BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

AUG 13 2010

ADMINISTRATIVE HEARING COMMISSION

DIRECTOR, **Department of Insurance, Financial Institutions and Professional Registration, State of Missouri,** **Petitioner,** **vs.** **JEFFREY P. DUNGAN** **and** **DUNGAN INSURANCE GROUP, LLC, f/k/a JEFF DUNGAN AGENCY, INC., d/b/a JEFF DUNGAN AGENCY,** **Respondents.** **Serve both at:** **2100 E Broadway Ste 200** **Columbia, MO 65201**	)	**Case No.:** _____

COMPLAINT

JOHN M. HUFF, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists for disciplinary action against Respondents, Jeffrey P. Dungan and Dungan Insurance Group, LLC, f/k/a Jeff Dungan Agency, Inc., d/b/a Jeff Dungan Agency, because:

FACTS RELEVANT TO ALL COUNTS

1. Petitioner is the Director of the Department of Insurance, Financial Institutions and Professional Registration. The Director has the duty to administer Chapters 374 and 375, RSMo, which includes the supervision, regulation, and discipline of insurance producers and business

entity insurance producers.

2. The Commission has jurisdiction over this Complaint under § 621.045, RSMo (Supp. 2009).

3. The Missouri Department of Insurance, Financial Institutions and Professional Registration ("Department") first issued Respondent Jeffrey P. Dungan ("Respondent Dungan") an insurance producer license on October 21, 1987, which license, after multiple renewals, is set to expire on October 21, 2011 (License Number 0285831).

4. Dungan Insurance Group, LLC, is a Missouri limited liability company, registered as such with the Missouri Secretary of State. The Department first issued a business entity insurance producer license to the entity now known as Dungan Insurance Group, LLC, on or about May 31, 2001. The entity has changed form or name on two occasions since its initial licensure:

a. On or about May 31, 2001, the Department issued a business entity producer license to an unincorporated entity known by the fictitious business name "Jeff Dungan Agency." Respondent Dungan was listed as the sole owner of "Jeff Dungan Agency" on the Missouri Secretary of State's Registration of Fictitious Name dated May 29, 2001 (File number X00391279). The Jeff Dungan Agency's business entity producer license was denominated "AG8012780."

b. On or about October 29, 2002, because Respondent Dungan registered Jeff Dungan Agency, Inc., with the Missouri Secretary of State as a Missouri corporation, the Department amended the license to reflect a name change on the license to "Jeff Dungan Agency, Inc. d/b/a Jeff Dungan Agency" (Charter number CC0509453). The license retained the denomination "AG8012780."

c. On or about December 22, 2008, because Respondent Dungan changed the form of his business entity to a Missouri limited liability company (Secretary of State file number LC0935141), the Department amended the license to reflect a name change on the license to "Dungan Insurance Group, LLC." The Department currently denominates licenses by number only; Dungan Insurance Group, LLC currently holds license number 8012780. According to Dungan's testimony at a Department Subpoena Conference, Dungan Insurance Group, LLC continues to do business as "Jeff Dungan Agency."

5. Throughout this Complaint, "Respondent Dungan Agency" shall refer to the entity holding license number "AG8012780" or "8012780," as the case may be, during the time relevant to the context of each such reference. After multiple renewals, Respondent Dungan Agency remains licensed as a business entity insurance producer, and its license is set to expire on May 31, 2011.

6. As an insurance producer licensed in the State of Missouri, Respondent Dungan is responsible for knowledge of all insurance laws and of his responsibility for complying with the insurance laws of Missouri.

7. At all times relevant to this Complaint, Respondent Dungan has been responsible for Respondent Dungan Agency's compliance with the insurance laws and regulations of the State of Missouri:

a. On the Registration of Fictitious Name filed with the Missouri Secretary of State on May 29, 2001, Respondent Dungan is listed as the sole owner of "Jeff Dungan Agency."

b. On each Annual Registration Report filed by Jeff Dungan Agency, Inc. with the

Missouri Secretary of State, Respondent Dungan is listed as president, secretary and sole director of Jeff Dungan Agency, Inc. No other person is listed as an officer or director on any Annual Registration Report for Jeff Dungan Agency, Inc.

c. On the Registration of Fictitious Name filed by Respondent Dungan with the Missouri Secretary of State on March 5, 2009, Respondent Dungan is listed as the sole member of Dungan Insurance Group, LLC.

d. The Department has not received any filing from Respondent Dungan or Respondent Dungan Agency indicating that any licensed insurance producer other than Respondent Dungan has been designated by Respondent Dungan Agency as its responsible licensed producer under § 375.015, RSMo (Supp. 2009).[1]

8. Respondent Dungan was terminated for cause from his appointment as a producer for American Family Insurance Group ("American Family"), on November 18, 2008.

9. After receiving notice from American Family of Respondent Dungan's termination, the Department began an investigation of the circumstances surrounding Respondent Dungan's termination.

10. As part of its investigation, the Department issued a subpoena duces tecum to Respondent Dungan, pursuant to which Respondent Dungan appeared at the Department and testified under oath on February 24, 2009 (the "Subpoena Conference").

11. On or about September 26, 2007, Respondent Dungan sold an American Family commercial insurance policy to Mullins Investments, LLC, d/b/a Wornall Place Apartments ("Wornall").

12. When Respondent Dungan sold the policy to Wornall, he provided Wornall with an

[1] References to statutes in this Complaint are to RSMo (Supp. 2009), unless otherwise indicated, but such citations also are intended to reference identical language in earlier supplements' codifications of the statutes.

evidence of insurance, or binder, bearing a "Date Issued" of October 3, 2007, an "Effective Date" of September 26, 2007, an "Expiration Date" of September 26, 2008, and a "Policy Number" of "TBA" (meaning "To Be Assigned").

13. Thereafter, Respondent Dungan, or an unlicensed employee at Respondent Dungan Agency—identified by Respondent Dungan as Stephanie Walter ("Walter")—misplaced the application and the initial premium check, apparently by filing it as a part of an inactive "dead" file in a storage area in the back of the agency office. As a result, neither the application nor the check was forwarded to American Family.

14. In the following months, Respondent Dungan, Walter, or other unlicensed employees of Respondent Dungan Agency, received 10 additional monthly premium checks from Wornall for the commercial insurance policy sold to Wornall by Respondent Dungan, but none of these checks was forwarded to American Family.

15. Instead, at least 6 of the checks were attached to the unsent application and left in storage in the back of the agency or otherwise retained at the office of Respondent Dungan Agency, and the remainder were received and held by Respondent Dungan after Walter left.

16. On or about August 21, 2008, Wornall called Respondent Dungan because Wornall's mortgagee, Champion Bank, was concerned that it had not received a copy of the commercial insurance policy.

17. In response to Wornall's call concerning Champion Bank, Respondent Dungan created a second evidence of insurance ("Evidence Two", a true and accurate copy of which is attached to this Complaint as Exhibit C and incorporated herein) and faxed it to the bank.

18. Evidence Two indicated that coverage requested by Wornall from American Family, through Respondent Dungan, was or would be bound or issued.

