

**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

**FINAL AGENCY DECISION**

This case appears before the Deputy Securities Commissioner as the duly appointed designee of the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), to render a final agency decision pursuant to the Montana Administrative Procedures Act, found at Montana Code Annotated Title 2, Chapter 4 (MAPA). All actions set forth herein are done on behalf of the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI).

The Deputy Securities Commissioner (Deputy Commissioner), has reviewed the Hearing Examiner's May 23, 2023, Findings of Fact, Conclusions of Law, Order and Recommended Decision on the Commissioner's Motion for Summary Judgment (Proposed Order) in this matter attached as Exhibit A. All motions related to this hearing are deemed timely and therefore ripe for final judgment.

Oral Arguments on Exceptions were held on August 11, 2023. Respondent, appearing through the representation of Lin Deola, was given the opportunity to present its Exceptions. CSI, represented by Kirsten Madsen, likewise presented arguments on behalf of CSI.

### STANDARD OF REVIEW

In reviewing the Hearing Examiner's Proposed Order and after listening to the oral arguments, the Commissioner adheres to MAPA regarding contested cases. Specifically, Mont. Code Ann. § 2-4-621(3) provides:

The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

As noted in *Ulrich v. State ex rel Board of Funeral Serv.*, 1998 MT 196, ¶ 14, 289 Mont. 407, 961 P.2d 126:

When conducting a review of the Board's decision, we note that the Board, which did not personally hear or observe the evidence, does not have the authority to conduct a de novo review of the hearing examiner's decision. Rather, it may reject the examiner's findings only if they are not based upon *competent, substantial evidence*. Additionally, the Board must state with particularity that the findings are not based upon competent, substantial evidence ... [omitting partial quote of §2-4-621.]  
A rejection of the hearing examiner's findings in violation of Mont. Code Ann. §2-4-621(3) constitutes an abuse of discretion pursuant to §2-4-704(2)(a)(vi). [omitting citation]

In interpreting MAPA, the Montana Supreme Court has held that a hearing examiner's findings of fact may be modified or rejected in other circumstances. See *In the Matter of the Grievance of Brady*, 1999 MT 153, 295 Mont. 75, 983 P.2d 292. The

Commissioner may determine that certain of the Hearing Examiner's findings of fact are based on an interpretation of law and, therefore, such findings of fact may be rejected or modified like conclusions of law by the Commissioner. *Id.* at ¶ 14.

Regarding the Hearing Examiner's conclusions of law interpreting and applying the Montana Insurance Code, § 33-1-101, et seq., and rules promulgated thereunder, the Commissioner may determine that the Hearing Examiner misinterpreted the law and may modify or reject the Hearing Examiner's proposed Conclusions of Law. *Id.* at ¶14; *Steer, Inc. v. Department of Revenue* (1990), 245 Mont. 470, 474, 803 P.2d 601, 603. Further the Commissioner may accept or reduce the recommended penalty in the Hearing Examiner's proposed decision but may not increase it without review of the complete record pursuant to Mont. Code Ann. § 2-4-621(3). As the Deputy Commissioner does not challenge any of the factual findings of the Hearings Examiner, nor are there any genuine issues of material facts<sup>1</sup>, MAPA constrains the Deputy Commissioner to reviewing conclusions of law.

### **Questions of Law presented by Respondent**

Respondent's *Exceptions* briefing presents matters which must be addressed. Respondent first argues that the declaration of mootness by the Hearing Examiner regarding Respondent's *Motion for Summary Judgment* was improper, and that this fatal flaw means the decision is not ripe for judgment now. It secondly argues the fine amount is excessive and impossible to determine because there was no hearing regarding damages. In its *Exceptions* briefing, Respondent reiterates many of the questions presented in its *Response to the CSI's Motion for Summary Judgment*, and its own *Motion for Summary Judgment*; therefore, wherein arguments align, the Deputy Commissioner consolidates the arguments.

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<sup>1</sup> It is noted that Respondent appears to argue the Commissioner should decide this matter solely on the summary judgment standard since there are no Findings of Fact. *Reply Brief in Support of Exceptions*, p. 1-2. The Deputy Commissioner notes there are 69 Findings of Fact issued by the Hearings Examiner. Respondent also notes the Montana Supreme Court will review *de novo*. The Deputy Commissioner agrees, the Supreme Court, should this case get there, will review the entire record before entering judgment.

***I. The issue of mootness is irrelevant as even reading Victory’s Motion for Summary Judgment in a light most favorable to Victory (rather than CSI), would render the same conclusion.***

It is undisputed that Respondent, over CSI’s objection, filed its *Motion for Summary Judgment* on May 22, 2023. One day later, the Hearings Examiner issued his final order and declared, *sua sponte*, Victory’s motion as moot. *Proposed Order*, p. 39. CSI did not respond to Respondent’s *Motion for Summary Judgment*, nor did CSI request the Hearings Examiner to declare the issue moot.<sup>2</sup>

Mootness is a “[t]hreshold issue which must be resolved before addressing the underlying dispute.” *Briese v. Mont. Pub. Empl. Ret. Bd.*, 2012 MT 192, ¶ 14, 366 Mont. 148, 285 P.3d 550. A moot question is “one which existed once, but because of an event or happening, it has ceased to exist and no longer presents an actual controversy.” *Povsha v. City of Billings*, 2007 MT 353, ¶ 19, 340 Mont. 346, 174 P.3d 515. A question is moot “if the issue presented at the outset of the action has ceased to exist or is no longer “live,” or if the court is unable due to an intervening event or change in circumstances to grant effective relief or to restore the parties to their original position.” *Progressive Direct Ins. Co. v. Stuivenga*, 2012 MT 75, ¶ 17, 364 Mont. 390, 276 P.3d 867.

Respondent summarizes its position as follows: the Hearings Examiner was required, at a minimum, to consider Respondent’s *Motion for Summary Judgment* and to make a specific ruling on the *Motion*. Respondent cites various case law (none from a Montana District Court, the Montana Supreme Court, or the Ninth Circuit), to argue the Hearings Examiner fully adjudicated the matter without considering all the evidence before him. Cases cited by the Respondent do not grant the fact finder the ability to

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<sup>2</sup> The Montana Rules of Civil Procedure, adopted by the CSI at Admin. R. Mont. 6.2.101, state that a party may move for summary judgment at any time unless a court orders otherwise. Mont. R. Civ. Proc. 56(c)(1)(A). Judgment should be rendered if the pleadings, the discovery and disclosure material on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. *Id.* at (c)((3).

ignore a document that is properly filed.<sup>3</sup> See generally Respondent's *Reply Brief in Support of Exceptions*, p. 2-4.

Alternatively, CSI argues that Respondent had ample opportunity to present such evidence when it filed its response to CSI's motion over one month prior. CSI relies on caselaw from the Seventh Circuit, stating emphatically that the time to file a motion for summary judgment is when approached with one. Moreover, CSI argues that a dispositive issue had been resolved in CSI's favor, and no consideration for Respondent's motion was required. CSI characterizes Respondent's mootness argument as a red herring. See generally, CSI's *Response Brief to Exceptions*, p. 13.

The Deputy Commissioner, reviews the arguments to determine if the decision to consider Respondent's *Motion for Summary Judgment* moot impaired Respondent. It does not.

***A. Respondent's filing of its Motion for Summary Judgment was not procedurally flawed.***

As an initial matter, there is nothing on the record which indicates Respondent acted outside its rights when filing for summary judgment. The rules clearly indicate a motion for summary judgment can be made *at any time*. Mont. R. Civ. Proc. 56(c)(1)(A). Pursuant to the Montana Administrative Procedure Act, Mont. Code Ann. §§ 2-4-101 et seq. (MAPA), and the rules promulgated thereunder, the designated hearings officer must ensure that "all parties are afforded the opportunity to respond and present evidence and argument on all issues involved." Admin. R. Mont. 1.3.219.

While Respondent's timing of the filing of the *Motion* may have been procedurally odd, neither the Montana Rules of Civil Procedure nor MAPA compel a party to file a cross motion rather than a separate motion. There may be a host of reasons for filing an independent motion rather than as an officially designated cross motion (such as new evidence or a strategic calculation), and Respondent acted within the Rules. Because

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<sup>3</sup> Notably, the only additional relevant factual information presented in Respondent's *Motion for Summary Judgment* were a statement by the company that it had sent the policy at issue five days prior to termination, on December 26, 2020.

Respondent acted within its rights, the next question is whether the Hearings Officer had the authority to declare the issue as moot.

There is nothing on the record to indicate the Hearing Examiner did not consider the entire record before him as required by MAPA. That said, CSI did not have an opportunity to refute the evidence presented by Respondent<sup>4</sup> and Respondent did not have the opportunity to then argue why CSI was correct or incorrect in its assertions.<sup>5</sup> This is because a superseding event occurred – the Hearings Officer declared the issue as moot. This was presumably done because he ruled on CSI’s original *Motion for Summary Judgment*, and under *City of Billings*, he was not required to issue a separate ruling when the original controversy was decided. *City of Billings*, ¶19.

There were alternative options for the Hearings Examiner to follow besides declaring the issue moot. He could have converted the *Motion for Summary Judgment* to a cross motion for summary judgment and disposed of both motions simultaneously. See generally *Zinvest, LLC v. Hudgins*, 2014 MT 201 (indirectly acknowledging a judge’s right to convert a motion for summary judgment to a cross motion for summary judgment). He could have allowed for further briefing on the matter so that all parties were afforded the opportunity to respond and present evidence and argument on all issues involved as directed by the Admin. R. Mont. 1.3.219. He could have simply denied the motion on its face as the facts were insufficient for summary judgment. As the Hearings Examiner did not choose these options in their strictest terms, Respondent concocts a legal argument that would require the Hearings Examiner to rework his ultimate decision, not based on evidence actually in the record, but solely on procedural grounds. *Respondent’s Reply to BISO Exceptions*, p. 2-4.

Respondent demands that the Hearings Officer, at a minimum, consider its *Motion for Summary Judgment*. *Id.* at 4. While the Deputy Commissioner does not know how

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<sup>4</sup>The Deputy Commissioner agrees with CSI that Respondent’s characterization of inferences made in its *Motion for Summary Judgment* are unrefuted – CSI never responded, nor was it obligated to respond, to that *Motion*.

<sup>5</sup> This is strictly a procedural statement, as the Respondent’s motion largely rearticulates arguments it had already made in its response.

the Hearings Examiner could have deemed Respondent's *Motion for Summary Judgment* as moot unless he read it, the amount of consideration granted is immaterial to the Deputy Commissioner's ultimate determination. This is because any potential violation of MAPA procedures regarding the *Motion for Summary Judgment* which does not affect substantial rights can be deemed as harmless. *Liberty Cove, Inc. vs. Missoula County*, 2009 MT 377 ¶ 21, citing M. R. Vic. P. 61. For the reasons stated below, such an error, if indeed an error it was, is harmless.

***B. Even if the Hearings Examiner improperly disposed of Respondent's Motion for Summary Judgment, the error was harmless.***

In specifically declining to make a legal determination regarding mootness, the Deputy Commissioner reviewed Respondent's *Motion for Summary Judgment*. A complete review of that *Motion* indicates that even had the Hearings Examiner ruled on the motion independently, the result would have been the same and thus any error would have been harmless. This is because the Respondent's *Motion* largely reiterated what it had already argued in its original Response to CSI's motion, mines no new material factual ground, and asks questions upon which the Hearings Examiner was not permitted to opine. Thus, Respondent's *Motion* does not meet its burden in establishing material disputed material facts, and Respondent is therefore not entitled to judgment as a matter of law. *In re Peila*, 249 Mont. 272, 280-81, 815 P.2d 139, 144-45 (1991); Mont. R. Civ. P. 56(c); *accord Anaconda Pub. Schs v. Whealon*, 2012 MT 13, ¶ 16, 363 Mont. 344, 268 P.3d 1258.

