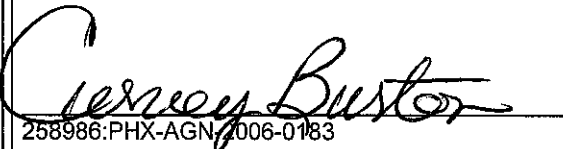


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Alyse C. Meislik
Assistant Attorney General
1275 West Washington, Suite 101
Phoenix, Arizona 85007

Mary Kosinski, Executive Assistant for Regulatory Affairs
June Bittner, Auditor, Financial Affairs Division
Tamika Walton, Financial Affairs Division
Kelly Stephens, Compliance Section Manager
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

James Patrick McErlean
863 S. Sabrina
Mesa, AZ 85208
Respondent


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STATE OF ARIZONA
FILED

STATE OF ARIZONA

JUL 9 2008

DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY MS

In the Matter of:

JAMES PATRICK MCERLEAN,

Respondent.

No. 08A-026-INS

NOTICE OF HEARING

(A.L.J. Lewis Kowal)

PLEASE TAKE NOTICE that pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") §§ 20-161 through and including 20-165 and 41-1092 et seq., through and including 41-1066, and 41-1092.01, the above-captioned matter will be heard before the Director of Insurance of the State of Arizona ("Director") or her duly designated representative, on August 18, 2008, at 1:30 p.m. at the Office of Administrative Hearings ("Hearing"), 1400 West Washington Street, Suite 101, Phoenix, Arizona 85007, telephone number (602) 542-9826.

Motions to continue this matter shall be made in writing to the Administrative Law Judge not less than fifteen (15) days prior to the date set for the hearing. A copy of any motion to continue shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of Administrative Hearings.

A.R.S. § 20-164(B) entitles any person affected by this Hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence, to examine witnesses, to present supporting evidence in support of his interests, and to have subpoenas issued by the Administrative Law Judge to compel attendance of witnesses and production of evidence.

If Respondent is represented by counsel, the attorney shall be licensed to practice law in the State of Arizona or, if applicant is an insurer, it may be represented by a corporate officer, pursuant to A.R.S. § 20-161(B).

1 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings
2 will be made by a court reporter or by electronic means. Any party that requests a
3 transcript of the proceeding shall pay the cost of the transcript to the court reporter or other
4 transcriber.

5 Questions concerning issues raised in this Notice of Hearing should be directed to
6 Assistant Attorney General Alyse C. Meislik, 1275 West Washington Street, Phoenix,
7 Arizona 85007-2926, telephone number (602) 542-7727, alyse.meislik@azag.gov.

8 NOTICE OF APPLICABLE RULES

9 On January 23, 1992, the Arizona Department of Insurance ("Department") adopted
10 A.A.C. R20-6-101 through R20-6-115, setting forth the rules of practice and procedure
11 applicable in contested cases before the Director of Insurance. The hearing will be
12 conducted pursuant to these rules.

13 PURSUANT TO A.A.C. R20-6-106, RESPONDENT SHALL FILE A WRITTEN
14 ANSWER WITHIN **20 DAYS** AFTER ISSUANCE OF THIS NOTICE OF HEARING AND
15 SHALL MAIL OR DELIVER A COPY OF THE ANSWER TO THE ASSISTANT ATTORNEY
16 GENERAL DESIGNATED ABOVE. THE ANSWER SHALL STATE RESPONDENT'S
17 POSITION OR DEFENSE AND SHALL SPECIFICALLY ADMIT OR DENY EACH
18 ASSERTION IN THE NOTICE OF HEARING. ANY ASSERTION NOT DENIED SHALL BE
19 DEEMED TO BE ADMITTED. ANY DEFENSE NOT RAISED IN THE ANSWER SHALL
20 BE DEEMED WAIVED. IF AN ANSWER IS NOT TIMELY FILED, RESPONDENT SHALL
21 BE DEEMED IN DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS ARE
22 TRUE, AND TAKE WHATEVER ACTION IS APPROPRIATE, INCLUDING SUSPENSION,
23 REVOCATION, DENIAL OF A LICENSE, OR RENEWAL OF A LICENSE, IMPOSITION
24 OF A CIVIL PENALTY AND/OR ORDER RESTITUTION TO ANY PARTY INJURED.

25 PERSONS WITH DISABILITIES MAY REQUEST REASONABLE
26 ACCOMMODATIONS SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR

1 ASSISTANCE WITH PHYSICAL ACCESSIBILITY. REQUESTS FOR
2 ACCOMMODATIONS SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME
3 TO ARRANGE THE ACCOMMODATIONS. IF YOU REQUIRE ACCOMMODATIONS,
4 PLEASE CONTACT THE OFFICE OF ADMINISTRATIVE HEARINGS AT (602) 542-9826.