19. Evidence Two bore a "Date Issued" of August 21, 2008, an "Effective Date" of July 29, 2008, an "Expiration Date" of July 29, 2009, and a policy number of "24-XJ7416-01". See Exhibit C, attached.

20. Respondent Dungan admitted under oath in the Subpoena Conference that when he created Evidence Two he approximated the dates listed and inserted a policy number that he knew did not correspond to a policy issued by American Family to Wornall. See Exhibit A, a true and accurate copy of relevant portions of the Subpoena Conference, attached and incorporated herein, at p. 23:13-19;[2] p. 47:5-20; p. 49:11-15; p. 58:21-25. In a written response to an inquiry from the Department, attached and incorporated herein as Exhibit B, Respondent Dungan admits he "used a policy number that I thought would be similar to the policy number that would be issued."

21. Upon information and belief, Respondent Dungan inserted the approximated dates and the false policy number to create the false appearance that the application had been turned in to American Family and the policy issued.

22. Respondent Dungan admitted that he discovered the failure to submit the application and approximately 6 to 8 unsent premium payment checks from Wornall in "mid, late summer" of 2008. See Exhibit A at p. 58:18-20.

23. Upon making this discovery, Respondent Dungan did not contact Wornall or American Family to notify them of the lost application or unsent premium checks, nor did he propose to rewrite the application, but instead continued for months to receive and hold premium checks while looking for the lost application. See Exhibit A at pp. 41:9 to 42:1; pp. 43:7 to 45:23.

[2] References to Exhibit A, which consists of relevant excerpts from the transcript of the Subpoena Conference, are denoted by the transcript page number followed by the line numbers corresponding to the sworn testimony being referenced on that page. E.g. "Exhibit A at p. 35:12-17" refers to page 35 of the transcript, lines 12 to 17.

24. In his Subpoena Conference testimony, Respondent Dungan admitted that he considered rewriting the policy but was "honestly probably concerned about calling the client up and saying hey, your application is lost." See Exhibit A at p. 45:6-11.

25. After approximately three to five months, Respondent Dungan located the application and the unsent premium checks, but Wornall elected to place coverage through another agency.

26. During the approximately three to five months after Respondent Dungan discovered the failure to submit the application, Walter was no longer working in Respondents' office.

27. Respondent Dungan admitted that he personally received and failed to forward premium checks from Wornall after he discovered the failure to submit the application and previous checks. See Exhibit A at p. 43:7-21; p. 44:10-12; p. 58:18-20; p. 60:9-14.

28. Section 375.141, RSMo, authorizes the Director to discipline the licenses of insurance producers and provides, in part:

> 1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:
>
> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
>
> * * *
>
> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
>
> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
>
> * * *

3. The license of a business entity licensed as an insurance producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual insurance producer was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

29. Section 375.144, RSMo, prohibits certain conduct relating to the sale of insurance products and provides, in part:

> 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; [or]
>
> * * *
>
> (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

30. 20 CSR 700-1.020(3) identifies certain activities as the sale of an insurance contract and provides, in part:

> (B) Sale of an insurance contract includes, but is not limited to, the following activities:
>
> 1. Signing binders, certificates of insurance, commitments, endorsements, insurance identification cards and insurance policies;
>
> 2. Indicating that the requested coverage is or will be bound or issued; or
>
> 3. Issuing certificates of insurance, endorsements, binders, commitments, insurance policies or insurance identification cards except when done by a group policyholder.

31. Section 375.012.2, RSMo, provides, in part:

> As used in sections 375.012 to 375.158, the following words mean:
>
> (1) "Business entity", a corporation, association, partnership, limited liability

company, limited liability partnership or other legal entity;

* * *

(6) "Insurance producer" or "producer", a person required to be licensed pursuant to the laws of this state to sell, solicit or negotiate insurance;

* * *

(13) "Person", an individual or any business entity[.]

32. Section 375.014.1, RSMo, provides:

No person shall sell, solicit or negotiate insurance in this state for any class or classes of insurance unless he or she is licensed for that line of authority as provided in this chapter.

33. Section 375.015.2, RSMo, provides, in part:

A business entity acting as an insurance producer is required to obtain an insurance producer license.

34. Under the version of 20 CSR 700-1.020(4)(B) in effect until July 30, 2008, an insurance producer "shall be held responsible for all insurance-related activities performed by an unlicensed individual under the supervision of that insurance producer."

35. Under the version of 20 CSR 700-1.020(4)(B) in effect from July 30, 2008, through the present, an insurance producer "may be found to be materially aiding any acts in violation of law engaged in by an unlicensed individual under the supervision of that insurance producer."

36. Disciplinary statutes must be construed broadly to further their remedial purpose. *Dir. of Insurance v. Walker Services*, 05-1716 DI (Mo. Admin. Hearing Comm'n December 20, 2006) (citing *State ex rel. Webster v. Myers*, 779 S.W.2d 286, 290 (Mo. App. 1989)).

COUNT I

Petitioner Has Cause to Discipline Respondent Dungan's Insurance Producer License for Respondent Dungan's Improper Withholding, Misappropriation and Conversion of Premium Checks

37. Petitioner incorporates and re-alleges Paragraphs 1 through 36 of this Complaint.

38. Respondent Dungan, Walter, or other unlicensed employees supervised by Respondent Dungan received approximately 11 monthly premium checks from Wornall.[3]

39. Wornall intended the premium checks to be forwarded to American Family as payments on a policy Wornall believed Respondent Dungan had secured for Wornall.

40. Respondent Dungan, Walter, or other unlicensed employees supervised by Dungan retained approximately 11 of the checks in the agency office and failed to forward them to American Family.

41. Respondent Dungan admitted that he personally received premium checks from Wornall and failed to forward them to American Family. See Exhibit A at p. 43:7-21; p. 44:10-12; p. 58:18-20; p. 60:9-14.

42. Each time Respondent Dungan failed to forward a premium check, and instead filed it away in the office of Respondent Dungan Agency, he improperly withheld, misappropriated and converted monies and properties received in the course of doing insurance business, and each instance is a separate cause for discipline under § 375.141.1(4), RSMo.

43. Even if, as Respondent Dungan contended, an unlicensed employee of Respondent Dungan Agency was responsible for misfiling some of the checks and failing to submit them to American Family:

a. Walter, or any other employee who misfiled the checks or otherwise failed to

[3] The total number of checks received is based on Respondent Dungan's Subpoena Conference testimony, during which Respondent Dungan did not provide the Division with copies of the checks or with a precise number of checks. Respondent Dungan testified that he mailed all the checks back to Wornall. See Exhibit A at p. 41: 13-16.

submit them to American Family, improperly withheld, misappropriated and converted moneys and properties received in the course of doing insurance business,

b. Walter, as well as any other such unlicensed employee, was under the supervision of Respondent Dungan at the time that the employee improperly withheld, misappropriated and converted the checks,

c. Remittance of premium checks and submission of insurance policy applications are "insurance-related activities",

d. Poor supervision or training and failure to ensure that premium checks are remitted and insurance applications are submitted materially aid a supervisee's failure to remit premium checks and submit applications, and

e. Respondent Dungan is responsible under both versions of 20 CSR 700-1.020(4)(B), at the times each version was in effect, for that improper withholding, misappropriation and conversion each of the checks by an unlicensed employee.

