

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
HELENA, MONTANA

Hearing Examiner

OCT 10 2003

IN THE MATTER OF:)
)
THE PROPOSED DISCIPLINARY)
TREATMENT OF BETH GARGUILO,)
MEDICAL BENEFITS)
ADMINISTRATORS OF MD, INC,)
CUSTOM RAIL EMPLOYER WELFARE)
TRUST FUND, AND THOSE)
UNDERWRITERS AT LLOYD'S)
LONDON SIGNATORY TO)
CERTIFICATE NO. L171255 AND)
CERTIFICATE NO. L271268,)

CASE NO. 2002-35

CONSENT ORDER

Respondents,

I

The Department of Insurance alleges the following:

1. When Central Montana Railroad agreed to participate in Custom Rail Employer Welfare Trust Fund (CREW) with an effective date of July 1, 2002, CREW then established itself in Montana since Central Montana Railroad has its primary place of business in Montana. Section 33-35-201(2), MCA;

2. Under Section 33-35-201(1), MCA, a "self funded multiple employer welfare arrangement" means, for purposes of applying the Montana Insurance Code, a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies licensed under Section 33-35-103(6) MCA;

3. Under the Montana Insurance Code, CREW is a self-funded multiple employer welfare arrangement because it does not provide for payment of benefits under the

HELENA, MONTANA
OCT 16 10 16 AM '03
STATE OF MONTANA

arrangement solely through a policy or policies of insurance issued by one or more insurance companies licensed under section 33-35-103(6), MCA;

4. CREW was established in Montana without a certificate of authority from the Commissioner pursuant to section 33-35-201(1), MCA;

5. By not having a certificate of authority issued by the Commissioner, CREW is in violation of section 33-2-101, MCA, pursuant to section 33-35-303, MCA;

II

As a result of hearings and discovery, the Department and CREW agree that:

1. CREW was formed in November 2001 by the Small Railroad Business Owners Association of America ("SRBOA"), which is an association located in the District of Columbia whose membership is limited to small and short line railroads and select small railroad contractors;

2. The Custom Rail Employer Trust Fund ("CREW") is a multi-employer welfare arrangement ("MEWA") subject to the Employee Retirement Income Security Act ("ERISA");

3. CREW offers occupational and other health benefits to employers who are small and short line railroads pursuant to a Summary Plan Description;

4. SRBOA created CREW because its members were unable to obtain occupational employee benefits coverage from traditional insurance companies, which do not provide such occupational coverage in an economically feasible manner;

5. CREW has obtained a policy of insurance in December, 2002 from Certain Underwriters at Lloyds, London (the "2002 Underwriters") which is an insurance organization;

6. The policy of insurance provided by the 2002 Underwriters, by its terms, permits the employee or covered beneficiary to collect from the Underwriters any amounts due with respect to a covered claim which is not paid by CREW, for any reason, within such thirty day period;

7. Under the insurance policy for CREW issued by the 2002 Underwriters, the 2002 Underwriters guarantee the payment of any covered claim under CREW which is not paid within thirty days after it has been allowed and provide insurance which pays any claim in excess of \$50,000. As a result, the 2002 Underwriters are ultimately responsible for payment of any and all claims which are not otherwise paid by CREW.

III

CREW alleges the following:

1. CREW is a "fully-insured" multiple employer welfare arrangement within the meaning of 29 U.S.C.A § 1144.
2. The provisions of Montana law which the Department seeks to enforce against CREW are preempted under provisions of ERISA.

The Department has contested the allegations of CREW.