5 The allegations supporting this Notice of Hearing are as follows:

6 1. James Partick McErlean ("McErlean") is, and was at all material times,
7 licensed as an Arizona resident life, property and casualty producer and surplus lines
8 broker, Arizona license number 88630, which expires on March 31, 2009.

9 2. McErlean's address of record with the Department is: 863 S. Sabrina, Mesa,
10 AZ 85208 (business/ mailing/ residential).

11 3. McErlean, as a licensed surplus lines broker, is required to file a Semi-Annual
12 Statement and Tax Report ("statement") for each reporting period, and additionally remit
13 the premium tax coinciding with the statement being filed.

14 4. For the reporting period of July 1 through December 31, 2006, ("reporting
15 period"), McErlean was required to file the statement on March 1, 2007, and pay the
16 accompanying tax on that date.

17 5. On or about June 20, 2007, the Department notified McErlean that he failed to
18 timely file the statement and pay the tax for the reporting period.

19 6. On or about July 23, 2007, McErlean submitted a late surplus lines tax
20 payment without submitting the required statement for the reporting period.

21 7. On or about October 5, 2007, the Department notified McErlean that failure to
22 file the statement was a violation.

23 8. To date, McErlean has not submitted the statement for the reporting period
24 ending December 31, 2006.

25 ...

26 ...

1 VIOLATIONS

2 9. Respondent's conduct as described above constitutes failure of a surplus
3 lines broker to file with the Director a notarized Semi-Annual Statement of all surplus lines
4 business transacted by the broker during the period for which the statement is being filed,
5 within the meaning of A.R.S. § 20-415.

6 10. Respondent's conduct as described above constitutes failure of a surplus
7 lines broker to remit the tax amount due as shown on the Semi-Annual Statement on or
8 before the due date, in violation of A.R.S. § 20-416.

9 11. Respondent's conduct as described above constitutes failure to comply with a
10 requirement of Title 20, Chapter 2, Article 5, within the meaning of A.R.S. § 20-418(A)(1)
11 and (B).

12 12. Grounds exist for the Director to suspend, revoke, or refuse to renew
13 McErlean's surplus lines broker's license, impose a civil penalty, and/or order restitution
14 pursuant to A.R.S. §§ 20-417 and 20-418.

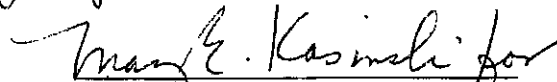
15 WHEREFORE, if after hearing, the Director finds the grounds alleged above, the
16 Director may suspend or revoke Respondent's insurance license and order restitution,
17 pursuant to A.R.S. §§ 20-417 and 20-418.

18 Pursuant to A.R.S. § 20-150, the Director of Insurance delegates the authority
19 vested in the Director of Insurance of the State of Arizona, to the Director of the Office of
20 Administrative Hearings or her designee to preside over the hearing of this matter as the
21 Administrative Law Judge, to make written recommendations to the Director of Insurance
22 consisting of proposed findings of fact, proposed conclusions of law, and a proposed order.
23 This delegation does not include delegation of the authority of the Director of Insurance to
24 make the order on hearing or other final decision in this matter.

25 Pursuant to A.R.S. § 41-1092.01, your hearing will be conducted through the Office
26 of Administrative Hearings, an independent agency. Please find enclosed a copy of the

1 procedures to be followed. Further hearing information may also be found at the Office of
2 Administrative Hearings website: www.azoah.com.

3 DATED this 9th day of July, 2008.

4
5 
6 GERRIE MARKS, Deputy Director
7 Arizona Department of Insurance

8 COPY of the foregoing mailed this
9 9th day of July, 2008 to:

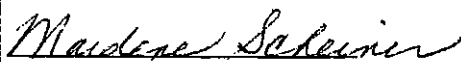
10 Lewis Kowal, Administrative Law Judge
11 Office of Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, Arizona 85007

14 Mary Kosinski, Executive Assistant for Regulatory Affairs
15 June Bittner, Auditor, Financial Affairs Division
16 Tamika Walton, Financial Affairs Division
17 Kelly Stephens, Compliance Section Manager
18 Arizona Department of Insurance
19 2910 North 44th Street, Suite 210
20 Phoenix, Arizona 85018

21 Alyse C. Meislik.
22 Assistant Attorney General
23 1275 West Washington Street
24 Phoenix, Arizona 85007-2926
25 Attorney for the Arizona Department of Insurance

26 AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

James Patrick McErlean
863 S. Sabrina
Mesa, AZ 85208
Respondent


235899:PHX-AGN-2008-0183

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