44. As a result, sufficient grounds exist to discipline Respondent Dungan's insurance producer license pursuant to § 375.141.1(4), RSMo.

COUNT II

Petitioner Has Cause to Discipline Respondent Dungan Agency's Business Entity Insurance Producer License for Respondent Dungan's Improper Withholding, Misappropriation and Conversion of Premium Checks

45. Petitioner incorporates and re-alleges Paragraphs 1 through 44 of this Complaint.

46. Respondent Dungan, in his capacity as the sole proprietor, officer, member or manager acting on behalf of Respondent Dungan Agency, knew or should have known of his

own improper withholding, misappropriation and conversion of premium checks sent by Wornall.

47. At no time relevant to this Complaint did Respondent Dungan, in his capacity as the sole proprietor, officer, member or manager acting on behalf of Respondent Dungan Agency, report to the Department the improper withholding, misappropriation and conversion of Wornall's checks.

48. At no time relevant to this Complaint did Respondent Dungan, in his capacity as the sole proprietor, officer, member or manager acting on behalf of Respondent Dungan Agency, take adequate corrective action with regard to the improper withholding, misappropriation and conversion of Wornall's checks.

49. As a result of each instance of Respondent Dungan's improper withholding, misappropriation and conversion, and of Respondent Dungan's failures to report or take corrective measures with regard to each withheld, misappropriated or converted check, sufficient grounds exist to discipline the business entity insurance producer license of Respondent Dungan Agency pursuant to §§ 375.141.1(4) and 375.141.3, RSMo.

COUNT III

Petitioner Has Cause to Discipline Respondent Dungan Agency's Business Entity Insurance Producer License for Respondent Dungan Agency's Improper Withholding, Misappropriation and Conversion of Premium Checks

50. Petitioner incorporates and re-alleges Paragraphs 1 through 36 and 45 through 49 of this Complaint.

51. Respondent Dungan stated in his sworn testimony at the Subpoena Conference that an employee of Respondent Dungan Agency failed to remit Wornall's premium funds to American Family.

52. Under § 375.141.1, RSMo, Petitioner may revoke the license of "an insurance producer" for, among other causes, improper withholding, misappropriation or conversion of funds.

53. Respondent Dungan Agency is an "insurance producer" for purposes of § 375.141.1, RSMo, because:

a. Section 375.012.2, RSMo, defines "insurance producer" as a "person required to be licensed" under the insurance laws, "person" to include a business entity, and "business entity" to include a limited liability company;

b. Respondent Dungan Agency is a limited liability company required to be licensed as a business entity insurance producer by § 375.014, RSMo, and § 375.015.2, RSMo, because agents of Respondent Dungan Agency sell, solicit and negotiate insurance in this state.

54. Any employees of Respondent Dungan Agency who received the checks from Wornall and failed to remit them to American Family acted as agents of Respondent Dungan Agency when they received the checks and failed to remit them.

55. Each failure by any employee of Respondent Dungan Agency to remit the Wornall premium funds to American Family was an improper withholding, misappropriation and conversion of the checks received in the course of doing insurance business, under § 375.141.1(4), RSMo.

56. Because of the agency relationship between any employee of Respondent Dungan Agency and Respondent Dungan Agency, each instance of an employee's improper withholding, misappropriation and conversion of checks received in the course of doing insurance business under § 375.141.1(4), RSMo, provides Petitioner with cause to discipline Respondent Dungan

Agency's insurance producer license under § 375.141.1(4), RSMo.

COUNT IV

Petitioner Has Cause to Discipline Respondent Dungan's Insurance Producer License for Committing Prohibited Acts in Connection with the Sale of Insurance

57. Petitioner incorporates and re-alleges Paragraphs 1 through 36 of this Complaint.

58. When Respondent Dungan created and issued Evidence Two, he included a false policy number, which he knew did not accurately correspond with an existing policy issued by American Family to Wornall.

59. When Respondent Dungan created and issued Evidence Two, he included a false "Date Issued" of August 21, 2008, a false "Effective Date" of July 29, 2008, and a false "Expiration Date" of July 29, 2009.

60. When Respondent Dungan created and issued Evidence Two, he included the false policy number and dates in order to create the false impression to Wornall and Champion Bank that a policy had been issued by American Family to Wornall.

61. In turn, Respondent Dungan included the false policy number and dates to create the false impression to Wornall and Champion Bank that Respondent Dungan had properly forwarded Wornall's application and all checks submitted by Wornall to Respondent Dungan Agency to American Family.

62. Upon information and belief, Respondent Dungan created the false impressions that he had sent the application and checks to American Family and that the policy had been issued to avoid the consequences of his failure to send the application and checks, which consequences could include:

a. The loss of Wornall's business;

b. Termination by American Family;

c. Discipline to his insurance producer license by the Department; and/or

d. Monetary losses (in the form of lost income or commissions from Wornall, penalties or charges to his producer account with American Family, and fines or forfeitures from the Department).

63. By including the false policy number and dates on Evidence Two, Respondent Dungan:

a. Employed a deception and artifice to defraud, in that he used an artificial policy number to deceive Wornall and Champion Bank, intending that they rely on this deception so he could avoid the consequences alleged in Paragraph 62;

b. Made or used misrepresentations of a material fact, in that he misrepresented that a policy number existed, that it was the number used on Evidence Two, that the policy had been issued as of the date stated, and that a policy had been issued to Wornall by American Family;

c. Concealed and suppressed the facts that neither the application nor any of the checks had been forwarded to American Family, and that American Family had not issued a policy to Wornall; and/or

d. Engaged in acts that operated as frauds and deceits upon Wornall and Champion Bank, to lead them to believe that the application and checks had been sent and the policy had been issued.

64. When Respondent Dungan issued Evidence Two, containing a false policy number and dates, he did so in connection with the sale of insurance, in that Evidence Two is a certificate of insurance, endorsement, binder, commitment, or insurance identification card for purposes of

20 CSR 700-1.020, which Respondent Dungan signed, and used to indicate that coverage requested by Wornall had been bound.

65. As a result, Petitioner has cause to Respondent Dungan's license under § 375.141.1(2) for violating § 375.144(1), (2) and/or (4), RSMo.

COUNT V

Petitioner Has Cause to Discipline Respondent Dungan Agency's Business Entity Insurance Producer License for Respondent Dungan's Prohibited Acts in Connection with the Sale of Insurance and Respondent Dungan's Failure to Report or Correct Such Violations

66. Petitioner incorporates and re-alleges Paragraphs 1 through 36 and 57 through 65 of this Complaint.

67. Respondent Dungan, in his capacity as the sole proprietor, officer, member or manager acting on behalf of Respondent Dungan Agency, knew or should have known of his own prohibited acts in connection with the sale of an insurance contract.

