

**IN THE DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION
STATE OF MISSOURI**

In Re:)	
)	Case No. 10-0407429C
James C. McCain, Jr.,)	
Underwriters Service Agency, and)	
Missouri Automobile Insurance)	
Underwriters Agency,)	
)	
Serve at:)	
3720 Hampton Avenue)	
St. Louis, MO 63109)	
)	
and)	
)	
615 N. Rock Hill Road)	
St. Louis, MO 63119)	
)	
And)	
)	
Carol Herget,)	
)	
Serve at:)	
5018 Elenore Ave., Floor 1)	
St. Louis, MO 63116.)	

VERIFIED STATEMENT OF CHARGES

COMES NOW, the Division of the Consumer Affairs of the Department of Insurance, Financial Institutions and Professional Registration to initiate administrative enforcement proceedings against James C. McCain, Jr., Underwriters Service Agency, Missouri Auto Insurance Underwriters Agency, and Carol Herget (collectively, "Respondents") pursuant to § 374.046, RSMo (Supp. 2009),¹ based on the following Statement of Charges.

¹ All statutory references are to RSMo (Supp. 2009) unless otherwise indicated.

JURISDICTION & RELEVANT STATUTES

1. The Director of the Department of Insurance, Financial Institutions and Professional Registration ("Director") is authorized to issue a cease and desist order pursuant to the provisions of § 374.046, which provides, in part:

If the director determines based upon substantial and competent evidence that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may order the following relief:

- (1) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;
- (2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state;
- (3) Order a civil penalty or forfeiture as provided in section 374.049; and
- (4) Award reasonable costs of the investigation.

2. Section 374.049 authorizes the Director to impose a civil penalty or forfeiture of \$1,000 per each level two violation, up to an aggregate civil penalty or forfeiture of \$50,000 per year for multiple violations. Section 374.049 authorizes the Director to impose a civil penalty or forfeiture of \$5,000 per each level three violation, up to an aggregate civil penalty or forfeiture of \$100,000 per year for multiple violations. Section 374.049 authorizes the Director to impose a civil penalty or forfeiture of \$10,000 per each level four violation, up to an aggregate civil penalty or forfeiture of \$250,000 per year for multiple violations. The Director is authorized to enhance the civil penalty or forfeiture with one-classification step increase if the violation was knowingly committed. The Director is authorized to enhance the civil penalty or forfeiture with

a two-level classification increase if the violation was knowingly committed in conscious disregard of the law.

3. Sections 374.049 and 374.280 authorize the Director to impose a monetary penalty or forfeiture depending on the level of the violation payable to the state of Missouri.

4. Title 20 CSR 700-1.140(1)(D) states:

Insurance producers shall remit all premium payments associated with a personal insurance policy to those persons entitled to them as soon as is reasonably possible after their receipt by the licensee, but in no event later than thirty (30) days after the date of receipt, provided, however, that premiums may be remitted at a later point in time if the licensee is so authorized under a written agreement between the licensee and the person legally entitled to the premiums. In no event, however, shall a licensee retain premium payments if to do so will result in the failure to obtain or continue coverage on behalf of an insured or prospective insured.

5. Section 375.051.2 states:

2. Any insurance producer who shall act on behalf of any applicant for insurance or insured within this state, or who shall, on behalf of any applicant for insurance or insured, seek to place insurance coverage, deliver policies or renewal receipts and collect premiums thereon, or who shall receive or collect moneys from any source or on any account whatsoever, shall be held responsible in a trust or fiduciary capacity to the applicant for insurance or insured for any money so collected or received by him or her.

6. Section 375.116 states, in part:

3. No insurance producer shall have any right to compensation other than commissions deductible from premiums on insurance policies or contracts from any applicant for insurance or insured for or on account of the negotiation or procurement of, or other service in connection with, any contract of insurance made or negotiated in this state or for any other services on account of insurance policies or contracts, including adjustment of claims arising therefrom, unless the right to compensation is based upon a written agreement between the insurance producer and the insured specifying or clearly defining the amount or extent of the compensation. Nothing contained in this section shall affect the right of any insurance producer to recover from the insured the amount of any premium or premiums for insurance effectuated by or through the insurance producer.

