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Counsel for the Commissioner of Securities and Insurance

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

IN THE MATTER OF VICTORY
INSURANCE COMPANY'S
MISREPRESENTATION OF POLICY
TERMS, ILLEGAL MIDTERM
CANCELLATION, AND FAILURE TO
PROVIDE NOTICE OF NON-
RENEWAL TO VICTORY'S
CUSTOMERS

VICTORY INSURANCE COMPANY,
INC. – NAIC Company Code 12900

Respondent.

Case No. INS-2022-00157

**NOTICE OF PROPOSED AGENCY
ACTION AND OPPORTUNITY FOR
HEARING**

TO: VICTORY INSURANCE COMPANY
KEITH EDWARD BROWNFIELD
PRESIDENT AND CEO
605 BRIDGE STREET
MILES CITY, MONTANA 59301

The Commissioner of Securities and Insurance, Office of the Montana State Auditor (Commissioner), has cause to believe that Victory Insurance Company, Inc. (Respondent) has violated the Montana Insurance Code, § 33-1-101, *et seq.*, MCA. The Commissioner proposes to levy a fine of up to \$2,700,000 pursuant to § 33-1-317, MCA.

The Commissioner has the authority to undertake this action pursuant to the Montana Insurance Code, including §§ 33-1-311, 33-1-317, 33-15-1103(1) and (2), 33-15-1105(1)(a), and 33-18-202(1), MCA.

Acceptance of the penalty will resolve this matter and it will be deemed a Final Agency Action based on the facts and law set out below. If Respondent chooses not to accept the penalty, an administrative hearing must be requested; that request must be in writing and received by the Commissioner **within 24 days** of the date this Notice, as described in the Statement of Rights below. Failure to timely request a hearing can result in entry of a default order as stated in the Possibility of Default section below.

FACTUAL BACKGROUND AND ALLEGATIONS

1. Respondent Victory Insurance Company, Inc. (Victory) is an insurance company organized under the laws of the State of Montana, with its principal place of business in Miles City, Montana.

2. Clear Spring Property and Casualty Company (Clear Spring) is an insurance company organized under the laws of the State of Texas, with its principal place of business in Chicago, Illinois.

3. Prior to January 1, 2020, Victory was the insurer for approximately 680 workers' compensation insurance policies in Montana.

4. Sometime prior to January 1, 2020, Victory agreed with Clear Spring that Victory's insureds would become insureds of Clear Spring, but Victory would be compensated for administering the policies as a "Managing General Agent."

5. Montana law and the language in Victory's own insurance contracts required that Victory give its insureds 45-days-notice in advance of the end date of the policy that Victory would no longer be their insurer. *See* § 33-15-1105(1)(a), MCA. Montana law and the language of Victory's own insurance policies also prohibit Victory from canceling a policy prior to the term agreed upon in the policy, except for reasons enumerated in the policy. Section 33-15-1103(1), MCA.

6. The intent behind these requirements is to give insureds stability in their coverage and adequate time to decide on a new insurer if Victory were to choose to no longer be their insurer. Furthermore, these requirements encourage fair competition by permitting other insurers to fairly compete for the insurance business that Victory was relinquishing. *See* § 33-15-1101, MCA.

7. Victory did not provide this required notice. Instead, in at least 54 instances, Victory sent the following email (or a substantially similar version) to its insureds on December 31, 2019:

To further reduce your business' workers' compensation premiums while increasing coverage options, effective January 1, 2020, your Victory Insurance Company policy has been upgraded to Clear Spring policy number WC110-0010651-2020A. Victory Insurance Company will continue to be the sole contact for your workers' compensation policy (including claims, billing, policy issuance, underwriting or any administration services). There is nothing that you need to do to realize the savings that have been made available to your company. Aside from the savings, all of Victory's policy terms remain the same and have been applied to your updated Clear Spring policy.

8. In all 54 instances this communication was sent on the day before Victory was canceling or non-renewing its customers policies. Nowhere in this email did Victory notify its insureds of their right to shop for another policy if they did not prefer to be insured by Clear Spring. Nor did Victory mention to its insureds in this email that Victory was going to be compensated if Clear Spring kept their policy, but Victory would not be compensated if an insurer other than Clear Spring assumed the policy.

9. Upon learning Victory had non-renewed and cancelled its policies without adequate notice, the Commissioner asked Victory if they agreed that they failed to give sufficient notice for non-renewal or a valid basis for mid-term cancellation under the law and the language of their own contract. Victory stated: "No 'non-renewal' notice was required as the policy was not 'cancelled or non-renewed' [sic] policy was assigned and continued under the same terms." Victory failed to explain how changing the insurer on

an insurance policy could possibly be interpreted as that insurance contract being “continued under the same terms.”

10. Victory previously had represented in verified district court pleadings that it had “terminated” these policies that they now characterized variously as “updated,” “upgraded,” and “assigned and continued under the same terms.” When asked why it now characterized these transactions as an “assignment,” Victory explained that the insurance code only requires notice to its customers for a “cancellation.” Victory argued that because it labeled these transactions as something other than a “cancellation,” they would not have to give notice to their customers that their insurer was changing. The Commissioner pointed out that “cancellation” is actually defined by the insurance code as a “decision by the insurer to terminate an insurance policy prior to the expiration of its term.” *See* § 33-15-1102(2), MCA. Victory responded that “Victory did not ‘cancel’ policies or cancel policies mid-term. As noted, the policies were assigned to [Clear Spring].” Victory failed to explain how its distinction between “cancellation” and “termination” helped its customers understand in a timely manner that they were no longer going to be insured by Victory.

