



FILED

OFFICE OF  
INSURANCE COMMISSIONER

2010 DEC 10 P 1:45

In the Matter of )  
 )  
WILLIAM H. TANNER and ANCHOR )  
BAY INSURANCE MANAGERS, INC., )  
 )  
Licensees. )  
 )

Hearings Unit, DIC  
No. 10-0204 Patricia D. Petersen  
Chief Hearing Officer  
OIC HEARING BRIEF

**FACTS**

William H. Tanner holds a Washington producer and surplus line broker license for the lines of property and casualty insurance. Mr. Tanner is the owner and president of Anchor Bay Insurance Managers, Inc., ("Anchor Bay") which holds a Washington agency and surplus line broker license for property and casualty insurance. On or about March 30, 2010, Anchor Bay submitted its premium tax return for calendar year 2009 reflecting \$4,466,231.89 in total Washington premiums collected and \$89,325 in premium taxes due. These taxes were due by March 1, 2010, and have not been paid. The amount of delinquent taxes together with penalties now due and owing is \$107,190, and a judgment for that amount has been entered in Kitsap County Superior Court.

In October, 2010, the OIC initiated a financial examination of Anchor Bay due to the licensees' tax delinquency. The audit reflected, and Mr. Tanner admitted, that Anchor Bay had failed to maintain the premium taxes in its premium trust account and that the money the Company had collected for premium taxes had instead been spent on operating expenses.



On November 2, 2010, an Order of Revocation of Respondents' insurance licenses was entered by the Office of Insurance Commissioner ("OIC"). This Order was based upon the licensees' failure to pay premium taxes when due in violation of RCW 48.15.120 and RCW 48.14.060 and upon the licensees' conversion of the premium taxes they had collected for the benefit of the state in violation of their fiduciary duties under RCW 48.17.480, RCW 48.17.600, RCW 48.15.180, and WAC 284-12-080.

### ARGUMENT AND AUTHORITY

By failing to promptly pay insurance premiums received in a fiduciary capacity to the parties entitled thereto and by transferring and commingling into their operating account premium tax trust account funds they collected and held for others in a fiduciary capacity, Respondents violated RCW 48.15.120, RCW 48.14.060, RCW 48.17.480, RCW 48.17.600, RCW 48.15.180, and WAC 284-12-080.

Pursuant to RCW 48.17.530(1)(b) and (d), the Insurance Commissioner may revoke any producer or broker license if the licensee violates any insurance laws or rules of the commissioner or if the licensee improperly withholds, misappropriates, or converts any moneys received in the course of doing insurance business.

Under the insurance code, "premium" is broadly defined to include "all sums charged, received, or deposited as consideration for an insurance contract or the continuance thereof." RCW 48.18.170. "Consideration" is any act, forbearance, creation, modification, or destruction of legal relationship, or return promise given in exchange. *King v. Riveland*, 125 Wn.2d 500, 505, 886 P.2d. 160 (1994). Consideration need not go directly to the promisor. *Alexander & Alexander, Inc. v. Wohlman*, 19 Wash. App. 670, 683, 578 P.2d 530 (1978). Whether or not a surplus line broker itemizes

premium tax as a separate item on the insured's bill, the tax is clearly part of the consideration for the contract and is therefore premium. The fact that premium tax in the surplus lines setting is paid by the surplus line broker rather than the insurer does not change the character of the insured's payment which is clearly part of the consideration for the contract as if it were remitted to an authorized insurer which then paid the tax. Any doubt about this fact is surely removed WAC 284-12-080, subsection (5)(a) of which confirms that premium taxes are part of premium and are to held in the same fiduciary capacity, providing in pertinent part as follows:

The entire premium received (including a surplus lines premium tax if paid by the insured) must be deposited into the separate account.

