9. In 2009, a BCBSMT analyst identified Big Sky ICF Supply, LLC as a group with members receiving medical care primarily in the New York/New Jersey area rather than in Montana and the matter was forwarded to the BCBSMT Special Investigations Unit (SIU) to review eligibility for employees of Big Sky ICF Supply.

10. After investigating the matter, SIU determined that Big Sky ICF Supply, LLC did not at that time appear to be a viable, operating business; it had no jobs, no location, had been dissolved, the individuals on the east coast were misrepresented as employees. The owners of Big Sky ICF Supply, LLC had no work, were working other jobs, and could not provide proof of employment-related activities that would make them eligible for group coverage.

11. On December 17, 2009, BCBSMT submitted the matter to the CSI as a fraud referral and on January 1, 2010, BCBSMT cancelled the coverage.

12. The CSI conducted an investigation which confirmed that the individuals listed in ¶ 3 above were not full-time employees and, thus, ineligible for group coverage.

13. Mark Krawczyk failed to respond to a CSI information request sent to him by a CSI investigator.

CONCLUSIONS OF LAW

1. The Commissioner and the CSI have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.
2. A person commits the act of insurance fraud when the person presents or causes to be presented to or by an insurer, purported insurer, producer, or administrator, a materially false or altered application of insurance. Mont. Code Ann. § 33-1-1202(3).
3. The Respondents committed insurance fraud by representing in applications of insurance, that they were full-time employees of Construction Services Unlimited and/or Big Sky ICF Supply, LLC, when they were, in fact, not full-time employees.
4. If the Commissioner determines that a person has committed insurance fraud, the Commissioner may impose any penalty provided for in Mont. Code Ann. § 33-1-317 and shall require a person who commits insurance fraud to make restitution to the insurer or to any other person for all financial loss sustained as a result of the insurance fraud. Mont. Code Ann. § 33-1-1211.
5. A person who knowingly fails to produce records, documents, or other evidence requested by the Commissioner or the Commissioner's designee, or who knowingly fails to give full and truthful information or to answer in writing to any material inquiry of the Commissioner or the Commissioner's designee relative to the subject of an investigation, is subject to the fine set forth in Mont. Code Ann. § 33-1-317. Mont. Code Ann. § 33-1-315.
6. Mark Krawczyk violated Mont. Code Ann § 33-1-315 by knowingly failing to respond to a CSI investigator's information request.

7. The Commissioner may impose a fine not to exceed the sum o \$25,000.00 upon a person found to have violated a provision of the Code or regulation promulgated by the Commissioner. Mont. Code Ann. § 33-1-317.

8. The Commissioner may fine each of the Respondents up to \$25,000 for each act of insurance fraud and require them to make restitution to BCBSMT.

9. The Commissioner may fine Respondent Mark Krawczyk up to \$25,000 for failing to respond to a CSI investigator's information request.

RELIEF REQUESTED

Staff is proposing, pursuant to Mont. Code Ann. § 33-1-317, that the Commissioner impose a fine not to exceed \$25,000.00 for each violation of the Montana Insurance Code for all respondents, in addition to all other penalties imposed by the laws of Montana. Additionally, staff proposes that the Commissioner require the Respondents to pay restitution to BCBSMT.

STATEMENT OF RIGHTS

You are entitled to a hearing and to respond to this Notice of Proposed Agency Action and to present evidence and arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act. Mont. Code Ann. § 2-4-601, et seq.

You have a right to be represented by an attorney at any and all stages of this proceeding. If you wish to contest the allegations herein, you must make a written request for a hearing within 20 days of receipt of this notice to Mike Winsor, Attorney for the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, MT 59601. The hearing shall then be held within 45 days of the Commissioner's receipt of the

hearing request, unless the time is extended by agreement of the parties or by order of the Hearing Examiner. While so advising Mr. Winsor, your written notice must clearly indicate whether you request a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

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

CONTACT WITH THE COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Mike Winsor, Attorney for the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave, Helena, MT 59601, (406) 444-2040. If you are represented by an attorney, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give written notice of your demand for a formal hearing or for informal procedure within 20 days will result in the entry of a default order imposing any sanctions available under Montana law without any additional notice to you pursuant to Mont. Admin. R. 6.6.101 and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 25th day of October 2011.



MIKE WINSOR
Attorney for the CSI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of October 2011, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served upon the following by certified mail, postage prepaid, return receipt requested:

Yolanda Paster
Big Sky ICF Supply, LLC
P.O. Box 161781
Big Sky, MT 59716

Irene Paster
Big Sky ICF Supply, LLC
P.O. Box 161781
Big Sky, MT 59716

Mark Krawczyk
Big Sky ICF Supply, LLC
P.O. Box 161781
Big Sky, MT 59716

