STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of: MBC ASSURANCE COMPANY, INC. Respondents	Case No. INS-22-0104 ORDER TO CEASE AND DESIST, ORDER ASSESSING CIVIL PENALTIES, ACCEPTANCE OF VOLUNTARY SURRENDER OF CERTIFICATE OF AUTHORITY AND DISSOLUTION, AND CONSENT TO ENTRY OF ORDER

The Division of Financial Regulation (the "Division"), acting on behalf of the Director of the Department of Consumer and Business Services for the State of Oregon (the "Director"), conducted an investigation of MBC Assurance Company, Inc. ("Respondent"). The Division determined that Respondent violated provisions of Oregon Revised Statutes ("ORS") chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750 ("Insurance Code") and the Oregon Administrative Rules ("OAR") promulgated under those laws.

Respondent, without admitting or denying the allegations contained herein, submits to the Director's jurisdiction and wishes to resolve and settle this matter.

Now, therefore, as evidenced by the signatures subscribed herein, Respondent hereby consents to entry of this order.

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FINDINGS OF FACT

The Director FINDS that:

1. Since December 29, 2017, Respondent has been licensed in Oregon as a domestic pure captive insurer. Respondent's Oregon Captive Insurer Certificate of Authority number is 5020.

2. Respondent has not conducted any business in Oregon as a captive insurer since on or before December 31, 2020.

3. On March 10, 2022, the Division contacted Respondent's authorized captive manager (the "Captive Manager") to state that the Division had not received Respondent's Captive Insurance Company Annual Statement for the period ending December 31, 2021 (the "2021 Annual Statement"), which the Division noted was due on March 1, 2022.

4. On March 14, 2022, in response to the foregoing correspondence from the Division, the Captive Manager requested 15 additional business days to submit the 2021 Annual Statement.

5. The Division granted the Captive Manager's request to permit it to file the 2021 Annual Statement by April 4, 2022. In doing so, the Division noted the Captive Manager had filed the prior year's annual statement late as well.

6. On June 6, 2022, the Division received Respondent's 2021 Annual Statement.

7. The 2021 Annual Statement was verified by Corbin Craig, who is Respondent's President, Secretary, Treasurer, and Director.

8. The 2021 Annual Statement reported total assets of $343,354, total liabilities of $141,205, and a total capital and surplus of $202,149.

9. The 2021 Annual Statement reported a dividend payment to stockholders in the amount of $7.7 million (the "2021 Dividend Payment").

10. Respondent did not report the 2021 Dividend Payment to the Director within five business days of declaring the dividend, within 10 business days prior to payment of the dividend, or at any other time except as reported on the 2021 Annual Statement.

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11. The 2021 Annual Statement reported that $47,851 of the 2021 Dividend Payment was paid from earned surplus.

12. Respondent failed to complete an annual audit by an independent certified public accountant and file an audited financial report to the Director for the year 2021 or the year 2022 (the "2021 and 2022 Annual CPA Reports").

13. Respondent failed to file an Application to Certify Loss and Expense for Captive insurers Captive Actuary Application for the year 2021 or 2022 (the "2021 and 2022 Actuarial Opinions").

14. Respondent failed to file its 2022 Annual Statement.

15. Respondent failed to pay a $5,000 certificate of authority continuation fee for the years 2021 and 2022 prior to April 1, 2022 and 2023, respectively.

16. Respondent desires to exit the Oregon marketplace. Respondent has worked with Division staff to provide all requested and necessary documentation to support dissolving as an Oregon captive insurer.

17. Discussions with Respondent made clear that many of the foregoing problems with respect to late filings, unpaid fees, and the like stemmed from issues with the Captive Manager. The Division also received complaints about that Captive Manger with respect to its dealings with other captive insurers. Nevertheless, Respondent acknowledges that it is its responsibility to comply with all requirements of the Insurance Code whether or not the Captive Manager is performing the duties it agreed to perform.

18. On June 28, 2023, Respondent submitted to the Division a written Plan of Liquidation to request it be permitted to dissolve as a captive insurer in Oregon, including, among other things, articles of dissolution, an affidavit confirming that Respondent has no known

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outstanding insurance claims or obligations, and its most recent audited financial statements. The Division reviewed Respondent's Plan of Liquidation and has determined that Respondent may dissolve, as acknowledged in the letter attached to this Consent Order as Exhibit A dated August 24, 2023.