It is just as illegal for a surplus line broker to misappropriate the premium taxes he holds in trust for the state as it is for him to misappropriate the rest of the premium that he holds in trust for the insurer. RCW 48.17.480 provides in pertinent part as follows:

(2) All funds representing premiums or return premiums received by an insurance producer or title insurance agent shall be so received in the insurance producer's or title insurance agent's fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, title insurance agent, or insurance producer as entitled thereto.

(3) Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds.

(4) Any insurance producer, title insurance agent, adjuster, or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, is guilty of theft under chapter 9A.56 RCW.

Although a producer or broker may add funds from non premium sources to his fiduciary account, the producer may not remove premium from the account except to pay those who are lawfully entitled to the funds. RCW 48.17.600 provides in part as follows:

(1) All funds representing premiums or return premiums received by an insurance producer to title insurance agent in the insurance producer's or title insurance agent's fiduciary capacity shall be **accounted for** and **maintained** in a separate account from all other business and personal funds. (Emphasis added.)

(2) An insurance producer or title insurance agent shall not commingle or otherwise combine premiums with any other moneys, except as provided in subsection (3) of this section.

(3) An insurance producer or title insurance agent may commingle with premium funds any additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in his or her business of receiving and transmitting premium or return premium funds.

(4) Each willful violation of this section shall constitute a misdemeanor.

These statutory and regulatory provisions specifying that surplus lines premium taxes are part of premium, that they be deposited and maintained in a separate account, that they not be commingled, and that they be held in a fiduciary capacity all make it clear that such funds are held in trust. The fiduciary account provisions of the Washington insurance code are consistent with well established common law principles.

As stated in *Svanoe v. Jurgens*, 144 Ill. 507, 513, 33 N.E. 955 (1893):

There cannot be any very material difference between the interests and obligations of a person who acts in a fiduciary capacity or character, and those of a person who receives or holds money in trust. Webster defines the adjective, "fiduciary," as follows: "Holding or held or founded in trust;" he defines the noun, "fiduciary," as follows: "One who holds a thing in trust for another; a trustee." Bouvier in his Law Dictionary says: "Fiduciary may be defined: in trust, in confidence."

As stated in *In re Marriage of Petria*, 105 Wn. App. 268, 276 (2001):

Petrie's commingling of funds and purchasing of personal assets with custodial funds are a form of self-dealing. A trustee who engages in self-dealing violates his duty of loyalty to the beneficiaries. *In re Guardianship of Eisenberg*, 43 Wn. App. 761, 767, 719 P.2d 187 (1986).

Mr. Tanner's apparent theory is that once he deposited premium taxes he had collected into his separate fiduciary account, his fiduciary duty ended and he was free to then withdraw the money and engage in self-dealing with the funds as long as he intended to repay them by March when his premium taxes were due. Mr. Tanner's view of the duties owed by a fiduciary responsible for maintaining funds in trust is utterly devoid of logical or legal merit and is frankly shocking. Under RCW 48.17.480, the licensees' admitted appropriation of the premium tax he held in trust actually constituted theft under RCW Chapter 9A.56 and surely justifies revocation of their insurance licenses.

### CONCLUSION

This is not a case about an accounting error or a negligent or dishonest employee. It is a case about the intentional misappropriation of funds held in trust for the state. The licensees' egregious fiduciary violation is beyond the realm of serious dispute and mandates revocation of their insurance licenses.

Respectfully submitted this 10<sup>th</sup> day of December, 2010.



Charles D. Brown  
OIC Staff Attorney

CERTIFICATE OF MAILING

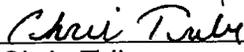
The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing OIC HEARING BRIEF on the following individuals via US Mail.

William H. Tanner  
15646 Cox Avenue NW  
Poulsbo, WA 98370

Anchor Bay Insurance Managers, Inc.  
Attn: William H. Tanner  
PO Box 2510  
Silverdale, WA 98383

**SIGNED** this 10<sup>th</sup> day of December, 2010, at Tumwater, Washington.

  
\_\_\_\_\_  
Chris Tribe