

STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

In the Matter of: }
Alaska Mining & Diving Supply, Inc. }
_____ }

Case No. D 01-20

STIPULATED AGREEMENT AND ORDER

The Division of Insurance (“division”) and Alaska Mining and Diving Supply, Inc. (“AK M&D”), by and through the undersigned, hereby stipulate and agree as provided herein to resolve the alleged statutory violations raised in the Cease and Desist Order (C&D No. D 01-20), dated August 21, 2001, in lieu of an administrative hearing.

BACKGROUND

The division conducted an investigation that determined that AK M&D had, in the past, offered consumers a product referred to as a “patronage cash refund,” from a company d/b/a 100% Money Back Guarantee (“100% MBG”). The product was “free” to consumers in that it was included as an additional “free” benefit within an extended service contract. The division determined that, in offering the 100% MBG product, AK M&D had been transacting insurance without being properly licensed. C&D No. D 01-20 was issued accordingly. AK M&D disputed that offering the 100%

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OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
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1 MBG product constituted the transaction of insurance or that in offering the product AK
2 M&D had violated any law. AK M&D, therefore, requested a hearing on the C&D.

3 For purposes of this settlement agreement only, AK M&D now
4 acknowledges that in offering the product from 100% MBG, it was transacting
5 insurance in this state in violation of the insurance code as alleged in C&D No. D 01-20.
6 However, AK M&D asserts, and upon further investigation the division believes, that
7 AK M&D was not knowingly or intentionally violating Alaska's insurance code. The
8 division also believes, based on the investigation, that no consumers were harmed by
9 AK M&D having offered the 100% MBG product. Further, AK M&D did not receive
10 any determinable monetary gain from offering the 100% MBG product. Finally, the
11 parties agree that AK M&D has not offered the 100% MBG product in approximately
12 two years.
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17 TERMS AND CONDITIONS

- 18 1. AK M&D agrees that it will never offer the 100% MBG product nor any similar
19 product, without first ensuring that AK M &D and the product offered are in full
20 compliance with all laws of the State of Alaska, in particular, Alaska's insurance
21 code.
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- 23 2. Based on the foregoing, AK M & D understands that any future violation of
24 Alaska's insurance code may subject AK M&D to any and all sanctions, fines
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and penalties - both civil and criminal - authorized by the insurance code,
including sanctions for willful violations.

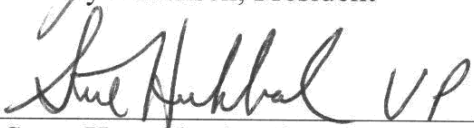
3. The division agrees not to seek any sanction, fine or penalty – either civil or criminal – against AK M&D based on the acts alleged in C&D No. D 01-20.
4. By signing this agreement, AK M&D withdraws its request for a hearing.
5. AK M&D understands that this agreement is not binding on the parties unless and until the director signs the order approving the agreement.

ALASKA MINING & DIVING SUPPLY, INC.

DATED: 4/25/02


By: 
Dudley Benensch, President

DATED: 4/25/02

By:  VP
Steve Herschbach, Vice President

DATED: 4/25/02

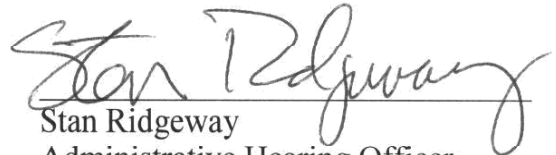
BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Nathaniel B. Atwood
Assistant Attorney General

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RECOMMENDED FOR APPROVAL

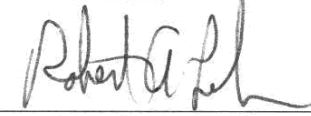
This Stipulated Agreement and Order is recommended for approval by the
Director of Insurance this 03 day of May, 2002.


Stan Ridgeway
Administrative Hearing Officer

ORDER

IT IS ORDERED that this Stipulated Agreement and Order is adopted in
full resolution of the issues in this case, and shall constitute the final order in this matter.

DATED this 17th day of May, 2002.


Robert A. Lohr
Director of Insurance

STATE OF ALASKA
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DIVISION OF INSURANCE
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1 STATE OF ALASKA
2 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
3 DIVISION OF INSURANCE

4 CEASE AND DESIST ORDER D 01-20

5 TO: Alaska Mining & Diving Supply, Inc.
6 Att: Steve Herschbach, Vice President
7 3222 Commercial Drive
8 Anchorage, AK 99501

9 The Division of Insurance has determined that you have been transacting insurance in Alaska,
10 in violation of Alaska law.

11 Specifically, you have been selling a product called a "patronage cash refund," which is offered
12 by 100% Money Back Guarantee. This product is insurance as defined in AS 21.90.900(23).
13 The organization underwriting and issuing these contracts is acting as an insurer and must be
14 authorized to do so under AS 21.09. In absence of this authority, the organization is acting as
15 an unauthorized insurer and any person selling or acting as an administrator of the contracts on
16 behalf of the organization is in violation of AS 21.33.037. Further, a person who sells, solicits,
17 negotiates, effects, procures or delivers a policy of insurance in this state must be licensed as an
18 insurance producer under AS 21.27. AS 21.27.010; AS 21.90.900(24). Failure to hold the
19 required license is a violation of AS 21.27.010.

20 "Insurance" means a contract whereby one undertakes to indemnify another or pay or
21 provide a specified or determinable amount or benefit upon determinable contingencies.
22 AS 21.90.900(23)

23 "Transact" with respect to insurance includes

- 24 (A) solicitation and inducement;
25 (B) preliminary negotiations;
26 (C) effectuation of a contract of insurance;
(D) transaction of matters subsequent to effectuation of the contract of insurance and
arising out of it. AS 21.90.900(41)

A person acting on behalf of an unauthorized insurer or selling insurance without a license is
subject to civil penalties for violating the insurance code.

AS 21.27.440(a) states in part:

In addition to any other penalty provided by law, a person that the director determines
under AS 21.06.170 - 21.06.240 has violated the provisions of this chapter is subject to

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(1) a civil penalty equal to the compensation promised, paid, or to be paid, directly or indirectly, to a person in regard to each violation;

(2) either a civil penalty of not more than \$10,000 for each violation or a civil penalty of not more than \$25,000 for each violation if the director determines that the person wilfully violated the provisions of this chapter

AS 21.33.065 states:

(a) A person other than an insured, who in this state represents or aids a nonadmitted insurer in violation of AS 21.33.037, is subject to a civil penalty of not more than \$50,000 in addition to applicable criminal penalties and other penalties prescribed in this title.

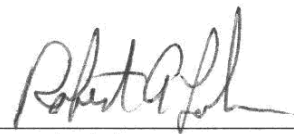
(b) In addition to any other penalty provided, a person who violates a provision of this chapter is subject to a civil penalty of not more than \$10,000 for the first offense and not more than \$100,000 for each succeeding violation.

Further, a violation of the insurance code is considered a fraudulent insurance act under AS 21.36.360(p)(1), which may be prosecuted as a class B misdemeanor under AS 21.36.360(q).

You are hereby ordered to cease and desist from transacting insurance in this state in violation of the insurance code. Continued transaction of insurance in Alaska after receipt of this order will be considered a wilful violation and subject to appropriate action under the insurance code, as well as possible criminal remedies.

This order is effective immediately.

Dated at Anchorage, Alaska this 22nd day of August, 2001.



Robert A. Lohr
Director