68. At no time relevant to this Complaint did Respondent Dungan, in his capacity as the sole proprietor, officer, member or manager acting on behalf of Respondent Dungan Agency, report to the Department that he had committed prohibited acts in connection with the sale of an insurance contract.

69. At no time relevant to this Complaint did Respondent Dungan, in his capacity as the sole proprietor, officer, member or manager acting on behalf of Respondent Dungan Agency, take adequate corrective action with regard to his having committed prohibited acts in connection with the sale of an insurance contract.

70. As a result, Petitioner has cause to discipline the business entity insurance producer license of Respondent Dungan Agency pursuant to §§ 375.141.1(2), and 375.141.3, RSMo, for Respondent Dungan's violation of § 375.144(1), (2) and/or (4), RSMo.

COUNT VI

Petitioner Has Cause to Discipline Respondent Dungan's Insurance Producer License for Using Dishonest Practices, and Demonstrating Incompetence, Untrustworthiness and Financial Irresponsibility in the Conduct of Business in this State

71. Petitioner incorporates and re-alleges Paragraphs 1 through 70 of this Complaint.

72. Respondent Dungan's failure to remit Wornall's application and premium checks and his creation of a false evidence of insurance in an attempt to hide his failure to remit the application and checks constitute the use of dishonest practices and demonstrate incompetence, untrustworthiness and financial irresponsibility in the conduct of business in this state:

a. Respondent Dungan's failure to remit Wornall's application and checks to American Family demonstrates lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform the occupation of an insurance producer;

b. Respondent Dungan's failure to remit Wornall's application and checks to American Family and his creation of a false evidence of insurance to hide his failure to remit the application and checks demonstrate that Respondent Dungan is not worthy of confidence or dependable;

c. Respondent Dungan's attempts to hide his failure to remit Wornall's application and checks and his creation of a false evidence of insurance to hide his failure to remit the application and checks demonstrate a lack of honesty and integrity; and/or

d. Respondent Dungan's failures to forward Wornall's checks to American Family demonstrate financial irresponsibility.

73. All of the above-described acts or failures to act took place as part of Respondent

Dungan's conduct of business as an insurance producer in Missouri.

74. Each of the above-described acts is sufficient to provide Petitioner with cause to discipline Respondent Dungan's license under § 375.141.1(8), RSMo.

COUNT VII

Petitioner Has Cause to Discipline Respondent Dungan Agency's Business Entity Insurance Producer License for Respondent Dungan's Use of Dishonest Practices and Demonstration of Incompetence, Untrustworthiness and Financial Irresponsibility in the Conduct of Business in this State, and Respondent Dungan's Failure to Report or Correct Such Violations

75. Petitioner incorporates and re-alleges Paragraphs 1 through 74 of this Complaint.

76. Respondent Dungan, in his capacity as the sole proprietor, officer, member or manager acting on behalf of Respondent Dungan Agency was aware of his own dishonesty, incompetence, and untrustworthiness in the conduct of business in this state.

77. At no time relevant to this Complaint did Respondent Dungan, in his capacity as the sole proprietor, officer, member or manager acting on behalf of Respondent Dungan Agency, report to the Department his conduct using dishonesty, or demonstrating incompetence and untrustworthiness.

78. At no time relevant to this Complaint did Respondent Dungan, in his capacity as the sole proprietor, officer, member or manager acting on behalf of Respondent Dungan Agency, take adequate corrective action with regard to his dishonesty, incompetence, and untrustworthiness in the conduct of business in this state.

79. As a result, Petitioner has cause to discipline the business entity insurance producer license of Respondent Dungan Agency pursuant to §§ 375.141.1(8) and 375.141.3, RSMo.

WHEREFORE, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established

cause to discipline Respondent Jeff Dungan's insurance producer license pursuant to §§ 375.141.1(2), (4), and (8), RSMo, for the acts and omissions described in this Complaint, which constitute grounds for discipline under those provisions, including Respondent Dungan's violation of § 375.144, RSMo, and as otherwise alleged in this Complaint, and that the Commission find that Petitioner has established cause to discipline Respondent Dungan Agency's business entity producer license pursuant to the same statutes, and also pursuant to § 375.141.3, RSMo, for the failure of Respondent Dungan, or any other partner, officer or manager acting on behalf of Respondent Dungan Agency, to report such known violations to the director and take corrective action.

Respectfully submitted,

Andy Heitmann
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MIDWEST LITIGATION SERVICES
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BEFORE THE DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION STATE OF MISSOURI

SUBPOENA CONFERENCE

In Re: Jeffrey Dungan

Case Nos. 08A000287 & 08A000985

Tuesday, February 24, 2009
Harry S. Truman State Office Building
301 West High Street
Jefferson City, Missouri 65109

COPY

EXHIBIT
A

NATIONWIDE SCHEDULING

OFFICES MISSOURI ▪ ILLINOIS ▪ KANSAS

HEADQUARTERS: 711 NORTH ELEVENTH STREET, ST. LOUIS, MISSOURI 63101
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BEFORE THE DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION STATE OF MISSOURI

SUBPOENA CONFERENCE

In Re: Jeffrey Dungan

Case Nos. 08A000287 & 08A000985

Tuesday, February 24, 2009
Harry S. Truman State Office Building
301 West High Street
Jefferson City, Missouri 65109

COPY

EXHIBIT
tabbies
A

1 A Yes.

2 **Q About how many different people?**

3 A One person that I can recall whose name, I

4 believe, was -- last name was Horrack. It was John

5 Horrack.

6 **Q How many conversations do you think you**

7 **had with Mr. Horrack?**

8 A We didn't have actually a conversation.

9 He sent me e-mails of which I responded to, probably

10 three or four e-mails.

11 **Q What was the contents of those e-mails?**

12 A Wanting to know the circumstances and what

13 had happened to the -- with this file and so on.

14 **Q What had happened with the file?**

15 A I went out and wrote a policy on a client.

16 It was an application for a commercial insurance

17 policy. I came back to my office to have a policy

18 issued. The policy -- I'm sorry. The application

19 got lost and never got entered. The insured called

20 and I told them that it was in processing because

21 that's where I believed it was. He called again at

22 a much later date and his bank was needing proof of

23 insurance because the policy had never got to them

24 so I issued an evidence of insurance on that policy

25 because I had bound coverage on that policy.

1 I did, because of the timeframe, put a policy
2 number in the policy number location on the
3 application, what I expected to be close to accurate
4 because I knew if I sent this evidence of insurance
5 to a bank with a to-be assigned policy number, or
6 TBA, to-be assigned, is what we used a lot of times,
7 that far out, the bank was going to give the client
8 a lot of grief. I had no doubt that the client had
9 coverage because I had bound coverage.
10 I then finally found the application. Insured
11 called up and requested me not to issue the policy
12 and return the checks of which I did so.
13 MR. HEITMANN: So when you put that number
14 on there, you knew that that was not going to
15 be the actual number of the --
16 MR. DUNGAN: Yes. That's correct. I knew
17 that was not going to be the actual number but
18 the coverage was in place and because I had
19 binding authority. And honestly, the policy
20 number filled a blank which the bank would get
21 a formal policy and the policy number wouldn't
22 make any difference.
23 MR. HEITMANN: Did you not expect the bank
24 to notice the difference between the eventual
25 number and the one you put down at that time?