Respondent's *Motion for Summary Judgment* essentially contains four arguments:

1. The proceedings violate the constitution because:
  - i. There is an unconstitutional delegation of legislative authority regarding the author of the fine. *VBISOMSJ* at p. 5-10;
  - ii. The fine is unconstitutionally excessive. *Id.* at 10-12;
  - iii. There is a due process violation regarding a hearing on the fine *Id.* at p. 12-13;
  - iv. The Defendant has a right to a jury trial. *Id.* at 18-20;

2. Victory made no misrepresentation because Victory informed its clients there was a new insurance company. *Id.* at p. 18;
3. Cancellation rights do not prohibit assignment. *Id.* at p. 2-5;
4. The CSI misreads § 33-1-317 regarding the allowable fine amount. *Id.* at 13-15, and even if the interpretation of that statute is correct, the Commissioner has made no justification for why the fine is appropriate *Id.* at p. 15-17.

Before addressing these issues, the Commissioner notes that Respondent has had ample opportunity to present legal arguments on the matter. As the table below demonstrates, both before and after the Hearings Examiner issued his proposed findings, Respondent rearticulated substantially similar arguments on the issues presented in its *Motion for Summary Judgment* (and did so again in its *Exceptions* briefing):

| Arguments:  | <i>Response to CSI MSJ</i> | <i>Respondent MSJ</i> | <i>Respondent BISO Exceptions</i> | <i>Respondent Reply BISO Exceptions</i> |
|---|----------------------------|-----------------------|-----------------------------------|---|
| Coverage was never terminated/this was an Assignment  | p. 6-7                     | p. 2-5                | p. 3-6                            | p. 5-8                                  |
| There was no misrepresentation  | p. 11-12                   | p. 18                 | p. 7-9                            | p. 4-5                                  |
| Fine amount is subject to a hearing, excessive, an abuse of discretion, and otherwise unconstitutional <sup>6</sup> | p. 16-20                   | p. 5-17               | 9-14                              | 8-18                                    |
| Commissioner misreads statutory scheme for fining a nonproducer/adjuster  | p. 16-18                   | p. 13-15              | p. 13                             | p. 10-11                                |

<sup>6</sup> It is noted that certain constitutional issues, such as a right to a jury trial, are only presented in Respondent's *Motion for Summary Judgment*. However, those issues are beyond what the Deputy Commissioner may decide (see generally (i) herein).



It is noted that there are no undisputed issues of material fact in any of these arguments. Therefore, the Deputy Commissioner addresses Respondent's concerns in turn and determines that any error related to mootness is harmless.

***i. Constitutional Claims are beyond the Hearings Examiner's authority to determine.***

As CSI notes in its *Response to Exceptions*, it is a basic tenant of the separation of powers that only a judicial body has the authority to decide constitutional matters. *Jarussi v. Board of Trustees*, 204 Mont. 131, 664 P.2d 316, 318 (1983). Both CSI and its duly appointed Hearings Examiner acted within the scope of the authority granted by the legislature. Whether that scope is an unconstitutional delegation of authority, provides for an unconstitutionally excessive fine, violates due process regarding a hearing on the fine amount, or violates Respondent's right to a jury trial is not for the Hearings Examiner to rule upon or the Deputy Commissioner to determine – they are both limited by MAPA and the procedures set forth therein for contested cases. Mont. Code Ann. §§ 2-4-601 et. seq.

As Respondent has set forth no statutory argument that MAPA was not followed correctly, these alleged constitutional deficiencies are beyond the scope of what the Deputy Commissioner is permitted to adjudicate. Therefore, to the extent Respondent alleges the Hearings Examiner was required to consider constitutional issues and did not, any such error was clearly harmless since he could not have rendered an opinion on them even if he so desired, and no declaration of mootness would have made such a determination different. *Liberty Cove, Inc.*, ¶ 21.

***ii. The Issue of Misrepresentation was fully briefed in Respondent's original Response to CSI's Motion for Summary Judgment and therefore was duly considered by the Hearings Examiner.***

The Hearings Examiner's Order articulated that he found Respondent misrepresented "the benefits, advantages, conditions, or terms of its policy by issuing or circulating statements, i.e. the Letter". *Recommended Action*, ¶ 78. This happened on 57

separate occasions. *Id.* at ¶ 79. The Hearings Examiner also stated his rationale that the documents failed to clearly explain that each policy was terminated and rewritten by a separate entity *and* they failed to clearly articulate that Clear Spring had assumed policy burdens formerly held by Respondent. *Id.* at ¶78.

In Respondent's *Motion for Summary Judgment*, Respondent provided an excerpt of the notice it sent on December 26, 2019 (five days prior to the renewal period), wherein Respondent states Clear Springs Property and Casualty company issued the new policy. *Respondent's Brief in Support of Motion for Summary Judgment*, p. 18. This exact same notice was included as part of a 21-page policy declaration provided in Respondent's original response to CSI's *Motion for Summary Judgment*. *Victory's Response Brief to CSI's Motion for Summary Judgment*, p. 12, Exhibit D.

While it is curious that Respondent rehashed a previous argument that had already been briefed, using the exact same facts and the exact same policy, the appropriateness of doing so in a new *Motion for Summary Judgment* is not before the undersigned. What is before the undersigned is whether the Hearings Examiner should have addressed them in a separate ruling related to Respondent's *Motion for Summary Judgment*. Assuming, *arguendo*, he should have considered the *Motion for Summary Judgment*, then the question is whether the error was harmless pursuant to *Liberty Cove, Inc (supra)*.

It is self-evident that such a perceived error would be harmless since Respondent's *Motion for Summary Judgment* presented no new facts not already contained in its *Response to CSI's Motion for Summary Judgment* – indeed Respondent relied on the same policy that it presented previously. Therefore, it is reasonable to assume the Hearings Examiner, when presented with the exact same facts, and the exact same policy, would come to the exact same conclusion--Respondent made misrepresentations concerning the policies at issue. Moreover, because there are no new facts presented, any perceived error is harmless under the *Liberty Cove, Inc.* standard.

**iii. Respondent's relationship to the policyholder means that it cancelled its policies without providing the statutorily required notice required by the Insurance Code.**

As an initial matter, it is undisputed that the appropriate notice provisions for nonrenewal or a midterm cancellation found at Mont. Code Ann. §§ 33-15-1103, 1105 and the policies themselves were, as a matter of undisputed fact, not followed.<sup>7</sup> Therefore, Respondent's *Exceptions*, its *Response to CSI's Motion for Summary Judgment*, and its own *Motion for Summary Judgment* argue that the Insurance Code did not require it to follow the cancellation statutes since there was no cancellation, but rather an assignment. As the facts are not in dispute, nor were they in dispute when Respondent filed its *Motion for Summary Judgment*, the question of whether this transaction amounted to a cancellation is a matter of law and is therefore rightfully before the Deputy Commissioner.

Both in its *Response Brief to CSI's Motion for Summary Judgment* (p. 2-4, 6-11) and in its own *Motion for Summary Judgment* (p. 2-5), Respondent cites arguments articulated by its own expert. In both its *Response* and its own *Motion*, Respondent provided its Expert's Report (Exhibits A and 15, respectively).<sup>8</sup> Respondent's *Motion for Summary Judgment* mines no new factual ground.<sup>9</sup> All relevant facts regarding assignment and cancellation were before the Hearings Examiner prior to Respondent filing the *Motion for Summary Judgment*. The *Motion*, therefore, enabled Respondent to take a second bite of the apple, reinforcing identical arguments it had already espoused in its original *Response*.<sup>10</sup>

After the Deputy Commissioner's review of both filings, it is unclear what compelled Respondent to file this portion of the *Motion for Summary Judgment*—

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<sup>7</sup> Brownfield's testimony regarding his phone calls to insureds is irrelevant, as notice is required to be written.

<sup>8</sup> Respondent's expert testimony was filed after CSI's motion for *Response to CSI's Motion for Summary Judgment*.

<sup>9</sup> *Victory's Statement of Undisputed Facts* brought forth in the *MSJ* on this issue are ¶¶ 9, 11, 12, 13, 18, 19, 32, and 33. ¶¶ 9, 11, and 12 are not challenged by CSI (the renewal dates, rates, and terms are identical). ¶ 18 is a deposition from Examiner Dachs which states that MT law does not have a specific section on transfer/assignment is a matter of law. ¶¶ 19, 32, and 33 are statements by Expert Witness Crawford, who had previously provided an Expert Report (*supra*).

<sup>10</sup> It is also noted that filing this same argument in its *Exceptions* permitted a third bite of the Assignment v. Cancellation apple.

Respondent argued in its original response that this “assignment” does not equal cancellation and it argues again in its own motion that “assignment” does not equal cancellation. *See generally Response* at p. 6-7 and *Motion* at 2-5. Having curried no new facts, either from its own expert or from depositions, it is apparent the Hearing Examiner did not prejudice Respondent by declaring its *Motion for Summary Judgment* moot. He had all relevant evidence on this topic before him.

Having reviewed the complete record, including Respondent’s *Motion for Summary Judgment*, the Deputy Commissioner concurs with the Hearings Examiner’s legal analysis of this issue. *Proposed Order* at ¶¶ 75-77.<sup>11</sup> The purpose of the cancellation statutes are to protect the policyholder. This does not just mean in coverage, but also in choice.

Whether the policyholder had a negative experience with Clear Spring; whether the policyholder wanted to do business with a Montana company rather than an overseas conglomerate; whether the policyholder could have found a lower rate for the same coverage on the open market—these are choices Respondent barred the Montana consumer from making because the policyholder never had time to shop for a new company. The policyholder was due her notice under the cancellation provisions so she could answer these questions.

Respondent’s movement of the policy effectively cancelled the policyholder’s relationship with Respondent and triggered the cancellation provisions as a matter of law, therefore any perceived error made by the Hearings Examiner in not considering Respondent’s argument a second time is harmless under *Liberty Cove, Inc.*<sup>12</sup>

***iv. The Commissioner is entitled to assess a fine within the parameters set forth by the Legislature.***

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<sup>11</sup> It is duly noted that the Hearings Examiner identified additional violations to what the CSI enumerated in its original *Notice of Proposed Agency Action*. The CSI makes it abundantly clear that its recommended fine amount does not account for those violations. *Reply to Exceptions*, p. 8.

<sup>12</sup> Respondent’s argument that the policy language allowed for cancellation at any time presupposes that the policyholder could drop everything over a period of 5 days to find a new insurer, which is exactly what the cancellation statutes attempt to prevent. On their face, they are intended to give the policyholder time to find a new insurer.

The final arguments in Respondent's *Motion for Summary Judgment* center around the amount of money the Commissioner may fine a company and whether that amount is appropriate. In its *Motion for Summary Judgment*, Respondent notes that Mont. Code Ann. § 33-1-701 argues that a person (ie. a company), may not be fined in excess of \$25,000 for violating the Code, while a producer/adjuster may be fined \$5,000 per violation. *VBISOMSJ*, p. 13-15. Respondent reiterates this position in its *Exceptions* and in its accompanying brief. *Victory's Exceptions*, ¶ 81; *Victory's Reply BISO Exceptions*, p. 10-13. The Deputy Commissioner asked about Respondent's interpretation in Oral Argument. Oral Argument Transcript 15:11-16:5 (August 11, 2023). And all of this was articulated in Respondent's original *Response to Motion for Summary Judgment*. at p.16-18. It was not addressed by the Hearing Examiner in his Order except and inasmuch as he implicitly rejected this argument by his determination of what fine the Commissioner could levy against the Respondent.

