

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

**In the Matter of Wesco Insurance) Docket No. 3662-SO
Company)**

CONSENT ORDER

Wesco Insurance Company wishes to resolve this matter without formal adjudicative proceedings by entering into this consent order. The Commissioner of Insurance (“Commissioner”) hereby makes the following findings of fact, conclusions of law, and order, to-wit:

Findings of Fact

1. Wesco Insurance Company (“Wesco”) is a stock property and casualty company authorized to transact the business of insurance in the State of Kansas with its statutory home office located at Churchman’s Corporate Center, 90 Christiana Road, New Castle, Delaware 19720, and is subject to statutes regulating the business of insurance.
2. The Commissioner of Insurance (“the Commissioner”) has jurisdiction over the subject matter of this proceeding, and this proceeding is held in the public interest.
3. Wesco was admitted to transact the business of insurance in Kansas on August 25, 1989.
4. Wesco is authorized to write workers compensation and surety business in Kansas.

5. The State of Delaware requires a special deposit of \$100,000 for foreign companies authorized to write workers compensation.

6. The State of Delaware requires a special deposit of \$10,000 for foreign companies authorized to write surety.

7. On December 31, 2005, Wesco had a special deposit with a market value amount of \$108,436 for the benefit of Kansas policyholders only.

8. In December, 2006, US Bank, the custodian bank for Wesco, verified that the market value of Wesco's deposit was below \$110,000.

9. On June 23, 2006, Charlotte Humburg, Financial Analyst, Kansas Insurance Department ("KID"), requested from Wesco an additional deposit.

10. On September 19, 2006, KID sent, via email, Eli Tisser of Wesco the Deposit for Securities Forms and the Authorized Designated Agents form that were necessary to update the deposit information.

11. On March 27, 2007, KID sent a letter requesting the updated deposit information to Wesco at its general administrative office located at 5800 Lombardo Center, Seven Hills, Ohio 44131.

12. On March 27, 2007, KID advised Wesco that the information should be provided to KID no later than April 17, 2007.

13. Wesco did not respond by April 17, 2007.

14. To date, Wesco has not responded to the request by KID for the necessary forms.

Conclusions of Law

15. Delaware Insurance Code, Title 18, Section 513 provides, in relevant part:

(b) The Commissioner shall not authorize an insurer to transact surety insurance unless it makes and thereafter continuously maintains in this State through the Commissioner a special and additional deposit of cash or securities eligible therefor under § 1503 of this title, of a fair market value not less than \$10,000, to answer any default of such insurer upon surety contracts issued by it in this State. The foregoing requirement shall not be applicable to any insurer having a paid-in capital and surplus of \$10,000,000 or more and continuously maintaining on deposit in this State through the Commissioner, or in another state, cash or securities eligible for such deposit under the laws of this State or of such other state of a fair market value of not less than \$400,000 for the protection of all its policyholders wherever located, or all of its policyholders in the United States or all of its policyholders and creditors.

(c) No insurer shall transact workers' compensation insurance in this State unless it makes and thereafter maintains in this State through the Commissioner a special and additional deposit of cash or securities eligible therefor under § 1503 of this title, of a fair market value of not less than \$100,000 for the protection of persons in this State covered under the insurance so transacted. Upon any insurer's inability to pay workers' compensation claims as a result of a court of competent jurisdiction finding of financial impairment or insolvency, which prevents the regular payment of workers' compensation benefits, this deposit shall be immediately available upon their request to the Delaware Insurance Guaranty Association for continuation of claims benefits to eligible workers.

16. Kansas Statutes Annotated ("K.S.A.") 40-253 provides, in relevant

part:

Whenever the existing or future laws of any other state or country shall require from insurance companies or fraternal benefit societies organized under the laws of this state, applying to do business in such other state or country, any deposit of securities in such state or country for the protection of policyholders therein or any payment for taxes, fines, penalties, certificates of authority, licenses, fees, or compensation for examination, including taxes or fees based on fire premiums, greater than the amount required for such

purpose from insurance companies or agents of other states by the then existing laws of this state, then, and in every case, all companies and agents of any such state or country, doing business in this state shall make the same deposit, for a like purpose, with the commissioner of insurance of this state...

17. K.S.A. 40-2,125(b) provides, in relevant part:

If any person fails to file any report or other information with the commissioner as required by statute or fails to respond to any proper inquiry of the commissioner, the commissioner, after notice and opportunity for hearing, may impose a penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the commissioner.

18. Based on the information contained in Findings of Facts, it appears that Wesco Insurance Company failed to respond to a proper inquiry of the Kansas Insurance Department.

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

1. Wesco Insurance Company shall remit \$2,000 for failing to comply with a proper inquiry of the Kansas Insurance Department.
2. Wesco Insurance Company shall file with the Kansas Insurance Department the *Deposit for Securities Forms* and the *Authorized Designated Agents* form.
3. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action as necessary to dispose of this matter.

Notice of Right to Hearing or Appeal

You are entitled to a hearing pursuant to K.S.A. § 77-537, the Kansas Administrative Procedure Act. If you desire a hearing, you must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612.

This request must be filed within fifteen (15) days from the date of service of this Order. If you request a hearing, the Kansas Insurance Department will notify you of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. § 77-613. In the event that you file a petition for judicial review, pursuant to K.S.A. § 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612.

IT IS SO ORDERED THIS 31st DAY OF JULY, 2007, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

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

SUBMITTED AND APPROVED BY:

/s/ Deletria L. Nash
Deletria L. Nash
Attorney for Petitioner
Kansas Insurance Department

/s/ Christopher R. Zentner
Christopher R. Zentner
Vice President/ Compliance
Wesco Insurance Company