1 MR. DUNGAN: Honestly, I didn't think it
2 would make any difference. I don't want to say
3 it wasn't an important fact but it was not as
4 crucial as to whether there was coverage or
5 not.
6 MR. HEITMANN: Did you believe at that
7 time that if you had left the blank blank or
8 had put TBA in it that -- well, what do you
9 believe would have happened?
10 MR. DUNGAN: I believe it would have
11 created a lot of problems for the client
12 because the policy was an issue. They would be
13 wise there and it would have looked more
14 misleading that we're six, nine months into the
15 policy but you don't have a policy number yet.
16 And I was merely trying to keep my clients. My
17 client had coverage. I was merely trying to
18 provide proof for the bank that the client had
19 coverage.
20 MR. HEITMANN: Were there any specific
21 consequences that you were aware of if the bank
22 had not accepted that or if you had turned that
23 in with a TBA or blank? Did you know of
24 anything specific that would have occurred to
25 the client because of that?

1 MR. DUNGAN: The only thing that I was
2 afraid is they would try to force placed
3 coverage or something to that effect on him
4 believing there really was no coverage in place
5 when there was bound coverage in place.
6 **Q (By Mr. Fitzpatrick) So explain to me.**
7 **You took the application. What happened to the**
8 **application?**
9 A I came back to the office and went to have
10 it issued. I assigned it to somebody and where I
11 found it was in a file in the back room.
12 **Q Do you know the approximate date you took**
13 **that application?**
14 A October, November of '07.
15 **Q And when you brought this application back**
16 **to the office, who did you give it to?**
17 A Stephanie Walter.
18 **Q And --**
19 A And it may not have been right when I
20 walked back in the door but that was who it was
21 assigned to.
22 **Q What would have been Stephanie's normal**
23 **procedure for an application such as this?**
24 A Entering it onto the computer system and
25 submitting it.

1 Q **What do you mean by entering it?**
2 A Completing the online application form.
3 Q **And then would you have received some sort**
4 **of verification that that application was entered?**
5 A No. She should have. I wouldn't get a
6 copy.
7 Q **So you didn't really watch --**
8 A Actually, let me rephrase it. I might
9 have got a copy. Some of the policies, and I don't
10 know, some policies the person entering it gets a
11 copy. Some of them the agent gets a copy. I'm not
12 sure on that one whether it would have come to me or
13 to her.
14 Q **What I'm trying to do is get an**
15 **understanding of how the office was set up. If you**
16 **took the application and you gave it to somebody,**
17 **then it was their responsibility to make sure things**
18 **were taken care of from there?**
19 A Yes.
20 Q **And you're saying that Stephanie didn't do**
21 **that, Stephanie Walter.**
22 A Right.
23 Q **I want to go on to Exhibit 3.**
24 MR. FERGUSON: Before we get there, I just
25 want to make sure that we have a clear

1 understanding of one thing. Had there been a
2 loss at any time during this timeframe, that
3 loss would have been covered because Jeff had
4 bound the coverage and he had the authority to
5 bind the company to the coverage. So if there
6 had been a loss, whether there's an issued
7 policy or not, whether the app was ever keyed
8 in or not, there would have been coverage for
9 the loss.
10 **Q (By Mr. Fitzpatrick) How would that**
11 **coverage have been provided for?**
12 MR. FERGUSON: Well, companies have
13 varying ways of doing it. One way would be to
14 take a new app and another check and get it
15 back in the system and back date it. Another
16 way would be to fill out a form to be submitted
17 explaining that the application was lost but
18 coverage was bound on a given date and that
19 would require his signing something and
20 attesting to that. And then a policy would
21 eventually get issued but the policy would get
22 issued back to the date when he bound it and
23 there would be coverage because that's the
24 essence of his binding authority.
25 When he takes a check and an application

1 from a client and says you have insurance
2 coverage, they do, and the company is bound.
3 Now, the company, if Jeff binds them as in this
4 case, they didn't get the premium, they didn't
5 get the chance to decline the risk or whatever,
6 their recourse would be against Jeff if there
7 were a loss, you know. They had to pay a loss,
8 which they would have, then they could have
9 came back to Jeff and said, you know, due to
10 your failures here, we had to pay a loss that
11 we shouldn't have had to pay, we wouldn't have
12 accepted this for whatever reason so we're
13 going to bill your agency for this loss.
14 You know, they could do that. But they
15 couldn't not cover the insured. I think that's
16 what needs to be understood. He has the
17 ability as a binding agent with the agent's
18 binding contract to bind coverage and he did
19 so. And that is why he didn't think it was a
20 big deal to put a number in that blank because
21 he knew there was coverage. He took the
22 application. He bound it.
23 **Q (By Mr. Fitzpatrick) Okay. Let's move on**
24 **to Exhibit 3. I'm handing both you and your**
25 **attorney a copy of Exhibit 3. This is a form that I**

1 Q **Yes.**

2 A I get the lead. I talk to the client. If

3 they're interested I go out and on each of these

4 buildings, as you can see, the building amount, it

5 varies from building to building because I measured

6 the square footage, took photos of all the

7 properties. I figure a replacement cost on all of

8 them according to company guidelines and put the

9 presentation together. I either then talk to them

10 on the phone or, like I say, I could fax or e-mail.

11 I've done it multiple ways. And then to actually

12 write the policy, I actually meet with the person.

13 Q **And so you met with Mr. Mullins and**

14 **completed the application?**

15 A Yes.

16 Q **And he gave you a check?**

17 A He either gave me a check that day or he

18 mailed me one that afternoon and I got it in the

19 next couple days.

20 Q **And you gave all that to Stephanie Walter.**

21 A Yes.

22 Q **And the normal procedure would have been**

23 **for that application to be turned in, the policy**

24 **issued.**

25 A Yes.

1 Q Would that policy have come back to your
2 office --
3 A Yes.
4 Q -- or would it have been mailed to the
5 client?
6 A I actually had it set up. American Family
7 actually mailed the policies to my office. I put
8 them in an envelope with a letter thanking them for
9 their business and forwarding it on to the client or
10 I delivered them in person depending on timing and
11 location.
12 Q Did you deliver a policy to Mr. Mullins?
13 A No.
14 Q Did you mail him one?
15 A No.
16 Q Did you keep a checklist that says wrote
17 an application such and such date and delivered the
18 policy the next couple weeks later or something?
19 A No. I do not.
20 Q Have you ever had that problem before with
21 any other client?
22 A I've had policies run late. But have I
23 ever had this scenario, no.
24 Q Did those involve Mrs. Stephanie Walter?
25 A Yes.