As this is an interpretation of a statute which is not dependent on the facts of this case, it is a question of law. Therefore, any error in not addressing it when the Hearings Examiner declared Respondent's *Motion for Summary Judgment* moot could be remedied at this phase by the Deputy Commissioner<sup>13</sup> and is therefore harmless.

***a. There is no conflict between Mont. Code Ann. § 33-1-317 and Mont. Code Ann. § 33-318.***

In its *Motion for Summary Judgment*, Respondent declares the Commissioner must reconcile Mont. Code Ann. § 33-1-318, which allows for a fine of \$5,000 per violation of that section, and Mont. Code Ann. § 33-1-317, which allows for a fine of \$25,000 or \$5,000 per violation of the Insurance Code. *VBISOMSJ*, p14.<sup>14</sup> Respondent attempts to do so via the rules of leniency (applied in the cases of conflicting statutes or ambiguity), concluding that the fine is meant to be cumulative. *Id.* at 15. However, the Deputy Commissioner finds no conflict or ambiguity.

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<sup>13</sup> As noted throughout, the Deputy Commissioner has the authority to modify incorrect conclusions of law.

<sup>14</sup> Respondent doubles up on this exact argument in its *Reply BISO Exceptions*, p. 12.

Montana Code Annotated § 33-1-318 deals specifically with Cease and Desist Orders and Injunctions. It imposes a fine which, by its very terms, is in addition to all other penalties found in the Insurance Code. *Id.* At (3). To give any meaning at all to that phrase, there must necessarily be other fines and remedies available to the commissioner. There are—specifically at Mont. Code Ann. § 33-1-317, the very \$25,000/\$5,000 fine at issue. Thus, section 318 exists to allow the commissioner to impose a penalty for violating a cease and desist issued under Mont. Code Ann. § 33-1-318(1)(a,b), or an injunction issued by a district court under (1)(c), not as an independent cause of action. In whichever case, if a person violates the order, that person is subject to an additional penalty beyond what is statutorily called for under the original violation, in the amount of \$5,000 per violation.

Because this is an additional penalty, the two statutes are not irreconcilable as Respondent states, *VBISOMSJ*, p. 14, but work in conjunction to ensure the commissioner or a court have the authority to stop bad actors. Indeed, without a fine provision on the injunctive actions, the commissioner or a court would lack remedies when a cease and desist or injunction is in place and has been violated. What is more, without this provision, a producer writing business illegally could continue to write business in violation of the cease and desist order or injunction without fear of additional penalties.<sup>15</sup>

Because there is no ambiguity or conflict within the statutes, this argument presented in Respondent's *Motion for Summary Judgment* (or later in its *Reply Brief in Support of Exceptions*), has no merit, and therefore any error in not considering it is necessarily harmless.

***b. The Hearings Examiner correctly determined that a company can be fined \$25,000 per violation of the Insurance Code pursuant to Mont. Code Ann. § 33-1-317.***

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<sup>15</sup> It is noted that in the example above, if no fine remedy were available to the Commissioner or a court of competent jurisdiction for violating a cease and desist, then the only remedy which would stop a bad actor from writing business would be to terminate or suspend his license immediately, something the Deputy Commissioner would be loathe to do without a full hearing on the matter.

Respondent's *Motion for Summary Judgment* also argues that the limitation placed on a producer creates a limitation on what a company can be fined. *VBISOMSJ*, p. 13. Respondent argues that the differentiating language creates a "cumulative cap" of \$25,000 in fines, regardless of the number of violations a company has committed. *Id.* The Deputy Commissioner sought clarity on this argument in oral arguments. Paraphrasing Respondent's argument, Respondent essentially stated that if company committed a systematic misrepresentation which effected many persons, it would be subject to a \$25,000 fine, but if a producer committed that same misrepresentation on 20 people, he would be subject to a \$5,000 per violation, and thus a cumulative fine of \$100,000 (facts and circumstances warranting). Oral Arg.17:11-18:24.

The Deputy Commissioner agrees with Respondent that the rules of statutory construction require the commissioner to give different meaning to different terms. *Gregg v. Whitefish City Council*, 2004 MT 262, ¶38, 323 Mont. 109, 99 P. 3d 151. However, that same case and that same paragraph note that a court will avoid statutory construction that leads to absurd results if a reasonable construction will avoid it. *Id.* In the instant case, there is a reasonable construction which avoids the absurd construction Respondent articulated in oral argument wherein a producer may be fined a larger amount than a company for substantially similar violations.

Section 33-1-317 has two distinct clauses:

- ***The commissioner may impose a fine not to exceed the sum of \$25,000 upon a person found to have violated a provision of the Insurance Code;***
- ***The fine imposed upon insurance producers or adjusters may not exceed \$5,000 per violation.***

While the legislature certainly could have been clearer when it set forth the fine thresholds, the legislative intent was clear. It sought to ensure small producers (i.e. individuals running insurance agencies), would not be financially ruined by small violations of the code. Thus, it limited the producer's exposure to \$5,000 per violation.

The “per violation” language, while inartful in context, reinforces what is already present in the statute.

While “violated a provision” and “per violation” certainly are differently constructed phrases, their meaning is identical in context of the statute. To violate a provision can be done multiple times by the same entity, just as a producer can be fined on a per violation basis. If a company is not licensed in Montana and writes 100 policies, it will have violated a provision of the Insurance Code 100 times. Similarly, a producer who has written 100 policies while not being registered would likewise have violated the Code 100 times. Thus, the company would be subject to a \$25,000 fine for each independent violation of the code (cumulatively \$2,500,000), and the producer would be subject to a \$5,000 per violation (cumulatively \$500,000). Under Respondent’s analysis, the company would be subject to one fine (\$25,000), and the producer would be subject to a significantly larger amount (\$500,000).

To bring this absurd result even more into focus, the underwriting company at issue in this case, Clear Springs parent companies, Delaware Life and 1001 Insurance Holding LLC (net reserves over \$41.8 billion), would be subject to only \$25,000 in fines for violating a provision of the Code multiple times (roughly .0000006% of its net reserves)<sup>16</sup>, wherein a producer writing on Clear Springs paper and earning \$150,000 annually would be subject to a \$500,000 fine (roughly 333% of her total annual income). It is hard to envision a scenario more at odds with the interests of insurance consumers (the prime directive of the Commissioner as articulated at Mont. Code Ann. § 33-1-311(3)), than to allow companies to violate laws ad infinitum while being subject to a relatively minor fine, yet subjecting producers and adjusters to fines ad infinitum.

As *Whitefish City Council* tells us, we should avoid absurd results in statutory construction when reasonable interpretation is available. In this instance, a reasonable interpretation of the statute allowing for the Commissioner to impose a fine of \$25,000 for violating a provision of the code each time a violation occurs exists. Therefore,

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<sup>16</sup> This hypothetical is meant solely for illustrative purposes.



Respondent's interpretation in its *Motion for Summary Judgment* is inconsistent with the provisions of the Insurance Code in general, and its consumer protection mandate specifically. The argument as presented in its *Motion for Summary Judgment* is rejected as a matter of law, and therefore under *Lincoln County, Inc.*, any potential error in declaring the issue moot is harmless.

**II. MAPA does not require a hearing on a fine amount.**

In its *Brief in Support of Exceptions*, Respondent argues that the Commissioner, at the very least, is required to hold a hearing on damages before issuing a fine.<sup>17</sup> *Exceptions BISO*, p. 11-12. Respondent's *Motion for Summary Judgment* states that CSI has presented no factual basis for a fine. *VBISOMSJ*, p. 15-17. In its *Response to the CSI's Motion for Summary Judgment*, Respondent stated that the full fine amount is subject to a hearing, is excessive, and is an abuse of discretion. *Response*, p. 13.

The Deputy Commissioner specifically notes that Respondent has made no claims that CSI violated MAPA. It is also noted that Respondent has now briefed these issues four separate times, and had the opportunity to present arguments in at least three different instances, including two that were not declared moot, once in its *Response to CSI's Motion for Summary Judgment* and once in Respondent's own *Exceptions* briefing. The issue is fully briefed, and the Deputy Commissioner rejects any notion that MAPA requires a separate hearing on damages or the fine amount for the reasons articulated by CSI in its briefing on the matter.

While Respondent goes to great lengths in its *Exceptions* briefing to illustrate that CSI attorneys should not pronounce a fine on behalf of the agency,<sup>18</sup> Respondent conveniently ignores the verb recommend, which CSI attorneys utilized time and again when discussing what amount of fine is appropriate. See generally *CSI's Response to Exceptions*, p. 2-5. Notably, Respondent also recommended a fine (a nominal amount).

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<sup>17</sup> While a damages hearing may be appropriate in a civil context, this is a determination solely on sanctions. See generally *Munn, infra*.

<sup>18</sup> Respondent's reliance on an insurance examiner's statement regarding the innerworkings of the executive branch are contrary to logic.

*Respondent's Reply BISO Exceptions*, p. 17. Thus, through the briefing on Exceptions, through the various prehearing motions, and at oral argument itself, both sides have had ample opportunity to argue what they believe a fine should be. It is now the sole discretion of the undersigned, based on competent and substantial evidence, and acting solely within the bounds of the allowable fine amount, to determine what that fine should be.

### **Conclusion**

The Deputy Commissioner concurs with CSI – a fine of up to the allowable amount (\$2.7 million) is not necessary to ensure consumers are protected or to ensure Respondent follows the law moving forward. The Deputy Commissioner points out that Respondent cannot ignore cancellation procedures when it transfers its entire book of business and all risk to a third party not in privity of contract with consumers. Secondly, a company cannot misrepresent the fundamental terms of a contract (notably the actual insurer), in framing its new arrangement to its policyholders.<sup>19</sup> Finally, Respondent is on notice that it is responsible for compliance with the entire Insurance Code, not just certain subsections as it chooses.

All of these considerations are precisely why the Montana Supreme Court recognized that it is the agency who has final say as to what is an appropriate sanction. *Munn v. Mont. Bd. Of Med. Exam'rs*, 2005 MT 303, ¶28, 329 Mont. 401, 124 P.3d 1123 (holding that a hearing examiner can offer an opinion in making a recommendation but cannot conclude what a discretionary decision of the medical board must be). Just as the *Munn* Court recognized the Medical Board could order a sanction it was statutorily authorized to impose, in the instant matter, the Commissioner (or specifically his designee), has that same statutorily authorized discretion to issue a sanction.<sup>20</sup> Mont. Code Ann. § 33-1-317.

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<sup>19</sup> Respondent mischaracterizes the facts in *Continental Life*. Respondent states that Continental issued a disapproved plan for three years after receiving notice. CSI specifically stated in its *Notice* that Respondent was unaware of the disapproval for these three years, self-reported the violation, and discontinued sales of the plan at issue when it learned of the disapproval. *In re Continental Life Insurance Company of Brentwood, Tennessee, Notice of Proposed Agency Action*, Factual Allegations 4-7. Available at <https://csimt.gov/wp-content/uploads/2022/11/INS-2021-220-NOPAA.pdf>

<sup>20</sup> Under *Munn*, the Commissioner could even increase the penalty to the amount authorized by statute. *Munn*, ¶28.