19. As part of its Plan of Liquidation, Respondent acknowledges that it remains responsible for covering any claims liabilities that arose during its tenure as a licensed captive insurer and Respondent further acknowledges that it is required pay any such claims. Accordingly, Respondent has transferred back into its captive insurer account.

CONCLUSIONS OF LAW

The Director CONCLUDES that:

20. Under ORS 735.150(7), "captive insurer" means an entity that holds a certificate of authority under ORS 735.150 to 735.190, including a pure captive insurer.

21. Respondent is a "captive insurer" under ORS 735.150(7).

22. Under ORS 735.172(2), before March 1 of each year, or in accordance with rules adopted under subsection (6) of this section, a captive insurer shall submit to the Director a report of the financial condition of the captive insurer (the "Annual Statement").

23. Under OAR 836-029-0015(1), not later than March 1, a captive insurer authorized in this state shall file an annual report of its financial condition as of the immediately preceding December 31 with the Director.

24. By failing to submit the 2021 Annual Statement before March 1, 2022, and by failing to submit the 2022 Annual Statement before March 1, 2023, Respondent violated ORS 735.172(2) and OAR 836-029-0015(1).

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25. Under ORS 735.158(5)(a)(C), a captive insurer shall pay to the Division nonrefundable fees established by the Director by rule for renewing a certificate of authority in an amount not less than $5,000.

26. Under OAR 836-029-0015(2), each captive insurer that is authorized by the Director shall pay prior to April 1 an annual continuation fee, without proration, for the year following the year during which the certificate of authority was originally issued and each year thereafter in the amount established in OAR 836-009-0007.

27. Under OAR 836-009-0007(1)(d), the fee for annual renewal of a certificate of authority for a captive insurer issued under subsection (d) of this section is $5,000.

28. By failing to pay the annual continuation fee prior to April 1, 2022, Respondent violated ORS 735.158(5)(a)(C) and OAR 836-029-0015(2).

29. Under ORS 735.162(5), a captive insurer may pay dividends or make distributions if all of the following requirements are met:

A. Submission of a report to the Director listing all dividends and distributions within five business days following the declaration, and not less than 10 business days prior to payment, of the dividends and distributions, commencing from the date of receipt of the report by the Director;

B. The foregoing report demonstrates that the combined capital and surplus of the captive insurer following any dividend or distribution is reasonable in relation to the captive insurer's outstanding liabilities and adequate to the captive insurer's financial needs; and

C. A captive insurer may pay dividends or distributions only from earned surplus unless the Director gives prior approval of payment from another source.

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30. By failing to submit a report to the Director within five business days following the declaration of the 2021 Dividend Payment and not less than 10 days prior to payment of the 2021 Dividend Payment, Respondent violated ORS 735.162(5)(a).

31. By failing to submit a report demonstrating that the payment of the 2021 Dividend Payment was reasonable in relation to its outstanding liabilities and adequate to meet its financial needs, Respondent violated ORS 735.162(5)(b).

32. By paying the 2021 Dividend Payment in part from earned surplus and in part from another source without prior approval from the Director, Respondent violated ORS 735.162(5)(c).

33. Under ORS 731.252(1), whenever the Director has reason to believe that any person has been engaged or is engaging or is about to engage in any violation of the Insurance Code, the Director may issue an order, directed to such person, to discontinue or desist from such violation or threatened violation.

34. Because the Director has reason to believe that Respondents have violated ORS 735.172(2), OAR 836-029-0015(1), ORS 735.158(5)(a)(C), OAR 836-029-0015(2), and ORS 735.162(5)(a)-(c), the Director may issue an order directed to Respondent to discontinue or desist from those violations under ORS 731.252(1).

35. Under ORS 731.988(1), a person that violates any provision of the Insurance Code, any lawful rule or final order of the Director or any judgment that a court makes in response to the director's application, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the Director that does not exceed $10,000 for each offense. Each violation is a separate offense.

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36. Because Respondent has violated the Insurance Code, including ORS 735.172(2), OAR 836-029-0015(1), ORS 735.158(5)(a)(C), OAR 836-029-0015(2), and ORS 735.162(5)(a)-(c), the Director may impose a civil penalty of up to $10,000 per violation under ORS 731.988(1).

