

On or about 6/19/08, John E. Desmarteau (Desmarteau), a member of and on behalf of Beaver State, completed an application dated 6/19/08 for commercial general liability insurance insuring Alpine Construction of Oregon, Inc. (Alpine) of Turner, Oregon. On or about the same date, Desmarteau sent to Swett and Crawford Group (Swett & Crawford) the application and requested Swett & Crawford issue a quote of the premium and terms of the proposed insurance. On or about 7/3/08, Swett & Crawford sent to Beaver State a quote of the premium and terms of the proposed insurance to be provided by American Safety Indemnity Company (American Safety), a non-admitted insurer. Alpine accepted the quote. On or about 7/24/08, Desmarteau sent to Swett and Crawford the application, signed by Alpine, and requested Swett & Crawford bind the proposed insurance. On or about 7/25/08, Swett & Crawford sent to Beaver State a confirmation that Swett & Crawford had bound the insurance under policy, number 10TSR-GL1915-00, insuring Alpine from 7/24/08 to 7/24/09. On or about 7/25/08, Swett & Crawford sent to Beaver State an invoice number 4337196 dated 7/25/08, informing Beaver State that the net amount due for the policy was \$7,925.00, and the amount was due to be paid by 8/13/08. On or about 8/1/08, Swett & Crawford sent to Beaver State a broker statement again informing Beaver State that the net amount due for the policy was \$7,925.00. On 8/5/08, Desmarteau received from Alpine a check, number 3293, dated 8/5/08, in the amount of \$3,050.00, made payable to "Beaver State Insurance," as payment of part of the amount due. Beaver State did not deposit the check into Beaver State's insurance premium trust account or forward the check or proceeds of the check to Swett & Crawford. On or about 10/9/09, Swett & Crawford sent to Beaver State an invoice, number 4386253 dated 10/9/08, informing Beaver State that Swett & Crawford canceled the policy from inception because Swett & Crawford did not receive payment of any of the amount due for the policy. At this point, Beaver State was obligated to return the check to Alpine because Alpine was not insured under the policy and Alpine did not authorize Beaver State to retain the check. On or about 2/9/09, Linda Marquardt, also a

member of and the accounting manager for Beaver State, sent to Alpine a letter dated 2/9/09 saying:

“I am returning your check #3293 for \$3050 to you dated August 5, 2008 that has not been cashed by this agency. This check was for the General Liability policy you contacted John Desmarteau of our office about. In researching this, I contacted the Managing General Agency [Swett & Crawford] for American Safety Indemnity Company and found out that on October 9, 2008, the premium was offset and the coverage cancelled flat. This means there was not coverage in force at all. As I have not been involved in your account at all, I am at a loss to explain why this was not made clear to you because it means that you have had no General Liability coverage since July 24, 2008. Unfortunately because of this discovery, all of the certificates [dated 8/5/08], including the [certificate issued by Beaver State to the] Oregon Construction Contractors Board[,] have also been cancelled. I apologize that you were not made aware of this very important fact.”

On 2/10/09, Alpine received the letter and check. Thus, Beaver State withheld the premium from Swett & Crawford from 8/13/09 to 10/9/08, and withheld the premium from Alpine from 10/9/09 to 2/10/09, for a total of 182 days.

Failed to Deposit Insurance Premium into Trust Account

Beaver State is subject to enforcement action pursuant to ORS 744.083(1) because of the following circumstances.

ORS 744.074(1)(b) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person violated any insurance statute; or any rule, order, or subpoena, of the director or the insurance regulator of another state.

ORS 744.083(1) requires a person that is licensed in Oregon as an insurance producer to deposit into an insurance premium trust account all premium received by the insurance producer, unless permitted otherwise, and keep the premium therein until paid to the person entitled thereto.

On 8/5/08, Desmarteau, on behalf of Beaver State, received from Alpine a check, number 3293, dated 8/5/08, in the amount of \$3,050.00, made payable to “Beaver State Insurance,” as payment for insurance. Beaver State was required to deposit the check into its insurance premium trust account by 8/12/08. Beaver State did not

deposit the check into its trust account. Instead, Beaver State retained the check in its office. On 2/9/09, Beaver State sent the check to the payor. On 2/10/09, Alpine received the check.

On 6/24/09, Desmarteau, on behalf of Beaver State, received from Homestar Brokers LLC a check, number 502, dated 6/24/09, in the amount of \$2,382.00, made payable to "Beaver State Insurance," as payment for insurance. Beaver State was required to deposit the check into its insurance premium trust account by 7/1/09. Beaver State did not deposit the check into its trust account but retained them in its office. Instead, Beaver State retained the check in its office. As of 8/11/09, Beaver State still had not deposited the check into its trust account, forwarded it to the agent or insurer entitled to payment, or returned it to the payor.

Action

Pursuant to ORS 731.988(1), Beaver State is assessed a civil penalty of \$7,000.00. 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 or mailed to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE Room 300, Salem, Oregon 97301-3880; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. The payment shall be *received* by the Insurance Division by 4/1/10.

Dated January 4, 2010

/s/ Roger C. Pena

[Signature of Representative]

Roger C. Pena

[Printed Name of Representative]

Member

[Printed Title of Representative]

Beaver State Insurance Agency LLC

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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 January 13, 2010

/s/ Teresa D. Miller
Teresa D. Miller
Administrator
Insurance Division
Department of Consumer and Business Services

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