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Attorney for the CSI

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

<p>IN THE MATTER OF:</p> <p>CASCADE COUNTY, dba MONTANA EXPOPARK,</p> <p>Respondent.</p>	<p>CASE NO. INS-2015-298</p> <p>NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING</p>
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PLEASE TAKE NOTICE:

Staff of the Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101 et seq. (the Code), is proposing that the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner) take disciplinary action against Respondent Cascade County, dba Montana ExpoPark.

The Commissioner has authority to take such action under the provisions of §§ 33-1-311, 33-1-317, 33-1-318, 33-1-1302, 33-17-1004, 33-18-102, 33-18-212, and 33-18-1003.

REASONS FOR ACTION

There is reasonable cause to believe that the following facts will be proven true and justify disciplinary action against Respondent, including restitution to insurance consumers, statutory fines, and a cease and desist order.

ALLEGATIONS OF FACT

1. Respondent Montana ExpoPark is an assumed business name for Cascade County. Respondent is responsible for running the Montana State Fair, as well as other events at the ExpoPark grounds.

2. Respondent requires potential vendors at the Montana State Fair to apply for booth space at the Fair, and to obtain liability insurance.

3. In at least 2013 and 2014, and potentially before and after, Respondent offered potential vendors the option of obtaining insurance through Respondent. Respondent provided the insurance brochures to the vendors, and collected money as premium to pay for the insurance. Respondent then applied to United State Fire Insurance Company (U.S. Fire) for insurance policies for those vendors.

4. Respondent is not a licensed insurance producer in Montana. No employees of Respondent who participated in obtaining insurance for vendors were licensed insurance producers in Montana.

5. In at least 2013 and 2014, and potentially before and after, vendors paid more to Respondent as insurance premium than the actual insurance cost. Vendors paid Respondent between \$150 and \$400 each for liability coverage through U.S. Fire. Respondent paid U.S. Fire for insurance policies to cover the vendors at a premium cost of either \$75 or \$105 for each vendor.

ALLEGATIONS OF LAW

1. The State Auditor is the Commissioner of Insurance (Commissioner). § 2-15-1903.
2. The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), is under the control and supervision of the Commissioner. §§ 2-15-1902 and 33-1-301.
3. The Commissioner shall administer the CSI to protect insurance consumers. § 33-1-311(3).
4. The Commissioner and the CSI have jurisdiction over this matter. § 33-1-311.
5. A “person” is an individual, insurer, company, association, organization, partnership, business trust, corporation, or any other legal entity. § 33-1-202(3).
6. A person may not, in the course of offering or selling insurance, misrepresent a material fact known to the person to be untrue, or with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person’s detriment. § 33-1-1302(1)(a).
7. Respondent violated § 33-1-1302(1)(a) by misleading vendors that the cost of insurance was greater than the actual premium, and pocketing the extra amounts paid by the vendors.
8. A person may not sell, solicit, or negotiate insurance, or otherwise act as an insurance producer in Montana unless licensed as an insurance producer by the CSI. § 33-17-201(1).
9. Respondent and its employees acted as insurance producers by obtaining insurance on behalf of others, and collecting premium from them to later pay for insurance.

10. No person shall engage in any unfair method of competition defined in Title 33, Chapter 18, or any unfair or deceptive practice in the business of insurance in Montana. § 33-18-102.

11. A person may not willfully collect any sum as a premium or charge for insurance any sum in excess of the premium or charge applicable to the insurance policy. § 33-18-212.

12. Respondent violated § 33-18-212 by charging vendors more as premium for insurance coverage than the actual insurance cost.

13. The Commissioner may impose a fine not to exceed \$25,000 on an insurer for each violation of the Insurance Code. § 33-1-317.

14. The Commissioner may issue a cease and desist order for any act or practice found after a hearing to have violated the Insurance Code. § 33-1-318.

15. The Commissioner may require a person who commits insurance fraud to make full restitution to the victims of such fraud with interest of 10% a year from the date of the fraud, plus any costs and reasonable attorney fees, less the amount of any benefit the victim received from the insurance.

RELIEF REQUESTED

For violating provisions of the Code, the CSI seeks the following relief:

1. Impose administrative fines against Respondent not to exceed \$25,000 per violation, pursuant to § 33-1-317;

2. Provide restitution to persons who paid Respondent more in premium than their insurance actually cost, pursuant to § 33-1-1302(4);

3. Issue a cease and desist order to enjoin Respondent's violations of the Code, pursuant to § 33-1-318; and

4. Any other relief deemed just and proper.

STATEMENT OF RIGHTS

You are each 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 21 days of receipt of this notice to:

Michael A. Kakuk
Office of the Montana State Auditor,
Commissioner of Securities and Insurance
840 Helena Avenue
Helena, MT 59601

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. Pursuant to § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. 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*, *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 Michael A. Kakuk, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 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 21 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 16th day of June, 2016.



Michael A. Kakuk
Attorney for the CSI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of June, 2016, 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:

Cascade County Attorney's Office
Attn: Carey Ann Haight
121 4th Street North, #2A
Great Falls, MT 59401