1 Q **How many different times did instances**
2 **come up where things didn't follow through with her?**
3 A We really didn't find out until she left.
4 We actually had to end up going back through all of
5 the quotes in the system and see all auto policies
6 and everything that had been quoted by her and call
7 the clients up and ask them. If there was no issued
8 policy, we had to call the clients up and ask them
9 if they had got the vehicle. And we found multiple
10 policies, primarily autos, a few homes, that she had
11 not completed.
12 Q **Had she taken money for them?**
13 A No. Most autos and everything are --
14 people call -- the autos people will call in and add
15 an additional auto and so was not required to have a
16 down payment at that point in time.
17 Q **So about how many instances do you think**
18 **happened between automobile policies and homeowner**
19 **policies?**
20 A I think there was only one home and it
21 wasn't actually a homeowners. It was a renters.
22 There were at least six or eight autos. We didn't
23 exactly keep track. Once we found out there was a
24 problem, it was more of getting it taken care of. I
25 didn't keep a count. All I wanted to make sure is

1 all the policies were accounted for, that the
2 clients had their policies issued.
3 **Q So were there any new applications**
4 **involved in this six to eight autos and renters**
5 **policies?**
6 A Just the one renters.
7 **Q That was a new application?**
8 A Yes. Well, the autos were new too but
9 they were add-ons to an existing client and the
10 renters was an add-on to an existing client.
11 **Q What do you mean? How is a renters an**
12 **add-on?**
13 A We already had the client and we were just
14 adding -- she was just adding the renters to the
15 client's billing and adding that policy that was
16 assigned application. It's an issued application.
17 **Q I'm going to hand you what we labeled as**
18 **Exhibit 4 both to you and your attorney. And this**
19 **is an evidence of property insurance, the effective**
20 **date of September 26, 2007, with an expiration date**
21 **of September 26, 2008. The insured is Mullins**
22 **Investment, LLC, doing business as Wornall,**
23 **W-o-r-n-a-l-l, Apartments. The agent's name is Jeff**
24 **Dungan. The amount of insurance is $4,017,900.00**
25 **with a $10,000 deductible. And where the policy**

1 **number should be listed it says TBA. What does TBA**
2 **mean?**
3 A To be assigned.
4 **Q Do you recognize this document?**
5 A Yes.
6 **Q Did you offer this document to**
7 **Mr. Mullins?**
8 A Yes. It's a normal practice when
9 something like this is bound, come back to my
10 office, issue an evidence of insurance for him in
11 the interim of the policy being issued.
12 **Q Do you turn this evidence of insurance in**
13 **to American Family for any reason?**
14 A Yes. They're usually attached to the
15 application and sent in with the application after
16 the application is issued or when the application is
17 issued.
18 **Q And this is an accepted practice by**
19 **American Family to have TBA under the policy number?**
20 A I believe every agent I know does it or
21 does something similar.
22 **Q If they didn't do that, what would they**
23 **do? What would be similar?**
24 A No policy number maybe.
25 MR. FERGUSON: Now.

1 A Uh-huh.
2 MR. FERGUSON: Yes.
3 A Yes.
4 **Q (By Mr. Fitzpatrick) And we looked at**
5 **Exhibit 4 and it looks like the effective date is**
6 **September 26.**
7 A Okay.
8 **Q Can you explain that difference?**
9 A Typographical error would be the only
10 explanation I would have.
11 **Q So when did the insured actually have**
12 **coverage?**
13 A According to the evidence of insurance
14 which is actually binding, September 26. The
15 billing statement is not binding.
16 **Q Did you receive a check from Mullins**
17 **Investment for $2,935.50?**
18 A I received a few checks from him. I'm not
19 sure if it was for 2,935 or since somebody scratched
20 through this and circled a different one. I'm
21 assuming he sent two different checks, one after I
22 met with them and then a second one. And that's the
23 reason the amount is circled.
24 **Q How many checks did you receive from him?**
25 A He sent payments apparently on a monthly

1 basis or somewhat thereof. Because at the time that
2 I found the application, they were all attached to
3 it.
4 **Q How many checks did you find?**
5 A I think there were six, I think. I don't
6 have those documents anymore so I'm not sure.
7 **Q So six times or six months for premium?**
8 A Uh-huh.
9 **Q And what happened to those checks?**
10 A The insured called back like I said
11 earlier and told me he did not want the policy
12 issued. He had placed coverage with somebody else
13 and he wanted them returned to him. So I notated on
14 the application that per insured's request, policy
15 not to be issued, return checks. And I mailed them
16 back to him.
17 **Q Did you discuss that procedure with**
18 **American Family before you did that?**
19 A No, I did not.
20 **Q Have you discussed it with them since?**
21 A No.
22 **Q In none of your conversations with**
23 **Mr. Horrack?**
24 A No. I advised him that was the
25 circumstances that happened and there was no

1 discussion about it.

2 **Q So when these checks came into your office**

3 **sent through the mail during the months, how did**

4 **they get where they went and not to the American**

5 **Family company?**

6 A I don't open mail. Stephanie most days

7 opened the mail so I assumed she put them with them.

8 **Q Did you ask her?**

9 A She was gone.

10 **Q When did she leave?**

11 A June, July. I'm not sure. It was summer

12 of '08. I'm not sure the exact date she left.

13 **Q Early summer?**

14 A Yeah. May, June, July at the absolute

15 latest, I think. She was with me for a year.

16 **Q I'm going to hand you and your attorney**

17 **something I've marked Exhibit 6. And this is a**

18 **vender ledger. Do you recognize this?**

19 A No, sir. I do not.

20 **Q Never seen this before?**

21 A No, I haven't.

22 **Q Didn't provide this to American Family,**

23 **Mr. Horrack, or anybody that was investigating this?**

24 A No, sir. I did not.

25 **Q Take a look at it again. Maybe you'll**

1 **remember.**

2 A No. I did not provide this. I can tell

3 where it came from though.

4 **Q Where did it come from?**

5 A It says Forest Property dot net which

6 would be something tied to Mullins. Not to me.

7 **Q Looks like they made 11 payments.**

8 A Okay. There were -- well, you asked me

9 how many checks were attached to the application a

10 while ago. I should have went further on and said

11 there were checks that did come in after Stephanie

12 left while I was trying to find where this

13 application was that I had possession of.

14 **Q What did you do with those checks?**

15 A I had them together looking for the

16 application so I could complete the issuance of it.

17 **Q How many checks did you have?**

18 A The balance of whatever was attached to

19 the application. Whether there were six or eight

20 attached to the application, I had the other three

21 or four or five.

22 **Q So that would be approximately a timeframe**

23 **of three, four months?**

24 A Yes.

25 **Q It took you three to four months to figure**

1 **out what to do with it?**
2 A I found the application the day he
3 requested it canceled -- or not canceled but the day
4 he requested his checks back.
5 **Q When was that?**
6 A August or September. Exact date I'm not
7 sure off because I don't have any of those notes.
8 **Q So you received a check and didn't know**
9 **what to do with it three, four, five times?**
10 A I think it was more like three or four so
11 there must have been more checks attached to the
12 application. I knew what to do with it. I couldn't
13 find the application to complete the issuance.
14 **Q What should you have done with it?**
15 A With?
16 **Q The checks.**
17 A There was nothing to do with them until
18 the policy was issued. I needed to find the policy,
19 get the policy issued so the checks could be sent to
20 the home office so they could cash them.
21 **Q And you didn't do that because?**
22 A I was trying to find the application. I
23 couldn't send the checks to the home office with no
24 policy number and no billing account number. They
25 wouldn't have known what to do with them.