Ultimately, it is the Deputy Commissioner's responsibility to ensure that any fine amount is tailored to the facts and circumstances before him. To that end, and after due consideration of the complete record in this matter, the Deputy Commissioner, in his sole discretion, finds good cause to enter the following:

## ORDER

The Proposed Findings of Fact, Conclusions of Law, Order and Recommended Decision on the Commissioner's Motion for Summary Judgment (collectively Exhibit A) are adopted as the Final Agency Decision in this matter and by this reference is made a part of the Final Agency Decision with the exception to paragraph 2 under Recommended Agency Action wherein additional sentences shall read: based on the foregoing Findings of Fact, Conclusions of Law and Order, Respondent is fined \$250,000 with \$150,000 suspended. The \$150,000 will only become due if Respondent commits further violations of the Insurance Code within one year. It is specifically noted that any collection of this amount will only be triggered by affirmative actions (or nonactions) taken as of the date of this Order.

Respondent is hereby notified that it has the right to request judicial review of this Order by filing a petition for judicial review within 30 days after service of this Order with the district court in Lewis and Clark, County, Montana, as provided in § 2-4-702, MCA.

DATED this 8<sup>th</sup> day of November 2023.



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**BRETT OLIN**  
Deputy Securities Commissioner

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

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, ORDER, AND RECOMMENDED  
DECISION ON THE COMMISSIONER'S  
MOTION FOR SUMMARY JUDGMENT**

The Commissioner moved for summary judgment on March 16, 2023.

Respondent Victory Insurance Company, Inc. ("Victory") responded on April 10, 2023. The Commissioner replied on April 24, 2023. Briefing is now complete and the motion is ripe for decision. But first, the Hearing Examiner will address Victory's Notice of Objection Concerning the Hearing Officer's Granting of Filing an Overlength Brief.

Victory's objection to the Commissioner's overlength brief would have been unavailing in any event. The Commissioner was correct that Victory elected to include arguments outside the Commissioner's Motion for Summary Judgment in its response (specifically, the jurisdictional argument at 4–6, and the argument regarding proposed fines at 13–20), and the Hearing Examiner granted the Motion for Leave to File Overlength Brief on that basis. Furthermore, the Hearing Examiner is convinced that word limits are in place for the sake of the tribunal, to

prevent it from being inundated by any single brief. The advisory authority cited as examples by Victory in its Notice of Objection gives ample backing to a tribunal intent on denying a motion to file an overlength brief, but, ultimately, does not deny or diminish the tribunal’s inherent authority to grant such a motion. Victory’s objection remains overruled.

### FINDINGS OF FACT

No material facts are in dispute.

1. Victory is a Montana property and casualty insurer.<sup>1</sup>
2. Keith Brownfield is the CEO of Victory.<sup>2</sup>
3. Clear Spring Property and Casualty Company (“Clear Spring”) is an insurer licensed to do business in Montana.<sup>3</sup>
4. Victory issued workers’ compensation insurance policies to various Montana businesses.<sup>4</sup>
5. On or about April 1, 2019, Victory entered an agreement with Clear Spring (the “Reinsurance Agreement,” Victory’s Exhibit B) whereby Clear Spring accepted all liabilities arising out of policies issued by Victory.<sup>5</sup>

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<sup>1</sup> Decl. Dachs, ¶ 5.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*, ¶ 7.

<sup>4</sup> *See, e.g.*, CSI’s Exhibit 4 at 5.

<sup>5</sup> Victory’s Exhibit B, ¶ 2.1; *and see* CSI’s Exhibit 4 at 2–4; Victory’s Exhibit A at 5.

6. At approximately 2:33 p.m. on Tuesday, December 31, 2019, Victory notified its policy holders:<sup>6</sup>

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 [number]. Victory Insurance Company will continue to be the sole contact for your workers' compensation policy (including claims, billing, policy issuance, underwriting or any administrative 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.

Because of your support and confidence in Victory, Victory has been recently ranked as the largest premium-producing private carrier in Montana. Victory is a Montana business and is Montana's only privately owned workers' compensation insurance carrier. In 2018 Victory and Clear Spring became partners in order to better serve Montana's preferred employers. Together we also provide nationwide coverage that is financially backed by almost \$40 billion in assets with a current AM Best rating of "excellent."

The same Victory staff will be serving your company.

There is no action required on your part; however, if you have any questions, please contact Victory's policy services department.

7. The foregoing represents the sole written communication Victory provided to explain its transaction with Clear Spring to policy holders.<sup>7</sup> The foregoing represents the sole written communication Victory provided to notify policy holders of the conversion of the Victory policies to Clear Spring policies.<sup>8</sup>

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<sup>6</sup> CSI's Exhibit 4 at 3, 29, 83, 121, 147, 176, 202, 231, 260, 287, 316, 344, 373, 399, 424, 451, 478, 507, 540, 567, 599, 630, 657, 684, 712, 740, 766, 794, 820, 848, 874, 903, 932, 959, 986, 1013, 1040, 1067, 1093, 1120, 1146 (sent Jan. 3, 2020), 1172, 1201, 1228, 1256, 1284, 1314, 1369, 1396, 1425, 1489, 1519, 1552, 1581, 1611, 1641, 1669, 1698, and 1732; herein, the "Letter."

<sup>7</sup> See, generally, CSI's Exhibit 4.

<sup>8</sup> *Id.*

8. On January 1, 2020, all policies subject to the agreement were rewritten on Clear Spring paper.<sup>9</sup>

9. Victory's policies include the obligation to provide the policy holders with not less than 10 days' advance written notice stating when the cancellation is to take effect.<sup>10</sup>

10. Victory's policies include the obligation to provide the policy holders with not less than 45 days' advance written notice stating its intention not to renew a policy.<sup>11</sup>

11. December 31, 2019, was fewer than 45 days prior to January 1, 2020. December 31, 2019, was fewer than 10 days prior to January 1, 2020.<sup>12</sup>

12. Victory entered an insurance contract with Advanced Cleaning Services, LLC on June 26, 2019.<sup>13</sup> The policy expired by its own terms on June 26, 2020.<sup>14</sup> On December 31, 2019, at 2:33 p.m., Victory notified Advanced Cleaning

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<sup>9</sup> Deposition of Keith Brownfield, 55:25–56:2.

<sup>10</sup> CSF's Exhibit 4 at 14, 26, 53, 79, 94, 119, 133, 145, 172, 188, 200, 215, 227, 244, 256, 273, 285, 300, 312, 329, 342, 357, 369, 385, 397, 409, 421, 437, 449, 462, 474, 491, 503, 524, 537, 553, 565, 581, 597, 613, 625, 643, 655, 682, 708, 725, 737, 752, 764, 778, 790, 806, 818, 845, 860, 872, 887, 899, 916, 928, 944, 956, 972, 984, 999, 1011, 1026, 1038, 1053, 1065, 1079, 1091, 1105, 1118, 1132, 1144, 1170, 1198, 1213, 1226, 1240, 1252, 1268, 1280, 1310, 1336, 1353, 1382, 1394, 1423, 1439, 1485, 1503, 1515, 1532, 1546, 1565, 1577, 1607, 1625, 1637, 1652, 1665, 1682, 1694, 1710, and 1722, §§ D.2; 40, 66, 159, 669, 695, 832, 1157, 1185, 1297, 1409, and 1594, §§ 2.

<sup>11</sup> CSF's Exhibit 4 at 14, 94, 133, 188, 215, 244, 273, 300, 329, 357, 385, 409, 437, 462, 491, 524, 553, 581, 613, 643, 725, 752, 778, 806, 860, 887, 916, 944, 972, 999, 1026, 1053, 1079, 1105, 1132, 1213, 1240, 1268, 1336, 1382, 1439, 1503, 1532, 1565, 1625, 1652, 1682, and 1710, §§ F.1; 41, 67, 160, 670, 696, 833, 1158, 1186, 1298, 1410, and 1595, §§ 1.

<sup>12</sup> The Hearing Examiner takes judicial notice of these facts.

<sup>13</sup> CSF's Exhibit 4 at 3–27.

<sup>14</sup> *Id.* at 6.



Services, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>15</sup>

13. Victory entered an insurance contract with Anderson Masonry, Inc. on July 1, 2019.<sup>16</sup> The policy expired by its own terms on July 1, 2020.<sup>17</sup> On December 31, 2019, at 2:33 p.m., Victory notified Anderson Masonry, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>18</sup>

14. Victory entered an insurance contract with Associated Management Services, Inc. on November 5, 2019.<sup>19</sup> The policy expired by its own terms on November 5, 2020.<sup>20</sup> On December 31, 2019, at 2:33 p.m., Victory notified Associated Management Services, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>21</sup>

15. Victory entered an insurance contract with Baldwin’s Customized Landscaping, Inc. on April 1, 2019.<sup>22</sup> The policy expired by its own terms on April 1, 2020.<sup>23</sup> On December 31, 2019, at 2:33 p.m., Victory notified Baldwin’s Customized

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<sup>15</sup> CSI’s Exhibit 4 at 3.

<sup>16</sup> *Id.* at 83–120.

<sup>17</sup> *Id.* at 86.

<sup>18</sup> *Id.* at 85.

<sup>19</sup> *Id.* at 121–46.

<sup>20</sup> *Id.* at 125.

<sup>21</sup> *Id.* at 121.

<sup>22</sup> *Id.* at 147–75.

<sup>23</sup> *Id.* at 151.

Landscaping, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>24</sup>

16. Victory entered an insurance contract with Becker Landscaping and Design, Inc. on October 1, 2019.<sup>25</sup> The policy expired by its own terms on October 1, 2020.<sup>26</sup> On December 31, 2019, at 2:33 p.m., Victory notified Becker Landscaping and Design, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>27</sup>

17. Victory entered an insurance contract with Big Sandy Activities, Inc. on July 1, 2019.<sup>28</sup> The policy expired by its own terms on July 1, 2020.<sup>29</sup> On December 31, 2019, at 2:33 p.m., Victory notified Big Sandy Activities, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>30</sup>

18. Victory entered an insurance contract with Bitterroot Lawn & Landscaping, Inc. on April 20, 2019.<sup>31</sup> The policy expired by its own terms on April 20, 2020.<sup>32</sup> On December 31, 2019, at 2:33 p.m., Victory notified Bitterroot

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<sup>24</sup> CSI’s Exhibit 4 at 147.

<sup>25</sup> *Id.* at 176–201.

<sup>26</sup> *Id.* at 180.

<sup>27</sup> *Id.* at 176.

<sup>28</sup> *Id.* at 202–30.

<sup>29</sup> *Id.* at 206.

<sup>30</sup> *Id.* at 202.

<sup>31</sup> *Id.* at 231–59.

<sup>32</sup> *Id.* at 235.

Lawn & Landscaping, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>33</sup>

19. Victory entered an insurance contract with Bonanza Freeze, Inc. on December 1, 2019.<sup>34</sup> The policy expired by its own terms on December 1, 2020.<sup>35</sup> On December 31, 2019, at 2:33 p.m., Victory notified Bonanza Freeze, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>36</sup>

20. Victory entered an insurance contract with Brown Builders, LLC on June 1, 2019.<sup>37</sup> The policy expired by its own terms on June 1, 2020.<sup>38</sup> On December 31, 2019, at 2:33 p.m., Victory notified Brown Builders, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>39</sup>

21. Victory entered an insurance contract with Brown Plumbing & Heating, Inc., also known as MCT Enterprises, Inc., on July 1, 2019.<sup>40</sup> The policy expired by its own terms on July 1, 2020.<sup>41</sup> On December 31, 2019, at 2:35 p.m.,

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<sup>33</sup> CSF's Exhibit 4 at 231.

