

OCT 1 1993

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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By

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| In the Matter of |) | Docket No. 7990 |
| |) | |
| TOBY RAY NELSON; COLONIAL |) | |
| BONDS, INC.; ST. LOUIS |) | |
| FIRE AND MARINE INSURANCE |) | ORDER ON ADOI REQUEST FOR |
| COMPANY, LTD., |) | REHEARING |
| |) | |
| Respondents. |) | |
| _____ |) | |

On August 30, 1993, counsel for the Arizona Department of Insurance ("ADOI") filed a request for rehearing pursuant to A.A.C. R4-14-114(B)(6). On September 27, 1993, counsel for St. Louis Fire and Marine Insurance Company, Ltd. ("St. Louis") filed a response to the ADOI's request.¹ Based upon a review of the ADOI's request and St. Louis' response and upon a review of the record in this matter, we find as follows.

The July 30, 1993 Order of the Director ("the Order") included a finding that "we expressly do not make any findings of fact or conclusions of law as to whether issuance of these policies by St. Louis in Illinois, California or Florida was in compliance with the laws of those respective states." The ADOI is seeking review of this finding.

A.R.S. §20-401.01(A) provides in pertinent part that it is unlawful for any insurer to transact insurance business in Arizona without a certificate of authority from the Director.

¹On September 29, 1993, counsel for ADOI filed a motion to strike St. Louis' response on the ground it was not timely filed. We find that no prejudice resulted from this delay in filing and that the response time may be extended. The ADOI's motion to strike is denied.

1 A.R.S. §20-401.01(B)(3) states that A.R.S. §20-401.01(A) is not
2 applicable to "transactions in this state involving a policy
3 lawfully solicited, written and delivered outside of this state
4 covering only subjects of insurance not resident, located or
5 expressly to be performed in this state at the time of issuance,
6 and which transactions are subsequent to the issuance of such
7 policy."

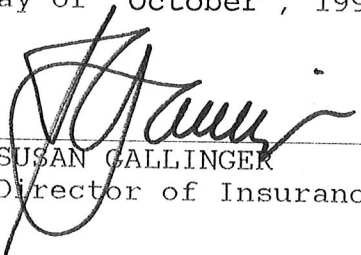
8 For the ADOI to prove that St. Louis violated A.R.S.
9 §20-401.01(A) by issuing policies in Illinois, California and
10 Florida, the ADOI had to show that A.R.S. §20-401.01 was
11 applicable to those transactions. It was the ADOI's burden to
12 show that the policies were not lawfully solicited in those
13 states and therefore A.R.S. §20-401.01(A) was applicable.

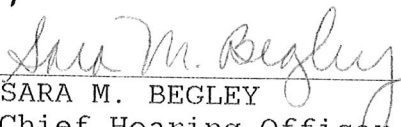
14 At the hearing, the ADOI presented testimony from
15 representatives from the Illinois and California Departments of
16 Insurance and from insurance brokers in Illinois, California and
17 Florida regarding St. Louis' compliance or noncompliance with
18 statutory requirements in those states. While these individuals
19 opined that St. Louis failed to satisfy statutory requirements,
20 no hearings on St. Louis had been held in those states and none
21 of these states had issued any formal findings of noncompliance.
22 For the Arizona Director of Insurance to find as a matter of
23 fact and to conclude as a matter of law that St. Louis was not
24 in compliance with the laws of these other states when such a
25 final determination of noncompliance has not been made by those
26 states would effectively deny St. Louis of due process. For the
27 reasons stated above, in the absence of a formal determination
28 of noncompliance by the Illinois, Florida or California

1 Departments of Insurance or by courts of competent jurisdiction
2 in those states, the Arizona Director of Insurance cannot find
3 as a matter of fact that the St. Louis policies in question were
4 not lawfully issued in those states.

5 The ADOI's request for rehearing is hereby DENIED.

6 DATED this 1st day of October, 1993.

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9 
SUSAN CALLINGER
Director of Insurance

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11 
SARA M. BEGLEY
Chief Hearing Officer

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13 COPY of the foregoing mailed/delivered
14 this 1st day of October, 1993, to:

15 Gerrie Switzer, Esq.
16 Assistant Attorney General
1275 W. Washington
Phoenix, Arizona 85007

17 Chris Herstam, Deputy Director
18 Charles R. Cohen, Assistant Deputy Director
19 Jay Rubin, Assistant Director
20 Maureen Catalioto, Supervisor
21 Jeff Solem, Examiner
Kurt Regner, Examiner
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

22 T. Michael Daggett, Esq.
23 818 E. Osborn, Suite #110
Phoenix, Arizona 85014

24 Jeffrey M. Proper, Esq.
25 4722 N. 24th St., Court 2, #100
Phoenix, Arizona 85016

26 Dan Campbell, Esq.
27 Wilenchik, Bartness & Zuckerman
28 2828 N. Central Ave.
13th Floor
Phoenix, Arizona 85004

- 1 Robert G. Peterson
12496 N. 76th Street
2 Scottsdale, Arizona 85260
- 3 Louis Redondo
1068 E. 2nd Place
4 Mesa, Arizona 85203
- 5 Charles S. Rowse
P.O. Box 242
6 Carson City, NV 89702-0242
- 7 National Commerce Investment
c/o Louis Redondo
8 1068 E. 2nd Place
9 Mesa, Arizona 85203
- 10 National Commerce Management
c/o Louis Redondo
1068 E. 2nd Place
11 Mesa, Arizona 85203
- 12 National Commerce Management
c/o Robert G. Peterson
12496 N. 76th Street
13 Scottsdale, Arizona 85260
- 14 Quorum Finance
c/o Louis Redondo
1068 E. 2nd Place
15 Mesa, Arizona 85203
- 16 Quorum Finance
c/o Robert G. Peterson
12496 N. 76th Street
17 Scottsdale, Arizona 85260
- 18 Quorum Management
c/o Louis Redondo
1068 E. 2nd Place
19 Mesa, Arizona 85203
- 20
- 21

- 22
- 23
- 24
- 25
- 26
- 27
- 28


Chris Crawford