1 Q Well, earlier your attorney explained to
2 us how different ways could be handled as far as if
3 there had been a claim. And one of those was to
4 re-write the application.
5 A Correct.
6 Q Did you ever consider the option of
7 re-writing the application?
8 A Yes. I was trying to find the policy to
9 get the policy issued and honestly probably
10 concerned about calling the client up and saying
11 hey, your application is lost.
12 Q Did you ever tell the client that the
13 application was lost?
14 A Yes. I believe I did the day I found it,
15 the day I issued the evidence for the bank, the day
16 he requested his checks back.
17 Q So either you or somebody in your office
18 took 11 checks for an application that wasn't turned
19 in?
20 A Yes. I did not realize it was that many
21 but yes, according to this.
22 Q Do you have any reason to dispute this?
23 A No.
24 Q So you would accept the fact that 11
25 different checks came to your office without

1 properly taking care of them and sending them on to
2 the insurance company?
3 A There was no way to send them on to the
4 insurance company to get them posted until the
5 policy was issued. Prior to the ones that I had in
6 my possession, they should have been brought to me.
7 Something should have been said to me.
8 I should have found a way -- I should have
9 known. I'll say it that way that it wasn't
10 processed but it was overlooked.
11 Q I'm going to offer you a copy of something
12 that I've labeled as Exhibit 7 both to you and your
13 attorney. Exhibit 7 is an evidence of insurance
14 property insurance, has an effective date of July
15 29, 2008, with an expiration date of July 29, 2009.
16 Amount of insurance is $4,017,900 with a
17 $10,000 deductible. The insured name is Mullins
18 Investment, LLC. This one does not name Wornall.
19 Compare it to Exhibit 4. This one has Champion Bank
20 listed as an additional interest. Do you recognize
21 Exhibit 7?
22 A Yes.
23 Q Did you issue Exhibit 7 or did you
24 manufacture or create Exhibit 7?
25 A Yes, I did.

1 **Q Did you have Exhibit 4 in your possession**
2 **at the time?**
3 A No. Because it was attached to the
4 original application.
5 **Q So where did you come up with July the**
6 **29th date?**
7 A It was my best estimate of when the policy
8 was written.
9 **Q Did you give this to Mr. Mullins?**
10 A I'm not sure if I faxed it to Mr. Mullins
11 or to Champion Bank but this is when the bank was
12 wanting coverage.
13 **Q And policy number 24XJ7416-01, where did**
14 **you get that policy number?**
15 A That was the policy number that I
16 mentioned earlier that I put in a policy number that
17 was going to be similar in style to the issued
18 policy number. And it was just a policy number I
19 picked for lack of a better term to fill in the
20 blank.
21 **Q Would that have been an accepted procedure**
22 **by American Family?**
23 A That I'm not aware of.
24 **Q Had you ever done it before?**
25 A No.

1 **Q Have you ever done it since?**
2 A No. But I've never had an application got
3 lost for the length of time that that one was lost
4 and the coverage was -- the insured did have bound
5 coverage.
6 **Q Was this a policy number that American**
7 **Family had issued to some other client?**
8 A Apparently so. I was informed in my
9 correspondence with Mr. Horrack.
10 **Q Did you send this evidence insurance to**
11 **American Family?**
12 A No. Because the policy was not issued
13 yet. I did upon their request.
14 **Q With the incorrect policy number?**
15 A Yes. I believe I sent it to them. I sent
16 them everything that they requested from me. They
17 either received it from me or from Mr. Mullins.
18 **Q And you think that this is an accepted**
19 **practice to provide a false policy number?**
20 A No. There was a better way to handle it.
21 I was trying to take care of my client and verify
22 that yes, he did have coverage for his bank.
23 **Q When we looked at Exhibit 1 earlier, we**
24 **said false insurance cards. Could this document,**
25 **Exhibit 7, be considered a false insurance claim or**

1 **evidence of insurance or card? Could that be what**
2 **they're referring to?**
3 A It could be but I thought from Exhibit 1
4 that they were actually -- this was an accusation
5 that I was issuing auto insurance cards is what I
6 thought that that was intending. I don't consider
7 this -- I don't consider it an incorrect document, a
8 false document because there was $4,017,900 worth of
9 coverage with a $10,000 deductible of which Champion
10 Bank would have been the lost payee.
11 **Q You don't consider Exhibit 7 a false**
12 **document?**
13 A I consider the policy number incorrect.
14 **Q And the expiration date?**
15 A Is incorrect.
16 **Q But that doesn't make it false?**
17 A The effective date would have been
18 accurate but he would have had coverage from 9/26 to
19 7/29. He did not have coverage prior to the 9/26
20 date.
21 **Q We -- you just a while ago about some auto**
22 **policies, six to eight auto policies that were**
23 **add-on cars to policies. Were insurance cards**
24 **provided for those vehicles?**
25 A That I'm not aware of. Most likely not

1 Q (By Mr. Fitzpatrick) But my question was
2 did you contact American Family and ask them for any
3 copies of anything even though they claim it's their
4 property. Did you ask them if you could have copies
5 of anything for your visit here with us today?
6 MR. FERGUSON: And I thought I told you on
7 advice of counsel he did not. That was my
8 advice to him, that he had no right. His
9 relationship with them was terminated and he
10 had no right to request or any obligation to
11 request documents from them.
12 MR. HEITMANN: That's clear on the record
13 but I think we want an answer to the question.
14 A No. I did not because I assume they
15 provided that information to you.
16 Q (By Mr. Fitzpatrick) Okay. Looking at
17 Exhibit 8, second paragraph, it says I gave this
18 obligation to an employee. We discussed that
19 earlier and that would be Stephanie Walter.
20 A Uh-huh, yes.
21 Q And in sentence five -- well, why don't
22 you go through here and if you can put some dates as
23 to approximately when things happened.
24 A Okay. September is when I took the
25 application and bound coverage and issued evidence

1 Q And then in sentence 14, in the back room.
2 A Uh-huh, yes.
3 Q How did these checks get in the back room?
4 Why wouldn't these checks be put -- I don't know.
5 Are you considering this back room inactive files or
6 something?
7 A Yes. And they were attached to the
8 application.
9 Q How did you find this? Was it in
10 alphabetic order?
11 A You know, it was not. I actually had been
12 going through my -- everywhere in my office looking
13 for this and it was just in the dead file, file
14 banks which I had not looked into until that day
15 that I found it.
16 Q It says you made notes on the application
17 and sent the insured's checks back to him. Did you
18 discuss this procedure with American Family?
19 A As I mentioned before, no.
20 MR. FERGUSON: Can I interrupt for a
21 second?
22 (Off the record discussion took place.)
23 MR. HEITMANN: Off the record. It's
24 10:15.
25 (Recess was taken from 10:15 a.m. to 10:22 a.m.)