<sup>34</sup> *Id.* at 260–86.

<sup>35</sup> *Id.* at 264.

<sup>36</sup> *Id.* at 260.

<sup>37</sup> *Id.* at 287–315.

<sup>38</sup> *Id.* at 291.

<sup>39</sup> *Id.* at 287.

<sup>40</sup> *Id.* 4 at 316–43.

<sup>41</sup> *Id.* at 320.

Victory notified Brown Plumbing & Heating, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>42</sup>

22. Victory entered an insurance contract with Claire W. Daines, Inc. on October 1, 2019.<sup>43</sup> The policy expired by its own terms on October 1, 2020.<sup>44</sup> On December 31, 2019, at 2:33 p.m., Victory notified Claire W. Daines, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>45</sup>

23. Victory entered an insurance contract with Club Royale, LLC on July 1, 2019.<sup>46</sup> The policy expired by its own terms on July 1, 2020.<sup>47</sup> On December 31, 2019, at 2:33 p.m., Victory notified Club Royale, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>48</sup>

24. Victory entered an insurance contract with D & D Auto, Inc. on July 1, 2019.<sup>49</sup> The policy expired by its own terms on July 1, 2020.<sup>50</sup> Sometime prior to January 1, 2020, Victory notified D & D Auto, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>51</sup> In contrast to all

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<sup>42</sup> CSF’s Exhibit 4 at 316.

<sup>43</sup> *Id.* at 344–72.

<sup>44</sup> *Id.* at 348.

<sup>45</sup> *Id.* at 344.

<sup>46</sup> *Id.* at 373–98.

<sup>47</sup> *Id.* at 377.

<sup>48</sup> *Id.* at 373.

<sup>49</sup> *Id.* at 399–423, 1728.

<sup>50</sup> *Id.* at 401.

<sup>51</sup> *Id.* at 1728.

other policy holders, there is no record of an e-mail sent by Victory to D & D Auto, Inc.<sup>52</sup> However, Victory stated to the Commissioner that “[t]he letter sent to all Victory policy holders or their agents were all sent via e-mail only and not snail mailed.”<sup>53</sup> The letter in question was the Letter.<sup>54</sup> Most other such notifications were e-mailed between 2:33 and 2:36 p.m. on December 31, 2019.<sup>55</sup> It is more likely than not that Victory’s notice e-mail to D&D Auto was sent at the same approximate time as most other notice e-mails.

25. Victory entered an insurance contract with Dan Kim Certified Seed Potatoes, LLC on October 25, 2019.<sup>56</sup> The policy expired by its own terms on June 26, 2020.<sup>57</sup> On December 31, 2019, at 2:34 p.m., Victory notified Dan Kim Certified Seed Potatoes, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>58</sup>

26. Victory entered an insurance contract with Decorative Concrete Professionals, LLC on April 25, 2019.<sup>59</sup> The policy expired by its own terms on

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<sup>52</sup> See generally CSI’s Exhibit 4.

<sup>53</sup> *Id.* at 1730.

<sup>54</sup> See *supra* at 3–4; and CSI’s Exhibit 4 at 1726–28, 1730.

<sup>55</sup> See, e.g., CSI’s Exhibit 4 at 3, 29, 83, 121, 147, 176, 202, 231, 260, 287, 316, 344, 373, 424, 451, 478, 507, 540, 567, 599, 630, 657, 684, 712, 740, 766, 794, 820, 848, 874, 903, 932, 959, 986, 1013, 1040, 1067, 1093, 1120, 1172, 1201, 1228, 1256, 1284, 1314, 1369, 1396, 1425, 1489, 1519, 1552, 1581, 1611, 1641, 1669, and 1698. The only notice e-mail not sent on December 31, 2019, was Victory’s e-mail regarding RAP, Inc., which was not sent until January 3, 2020. *Id.* at 1147.

<sup>56</sup> CSI’s Exhibit 4 at 424–50.

<sup>57</sup> *Id.* at 428.

<sup>58</sup> *Id.* at 424.

<sup>59</sup> *Id.* at 451–77.

April 1, 2020.<sup>60</sup> On December 31, 2019, at 2:34 p.m., Victory notified Decorative Concrete Professionals, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>61</sup>

27. Victory entered an insurance contract with Dents & Cents, Inc. on October 15, 2019.<sup>62</sup> The policy expired by its own terms on October 15, 2020.<sup>63</sup> On December 31, 2019, at 2:34 p.m., Victory notified Advanced Cleaning Services, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>64</sup>

28. Victory entered an insurance contract with Discovery Care Centre on July 1, 2019.<sup>65</sup> The policy expired by its own terms on July 1, 2020.<sup>66</sup> On December 31, 2019, at 2:34 p.m., Victory notified Discovery Care Centre that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>67</sup>

29. Victory entered an insurance contract with Frontier Distributing, Inc. on July 1, 2019.<sup>68</sup> The policy expired by its own terms on July 1, 2020.<sup>69</sup> On

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<sup>60</sup> CSI’s Exhibit 4 at 455. It is not clear, nor does it appear relevant, why this policy was drafted to expire within one year from its inception.

<sup>61</sup> *Id.* at 451.

<sup>62</sup> *Id.* at 478–506.

<sup>63</sup> *Id.* at 482.

<sup>64</sup> *Id.* at 478.

<sup>65</sup> *Id.* at 507–39.

<sup>66</sup> *Id.* at 511.

<sup>67</sup> *Id.* at 507.

<sup>68</sup> *Id.* at 540–66.

<sup>69</sup> *Id.* at 544.

December 31, 2019, at 2:34 p.m., Victory notified Frontier Distributing, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>70</sup>

30. Victory entered an insurance contract with Glader Electric, Inc. on July 1, 2019.<sup>71</sup> The policy expired by its own terms on July 1, 2020.<sup>72</sup> On December 31, 2019, at 2:34 p.m., Victory notified Glader Electric, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>73</sup>

31. Victory entered an insurance contract with Harvest Church on July 1, 2019.<sup>74</sup> The policy expired by its own terms on July 1, 2020.<sup>75</sup> On December 31, 2019, at 2:34 p.m., Victory notified Harvest Church that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>76</sup>

32. Victory entered an insurance contract with Hestia In Home Support, LLC on November 1, 2019.<sup>77</sup> The policy expired by its own terms on November 1, 2020.<sup>78</sup> On December 31, 2019, at 2:34 p.m., Victory notified Hestia In Home

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<sup>70</sup> CSI’s Exhibit 4 at 540.

<sup>71</sup> *Id.* at 567–98.

<sup>72</sup> *Id.* at 571.

<sup>73</sup> *Id.* at 567.

<sup>74</sup> *Id.* at 599–629.

<sup>75</sup> *Id.* at 603.

<sup>76</sup> *Id.* at 599.

<sup>77</sup> *Id.* at 630–56.

<sup>78</sup> *Id.* at 634.

Support, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>79</sup>

33. Victory entered an insurance contract with Kenneth Robbins on January 14, 2019.<sup>80</sup> The policy expired by its own terms on January 14, 2020.<sup>81</sup> On December 31, 2019, at 2:34 p.m., Victory notified Kenneth Robbins that his Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>82</sup>

34. Victory entered an insurance contract with Leskovar Motors, Inc. on October 1, 2019.<sup>83</sup> The policy expired by its own terms on October 1, 2020.<sup>84</sup> On December 31, 2019, at 2:34 p.m., Victory Leskovar Motors, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>85</sup>

35. Victory entered an insurance contract with Lilac Restaurant Group, LLC on June 1, 2019.<sup>86</sup> The policy expired by its own terms on June 1, 2020.<sup>87</sup> On December 31, 2019, at 2:34 p.m., Victory notified Lilac Restaurant Group, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>88</sup>

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<sup>79</sup> CSI’s Exhibit 4 at 656.

<sup>80</sup> *Id.* at 684–711.

<sup>81</sup> *Id.* at 688.

<sup>82</sup> *Id.* at 684.

<sup>83</sup> *Id.* at 712–39.

<sup>84</sup> *Id.* at 716.

<sup>85</sup> *Id.* at 712.

<sup>86</sup> *Id.* at 740–65.

<sup>87</sup> *Id.* at 744.

<sup>88</sup> *Id.* at 740.



36. Victory entered an insurance contract with Lohss Construction, Inc. on June 1, 2019.<sup>89</sup> The policy expired by its own terms on June 1, 2020.<sup>90</sup> On December 31, 2019, at 2:34 p.m., Victory notified Lohss Construction, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>91</sup>

37. Victory entered an insurance contract with Makeef Trucking, Inc. on July 1, 2019.<sup>92</sup> The policy expired by its own terms on July 1, 2020.<sup>93</sup> On December 31, 2019, at 2:35 p.m., Victory notified Makeef Trucking, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>94</sup>

38. Victory entered an insurance contract with Montana Mobile Document Shredding on March 4, 2019.<sup>95</sup> The policy expired by its own terms on March 4, 2020.<sup>96</sup> On December 31, 2019, at 2:35 p.m., Victory notified Montana Mobile Document Shredding that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>97</sup>

39. Victory entered an insurance contract with Montana Noodle Co., Inc. on October 6, 2019.<sup>98</sup> The policy expired by its own terms on October 6, 2020.<sup>99</sup> On

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<sup>89</sup> CSI’s Exhibit 4 at 766–93.

<sup>90</sup> *Id.* at 770.

<sup>91</sup> *Id.* at 766.

<sup>92</sup> *Id.* at 794–819.

<sup>93</sup> *Id.* at 798.

<sup>94</sup> *Id.* at 794.

<sup>95</sup> *Id.* at 820–47.

<sup>96</sup> *Id.* at 824.

<sup>97</sup> *Id.* at 820.

<sup>98</sup> *Id.* at 848–73.

<sup>99</sup> *Id.* at 852.

December 31, 2019, at 2:35 p.m., Victory notified Montana Noodle Co., Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>100</sup>

40. Victory entered an insurance contract with Mountain Meadows Pet Products, Inc. on July 1, 2019.<sup>101</sup> The policy expired by its own terms on July 1, 2020.<sup>102</sup> On December 31, 2019, at 2:35 p.m., Victory notified Montana Meadows Pet Products, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>103</sup>

41. Victory entered an insurance contract with Mountain Supply Co., Inc. on July 1, 2019.<sup>104</sup> The policy expired by its own terms on July 1, 2020.<sup>105</sup> On December 31, 2019, at 2:35 p.m., Victory notified Mountain Supply Co., Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>106</sup>

42. Victory entered an insurance contract with MT Flooring Center, LLP on November 8, 2019.<sup>107</sup> The policy expired by its own terms on November 8, 2020.<sup>108</sup> On December 31, 2019, at 2:35 p.m., Victory notified MT Flooring Center,

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<sup>100</sup> CSI’s Exhibit 4 at 848.

<sup>101</sup> *Id.* at 874–902.

<sup>102</sup> *Id.* at 878.

<sup>103</sup> *Id.* at 874.

<sup>104</sup> *Id.* at 903–31.

<sup>105</sup> *Id.* at 907.

<sup>106</sup> *Id.* at 903.

<sup>107</sup> *Id.* at 932–58.

<sup>108</sup> *Id.* at 936.