IV

CREW, Canton Agency, LLC, Medical Benefits Administrators of MD, Inc., Beth Garguilo, the certain Underwriters at Lloyd's, London Signatory to Certificate no. L171255 and Certificate no. L271268 do not admit to the violations of the Montana Insurance Code as alleged by the Commissioner, but for the purpose of resolving all matters raised by the investigation enter into this consent agreement and agree to the following:

1. This consent agreement becomes an order of the Commissioner upon all parties signing, and further understands that either CREW or Canton's failure to comply with this order constitutes a separate violation of the insurance code pursuant to sections 33-2-119, 33-17-1001 or other applicable codes by the party violating such order;

2. CREW will do the following:

A. pay a fine of \$2,500 for operating as a MEWA in Montana without a certificate of authority, and additionally pay a combined \$2,500 administrative and investigative fee;

B. in consideration for the commissioner of insurance granting CREW the certificate of authority pursuant to 33-35-211, MCA and not requiring a \$200,000 deposit pursuant to section 33-35-203, MCA, CREW agrees

(1) to seek a change in the second sentence of Section 'FOURTH A' of its Articles of Incorporation of the SRBOA to read as follows" "The voting members of the Association shall be limited to employers (persons or entities who or which employ at least two (2) persons for purposes of the provision of welfare and pension benefits) who are engaged in the operation of short line or small railroads." Contractors and suppliers to short line or small railroads who are controlled by a voting member (or by a common parent with a voting member) may join the Association as a non-voting member and may participate in the provision of pension and welfare benefits together with the voting member small or short line member with whom they are under common control. Otherwise contractors and suppliers to short line or small railroads shall be permitted to be members of the Association but may not participate in pension and welfare benefits.

(2) to seek a change in the last three sentences of Section 1 of the Bylaws of the SRBOA to read as follows: "Such members are Class II, Class III or Class IV freight,

interstate, or intrastate scenic or tourist railroads. The voting members of the Association shall be limited to employers (persons or entities who or which employ at least two (2) persons for purposes of the provision of welfare and pension benefits) which are engaged in the operation of freight, interstate, or intrastate scenic or tourist railroads and who otherwise pursue the purposes of the Association as may be provided in the Bylaws of the Association. Membership shall be open to all qualifying railroads and contractors and suppliers to short line or small railroads who are controlled by a voting member (or by a common parent with a voting member) may join the Association as a non-voting member and participate in pension and welfare benefits. Otherwise contractors and suppliers to short line or small railroads shall be permitted to be members of the Association but may not participate in pension or welfare benefits.

(3) until the Articles of Incorporation and Bylaws of the SRBOA are amended as provided above, CREW shall not accept as a participating employer any employer whose primary place of business is located in Montana who is not a person or entity who or which employ at least two (2) persons for purposes of the provision of welfare and pension benefits which are engage in the operation of freight, interstate, or intrastate scenic or tourist railroads and shall not permit any contractor or supplier to short line or small railroads and whose primary place of business is located in Montana to become a participating employer in CREW.

(4) to maintain the substance of the guaranty language as contained in Endorsement One of Certificate No. L271268.

(5) to include in its Summary Plan Description an addendum which shall be attached to the face of the Summary Plan Description for employers whose primary place of business is in the State of Montana the following notice in at least ten point type:

NOTICE APPLICABLE TO EMPLOYEES OF PARTICIPATING EMPLOYERS WHOSE
PRIMARY PLACE OF BUSINESS IS IN MONTANA

CREW is a multiple employer welfare arrangement which, under applicable Montana law and for purposes of applying the Montana Insurance Code, is included within the definition of a self-funded multiple employer welfare arrangement. CREW and a self-funded multiple employer welfare arrangements may not be subject to all of the insurance laws and regulations of the State of Montana and other states in which participating employers may be located. Under Montana law, state insurance solvency guaranty funds are not available for self-funded multiple employer welfare arrangements as defined under Montana law. State insurance solvency guaranty funds in other states may have similar exclusions for multiple employer welfare plans such as CREW.

3. Canton Agency, LLC will become registered with the Montana Secretary of State and licensed as a producer by the Montana Department of Insurance.

