

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF
IMPERIAL CASUALTY &
INDEMNITY COMPANY
NAIC NO. 11487

A.I.D. NO. 2007-036A

ORDER

On October 8, 2007, a re-hearing of the July 11, 2007, show cause hearing was held before Arkansas Insurance Commissioner Julie Benafield Bowman ("Commissioner"), to determine if Order 2007-036 directing Imperial Casualty & Indemnity Company, NAIC No. 11487 ("Respondent") to pay the delinquent \$200.00 for the 2005 Arkansas Rural Risk Underwriters Association Assessment ("ARRUA"), and in lieu of having its license suspended, pay five thousand dollars (\$5,000.00) as an administrative penalty pursuant to Ark. Code Ann. § 23-63-213, should be affirmed. The Arkansas Insurance Department ("Department") was represented by Associate Counsel Zane A. Chrisman. Respondent was represented by Robert Thomas and Nick Arizaga. From the facts and law before the Hearing Officer, she finds:

FINDINGS OF FACT

1. The Arkansas Insurance Commissioner ("Commissioner") has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. §23-61-103 and the authority to order payment of penalties under Ark. Code Ann. §§ 23-60-108 and 23-63-213.
2. Respondent is an insurer authorized in Arkansas to write property, casualty (including workers compensation), surety, marine, and accident and health. Respondent has held a Certificate of Authority to issue insurance policies in Arkansas since August 23, 2005.

3. On November 3, 2005, the Commissioner issued Bulletin No. 10-2005, that required all insurers licensed to write property insurance policies in Arkansas to pay a \$200.00 assessment for 2005 and pay a \$200.00 assessment for 2006. The payments were to be received by December 31, 2005, and December 31, 2006, respectively. This assessment and bulletin was promulgated pursuant to Ark. Code Ann. § 23-88-306. The bulletin was circulated both by the “email blast” system used by the Department to disseminate new information from the Department, and by United States Mail.

4. On May 29, 2007, the Department sent a letter to Respondent advising that the ARRUA Assessment for mailing expenses for fire department renewal subscription notices for 2005 had not been received. Respondent was given the option of paying the arrearage by June 22, 2007, or appearing for a hearing to show cause why it did not pay.

5. The letter was received by the company on June 1, 2007, as indicated by the United States Postal Service Certified Return Receipt.

6. As of June 27, 2007, payment had still not been received by the Department.

7. As of July 11, 2007, Respondent had not contacted the Department and did not appear for the hearing.

8. On July 27, 2007, Respondent contacted the Department after receiving Order 2007-036 directing it to pay the delinquent \$200.00 for the 2005 ARRUA, and in lieu of having its license suspended, pay five thousand dollars (\$5,000.00) as an administrative penalty pursuant to Ark. Code Ann. § 23-63-213, Respondent paid the \$200.00 delinquent assessment, but requested a rehearing as to the administrative penalty asserting that it had not acted in reckless disregard of Arkansas statutes by failing to pay the penalty.

9. On October 8, 2007, Respondent appeared at the re-hearing and asserted that it could not have known that a separate payment was required from the language of Bulletin 10-2005, the documents attached to Bulletin 10-2005, or the letters sent to the company requesting payment. Respondent further admitted that it was responsible for complying with Arkansas law.

10. Evidence was introduced at the re-hearing that Bulletin 10-2005 used plural nouns and verbs when referring to the assessments; that language suggested by Respondent for clarification that two assessments were involved had in fact been previously used in Bulletin 10-2005; that multiple due dates had elapsed; that the notifications were mailed to a correct address for the company and received by one of the company's employees; that as of the date of the hearing, the Respondent had not replied to the Department despite frequent notifications by the Department; and that Respondent did not appear at the July 11th hearing.

VIOLATIONS

Respondent is in violation of:

8. Ark. Code Ann. §23-63-213(a)(5) which provides that an insurer's certificate of authority may be suspended or an administrative penalty of five thousand dollars (\$5,000.00) in lieu of suspension may be imposed if the insurer has knowingly, or with reckless disregard, violated or failed to comply with any applicable provision of the Arkansas Insurance Code, or with any lawful rule, regulation, or order of the Commissioner;

9. Ark. Code Ann. § 23-88-306(d) which states that the Commissioner shall assess the members of ARRUA an amount on an annual basis to meet the costs of mailing fire department renewal subscription notices. The amount was determined and circulated

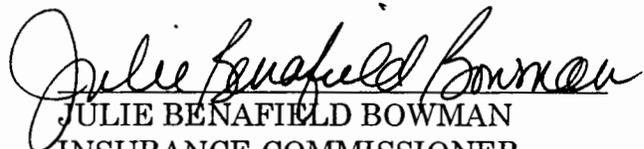
to the ARRUA members in Bulletin No. 10-2005. The 2005 ARRUA Assessment was due December 31, 2005. The 2006 ARRUA Assessment was due December 31, 2006. After failing to receive the payment of both assessments by their respected due dates, a third due date was set of June 22, 2007, to give Respondent an opportunity to pay all delinquent amounts before being required to attend a show cause hearing. Respondent failed to meet any of these deadlines and did not appear for the show cause hearing.

CONCLUSIONS OF LAW

Based on the allegations contained herein, Respondent is in violation of Ark. Code Ann. § 23-88-306. Further, Respondent is in violation of Ark. Code Ann. § 23-63-213 for acting in reckless disregard of the statutory requirements of the State of Arkansas by failing to pay assessments on time, by failing to take note of and respond to Department communications, and by failing to address any confusion regarding requirements with the Department.

THEREFORE, it is hereby ORDERED AND AGREED that: Order 2007-036 shall be affirmed and that Imperial Casualty & Indemnity Company, NAIC No. 11487 shall pay the delinquent \$200.00 for the 2005 Arkansas Rural Risk Underwriters Association Assessment, and in lieu of having its license suspended, shall pay five thousand dollars (\$5,000.00) as an administrative penalty pursuant to Ark. Code Ann. § 23-63-213.

IT IS SO ORDERED THIS 15th day of October, 2007.


JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS