

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Proposed)	
Adoption of the Market Conduct)	Docket No. 3128-MC
Review Report of WESLEY W. DEMOSS, JR.)	

FINAL ORDER

NOW COMES on this date for formal disposition the matter of the proposed adoption of the market conduct review report of Wesley W. DeMoss, Jr., a resident agent of Kansas. This matter is brought before the Commissioner of Insurance for adoption, rejection, or modification pursuant to the provisions of Kansas Statutes Annotated ("K.S.A.") 40-246a.

I, Sandy Praeger, the duly elected, qualified, and Commissioner of Insurance of the State of Kansas, having fully considered and reviewed the examination report, together with all written submissions, applicable rebuttals, and all relevant portions of the examiner's work papers, and further being advised on all premises, hereby find:

Findings of Fact

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-246a.
2. A market review of the Wesley W. DeMoss, Jr. ("DeMoss") was undertaken by the Kansas Insurance Department on August 5, 2002.
3. On November 4, 2002, the examiner in charge tendered and filed with the Kansas Insurance Department ("KID") a verified written report of the market conduct review under oath.

4. Within thirty (30) days following receipt of the report, KID sent a draft of the Market Conduct Report to DeMoss. The agent was asked to review the document and forward any written comments or additions or acceptance of the report to KID.

5. On February 11, 2003, KID received written comments from Daren Wilson, Executive Vice-President of Albright Insurance, Inc., on the written report.

6. Within thirty (30) days following the written response, the Commissioner of Insurance fully reviewed the report together with any written responses.

7. DeMoss was licensed in 1987 to write property and casualty lines of insurance in Kansas and was licensed in write excess lines in 1999.

8. In the course of the examination, the examiner found that of the 57 files reviewed for the period of January, 2000 through December, 2001 that were produced by DeMoss, 46 items were placed with a carrier that was not on the list of non-admitted carriers of the Kansas Insurance Department.

9. In the course of the examination, the examiner found that of the 57 files reviewed for the period of January, 2000 through December, 2001 that were produced by DeMoss, 40 accounts did not have the disclaimer statement that the coverage was placed in a non-admitted market on the file copy of the policy.

10. In the course of the examination, the examiner found that of the 57 files reviewed for the period of January, 2000 through December, 2001 that were

produced by DeMoss, 36 files did not contain evidence that the agent signed the policy.

11. In the course of the examination, the examiner found that of the 57 files reviewed for the period of January, 2000 through December, 2001 that were produced by DeMoss, 31 files did not contain sufficient documentation to determine if a due diligent test was performed and completed by DeMoss.

12. In the course of the examination, the examiner found that of the 57 files reviewed for the period of January, 2000 through December, 2001 that were produced by DeMoss, 55 files did not contain a disclaimer signed by the insured that coverage was placed in a non-admitted market within 30 days of the effective date.

13. In the course of the examination, the examiner found that of the 57 files reviewed for the period of January, 2000 through December, 2001 that were produced by DeMoss, 40 files did not have the correct gross premium and premium tax reported on the Excess Lines Annual Statement Reporting Form.

Applicable Law

14. K.S.A. 40-242 states, in relevant part:

(a)(4) The commissioner of insurance may impose a penalty prescribed by subsection (e)... in the event that investigation by the commissioner discloses that: the holder of such license has intentionally omitted any material fact in presentation.

(e)(2) In lieu of revocation or suspension of the agent's or broker's license, the commissioner may issue an order imposing an administrative penalty up to a maximum of \$500 for each violation but not to exceed \$2,500 for the same violation occurring within any six consecutive calendar months unless the agent or broker knew or reasonably should have known the act could give rise to disciplinary action under subsection (a)...

15. K.S.A. 40-246b states, in relevant part:

The agent so licensed shall... file with the insurance department of this state, a sworn affidavit or statement to the effect that, after diligent effort, such agent has been unable to secure the amount of insurance required to protect the property, person, or firm described in such agent's affidavit or statement from loss or damage in regularly admitted companies during the preceding year... the licensed excess coverage agent must, prior to placing insurance with an insurer not authorized to do business in this state, obtain written consent on the prospective named insured and provide such insured the following information in a form promulgated by the commissioner:

- (a) A statement that the coverage will be obtained from an insurer not authorized to do business in this state;
- (b) A statement that the insurer's name appears on the list of the companies maintained by the commissioner pursuant to K.S.A. 40-246e, and amendments thereto...

... the excess lines agent may bind the coverage after advising the insured of the information set out above and shall obtain written confirmation that the insured desires that coverage be placed with an insurer not admitted to this state within 30 days after binding coverage...

... Each excess lines agent shall keep a separate record book in such agent's office showing the transactions of fire and casualty insurance and reinsurance placed in companies not authorized to do business in this state...

... Any policy issued under the provisions of this statute shall have stamped and endorsed in a prominent manner thereon the following: This policy is issued by an insurer not authorized to do business in Kansas and, as such, the form, financial condition and rates are not subject to review by the commissioner of insurance and the insured is not protected by any guaranty fund...