V

1. The Commissioner dismisses the administrative action and cease & desist order against MBA, and Garguilo;

2. The Commissioner dismisses the administrative action against those Underwriters at Lloyd's, London, signatory to certificate no. L171255 and certificate no. L271268;

3. The Commissioner will dismiss Canton Agency, LLC from the cease and desist order when Canton becomes registered with the Secretary of State and licensed with the Commissioner; and

4. The Commissioner will dismiss CREW from the cease & desist order when CREW provides documentation to the Commissioner that the SRBOA has amended its Articles of Incorporation and Bylaws as provided above.

VI

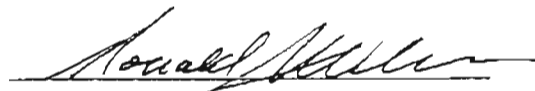
Pursuant to the stipulation and consent of CREW, Canton, MBA, Garguilo, the 2001 Underwriters, and the 2002 Underwriters, the Commissioner, under authority of the Insurance Code of Montana and Section 2-4-603, MCA, hereby agrees that if the terms and conditions of this Consent Agreement are complied with, he or his successor will not initiate any civil or administrative action against CREW, Canton, MBA, Garguilo, the 2001 Underwriters and the 2002 Underwriters regarding the allegations contained therein pursuant to Sections 33-1-317 and 33-35-202, MCA. If the Commissioner or his successor does initiate a civil or administrative action based upon non-compliance with the terms and conditions of this Consent Agreement, then such civil or administrative action will be limited to the entity or entities that allegedly failed to comply with the terms and conditions of this Consent Agreement. In consideration for the Commissioner not initiating any civil or administrative action, CREW, Canton, MBA, Garguilo, the 2001 Underwriters, and the 2002 Underwriters fully and forever release and discharge the Office of the State Auditor, the elected State Auditor and all State Auditor employees from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the above entitled administrative action.

VII

The parties agree that each party bears its own costs.

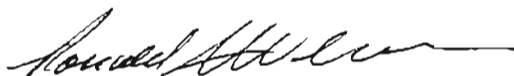
DATED this 15th day of October, 2003.

CANTON AGENCY, LLC



Ronald Wilson
President

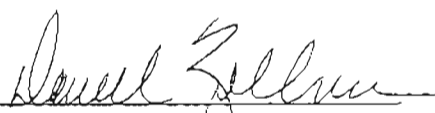
MEDICAL BENEFITS
ADMINISTRATORS OF MD, INC



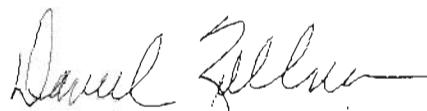
By:
Ronald J. Wilson
President

Beth Garguilo

The 2001 Underwriters of LLOYD'S, LONDON
SIGNATORY TO CERTIFICATE NO.
L171255

By: 
their attorney

The 2002 Underwriters of LLOYD'S, LONDON
SIGNATORY TO CERTIFICATE NO.
L271268

By: 
their attorney

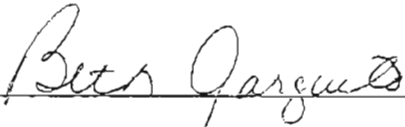
DATED this 15th day of October, 2005.

CANTON AGENCY, LLC

Ronald Wilson
President

MEDICAL BENEFITS
ADMINISTRATORS OF MD, INC

By:
Ronald J. Wilson
President


Beth Garguilo

The 2001 Underwriters of LLOYD'S, LONDON
SIGNATORY TO CERTIFICATE NO.
L171255

By: _____

The 2002 Underwriters of LLOYD'S, LONDON
SIGNATORY TO CERTIFICATE NO.
L271268

By: _____

JOHN MORRISON
State Auditor and
Commissioner of Insurance

By: *Angela Huschka*
Angela Huschka
Deputy Ins. Commissioner

CUSTOM RAIL EMPLOYER WELFARE
TRUST FUND

By:

CUSTOM RAIL EMPLOYER WELFARE
TRUST FUND

By:  _____

John Gohmann, Trustee