4. No insurance producer shall, in connection with the negotiation, procurement, issuance, delivery or transfer in this state of any contract of

insurance made or negotiated in this state, directly or indirectly, charge or receive from the applicant for insurance or insured therein any greater sum than the rate of premium fixed therefor and shown on the policy by the insurance company, unless the insurance producer has a right to compensation for services created in the manner specified in subsection 3 of this section.

7. Title 20 CSR 700-1.100 states:

(1) A producer service agreement may be used to establish compensation. The form set forth in Exhibit A is approved for use as specified in section 375.116, RSMo. Substantially equivalent forms may be used where they contain other provisions and do not affect the content as provided in Exhibit A. The producer service agreement, which is included herein, must be a separate document from any other form or contract.

(2) Each producer service agreement may cover multiple contracts of insurance negotiated or procured for the same insured or prospective insured where the insurance producer's compensation falls within the requirements of section 375.116.3, RSMo. Each insurance producer shall retain one (1) copy of the producer service agreement in the producer's office for three (3) years and deliver one (1) copy to the insured.

(3) The producer service agreement shall contain a list of the policies it covers.

8. Section 375.052 states:

An insurer or insurance producer may charge additional incidental fees for premium installments, late payments, policy reinstatements, or other similar services specifically provided for by law or regulation. Such fees shall be disclosed to the applicant or insured in writing.

9. Section 374.210.1 states:

It is unlawful for any person in any investigation, examination, inquiry, or other proceeding under this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, to:

(1) Knowingly make or cause to be made a false statement upon oath or affirmation or in any record that is submitted to the director or used in any proceeding under this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo; or

(2) Make any false certificate or entry or memorandum upon any of the books or papers of any insurance company, or upon any statement or exhibit offered, filed or offered to be filed in the department, or used in the course of any examination inquiry, or investigation under this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo.

10. Section 375.144 states:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

- (1) Employ any deception, device, scheme, or artifice to defraud;
- (2) As to any material fact, make or use any misrepresentation, concealment, or suppression;
- (3) Engage in any pattern or practice of making any false statement of material fact; or
- (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

11. This proceeding is in the public interest.

PARTIES

12. Respondent James C. McCain, Jr., is a licensed insurance producer in Missouri.

13. Respondent McCain is the sole owner of Respondent Underwriters Service Agency, which is a registered fictitious name with the Missouri Secretary of State and which holds a business entity insurance producer license.

14. Respondent McCain is the sole owner of Respondent Missouri Automobile Insurance Underwriters Agency, which is an expired fictitious name according to the Missouri Secretary of State and which holds a business entity insurance producer license.

15. Respondent Carol Herget is a licensed insurance producer in Missouri and until recently, an employee of Respondent Underwriters Service Agency.

16. Unless otherwise specified, the four Respondents will be collectively referred to as "Respondents."

FACTS RELEVANT TO ALL COUNTS

17. At least 29 Missouri consumers purchased homeowners insurance through the Missouri Basic Property Insurance Inspection and Placement Program ("Missouri FAIR Plan") from Respondents.

18. The Missouri FAIR Plan does not enter into agency contracts with insurance producers or business entity insurance producers.

19. At no point relevant to this statement of charges were Respondents authorized to accept payments for homeowners insurance for the Missouri FAIR Plan.

20. On March 23, 2010, Respondent Herget testified under oath at a subpoena conference held at the offices of the Department in Jefferson City.

21. On April 8, 2010, Respondent McCain testified under oath at a subpoena conference held at the offices of the Department in Jefferson City.

22. On March 23, 2010, Respondent Hergct admitted to the Department that consumer premium funds for homeowners insurance were being used to operate Respondents' business.

23. On April 8, 2010, Respondent McCain admitted to the Department that Respondents accepted premium payments from consumers, or from others on their behalf, and failed to remit the full premium to the insurers within thirty days after the date of receipt.

24. On April 8, 2010, Respondent McCain admitted to the Department that Respondents' failure to remit premiums paid by consumers, or by others on their behalf, has resulted and may in the future result in failure to obtain or continue insurance coverage on behalf of an insured or prospective insured.

