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Attorney for the CSI

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

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IN THE MATTER OF	)	CASE NO. INS-2014-216
MARY BAIRD LISTERUD,	)	<b>FINAL ORDER BY DEFAULT</b>
Respondent.	)	

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On October 7, 2014, the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), filed a Notice of Agency Action and Opportunity for Hearing (Notice) against Respondent Mary Baird Listerud (Respondent). The Notice alleged that Respondent multiple violations of the Montana Insurance Code, Mont. Code Ann. § 33-1-101 et seq. (the Code).

Respondent chose not to answer or otherwise defend within 21 days of service of the Notice. On November 28, 2014, the CSI moved for entry of a final agency decision by default against Respondent.

Based upon the CSI's motion and attached Affidavits of Michael A. Kakuk, Cheri Meier, and Bryan Stanley, and on the prior Orders involving Respondent that are in the public record, the Commissioner of Securities of Insurance, Montana State Auditor (Commissioner), makes the following determinations:

## FINDINGS OF FACT

1. Respondent was licensed with the CSI as an insurance producer, license #7044197, and was an appointed insurer of Allstate Insurance Company (Allstate).
2. It was reported to the CSI on May 23, 2011, that Respondent's appointment was terminated by Allstate. In the subsequent investigation, the CSI discovered the following information:
  - a. On or about June 1, 2009, Respondent purchased a 1997 Sea Ray 18 foot Runabout motor boat (Sea Ray).
  - b. On June 13, 2009, the Sea Ray was severely damaged while Respondent was using it with family and friends.
  - c. On June 15, 2009, Respondent submitted an application for boat insurance for herself and the Sea Ray.
  - d. On June 16, 2009, the Sea Ray insurance policy became effective.
  - e. On July 6, 2009, Respondent made a claim for the prior damage to the Sea Ray. In that claim, Respondent stated that the Sea Ray was damaged occurred on or about June 21, 2009.
  - f. On August 20, 2009, Allstate issued a check in the amount of \$6,355 to Respondent, which she deposited in her bank account on September 14, 2009.
3. Respondent and the CSI entered into a Consent Agreement and Final Order on January 23, 2012 (First Order), resolving the allegations set forth above. In that agreement, Respondent agreed to a six-month suspension of her license, and was given credit for a voluntary suspension. After the suspension, Respondent would enter into an agreement with a supervisory insurance producer, and work under that producer's supervision for 18 months. Respondent

agreed to pay \$254.06 to Insure Montana, and \$1,565.00 past due under a business lease to Ms. Carmine Mowbray. Finally, Respondent agreed to pay \$6,355.00 in restitution to Allstate Insurance Company (Allstate), in 36 monthly installments of \$176.53 each.

4. As part of the First Order, the CSI agreed to not initiate any civil or administrative action against Respondent for her conduct set forth above, so long as Respondent adhered to the terms of the First Order.

5. In addition, Respondent and the CSI both agreed that the statute of limitations for the conduct set forth above would be tolled for two years, and if Respondent violated the terms of the First Order during that two-year tolling period, the CSI could seek additional fines.

6. As required by the First Order, Respondent entered into a supervision agreement with Vicki Thurston (Thurston) of Thurston Family Insurance on February 29, 2012. That supervision agreement was later revised and signed on August 23, 2012.

7. In December of 2012, Respondent told Thurston that she would no longer work as a commissioned insurance producer. Thereafter, Respondent continued to work for Thurston Family Insurance, in a primarily clerical capacity.

8. On January 2, 2013, Respondent notified the CSI that she would no longer write business as an insurance producer.

9. In October of 2013, the CSI filed a Notice of Proposed Agency Action and Opportunity for Hearing, alleging that Respondent had failed to make payments to Allstate as required by the First Order.

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10. On February 11, 2014, Respondent and the CSI entered into a Consent Agreement and Final Order resolving those allegations (Second Order). Respondent agreed to voluntarily surrender her insurance producer license, pay a fine of \$500.00 to the State of Montana, and continue making payments to Allstate in the amount of \$132.45.

11. The CSI entered into the second consent agreement and Second Order with the understanding that Respondent was truthful, would voluntarily relinquish her license, had not conducted any insurance business since January 2, 2013, and was otherwise compliant with the First Order.

