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6 BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
7 STATE OF MONTANA

8 IN THE MATTER OF THE PROPOSED )  
9 AGENCY ACTION REGARDING THE )  
10 SURPLUS LINES INSURANCE )  
11 PRODUCER LICENSE AND THE )  
12 INSURANCE PRODUCER LICENSE OF )  
13 JAMES R. GIBSON, SR., )  
14 License #928047 and License #927720, )  
15 respectively. )

Case No. INS-2006-70

CONSENT AGREEMENT

13 The State Auditor and Commissioner of Insurance of the state of Montana  
14 (Commissioner) and the Montana Insurance Department (Department), pursuant to the authority  
15 of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, hereby make the following  
16 fact assertions and conclusions of law which justify and support disciplinary treatment:  
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18 **FACT ASSERTIONS**

19 1. Respondent James R. Gibson, Sr. (hereafter Gibson) holds surplus lines insurance  
20 producer license #928047 and insurance producer license #927720 issued by the State Auditor  
21 and Commissioner of Insurance.

22 2. Preferred Professional Insurance Company (hereafter PPIC) holds certificate of  
23 authority #18853967, issued by the State Auditor and Commissioner of Insurance, to transact  
24 property and casualty insurance in Montana. PPIC was issued this certificate of authority,  
25 thereby becoming an authorized insurer, on January 10, 2003.

26 3. Prior to receiving certificate of authority #18853967, PPIC was an eligible  
27 surplus lines insurer in Montana. Eligible surplus lines insurers are unauthorized insurers, in  
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1 that they do not hold a certificate of authority, but have been approved by the Commissioner to  
2 transact insurance in Montana in certain limited circumstances and are not subject to the same  
3 regulatory oversight as authorized insurers. After receiving a certificate of authority and  
4 becoming an authorized insurer, PPIC was no longer eligible to issue surplus lines insurance.

5 4. Gibson placed surplus lines insurance on Montana risks with PPIC after PPIC  
6 became an authorized insurer and was therefore no longer an eligible surplus lines insurer.

7 5. Gibson failed to remit the premium taxes and surplus lines stamping fees he  
8 collected from insureds on surplus lines insurance policies issued by PPIC after PPIC was no  
9 longer an eligible surplus lines insurer.

#### 10 CONCLUSIONS OF LAW

11 1. The State Auditor is the Commissioner of Insurance (Commissioner) pursuant to  
12 Mont. Code Ann. § 2-15-1903.

13 2. The Insurance Department (Department) is under the control and supervision of  
14 the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

15 3. The Commissioner shall administer the Department to protect insurance  
16 consumers. Mont. Code Ann. § 33-1-311.

17 4. A person or entity "may not transact a business of insurance in Montana or a  
18 business relative to a subject resident, located, or to be performed in Montana without complying  
19 with the applicable provisions of this code [Montana Insurance Code]." Mont. Code Ann. § 33-  
20 1-102(1).

21 5. Pursuant to Mont. Code Ann. § 33-1-201(2), an "authorized insurer" is an insurer  
22 "duly authorized by subsisting certificate of authority issued by the Commissioner to transact  
23 insurance in this state."

24 6. Pursuant to Mont. Code Ann. § 33-1-201(10), an "unauthorized insurer" is an  
25 insurer "not authorized by subsisting certificate of authority issued by the Commissioner to  
26 transact insurance in this state." An unauthorized insurer may be designated as an eligible  
27 surplus lines insurer by the Commissioner and may transact surplus lines insurance in Montana  
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1 under certain, limited circumstances. Mont. Code Ann. §§ 33-2-301, 33-2-302, 33-2-306, and  
2 33-2-307.

3 7. Authorized insurers are ineligible to transact surplus lines insurance. Mont. Code  
4 Ann. § 33-2-101, 33-2-301, 33-2-301, 33-2-306, and 33-2-307.

5 8. By placing surplus lines insurance with an ineligible insurer, Gibson is in  
6 violation of Mont. Code Ann. § 33-2-306(1).

7 9. By failing to remit premium taxes and stamping fees, Gibson is in violation of  
8 Mont. Code Ann. § 33-2-310, 33-2-311, and 33-2-321.

9 10. Pursuant to Mont. Code Ann. § 33-2-313, the Commissioner shall suspend,  
10 revoke, refuse to issue or renew a surplus lines insurance producer license, together with any  
11 other insurance producer license, for violations of the Montana Surplus Lines Insurance Law,  
12 Mont. Code Ann. § 33-2-301, *et seq.* The Commissioner may also impose an administrative fine  
13 on the surplus lines insurance producer for violations of the Montana Surplus Lines Insurance  
14 Law, Mont. Code Ann. § 33-2-301, *et seq.* Mont. Code Ann. §§ 33-2-313 and 33-17-1001.

15 12. Pursuant to Mont. Code Ann. § 33-1-317, the Commissioner may impose an  
16 administrative fine of up to \$5,000.00 per each violation of Montana law.

### 17 AGREEMENT

18 The Department and Respondent Gibson hereby stipulate and agree to the following:

19 1. The Commissioner and Department have jurisdiction over the subject matter of  
20 the above-entitled proceeding.

21 2. Respondent acknowledges that he was advised of the right to be represented by  
22 legal counsel and if represented by legal counsel, that such legal representation was satisfactory.