25. Respondents contacted and are continuing to contact consumers' mortgage companies to inform them of the homeowners insurance premium amount due to the Missouri FAIR Plan for consumers' homeowners insurance, to which Respondents added a broker service fee to the premium without informing the mortgage companies that the additional amount was for Respondents' fee, not the homeowners insurance premium.

26. When Respondents received the homeowners insurance premium payment for the entire year from consumers, or from others on consumers' behalf, Respondents, without consent or prior authorization from consumers, changed the premium payments from annual to installment payments, deposited those premium payments into their own account, and only paid installments on those policies, keeping the remainder in their own accounts.

27. Respondents failed to remit the homeowners insurance premium payments received from consumers, or from others on consumers' behalf, to the insurer in a timely manner, which resulted in the lapse or cancellation of consumers' homeowners policies.

28. Respondents deposited checks made payable to the Missouri FAIR Plan into its business accounts without authorization from Missouri FAIR Plan.

COUNT I

29. Respondents accepted premium payments from consumers or from others on their behalf and failed to remit the full premium to the insurers within thirty days after the date of receipt, a violation of 20 CSR 700-1.140(1)(D).

30. Each instance in which Respondents accepted premium payments from consumers, or from others on their behalf, and failed to remit the full premium to the insurer within thirty days after the date of receipt is a separate violation of 20 CSR 700-1.140(1)(D).

COUNT II

31. Respondents, acting on behalf of applicants for homeowners insurance, failed to maintain adequate account levels in bank accounts to cover premiums due for consumers' homeowners insurance, and thus violated § 375.051, by not acting in the trust or fiduciary capacity required.

COUNT III

32. Respondents charged and are continuing to charge an additional fee for services without a written agreement specifying or clearly defining the amount of compensation as required by § 375.116 and 20 CSR 700-1.100.

33. Each instance in which Respondents charged an additional fee for services without a written agreement specifying or clearly defining the amount of compensation as required by § 375.116 and 20 CSR 700-1.100 is a separate violation.

COUNT IV

34. Respondents changed consumers' homeowners policies from an annual payment to installment payments without the consumers' consent and consumers were charged an additional fee for the installment payments from the Missouri FAIR Plan. As such, Respondents engaged in an act, practice or course of business which operated as a fraud or deceit upon Respondents' consumers and the Missouri FAIR Plan and is a violation of § 375.144(4).

35. Each instance in which Respondents changed consumers' homeowners policies to installment payments without the consumers' consent is a separate violation.

COUNT V

36. Respondents have violated § 375.144(1) by employing deception, device, scheme or artifice to defraud in connection with the offer, sale, solicitation or negotiations of insurance, directly or indirectly, in that Respondents accepted premium payments from consumers or from others on their behalf and failed to remit the full premium to the insurers within thirty days after the date of receipt.

COUNT VI

37. Respondents have violated § 375.144(2) by engaging in the use of misrepresentation, concealment or suppression as to a material fact in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, in that Respondents misrepresented and continue to misrepresent the premium amount to mortgage companies by including Respondents' service fee in the premium amount.

COUNT VII

38. Respondents have violated § 375.144(4) by engaging in the acts, practices, omissions or course of business which operated and continues to operate as a fraud or deceit upon consumers, insurers, and others, in connection with the offer, sale, solicitation or negotiations of insurance, directly or indirectly, in that Respondents deposited checks made payable to the Missouri FAIR Plan into its business accounts without authorization from Missouri FAIR Plan.

COUNT VIII

39. Respondents have violated § 375.144(4) by engaging in the acts, practices, omissions or course of business which operated and continues to operate as a fraud or deceit upon consumers, insurers, and others, in connection with the offer, sale, solicitation or negotiations of insurance, directly or indirectly, in that Respondents used the homeowners premiums that had been deposited in Respondents' business accounts for operating expenses instead of remitting those payments to the insurer.

STATEMENT REGARDING SEEKING OF CIVIL PENALTIES OR COSTS

40. The Division of Consumer Affairs of the Department of Insurance, Financial Institutions and Professional Registration is seeking civil penalties and the costs of the investigation in this matter.