LLP that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>109</sup>

43. Victory entered an insurance contract with Nevermore, Inc. on October 25, 2019.<sup>110</sup> The policy expired by its own terms on October 25, 2020.<sup>111</sup> On December 31, 2019, at 2:35 p.m., Victory notified Nevermore, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>112</sup>

44. Victory entered an insurance contract with Paradise Valley Farms, LLC on May 22, 2019.<sup>113</sup> The policy expired by its own terms on May 22, 2020.<sup>114</sup> On December 31, 2019, at 2:35 p.m., Victory notified Paradise Valley Farms, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>115</sup>

45. Victory entered an insurance contract with Pioneer Meats, Inc. on November 1, 2019.<sup>116</sup> The policy expired by its own terms on November 1, 2020.<sup>117</sup> On December 31, 2019, at 2:35 p.m., Victory notified Pioneer Meats, Inc. that its

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<sup>109</sup> CSI’s Exhibit 4 at 932.

<sup>110</sup> *Id.* at 959–85.

<sup>111</sup> *Id.* at 963.

<sup>112</sup> *Id.* at 959.

<sup>113</sup> *Id.* at 986–1012.

<sup>114</sup> *Id.* at 990.

<sup>115</sup> *Id.* at 986.

<sup>116</sup> *Id.* at 1013–39.

<sup>117</sup> *Id.* at 1017.

Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>118</sup>

46. Victory entered an insurance contract with Polson Ambulance, Inc. on July 1, 2019.<sup>119</sup> The policy expired by its own terms on July 1, 2020.<sup>120</sup> On December 31, 2019, at 2:35 p.m., Victory notified Polson Ambulance, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>121</sup>

47. Victory entered an insurance contract with Pryor Creek Café & Grill, Inc. on September 24, 2019.<sup>122</sup> The policy expired by its own terms on September 24, 2020.<sup>123</sup> On December 31, 2019, at 2:35 p.m., Victory notified Pryor Creek Café & Grill, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>124</sup>

48. Victory entered an insurance contract with Pure Clean Techs, LLC on October 22, 2019.<sup>125</sup> The policy expired by its own terms on October 22, 2020.<sup>126</sup> On December 31, 2019, at 2:35 p.m., Victory notified Pure Clean Techs, LLC that its

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<sup>118</sup> CSI’s Exhibit 4 at 1013.

<sup>119</sup> *Id.* at 1040–66.

<sup>120</sup> *Id.* at 1044.

<sup>121</sup> *Id.* at 1040.

<sup>122</sup> *Id.* at 1067–92.

<sup>123</sup> *Id.* at 1071.

<sup>124</sup> *Id.* at 1067.

<sup>125</sup> *Id.* at 1093–119.

<sup>126</sup> *Id.* at 1097.

Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>127</sup>

49. Victory entered an insurance contract with Purity Cleaning Services, LLC on July 14, 2019.<sup>128</sup> The policy expired by its own terms on July 14, 2020.<sup>129</sup> On December 31, 2019, at 2:35 p.m., Victory notified Purity Cleaning Services, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>130</sup>

50. Victory entered an insurance contract with Rob Phipps Consulting, LLC on September 19, 2019.<sup>131</sup> The policy expired by its own terms on September 19, 2020.<sup>132</sup> On December 31, 2019, at 2:35 p.m., Victory notified Rob Phipps Consulting, LLC that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>133</sup>

51. Victory entered an insurance contract with Scott L. Koelzer Masonry, LLC on July 1, 2019.<sup>134</sup> The policy expired by its own terms on July 1, 2020.<sup>135</sup> On December 31, 2019, at 2:35 p.m., Victory notified Scott L. Koelzer Masonry, LLC

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<sup>127</sup> CSI’s Exhibit 4 at 1093.

<sup>128</sup> *Id.* at 1120–45.

<sup>129</sup> *Id.* at 1124.

<sup>130</sup> *Id.* at 1120.

<sup>131</sup> *Id.* at 1201–27.

<sup>132</sup> *Id.* at 1205.

<sup>133</sup> *Id.* at 1201.

<sup>134</sup> *Id.* at 1228–55.

<sup>135</sup> *Id.* at 1232.

that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>136</sup>

52. Victory entered an insurance contract with Security Solutions, Inc. on September 1, 2019.<sup>137</sup> The policy expired by its own terms on September 1, 2020.<sup>138</sup> On December 31, 2019, at 2:35 p.m., Victory notified Security Solutions, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>139</sup>

53. Victory entered an insurance contract with Story Distributing Co. on July 1, 2019.<sup>140</sup> The policy expired by its own terms on July 1, 2020.<sup>141</sup> On December 31, 2019, at 2:35 p.m., Victory notified Story Distributing Co. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>142</sup>

54. Victory entered an insurance contract with Superior Auto Body & Tow, Inc. on December 10, 2019.<sup>143</sup> The policy expired by its own terms on December 10, 2020.<sup>144</sup> On December 31, 2019, at 2:35 p.m., Victory notified Superior Auto Body &

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<sup>136</sup> CSI’s Exhibit 4 at 1228.

<sup>137</sup> *Id.* at 1256–83.

<sup>138</sup> *Id.* at 1260.

<sup>139</sup> *Id.* at 1256.

<sup>140</sup> *Id.* at 1314–68.

<sup>141</sup> *Id.* at 1318.

<sup>142</sup> *Id.* at 1314.

<sup>143</sup> *Id.* at 1369–95.

<sup>144</sup> *Id.* at 1373.

Tow, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>145</sup>

55. Victory entered an insurance contract with TNT Well Servicing, Inc. on July 1, 2019.<sup>146</sup> The policy expired by its own terms on July 1, 2020.<sup>147</sup> On December 31, 2019, at 2:36 p.m., Victory notified TNT Well Servicing, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>148</sup>

56. Victory entered an insurance contract with Toepfer Concrete, Inc. on July 1, 2019.<sup>149</sup> The policy expired by its own terms on July 1, 2020.<sup>150</sup> On December 31, 2019, at 2:36 p.m., Victory notified Toepfer Concrete, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>151</sup>

57. Victory entered an insurance contract with Tri County Mechanical & Electrical, Inc. on July 1, 2019.<sup>152</sup> The policy expired by its own terms on July 1, 2020.<sup>153</sup> On December 31, 2019, at 2:36 p.m., Victory notified Tri County

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<sup>145</sup> CSI’s Exhibit 4 at 1369.

<sup>146</sup> *Id.* at 1425–88.

<sup>147</sup> *Id.* at 1429.

<sup>148</sup> *Id.* at 1425.

<sup>149</sup> *Id.* at 1489–518.

<sup>150</sup> *Id.* at 1493.

<sup>151</sup> *Id.* at 1489.

<sup>152</sup> *Id.* at 1519–51.

<sup>153</sup> *Id.* at 1523.

Mechanical & Electrical, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>154</sup>

58. Victory entered an insurance contract with Tri State Restaurant Supply, Inc. on July 1, 2019.<sup>155</sup> The policy expired by its own terms on July 1, 2020.<sup>156</sup> On December 31, 2019, at 2:36 p.m., Victory notified Tri State Restaurant Supply, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>157</sup>

59. Victory entered an insurance contract with Tungsten Holdings, Inc. on November 1, 2019.<sup>158</sup> The policy expired by its own terms on November 1, 2020.<sup>159</sup> On December 31, 2019, at 2:36 p.m., Victory notified Tungsten Holdings, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>160</sup>

60. Victory entered an insurance contract with Unger Stone & Tile, Inc. on November 15, 2019.<sup>161</sup> The policy expired by its own terms on November 15, 2020.<sup>162</sup> On December 31, 2019, at 2:36 p.m., Victory notified Unger Stone & Tile,

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<sup>154</sup> CSI’s Exhibit 4 at 1519.

<sup>155</sup> *Id.* at 1552–80.

<sup>156</sup> *Id.* at 1556.

<sup>157</sup> *Id.* at 1552.

<sup>158</sup> *Id.* at 1611–40.

<sup>159</sup> *Id.* at 1615.

<sup>160</sup> *Id.* at 1611.

<sup>161</sup> *Id.* at 1641–68.

<sup>162</sup> *Id.* at 1645.



Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>163</sup>

61. Victory entered an insurance contract with White Heating & Air Conditioning, Inc. on July 1, 2019.<sup>164</sup> The policy expired by its own terms on July 1, 2020.<sup>165</sup> On December 31, 2019, at 2:36 p.m., Victory notified White Heating & Air Conditioning, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>166</sup>

62. Victory entered an insurance contract with Yellowstone Fitness, Inc. on May 12, 2019.<sup>167</sup> The policy expired by its own terms on May 12, 2020.<sup>168</sup> On December 31, 2019, at 2:36 p.m., Victory notified Yellowstone Fitness, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>169</sup>

63. Victory entered an insurance contract with Advanced Electric & Construction, Inc. on January 1, 2019.<sup>170</sup> The policy expired by its own terms on January 1, 2020.<sup>171</sup> On December 31, 2019, at 2:33 p.m., Victory notified Advanced

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<sup>163</sup> CSI’s Exhibit 4 at 1641.

<sup>164</sup> *Id.* at 1669–97.

<sup>165</sup> *Id.* at 1673.

<sup>166</sup> *Id.* at 1669.

<sup>167</sup> *Id.* at 1698–723.

<sup>168</sup> *Id.* at 1702.

<sup>169</sup> *Id.* at 1698.

<sup>170</sup> *Id.* at 28–56.

<sup>171</sup> *Id.* at 32.

Electric & Construction, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>172</sup>

64. Victory entered an insurance contract with J. Grant Lincoln and D. Ladd Lincoln on January 1, 2019.<sup>173</sup> The policy expired by its own terms on May 12, 2020.<sup>174</sup> On December 31, 2019, at 2:34 p.m., Victory notified J. Grant Lincoln and D. Ladd Lincoln that their Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>175</sup>

65. Victory entered an insurance contract with RAP, Inc. on January 1, 2019.<sup>176</sup> The policy expired by its own terms on May 12, 2020.<sup>177</sup> On January 3, 2020, at 11:52 a.m., Victory notified RAP, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>178</sup>

66. Victory entered an insurance contract with Spika Design & Manufacturing, Inc. on January 1, 2019.<sup>179</sup> The policy expired by its own terms on January 1, 2020.<sup>180</sup> On December 31, 2019, at 2:35 p.m., Victory notified Spika

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<sup>172</sup> CSI’s Exhibit 4 at 29.

<sup>173</sup> *Id.* at 657–83.

<sup>174</sup> *Id.* at 661.

<sup>175</sup> *Id.* at 657.

<sup>176</sup> *Id.* at 1146–71.

<sup>177</sup> *Id.* at 1149.

<sup>178</sup> *Id.* at 1147.

<sup>179</sup> *Id.* at 1284–313.

<sup>180</sup> *Id.* at 1288.

Design & Manufacturing, Inc. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>181</sup>

67. Victory entered an insurance contract with Thanepohn Corp. on January 1, 2019.<sup>182</sup> The policy expired by its own terms on January 1, 2020.<sup>183</sup> On December 31, 2019, at 2:36 p.m., Victory notified Thanepohn Corp. that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>184</sup>

68. Victory entered an insurance contract with Troy Seaberg Construction on January 1, 2019.<sup>185</sup> The policy expired by its own terms on January 1, 2020.<sup>186</sup> On December 31, 2019, at 2:36 p.m., Victory notified Troy Seaberg Construction that its Victory policy would be “upgraded” to a Clear Spring policy, effective January 1, 2020.<sup>187</sup>

69. The Commissioner proposes imposing a fine in the amount of \$25,000 per violation.<sup>188</sup> By the Commissioner’s calculation, the total amount of the fine is \$2,700,000.<sup>189</sup> The Commissioner did not provide a basis for imposing such a fine.<sup>190</sup>

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<sup>181</sup> CSI’s Exhibit 4 at 1284.

<sup>182</sup> *Id.* at 1396–424.

<sup>183</sup> *Id.* at 1400.