16. K.S.A. 40-246c states, in relevant:

...The commissioner of insurance shall collect double the amount of tax herein provided from any licensee or other responsible individual as herein described who shall fail, refuse or neglect to transmit the required affidavit or statement or shall fail to pay the tax imposed by this section, to the commissioner within the period specified...

17. Kansas Administrative Regulation (“K.A.R.”) 40-8-7(a) states, in relevant part:

The excess lines agent who actually places business with a non-admitted insurer shall file the affidavit and annual statement reporting forms prescribed by the commissioner.

18. K.A.R. 40-8-8 states, in relevant part:

Each insurance contract procured and delivered as excess coverage pursuant to K.S.A. 40-246b shall bear the signature of the agent who placed the coverage with a non-admitted carrier.

Conclusions of Law

19. Based on the findings of fact set out in paragraphs 1 through 6, the market conduct of affairs examination report of Wesley W. DeMoss, Inc., is adopted.

20. Based on the findings of fact set out in paragraph 8 of the Order, the commissioner finds and concludes that the agent is in violation of K.S.A. 40-246b(b), which is the requirement for agents to place coverage with insurers whose name appear on the list of companies maintained by the commissioner.

21. Based on the findings of fact set out in paragraph 9 of the Order, the commissioner finds and concludes that the agent is in violation of K.A.R. 40-246b, which is the requirement that agents obtain the written consent of the prospective named insured.

22. Based on the findings of fact set out in paragraph 10 of the Order, the commissioner finds and concludes that the agent is in violation of

K.A.R. 40-8-8, which is the requirement that agents sign policies placed in the non-admitted market.

23. Based on the findings of fact set out in paragraph 11 of the Order, the commissioner finds and concludes that the agent is in violation of K.S.A. 40-246b, which requires agents to conduct a due diligence test.

24. Based on the findings of fact set out in paragraph 12 of the Order, the commissioner finds and concludes that the agent is in violation of K.S.A. 40-246b, which requires that insureds sign a disclaimer that coverage was placed in a non-admitted market within thirty (30) days of the effective date.

25. Based on the findings of fact set out in paragraph 13 of the Order, the commissioner finds and concludes that the agent is in violation of K.A.R. 40-8-7, which requires that agents report correct gross premiums and premium tax.

26. The violations as outlined in paragraphs 8, 9, 10, 11, and 12 constitute five (5) violations of Kansas law. Under the provisions of K.S.A. 40-242(e)(2), the agent is fined \$5,000.

27. The violations as outlined in paragraph 13 constitute one (1) violation of Kansas law. Under the provisions of K.S.A. 40-246c, the agent is assessed an additional \$2,797.64 and is ordered to pay \$2,797.64 for a total of \$5,595.28, which constitutes twice the amount of gross premiums and premium tax currently past due.

Policy Reasons

28. It is the stated policy reason of the State of Kansas that whenever the Commissioner has cause to believe that any provision of Kansas insurance law has been violated, an examination of any insurance agent doing business in this State can be undertaken. Through the examination process the insurance concerning consuming public will be well served and protected.

IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED THAT:

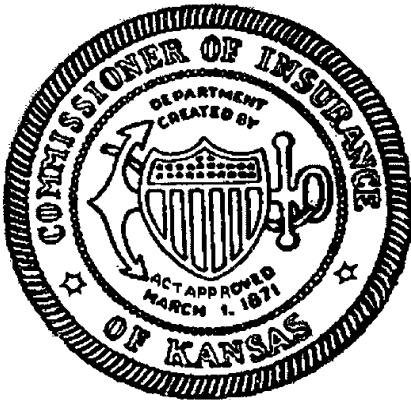
1. The market conduct review of Wesley W. DeMoss, Jr. is hereby adopted.
2. The Commissioner levies fines in the amount of \$1,000 for each of the five violations.
3. The Commissioner levies a penalty equal to the amount of unpaid premium taxes.
4. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further orders deemed appropriate or take further action necessary to dispose of this matter.
5. The Commissioner further orders, pursuant to K.S.A. 40-222(k)(3), that Wesley W. DeMoss, Jr. files written affidavits stating under oath that he has received a copy of the adopted report and related orders.

NOTICE OF RIGHT TO JUDICIAL REVIEW

You have the right to judicial review in accordance with the provisions set forth in the Act for Judicial Review and Civil Enforcement of Agency Actions

(K.S.A. 77-601, et seq., as amended). If you wish to appeal this decision, you must file a petition for judicial review after exhausting all administrative remedies available in this matter within 30 days. Your written petition for judicial review shall be served upon: Sandy Praeger, Commissioner of Insurance, Kansas Insurance Department, 420 SW 9th Street, Topeka, Kansas 66612-1678.

IT IS SO ORDERED THIS _18th_ DAY OF MARCH, 2003 IN THE CITY OF TOPEKA, SHAWNEE COUNTY, STATE OF KANSAS.



_____/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

_____/s/ John W. Campbell
John W. Campbell
General Counsel