1 MR. HEITMANN: Back on the record. It's
2 10:22.
3 EXAMINATION BY MR. FITZPATRICK
4 Q And we were looking at Exhibit A. And
5 look at the last sentence there. It says none of
6 the insured's checks were cashed but if there had
7 been a loss during this period, American Family
8 would have -- or would have had coverage.
9 And we said there was how many checks that you
10 received after Mrs. Walter left that you didn't turn
11 it or didn't place or didn't cash or do anything
12 with?
13 A Three or so. Which none of the checks
14 that he ever sent were cashed.
15 MR. FERGUSON: He found several with the
16 app. He had some in his possession so the
17 total of all of them were copied and sent back
18 to the insured at their request.
19 Q (By Mr. Fitzpatrick) Did you make a copy
20 of them for your file or anything?
21 A Yes, I did.
22 Q Did that get taken to American Family?
23 A Yes, it did.
24 Q Okay. Looking on to Page 2 of Exhibit 8,
25 this is a situation involving Max Tilt and Ashley

February 06, 2009

Missouri Department of Insurance, Financial Institutions and Professional Registration
Dennis Fitzpatrick
301 East High St Room 530
PO Box 690
Jefferson City, MO 65102-0690

RE:
Jeff Dungan
5264 County Road 321
Fulton, MO 65251
573.489.4199

File: 08A000985

All files, documents and materials were proprietary to American Family so when my employment with them ended, all records were picked up from my office and I am therefore unable to provide these.

Mullins Investments & Wornall Apartments:
I took an application and bound coverage for this policy and issued an evidence of insurance for his bank. I gave this application to an employee in my office to complete the entry to the company. The employee failed to do so. Checks for the insured came in the mail and I could not find the policy to apply them to. The insured called about his coverage and I assured him that the policy would get issued. I continued to try to find this lost application. Insured called again as his bank was concerned that they had not received a policy. I faxed another evidence of insurance to his bank. Due to the time that had lapsed, I knew that the bank would not accept an evidence of insurance with no policy number or a tba(to be assigned) wording in place of the policy number. In an attempt to make sure the insured was not in violation with his bank, I used a policy number that I thought would be similar to the policy number that would be issued. There was no question of coverage for the insured as I had binding authority and the policy would be issued. I ended up finding the application in the dead files file cabinet in the back room with several checks attached to it that the insured had sent on a monthly basis. The client called in that afternoon and told me that he did not want the policy issued because he had placed coverage with another company and he requested that I send his checks back to him. I made notes on the application and sent the insured's checks back to him as he requested. None of the insured's checks were cashed but if there had been a loss during this period, American Family would have had coverage.

Max Tilt & Ashley Elkin:

To the best of my recollection: I wrote an application in which Ashley Elkin and her husband were the insured. Max Tilt and his wife had bought a home and were listed as Contract Seller on the policy, the lien holder was listed on the policy as well. Ashley and her husband either split up or went through a divorce. Mr. Tilt called and apparently the policy had gone out of force and he stated that he did not receive a copy telling him that it had cancelled. I advised him that notifications were sent from the corporate office and not from my office. I later was contacted by my district manager I believe and was asked about the situation. I advised him that I had talked to Mr. Tilt and advised him the letters were sent from corporate office. I have not heard anything on this again and was under the impression that it was a resolved issue.

Sincerely,

Jeff Dungan

EXHIBIT
7
084985

EVIDENCE OF PROPERTY INSURANCE

American Family Insurance Company ☐
American Family Mutual Insurance Company if selection box is not checked.
6000 American Pky Madison, Wisconsin 53783-0001

Agent's Name, Address and Phone Number (Agt./Dist.)

Jeff Dungan (573) 875-1225
2100 East Broadway Ste 200
Columbia, MO 65201-6082 (364/165)

THIS IS EVIDENCE THAT THE COMPANY INDICATED HAS THE FOLLOWING INSURANCE IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY.

Insured's Name and Address

Mullins Investments LLC
PO Box 8616
Kansas City, MO 64114-0616

Policy Number	Effective Date (MM/DD/YY)	Expiration Date (MM/DD/YY)
24-XJ7416-01	07/29/2008	07/29/2009 *

PROPERTY INFORMATION

PROPERTY LOCATION

PROPERTY DESCRIPTION (For Business Insurance Only. Indicate # of Stories, Construction, Use or Occupancy, Equipment Description/Serial #)

COVERAGES

Personal Lines - Property				Farm/Ranch Lines		Business Insurance	
Policy Type				Policy Type		Policy Type	Form
☐ HO 1	☐ GS	☐ MH 1	☐ BO	☐ FR 01	☐ FR 05	☒ Businessowners	☐ Named Peril
☐ HO 2	☐ HO 6	☐ MH 3		☐ FR 02	☐ FR 09	☐ Business Key	☐ Basic
☐ HO 3	☐ CV 1	☐ DP 01		☐ FR 03	☐ FR MH 01	[ ] Property	☐ Broad
☐ HO 4	☐ CV 3	☐ DP 02		☐ FR 04	☐ FR MH 03	[ ] Inland Marine	☐ Special

Amount of Insurance		Amount of Insurance		Amount of Insurance	
Cov. A Dwelling	$	Cov. A Dwelling	$	Building	$ 4,017,800
Cov. B Pers. Property	$	Cov. B Pers. Property	$	Bus. Pers. Property	$
Cov. B Other Struct. (Fire & E.C.)	$	Sec. III Pers. Prop. Blanket	$	Other	$
Cov. C Pers. Prop. (Fire & E.C.)	$	Sec. III Schedule	$		
Boatowners - Sect. I	$	Sec. IV Outbldgs.	$		
Other	$	Other	$		
Deductible	$	Deductible Sec. I	$	Deductible-Bldg.	$ 10,000
		Deductible Sec. III	$	Deductible-Bus. Pers. Prop.	$
		Deductible Sec. IV	$	Deductible	$

REMARKS (Include Special Conditions/Endorsements)

EFFECTIVE DATE/RENEWAL OF COVERAGE/CANCELLATION

EFFECTIVE DATE - Date additional interest is added.

RENEWAL OF COVERAGE / CANCELLATON - This policy may be continued for successive policy periods by payment of the required premium on or before the effective date of each renewal period. If this policy is terminated, the company will give the additional interest identified below written notice. The delivery of this notice shall be subject to the laws of the state where this policy is issued. We will provide the insurance described in this policy in return for your premium payment and compliance with policy provisions.

*The Expiration Date is changed to read "UNTIL CANCELLED".

ADDITIONAL INTEREST NAME AND ADDRESS

CHAMPION BANK
ISAOA
10560 OLD OLIVE STREET RD
STE 200
ST LOUIS, MO 63141

NATURE OF INTEREST

☒ Mortgagee ☐ Loss Payee
☐

Loan Number

DATE ISSUED	AUTHORIZED REPRESENTATIVE
8/21/2008	JEFF DUNGAN

EXHIBIT
C

TO AGENT: It is very important that you mail a copy to American Family on the day issued, along with the application.

U-200 Ed. 1/96

ORIGINAL-Additional Interest YELLOW-Services PINK-Insured GOLD-Agent

Stock No. 06654 Rev. 0/99