ORDERS

The Director issues the following ORDERS:

Order to Cease and Desist

37. Pursuant to the authority of ORS 731.252(1), the Director hereby orders Respondent to CEASE AND DESIST from violating ORS 735.172(2), OAR 836-029-0015(1), ORS 735.158(5)(a)(C), OAR 836-029-0015(2), and ORS 735.162(5)(a)-(c).

Order Assessing Civil Penalties

38. Pursuant to ORS 731.988(1), the Director hereby assesses CIVIL PENALTIES against Respondent in the amount of twenty thousand dollars ($20,000) as follows:

A. $10,000 for failing to timely pay its annual certificate of authority fees for the years 2021 and 2022 in violation of ORS 735.158(5)(a)(C) and OAR 836-029-0015(2);

B. $5,000 for failing to timely submit its 2021 and 2022 Annual Statements in violation of ORS 735.172(2) and OAR 836-029-0015(1); and

C. $5,000 for failing to timely submit, demonstrate the reasonableness of, and obtain Division approval for the 2021 Dividend Payment, in violation of ORS 735.162(5)(a)-(c).

39. The Director hereby SUSPENDS collection of the foregoing twenty thousand dollars ($20,000) of the foregoing civil penalties, provided:

A. At or prior to the time it submits this signed Consent Order, Respondent pays the annual certificate of authority renewal fees for the years 2021 and 2022 totaling ten

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thousand dollars ($10,000) (five thousand dollars ($5,000) per year) that it failed to pay;

B. At or prior to the time it submits this signed Consent Order, Respondent demonstrates to the Division that it has transferred back to its captive insurer account the 2021 Dividend payment, and further provided Respondent agrees to retain those funds in that account until it has paid all valid claims of which it has been notified or, if Respondent has not been notified of any existing and unpaid claims, it retains those funds in that account until December 31, 2025, at which time it may transfer the funds out of the captive insurer account; and

C. Respondent complies with all the terms of this Consent Order and the Insurance Code.

40. The Director agrees to waive the foregoing suspended twenty thousand dollars ($20,000) of civil penalties at the end of a period of three (3) years from the date this Consent Order is fully executed provided that Respondent complies with all terms of this Consent Order and the Insurance Code. If Respondent fails to comply with the Insurance Code or otherwise fails to comply with the terms and conditions of this Consent Order within the foregoing period of three (3) years, then the twenty thousand dollars ($20,000) suspended civil penalty shall become immediately due and payable.

Order Accepting Voluntary Surrender of Certificate of Authority and Dissolution

41. In accordance with the Exhibit A, the Division hereby accepts Respondent's voluntary surrender of its certificate of authority and its request to dissolve as an Oregon captive insurer.

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NONDISCHARGEABILITY

42. Respondent agrees that the facts and violations set forth in this Order may be taken as true without further proof in any bankruptcy case or subsequent civil litigation the Director may pursue to enforce its rights to any payment or money judgment under the terms of this Order, including but not limited to any nondischargeablity complaint in any bankruptcy proceeding and that this Order shall have collateral estoppel effect in any bankruptcy case.

FINAL ORDER

43. This Order is a "Final Order" under ORS 183.310(6)(b). Subject to that provision, entry of this Order in no way limits or prevents further remedies, sanctions, or actions which may be available to the Director under Oregon law to enforce this Order, for violations of this Order, for conduct or actions of Respondent that are not covered by this Order, or against any party not covered by this Order.

IT IS SO ORDERED.

Dated this 2nd day of November 2023.

ANDREW R. STOLFI, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

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CONSENT TO ENTRY OF ORDER

I, Corbin Craig, state that I hold the title of President and I am an authorized representative of Respondent MBC Assurance Company ("MBC Assurance") with the authority to sign this Consent Order on behalf of MBC Assurance. I have read the foregoing Consent Order and I fully understand the contents hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. MBC Assurance voluntarily consents to the entry of this Consent Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this order. MBC Assurance understands that this is a "Final Order" under ORS 183.310(6)(b). MBC Assurance understands that the Director reserves the right to take further action to enforce this Order or to take appropriate action upon discovery that MBC Assurance has committed other violations of the Insurance Code. MBC Assurance will fully comply with the terms and conditions stated herein.

MBC Assurance understand that this Order is a public document.

Signature: /s/ Corbin Craig

Name: Corbin Craig

Title: President, MBC Assurance Company

State of New Mexico

County of Bernalillo

Signed or attested before me on this 20th day of October, 2023 by Corbin Craig.

/s/ Jarred James Mondragon
Notary Public

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