<sup>184</sup> *Id.* at 1396.

<sup>185</sup> *Id.* at 1581–610.

<sup>186</sup> *Id.* at 1585.

<sup>187</sup> *Id.* at 1581.

<sup>188</sup> Notice of Proposed Agency Action at 6.

<sup>189</sup> *Id.*

<sup>190</sup> *See id.*; Brief in Support of CSI’s Motion for Summary Judgment; Reply Brief in Support of CSI’s Motion for Summary Judgment at 17–22.

## CONCLUSIONS OF LAW

1. Summary judgment is available where there are no material facts in dispute and the party is entitled to judgment under the law.<sup>191</sup>

2. The party moving for summary judgment has the initial burden of establishing both the absence of genuine issues of material fact and entitlement to judgment as a matter of law.<sup>192</sup>

3. If the moving party meets this burden, then the burden shifts to the nonmoving party to establish that a genuine issue of material fact does exist.<sup>193</sup>

4. There is a State Auditor as provided in Art. VI, § 1, of the Montana constitution.<sup>194</sup> The State Auditor shall be *ex officio* the Commissioner of Insurance of this state.<sup>195</sup> The Commissioner shall enforce the applicable provisions of the laws of this state.<sup>196</sup> The Commissioner has the powers and authority expressly conferred or reasonably implied from the provisions of the laws of the State of Montana.<sup>197</sup>

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<sup>191</sup> *In re Peila*, 249 Mont. 272, 280–81 (1991); *and see* Mont. R. Civ. P. 56(c).

<sup>192</sup> *Roe v. City of Missoula*, 2009 MT 417, ¶ 14.

<sup>193</sup> *Id.*

<sup>194</sup> Mont. Code Ann. § 2-15-601.

<sup>195</sup> Mont. Code Ann. § 2-15-1903.

<sup>196</sup> Mont. Code Ann. § 33-1-311(1).

<sup>197</sup> Mont. Code Ann. § 33-1-311(2).

5. The Commissioner has the mandate to administer the Department of Securities and Insurance to ensure that the interests of insurance consumers are protected.<sup>198</sup>

6. The Commissioner has the power to conduct examinations and investigations of insurance matters to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision.<sup>199</sup>

7. “An insurer may not cancel an insurance policy before either the expiration of the agreed term or 1 year from the effective date of the policy or renewed date, whichever is less....”<sup>200</sup>

8. The Hearing Examiner concludes that Mont. Code Ann. § 33-15-1103(2) does not mandate 10 days’ notice of the cancellation of a policy, contrary to the Commissioner’s assertion; rather, it holds a purportedly cancelled policy active until after 10 days after notice of the cancellation. However, the terms of the policies themselves require Victory to provide policy holders with 10 days’ notice of cancellation of a policy.

9. “An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at

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<sup>198</sup> Mont. Code Ann. § 33-1-311(3).

<sup>199</sup> Mont. Code Ann. § 33-1-311(4).

<sup>200</sup> Mont. Code Ann. § 33-15-1103(1). Exceptions are a) for reasons specifically allowed by statute; b) for failure to pay a premium when due; or c) on grounds stated in the policy pertaining to material misrepresentation, substantial change in the risk assumed, substantial breaches of the insurance contract, financial impairment of the insurer, or any other reason approved by the Commissioner. None of these exceptions apply here.

least 45 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a notice of the intention not to renew.”<sup>201</sup>

10. “No person shall make, issue, circulate, or cause to be made, issued, or circulated any ... statement which misrepresents the benefits, advantages, conditions, or terms of any insurance policy.”<sup>202</sup>

11. The Commissioner has the power to enforce cancellation restrictions set forth in Mont. Code Ann. § 33-15-1103(1). The Department of Labor and Industry (the “DLI”) has the power to enforce its own notice of cancellation requirements and apply its own penalties.<sup>203</sup> The DLI’s power is separate from and concurrent with that of the Commissioner.<sup>204</sup>

12. The Commissioner has the power to enforce notice of nonrenewal requirements set forth in Mont. Code Ann. § 33-15-1105(1).

13. The Commissioner has the power to enforce misrepresentation restrictions set forth in Mont. Code Ann. § 33-18-202(1).

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<sup>201</sup> Mont. Code Ann. § 33-15-1105(1).

<sup>202</sup> Mont. Code Ann. § 33-18-202(1).

<sup>203</sup> *See, e.g.*, Mont. Code Ann. § 39-71-2205(1) and (3).

<sup>204</sup> Mont. Code Ann. § 33-1-317 states that the Commissioner’s fine is in addition to all other penalties imposed by the laws of this state, which includes any penalties imposed by the DLI.

14. The Commissioner may impose a fine upon a person found to have violated a provision of the Montana Insurance Code not to exceed the sum of \$25,000.<sup>205</sup> The term “person” includes an insurer and any other legal entity.<sup>206</sup>

15. Victory is a “person” for purposes of the Montana Insurance Code.

16. “Cancellation” means the decision by the insurer to terminate an insurance policy prior to the expiration of its term.<sup>207</sup>

17. “Renewal” means an agreement between the insurer and an insured to extend or continue an existing insurance policy for 90 days or more.<sup>208</sup>

18. “Nonrenewal” is undefined in statute. “When interpreting statutes, the goal is to give effect to the legislature’s intent, beginning with the text of the statute. The starting point for statutory interpretation is the plain language of the statute itself. In the construction of a statute, the office of the [tribunal] is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.”<sup>209</sup>

19. “Nonrenewal” means the absence of an agreement between the insurer and an insured to extend or continue an existing insurance policy. For purposes of Mont. Code Ann. 33-15-1105, “nonrenewal” means the decision by the insurer not to extend or continue an existing insurance policy beyond the agreed expiration date.

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<sup>205</sup> Mont. Code Ann. § 33-1-317. The penalty is limited to \$5,000 per violation when the fine is imposed upon an insurance producer or adjuster; Victory is neither of those things.

<sup>206</sup> Mont. Code Ann. § 33-1-202(3).

<sup>207</sup> Mont. Code Ann. § 33-15-1102(2).

<sup>208</sup> Mont. Code Ann. § 33-15-1102(9).

<sup>209</sup> *ALPS Prop. & Cas. Ins. Co. v. McLean & McLean, PLLP*, 2018 MT 190, ¶ 30 (internal quotations and citations omitted).

20. Victory “cancelled” its insurance policy held by Advanced Cleaning Services, LLC, because Victory terminated the policy prior to the expiration of its term.

21. Victory “cancelled” its insurance policy held by Anderson Masonry, Inc., because Victory terminated the policy prior to the expiration of its term.

22. Victory “cancelled” its insurance policy held by Associated Management Services, Inc., because Victory terminated the policy prior to the expiration of its term.

23. Victory “cancelled” its insurance policy held by Baldwin’s Customized Landscaping, Inc., because Victory terminated the policy prior to the expiration of its term.

24. Victory “cancelled” its insurance policy held by Big Sandy Activities, Inc., because Victory terminated the policy prior to the expiration of its term.

25. Victory “cancelled” its insurance policy held by Bitterroot Lawn & Landscaping, Inc., because Victory terminated the policy prior to the expiration of its term.

26. Victory “cancelled” its insurance policy held by Bonanza Freeze, Inc., because Victory terminated the policy prior to the expiration of its term.

27. Victory “cancelled” its insurance policy held by Brown Builders, LLC, because Victory terminated the policy prior to the expiration of its term.



28. Victory “cancelled” its insurance policy held by Brown Plumbing & Heating, Inc., because Victory terminated the policy prior to the expiration of its term.

29. Victory “cancelled” its insurance policy held by Claire W. Daines, Inc., because Victory terminated the policy prior to the expiration of its term.

30. Victory “cancelled” its insurance policy held by Club Royale, LLC, because Victory terminated the policy prior to the expiration of its term.

31. Victory “cancelled” its insurance policy held by D & D Auto, Inc., because Victory terminated the policy prior to the expiration of its term.

32. Victory “cancelled” its insurance policy held by Dan Kim Certified Seed Potatoes, LLC, because Victory terminated the policy prior to the expiration of its term.

33. Victory “cancelled” its insurance policy held by Decorative Concrete Professionals, LLC, because Victory terminated the policy prior to the expiration of its term.

34. Victory “cancelled” its insurance policy held by Dents & Cents, Inc., because Victory terminated the policy prior to the expiration of its term.

35. Victory “cancelled” its insurance policy held by Discovery Care Centre, because Victory terminated the policy prior to the expiration of its term.

36. Victory “cancelled” its insurance policy held Frontier Distributing, Inc., because Victory terminated the policy prior to the expiration of its term.

37. Victory “cancelled” its insurance policy held by Glader Electric, Inc., because Victory terminated the policy prior to the expiration of its term.

38. Victory “cancelled” its insurance policy held by Harvest Church, because Victory terminated the policy prior to the expiration of its term.

39. Victory “cancelled” its insurance policy held by Hestia In Home Support, LLC, because Victory terminated the policy prior to the expiration of its term.

40. Victory “cancelled” its insurance policy held by Kenneth Robbins, because Victory terminated the policy prior to the expiration of its term.

41. Victory “cancelled” its insurance policy held by Leskovar Motors, Inc., because Victory terminated the policy prior to the expiration of its term.

42. Victory “cancelled” its insurance policy held by Lilac Restaurant Group, LLC, because Victory terminated the policy prior to the expiration of its term.

43. Victory “cancelled” its insurance policy held by Lohss Construction, Inc., because Victory terminated the policy prior to the expiration of its term.

44. Victory “cancelled” its insurance policy held by Makeef Trucking, Inc., because Victory terminated the policy prior to the expiration of its term.

45. Victory “cancelled” its insurance policy held by Montana Mobile Document Shredding, because Victory terminated the policy prior to the expiration of its term.

46. Victory “cancelled” its insurance policy held by Montana Noodle Co., Inc., LLC, because Victory terminated the policy prior to the expiration of its term.

47. Victory “cancelled” its insurance policy held by Mountain Meadows Pet Products, Inc., because Victory terminated the policy prior to the expiration of its term.

48. Victory “cancelled” its insurance policy held by Mountain Supply Co., Inc., because Victory terminated the policy prior to the expiration of its term.

49. Victory “cancelled” its insurance policy held by MT Flooring Center, LLP, because Victory terminated the policy prior to the expiration of its term.

50. Victory “cancelled” its insurance policy held by Nevermore, Inc., because Victory terminated the policy prior to the expiration of its term.

51. Victory “cancelled” its insurance policy held by Paradise Valley Farms, LLC, because Victory terminated the policy prior to the expiration of its term.

52. Victory “cancelled” its insurance policy held by Pioneer Meats, Inc., because Victory terminated the policy prior to the expiration of its term.

53. Victory “cancelled” its insurance policy held by Polson Ambulance, Inc., because Victory terminated the policy prior to the expiration of its term.

54. Victory “cancelled” its insurance policy held by Pryor Creek Café & Grill, LLC, because Victory terminated the policy prior to the expiration of its term.

55. Victory “cancelled” its insurance policy held by Pure Clean Techs, LLC, because Victory terminated the policy prior to the expiration of its term.

56. Victory “cancelled” its insurance policy held by Purity Cleaning Services, LLC, because Victory terminated the policy prior to the expiration of its term.

57. Victory “cancelled” its insurance policy held by Rob Phipps Consulting, LLC, because Victory terminated the policy prior to the expiration of its term.

58. Victory “cancelled” its insurance policy held by Scott L. Koelzer Masonry, LLC, because Victory terminated the policy prior to the expiration of its term.