23 3. Respondent acknowledges that he has read and understands each term of this  
24 Consent Agreement and Final Order. Respondent acknowledges that he enters into this Consent  
25 Agreement voluntarily, and without reservation. Respondent acknowledges that he is not under  
26 the influence of alcohol or drugs (prescription or otherwise) and that he does not suffer from any  
27 emotional disturbance or mental disease or defect that would render him not competent to sign  
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1 this Consent Agreement. Respondent further acknowledges that this Consent Agreement  
2 constitutes the entire agreement between the parties and that no other promises or agreements,  
3 either express or implied, have been made by the Department or by any member, officer, agent or  
4 representative of the Department to induce Respondent to enter into this Consent Agreement.

5 4. The Department contends as set forth in the preceding Fact Assertions and  
6 Conclusions of Law and Respondent admits the same. The Department and Respondent have  
7 elected to resolve these matters as follows:

8 (a) As of August 4, 2004, Respondent has not placed any surplus lines insurance  
9 policies issued by PPIC on Montana risks;

10 (b) Respondent will not place any surplus lines insurance policies on Montana  
11 risks that are issued by an authorized insurer or an insurer otherwise ineligible to transact surplus  
12 lines insurance Montana;

13 (c) The surplus lines insurance policies and endorsements improperly placed with  
14 PPIC have now been filed with the Montana Surplus Lines Agents Association. Respondent has  
15 received statements prepared by the Montana Surplus Lines Agents Association for the  
16 associated premium taxes and stamping fees. Respondent will pay the premium taxes on these  
17 surplus lines insurance policies and endorsements to the Department. Respondent will pay the  
18 stamping fees on these surplus lines insurance policies and endorsements to the Montana Surplus  
19 Lines Agents Association;

20 (d) For violations of the Surplus Lines Insurance Law, Mont. Code Ann. § 33-2-  
21 301, *et seq.*, the Commissioner shall suspend, revoke, refuse to issue or renew a surplus lines  
22 insurance producer license, together with any other insurance producer license, and may also  
23 impose an administrative fine. Mont. Code Ann. §§ 33-2-313 and 33-17-1001. The  
24 Commissioner may impose a maximum administrative fine of \$5,000.00 per each violation  
25 pursuant to Mont. Code Ann. § 33-1-317. For all violations set out in this Agreement,  
26 Respondent Gibson will: (1) pay an administrative fine of \$10,000.00 to the Department; and (2)  
27 have his surplus lines insurance producer license #928047 and insurance producer license  
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1 #927720 suspended effective on the date that the Final Order is signed. These licenses will  
2 remain suspended for 30 days or until Respondent Gibson remits the premium taxes, stamping  
3 fees, and administrative fine as provided in the foregoing, whichever is longer. The Department  
4 will provide written notice to Respondent Gibson when the suspension is lifted;

5 (e) The Department and Respondent agree that this Consent Agreement and  
6 Final Order resolve the violations set out herein;

7 (f) Respondent specifically and affirmatively waives a contested case hearing  
8 and all rights to appeal under the Montana Administrative Procedure Act, Mont. Code Ann. § 2-  
9 4-101, *et seq.*, and elects to resolve this matter on the terms and conditions set forth herein;

10 (g) Respondent agrees that compliance with this Consent Agreement and Final  
11 Order shall be a final compromise and settlement of the matters set forth herein;

12 (h) Respondent fully and forever releases and discharges the Commissioner,  
13 Department, and all Department employees from any and all actions, claims, causes of action,  
14 demands, or expenses for damages or injuries, whether asserted or unasserted, known or  
15 unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this  
16 Consent Agreement; and

17 (i) The Department and Respondent agree that this Consent Agreement shall be  
18 incorporated and made a part of the attached Final Order issued by the Commissioner herein.

19 5. Respondent further understands that, upon the signing of the Final Order by the  
20 Commissioner or his representative, this Consent Agreement and Final Order will be an order of  
21 the Commissioner and failure to comply with the same may constitute separate violations of the  
22 Montana Insurance Code, pursuant to Mont. Code Ann. § 33-1-318 and/or other applicable  
23 statutes or rules, and may result in subsequent legal action by the Department.

24 6. Respondent understands that this Consent Agreement is not effective until such  
25 time as the following Final Order is signed.

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7. Respondent understands that this Consent Agreement and Final Order are public records under Montana law and as such may not sealed or otherwise withheld from the public.

JAMES R. GIBSON, SR., Respondent

*James R. Gibson, Sr.*

James R. Gibson, Sr.  
Subscribed and sworn to before me this 16<sup>th</sup> day of October, 2006.



*Karla Buss*  
Printed Name Karla Buss  
Notary Public for the State of Wisconsin  
Residing at Milwaukee, WI  
My commission expires 11-1-09

ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

*Jennifer Massman*  
Jennifer Massman, Staff Attorney

10-17-2006  
Date

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**FINAL ORDER**

Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, and upon review of the forgoing Consent Agreement and good cause appearing therefor,

IT IS ORDERED that the foregoing Consent Agreement between the Insurance Department and James R. Gibson, Sr. is hereby adopted as if set forth fully herein.

DATED this 17 day of October, 2006.

JOHN MORRISON  
State Auditor and Commissioner of Insurance

  
By: Gordon Higgins  
Deputy State Auditor

CERTIFICATE OF SERVICE

1  
2 I hereby certify that on the 17 day of OCTOBER, 2006, I served a  
3 true and accurate copy of the foregoing Consent Agreement and Final Order upon the  
4 Respondent and Department, by mail, postage prepaid, or by hand-delivery at the following  
5 address:

6  
7 Paulette Solinski  
8 Associate General Counsel  
9 Aon Corp.  
10 200 E. Randolph Street  
11 Chicago, IL 60601  
12 (Legal Counsel for Respondent)

13  
14 Jennifer Massman  
15 Staff Attorney  
16 Insurance Department

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