12. On March 28, 2014, the CSI received information from Thurston Family Insurance that Respondent had written two insurance policies in 2013 with potentially intentional inaccuracies.

13. After an investigation based on that information, the CSI discovered that contrary to her direct communications with the CSI, Respondent continued to write insurance business in 2013. Respondent failed to inform the CSI that she had written any insurance policies in 2013.

14. The CSI also discovered that some of those policies contained inaccuracies, or were otherwise written in a way that Respondent's supervising producer would not have authorized.

15. On two insurance policies written in 2013, Respondent reported her own address as the location of insured property and the residence of the insured, which Respondent knew was factually incorrect.

### **CONCLUSIONS OF LAW**

1. The Commissioner has jurisdiction over this matter pursuant to the Code.

2. A “person” is an individual, insurer, company, association, organization, partnership, business trust, corporation, or any other legal entity. § 33-1-202(3).

3. Respondent is a “person” as defined by § 33-1-202(3).

4. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. § 33-17-102(10).

5. Respondent was an insurance producer as defined by § 33-17-102(10).

6. An “insurer” includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. § 33-1-201(6).

7. Allstate Insurance Company is a “person” as defined by § 33-1-202(3), and an “insurer” as defined by § 33-1-201(6).

8. A person commits the act of insurance fraud when the person, for the purpose of obtaining any money or benefit, presents to any insurer any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy. § 33-1-1202(1).

9. Respondent purposely or knowingly committed an act of insurance fraud by submitting a claim for payment of damage to her Sea Ray boat with a false date of damage to the boat.

10. Respondent violated the terms of a consent agreement and order of the Commissioner when she wrote insurance policies in 2013 that contained factual inaccuracies that Respondent knew were inaccurate.

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11. The Commissioner may revoke an insurance producer's license when an insurance producer: a) violated or failed to comply with a provision of the Code or violated an order of the Commissioner; or, b) in the conduct of insurance business, used fraudulent, coercive, or dishonest practices or the insurance producer is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public. §§ 33-17-1001(1)(c) and (f).

12. By submitting a fraudulent insurance claim, Respondent violated a provision of the Code, used fraudulent and dishonest practices in the conduct of insurance business, and showed that she is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public.

13. By knowingly writing insurance policies that contained inaccuracies without the knowledge of both her supervising insurance producer and the CSI, Respondent violated the First Order of the Commissioner, used dishonest practices in the conduct of insurance business, and showed that she is untrustworthy.

14. The Commissioner retains authority to enforce the provisions of the Code, and impose any penalty or remedy authorized by the Code, even if the person's insurance producer license has been surrendered. § 33-17-1001(3).

15. The consent agreement and Second Order was fraudulently induced by Respondent. Had the CSI known that Respondent wrote insurance policies in 2013—some of which Respondent knew contained incorrect information—the CSI would not have entered into that agreement or allowed Respondent to surrender her license as an insurance producer.

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**ORDER**

Based on those findings of fact and conclusions of law, it is ORDERED that the insurance producer license of Respondent Mary Baird Listerud is hereby revoked. The Final Order in CSI case no. INS-2011-259 requiring Respondent to pay restitution to Allstate Insurance Company remains in full force and effect.

DATED this 1<sup>st</sup> of December, 2014.

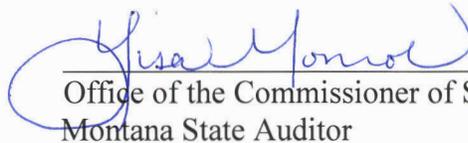
**MONICA J. LINDEEN**  
Commissioner of Securities and Insurance,  
Montana State Auditor

By:   
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**Adam Schafer**  
Deputy State Auditor

**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the Final Order by Default was sent by U.S. mail, postage paid, this 2nd day of December, 2014, to the following:

Tim McKeon  
McKeon, Doud, P.C.  
P.O. Box 7878  
60 Four Mile Drive, Suite 11  
Kalispell, Montana 59904

  
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Office of the Commissioner of Securities and Insurance,  
Montana State Auditor