

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **Marsh USA, Inc.**

) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 05-10-006

STIPULATION

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against Marsh USA, Inc. (Marsh).

Marsh enters into this stipulation pursuant to ORS 183.415(5).

Marsh waives all rights relative to an administrative hearing and judicial review thereof.

Marsh stipulates to the following facts, conclusions, action, and to the issuance of a final order incorporating this stipulation, except that Marsh neither admits nor denies its liability for, and explicitly denies its involvement in, the acts of one Marsh senior vice president and two Marsh vice presidents whom Marsh terminated for cause as a result of their actions summarized in this stipulation.

Facts and Conclusions

Marsh has been licensed in Oregon as a resident business entity surplus lines agent since 4/1/70; insurance producer since 1/1/74; insurance consultant since 9/10/92; and insurance adjuster, reinsurance intermediary broker, and managing general agent since 8/16/99. Marsh's last recorded principal business address is located in Portland, Oregon.

The director alleges that Marsh, as an Oregon licensee, is responsible for violations of ORS 744.013(2)(g) (1999) and ORS 744.074(1)(h) in 22 instances by three employees who engaged in the following conduct. ORS 744.013(2)(g) (1999), which applies to transactions that occurred before 1/1/02, prohibits a person from using a fraudulent or dishonest practice in the conduct of business under the

license, or demonstration therein that the licensee is incompetent, untrustworthy or a source of injury and loss to the public or others. ORS 744.074(1)(h), which applies to transactions that occurred on and after 1/1/02, prohibits a person from using a fraudulent, coercive, or dishonest practice; or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of business in Oregon or elsewhere. From 1999 to 2004, Marsh received a total of \$1,464,645 in commission from insurers for selling a total of 94 insurance policies to 22 public entities in Oregon. Marsh was required by agreement with each public entity to pay or credit the commission to the public entity.

From August to October 2004, Marsh conducted an internal audit and found that, due to the actions of a senior vice president, commission revenues had been retained which Marsh was not entitled to under client service agreements between Marsh and seven public entities. Subsequently, Marsh paid or credited the money to the seven public entities. In November 2004, Marsh notified the Insurance Division of the results of its audit and its remedial actions, terminated the senior vice president, and provided the Insurance Division with written notice that the termination was for cause.

In December 2004, the Insurance Division asked Marsh for further information about its audit. Marsh initially informed the Insurance Division that the senior vice president was the only executive to have engaged in misconduct. Nevertheless, the Insurance Division directed Marsh to reaudit its records to make sure there were no other entities overcharged.

In June 2005, Marsh informed the Insurance Division that it found four other public entities, serviced by the senior vice president noted above, had been overcharged. Subsequently, Marsh paid or credited the money to the four public entities. In September 2005, Marsh informed the Insurance Division that two vice presidents failed to observe the requirements of contracts, which resulted in the overcharging of 11 additional public entities. Subsequently, Marsh paid or credited the money to the 11 other public entities, terminated the two vice presidents, and

provided the Insurance Division with written notice that the terminations were for cause.

Marsh has informed the Insurance Division that it continues to analyze the accounting-related information for the 22 accounts, and Marsh has committed to the Insurance Division that if any account is entitled to further payment or credit, Marsh will provide such a payment or credit promptly.

Marsh also reconciled a representative sample of Marsh private sector fee-based accounts that had been selected by the Insurance Division. The Insurance Division found that Marsh's retention of revenue for those private accounts was consistent with their client service agreements.

The director alleges that Marsh, as an Oregon licensee, is responsible for violations of ORS 744.068(2) by three of its employees who engaged in the following conduct. ORS 744.068(2) requires a person that is licensed in Oregon as a resident insurance producer to keep records of the insurance transacted by the person for three years following the expiration of each policy. The person shall keep all such records at the person's principal place of business and available and open to inspection by the director during business hours. In several instances, the senior vice president and the two vice presidents failed to keep required records documenting the contractual understanding between Marsh and its clients.

Marsh has informed the Insurance Division that Marsh has instituted reforms to ensure that the contractual understanding between Marsh and its clients is properly documented and followed, and that Marsh has instituted reforms to ensure that all compensation received by Marsh is fully disclosed to its clients.

Action

Pursuant to ORS 731.988, Marsh is assessed a civil penalty of \$75,000. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall be delivered to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailed to the Insurance

Division at PO Box 14480, Salem, OR 97309-0405. The payment is due on, and shall be received by the Insurance Division by, the date of the final order.

Dated November 15, 2005

/s/ Edward T. Healy
[Signature of Representative]

Edward T. Healy
Managing Director
Marsh USA, Inc.

FINAL ORDER

The Director incorporates herein the above stipulation, adopts it as the Director's final decision in this proceeding, and orders that the action stated therein be taken.

Dated November 16, 2005

/s/ Cory Streisinger
Cory Streisinger
Director
Department of Consumer and Business Services

//
//
//