11. The Commissioner also asked Victory if it agreed that the language used in the email to its insureds was misleading on its face, given that the language did not clearly indicate that the policyholder’s policy was non-renewed or cancelled and that they are no longer insured with Victory Insurance Company. The Commissioner pointed out that the email misrepresents what occurred by making it appear that there have been no changes, while all the contractual duties and obligations to the policyholder are now the responsibility of a different legal entity, Clear Spring Property and Casualty Company. Victory disagreed without further explanation.

12. Victory effectively asserts it has the right to unilaterally transfer its customers to another insurer, at any time, without statutory notice, under a legal theory of termination and assignment (as opposed to cancellation), to which Victory refers to as an “upgrade” and “update” when communicating this transaction to its customers. Victory’s position is

contrary to the letter and intent of the notice provisions of the insurance code, their customer's interest in knowing who is insuring them, and fair competition in the marketplace.

ASSERTIONS OF LAW

13. The Commissioner has jurisdiction over this matter pursuant to § 33-1-311, MCA.

14. The Commissioner is tasked with enforcement of the Montana Insurance Code, including §§ 33-15-1103(1) and (2), 33-15-1105(1)(a), and 33-18-202(1), MCA.

15. Victory is an insurer pursuant to § 33-1-201(6)(a), MCA.

16. Casualty insurance includes workers' compensation and employer's liability as defined in § 33-1-206(1)(c), MCA.

17. Victory had a duty to mail or deliver notice to its customers it was non-renewing their workers' compensation policies at least 45-days prior to the expiration date in the policy. Section 33-15-1105(1)(a), MCA.

18. Montana law prohibits Victory from cancelling its workers compensation policies "before either the expiration of the agreed term or 1 year from the effective date of the policy or renewal date, whichever is less, except [under circumstances not applicable here.]" Section 33-15-1103(1), MCA. In any event, such a cancellation is not effective for 10 days after the notice. Section 33-15-1103(2), MCA.

19. Montana law prohibits Victory from misrepresenting the benefits, advantages, conditions, or terms of any insurance policy. Section 33-18-202(1).

20. Victory's own policy language in the policies at issue herein is consistent with these requirements of Montana law.

21. In at least five (5) instances, Victory failed to give the requisite 45-days-notice to its customers that Victory would not be renewing their coverage in violation of Mont. Code Ann. § 33-15-1105(1)(a).

22. In at least 49 instances, Victory failed to provide one of the enumerated statutory bases for a midterm cancellation in violation of § 33-15-1103(1), MCA.

23. In at least 49 instances, Victory canceled a policy prior to the agreed upon term without providing the required ten (10) day notice in violation of § 33-15-1103(2), MCA.

24. In at least 54 instances, Victory misled its customers by sending out an email with language that did not clearly indicate that the policyholder's policy was non-renewed or cancelled and that they are no longer insured with Victory Insurance Company. Furthermore, the email misrepresents what occurred by making it appear that there have been no changes, while all the contractual duties and obligations to the policyholder are now the responsibility of a different legal entity, Clear Spring Property and Casualty Company, all in violation of § 33-18-202(1), MCA.

25. If, after conducting a hearing, the Commissioner determines that a person has violated §§ 33-15-1103(1) or (2), 33-15-1105(1)(a), or 33-18-202(1), MCA, the Commissioner may impose a penalty in the form of a fine not to exceed the sum of \$25,000 per violation. Section 33-1-317, MCA.

PROPOSED AGENCY ACTION

WHEREFORE, the Commissioner proposes to order the following:

A fine in the amount of up to \$2,700,000 payable to the State of Montana pursuant to § 33-1-317, MCA.

STATEMENT OF RIGHTS

Respondent is entitled to contest the Commissioner's proposed action by requesting an administrative hearing. To do so, **within 24 days of the date this Notice**, Respondent must submit a written hearing request to CSI at 840 Helena Avenue, Helena, MT 59601 or CSI.LegalService@mt.gov. A hearing request may, but does not have to, include a response to the allegations set forth above. If a hearing is requested, Respondent will be provided notice of the time, place, and nature of the hearing. Respondent will be entitled to attend this hearing and respond and present evidence and arguments on all issues involved in this action.

Respondent has the right to retain legal counsel to represent, accompany, and advise them at any and all stages of this proceeding or may also elect to represent themselves; however, a business entity may not appear on its own behalf or through an agent other than an attorney licensed to practice law. Admin. R. Mont. 1.3.231.

Administrative hearings are conducted by an impartial hearing examiner appointed by the Commissioner under the provisions of the Montana Administrative Procedures Act. Formal proceedings may be waived pursuant to § 2-4-603, MCA.

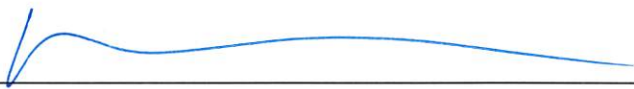
CONTACT WITH COMMISSIONER'S OFFICE

If there are questions or concerns, please contact CSI at 406-444-2040 or CSI.LegalService@mt.gov. If represented by an attorney, please ensure this contact is made by the attorney.

POSSIBILITY OF DEFAULT

Failure to timely provide a written hearing request shall result in the entry of a default order imposing the Commissioner's proposed action, without additional notice, pursuant to Admin. R. Mont. 1.3.214.

DATED this 27th day of December, 2022.



OLE OLSON
*Chief Legal Counsel for Commissioner of Securities
& Insurance*

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2022, I caused a copy of the foregoing, *Notice of Proposed Agency Action and Opportunity for Hearing*, to be served on the following persons by the following means:

1,2 Mail
1,2 E-Mail

1. Keith Edward Brownfield
President and CEO
Victory Insurance Company
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2. Linda M. Deola
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BRANDY MORRISON, Paralegal