59. Victory “cancelled” its insurance policy held by Security Solutions, Inc., because Victory terminated the policy prior to the expiration of its term.

60. Victory “cancelled” its insurance policy held by Story Distributing Co., because Victory terminated the policy prior to the expiration of its term.

61. Victory “cancelled” its insurance policy held by Superior Auto Body & Tow, Inc., because Victory terminated the policy prior to the expiration of its term.

62. Victory “cancelled” its insurance policy held by TNT Well Servicing, Inc., because Victory terminated the policy prior to the expiration of its term.

63. Victory “cancelled” its insurance policy held by Toepfer Concrete, Inc., because Victory terminated the policy prior to the expiration of its term.

64. Victory “cancelled” its insurance policy held by Tungsten Holdings, Inc., because Victory terminated the policy prior to the expiration of its term.

65. Victory “cancelled” its insurance policy held by Unger Stone & Tile, Inc., because Victory terminated the policy prior to the expiration of its term.

66. Victory “cancelled” its insurance policy held by White Heating & Air Conditioning, Inc., because Victory terminated the policy prior to the expiration of its term.

67. Victory “cancelled” its insurance policy held by Yellowstone Fitness, Inc. because Victory terminated the policy prior to the expiration of its term.

68. The Victory insurance policy held by Advanced Electric & Construction, Inc. was “nonrenewed” because Victory decided not to extend or continue the existing insurance policy beyond the agreed expiration date.

69. The Victory insurance policy held by J. Grant Lincoln & D. Ladd Lincoln was “nonrenewed” because Victory decided not to extend or continue the existing insurance policy beyond the agreed expiration date.

70. The Victory insurance policy held by RAP, Inc. was “nonrenewed” because Victory decided not to extend or continue the existing insurance policy beyond the agreed expiration date.

71. The Victory insurance policy held by Spika Design & Manufacturing, Inc. was “nonrenewed” because Victory decided not to extend or continue the existing insurance policy beyond the agreed expiration date.

72. The Victory insurance policy held by Thanepohn Corp. was “nonrenewed” because Victory decided not to extend or continue the existing insurance policy beyond the agreed expiration date.

73. The Victory insurance policy held by Troy Seaberg Construction was “nonrenewed” because Victory decided not to extend or continue the existing insurance policy beyond the agreed expiration date.

74. In 51 instances, Victory cancelled an insurance policy before either the expiration of the agreed term or 1 year from the effective date of the policy or renewal date in violation of Mont. Code Ann. § 33-15-1103(1).

75. In 51 instances, Victory failed to provide one of the enumerated statutory bases for a midterm cancellation in violation of Mont. Code Ann. § 33-15-1103(1).

76. The Hearing Examiner concludes that a violation of Mont. Code Ann. § 33-15-1103(1) based on a premature cancellation is a separate violation from a violation of Mont. Code Ann. § 33-15-1103(1) based on a failure to provide an enumerated statutory basis for a midterm cancellation.

77. In 6 instances, Victory failed to provide notice of at least 45 days of the nonrenewal of its policies.

78. The Hearing Examiner concludes that Victory misrepresented the benefits, advantages, conditions, or terms of its policies by issuing or circulating statements, i.e., the Letter. Specifically, the Letter made misrepresentations by failing to clearly explain that each Victory policy was terminated and rewritten by Clear Spring, a separate entity. The Hearing Examiner further concludes that the Letter made misrepresentations by failing to clearly explain that Clear Spring had assumed policy burdens formerly held by Victory.

79. In 57 instances, Victory misrepresented the benefits, advantages, conditions, or terms of policies reissued by Clear Spring and transferring policy burdens from Victory to Clear Spring.

80. The Commissioner has demonstrated that he is entitled to judgment as a matter of law.

81. The Commissioner is empowered to impose a fine of an amount not to exceed \$25,000 upon Victory for every violation of the Montana Insurance Code the Commissioner proves according to the procedures of a contested case hearing held pursuant to the Montana Administrative Procedures Act.

82. The amount of the fine the Commissioner imposes is at the discretion of the Commissioner, and the Commissioner need not provide a basis for imposing a fine of a particular dollar amount.<sup>210</sup>

83. As to the Victory insurance policy held by Amp Electric & Lighting, Inc., the Hearing Examiner concludes that the Commissioner failed to prove that Victory cancelled it without providing one of the enumerated statutory bases for a midterm cancellation because the Commissioner failed to include evidence of the date on which Victory gave notice of cancellation. Unlike the situation with the D & D Auto, Inc. policy, the Commissioner did not provide evidence that Victory supplied Amp Electric & Lighting with substantially the same Letter as it provided every other entity, nor did the Commissioner provide evidence that Amp Electric &

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<sup>210</sup> Mont. Code Ann. § 33-1-317.

Lighting was a recipient of an e-mail sent on December 31, 2019.<sup>211</sup> The Commissioner may not impose a fine upon Victory based on the cancellation of the Amp Electric & Lighting policy. The Hearing Examiner further concludes that the Commissioner failed to prove that Victory gave inadequate notice of nonrenewal of this policy. The Hearing Examiner begins with the presumption that Victory complied with notice requirements.<sup>212</sup> The Commissioner has the burden of proving notice was inadequate. The Commissioner did not provide evidence of the date of notice of nonrenewal. Therefore, the Commissioner may not impose a fine upon Victory based on the nonrenewal of the Amp Electric & Lighting policy. The Hearing Examiner further concludes that the Commissioner failed to prove that Victory misrepresented the benefits, advantages, conditions, or terms of the policy held by Amp Electric & Lighting because the Commissioner failed to provide evidence that such misrepresentation occurred. Therefore, the Commissioner may not impose a fine upon Victory based on any alleged misrepresentation directed toward Amp Electric & Lighting.

84. As to the Victory insurance policy held by Rhonda Verbeck d/b/a Miner House Inn, the Hearing Examiner concludes that the Commissioner failed to prove that Victory violated any statutory or policy requirements. The policy provided as evidence has an inception date of July 1, 2018, and it expired on its own terms on July 1, 2019.<sup>213</sup> The Commissioner provided no evidence addressing whether this

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<sup>211</sup> Compare CSI's Exhibit 4 at 57–82 with 399–423, 1726–28, 1730.

<sup>212</sup> Mont. Code Ann. § 26-1-602(33).

<sup>213</sup> CSI's Exhibit 4 at 1172–200, particularly at 1175–189, 1191, 1199, and 1200.



policy was renewed on July 1, 2019, and if it was, whether it was subsequently cancelled or nonrenewed in violation of the Montana Insurance Code. Therefore, the Commissioner may not impose a fine upon Victory based on the cancellation or nonrenewal of the Rhonda Verbeck d/b/a Miner House Inn policy. Furthermore, while the Commissioner provided evidence that Victory misrepresented the changes in its policies in the form of the Letter addressed to Rhonda Verbeck d/b/a Miner House Inn, the Commissioner failed to prove that Rhonda Verbeck d/b/a Miner House Inn had an active Victory insurance policy at the time the Letter was sent. Therefore, the Commissioner may not impose a fine upon Victory based on the misrepresentation of a policy which was not proven to have existed.

#### ANALYSIS

Prior to January 1, 2020, there were 58 insurance policies written on Victory paper.<sup>214</sup> On January 1, 2020, at least 57 of those policies<sup>215</sup> were rewritten on Clear Spring paper. The Victory policies ceased to exist; they were terminated. If they were terminated prior to the expiration of their terms, then they were “cancelled” within the meaning of Mont. Code Ann. § 33-15-1102(2). If they were terminated concurrently with the expiration of their terms, then they were “nonrenewed” within the meaning of Mont. Code Ann. § 33-15-1105. Policy holders were entitled

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<sup>214</sup> The Commissioner failed to prove that Rhonda Verbeck d/b/a Miner House Inn had an active policy on December 31, 2019.

<sup>215</sup> The Commissioner failed to prove that the policy held by Amp Electric & Lighting, Inc. was wrongfully cancelled or nonrenewed.

to 10 days' notice of cancellation by the terms of the policy, and to 45 days' notice of nonrenewal by the terms of the policy and by statute.

Victory provided notice of the terminations of policies a mere nine and a half hours prior to termination.<sup>216</sup> This is inadequate notice. The lateness of the notice is perplexing considering that the Reinsurance Agreement that caused the termination of Victory policies and issuance of Clear Spring policies was effective as of April 1, 2019, a full nine months prior to the cancellation or nonrenewal of Victory's policies. Victory had ample time to give its policy holders notice of what was coming.

None of the termination notices provided an enumerated statutory basis for a midterm cancellation, or any ground listed in the policies themselves. None of the termination notices provided a reason for nonrenewal, contrary to the terms of the policies.

Victory's argument that the policies were not terminated but were "assigned" is misdirected. The transaction that occurred between Victory and Clear Spring appears to be an assignment; however, the Commissioner is not concerned with that transaction, but rather with the transaction between Victory and its policy holders, which is to say, the termination of Victory's policies without providing notice required by either statute or the terms of the policies.

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<sup>216</sup> In most instances; one notice was not provided until two days following termination (*see* CSI's Exhibit 4 at 1147).

The amount of a fine the Commissioner may impose is limited to \$25,000 per violation. The Commissioner may impose the fine *after* having conducted a hearing pursuant to Mont. Code Ann. § 33-1-701.<sup>217</sup> These are the only applicable limits on the Commissioner's discretion to impose a fine upon Victory. This is the hearing. At the end of the hearing, the Hearing Examiner provides findings of fact, conclusions of law, and a recommended decision to the Commissioner; after the Hearing Examiner provides the findings, conclusions, and recommended decision, there is no further role for the Hearing Examiner. Only after the Commissioner adopts the findings, conclusions, and recommended decision holding that the respondent has violated a provision of the Montana Insurance Code may the Commissioner impose a fine. Thus, the amount of the fine is not subject to review by the Hearing Examiner. Imposition of the fine pursuant to Mont. Code Ann. § 33-1-317 is an order from which an appeal may be taken, pursuant to the provisions of Mont. Code Ann. § 33-1-711.

### **ORDER**

Upon the Commissioner's demonstration that no material facts are in dispute and that he is entitled to judgment as a matter of law,

**IT IS HEREBY ORDERED** that the Commissioner's Motion for Summary Judgment is **GRANTED**.

**IT IS FURTHER ORDERED** that Victory's Motion for Summary Judgment is denied as moot.

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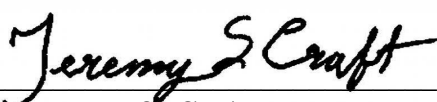
<sup>217</sup> Mont. Code Ann. § 33-1-317 (emphasis added).

## RECOMMENDED AGENCY ACTION

Victory cancelled 51 insurance policies prior to the expirations of their agreed terms without providing adequate notice pursuant to the terms of the policies. In addition, Victory cancelled these 51 insurance policies without providing an enumerated statutory basis pursuant to statute and to the terms of the policies. Victory failed to provide notice of the nonrenewal of 6 insurance policies pursuant to statute and to the terms of the policies. Victory misrepresented the nature and effect of its cancellation of Victory policies and issuance of Clear Spring policies when it sent the Letter to 57 of its policy holders.

The Commissioner has the power to impose a fine upon Victory in a sum not to exceed \$25,000 per violation. Victory committed 165 separate violations of the Montana Insurance Code, entitling the Commissioner to impose a fine upon Victory not to exceed the amount of \$4,125,000.

DATED May 23, 2023.

  
JEREMY S. CRAFT  
Hearing Examiner  
Montana Department of Justice  
Agency Legal Services Bureau

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