REQUEST FOR RELIEF

WHEREFORE, the Division of Consumer Affairs respectfully requests that the Director grant the following relief:

41. Issue an order finding that Respondents have engaged and are engaging in acts, practices, omissions, or courses of business constituting violations of the laws of this state relating to insurance in Chapters 374 and 375 and in violation of rules adopted pursuant to such chapters.

42. Issue an order finding that § 375.144 is being violated by Respondents and that consumers and providers are being aggrieved by the violations.

43. Issue a summary order, effective upon its issuance, prohibiting the continuation of Respondents' acts, practices, omissions and courses of business which violate § 375.144 and shall immediately:

- a. Cease and desist accepting premium payments from consumers or from others on their behalf and, without consent or prior authorization, failing to remit the full premium to the insurers within thirty days after the date of receipt.
- b. Cease and desist depositing checks made payable to the Missouri FAIR Plan into its business accounts without authorization from Missouri FAIR Plan.
- c. Ceases and desist misrepresenting the amount of homeowners insurance premium due to mortgage companies by including Respondents' service contract fee in the premium amount, without disclosing that the amount included the service contract fee.
- d. Cease and desist depositing consumers' homeowners insurance premium payments, which were for payment of the entire policy period, and, without consent or prior authorization from the consumers, only making an installment or

down payment on the policy, while retaining and/or utilizing the remainder for purposes other than payment of those consumers' premiums.

44. Issue a curative order or other orders directing Respondents to take other actions necessary or appropriate to comply with the insurance laws of this state.

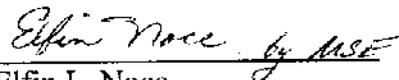
45. Issue an order directing Respondents to show cause why: (1) any summary order issued against Respondents should not be made final; (2) a curative order or other orders should not be issued; and (3) other relief, including penalties and costs of investigation, should not be granted against Respondents. In such order to show cause, this matter should be set for hearing at least ten (10) days after the service of the Statement of Charges pursuant to § 374.046.3.

46. Issue an order ordering the payment of monetary penalties pursuant to §§ 374.046, 374.049, 374.280, and 374.145.

47. Issue an order ordering the payment of reasonable costs of the investigation of this matter pursuant to § 374.046.

48. Such other relief as the Director deems just and appropriate in this proceeding.

Respectfully submitted,



Elfin L. Noce
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Missouri Department of Insurance, Financial
Institutions & Professional Registration
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Jefferson City, Missouri 65102-0690
Telephone: (573) 751-2619
Facsimile: (573) 526-5492

ATTORNEY FOR DIVISION OF
CONSUMER AFFAIRS

VERIFICATION

Before me, the undersigned authority, personally appeared Carrie Couch, who being duly sworn upon oath, deposes and states as follows:

1. My name is Carrie Couch and I am a Special Investigator with the Special Investigations Section, Consumer Affairs Division, Department of Insurance, Financial Institutions and Professional Registration.
2. I have read the foregoing Verified Statement of Charges and know the contents thereof.
3. The factual allegations contained in this Verified Statement of Charges are true and accurate to the best of my knowledge, information, and belief.

Carrie Couch

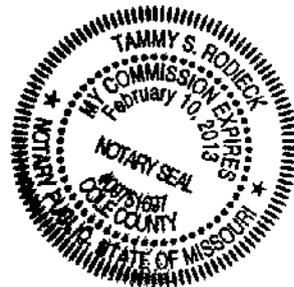
Carrie Couch, Special Investigator

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 26th day of May, 2010.

Tammy S. Rodieck

Notary

My commission expires: Feb 10, 2013



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by certified mail, postage prepaid, and by UPS Next Day, this 28th day of May, 2010, to:

James C. McCain, Jr.
Underwriters Service Agency
Missouri Automobile Insurance Underwriters Agency
3720 Hampton Avenue
St. Louis, MO 63109

James C. McCain, Jr.
Underwriters Service Agency
Missouri Automobile Insurance Underwriters Agency
615 N. Rock Hill Road
St. Louis, MO 63119

Carol Herget
5018 Elenore Ave., Floor 1
St. Louis, MO 63116

A handwritten signature in cursive script, appearing to read "Mary Lee", written over a horizontal line.