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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By *alc*

In the Matter of)
)
TOBY RAY NELSON; COLONIAL)
BONDS, INC.; ST. LOUIS) ORDER
FIRE AND MARINE INSURANCE)
COMPANY, LTD.,)
)
Respondents.)
_____)

On June 7-14, 1993, a hearing was held at the Arizona Department of Insurance in the above-captioned matter. The Arizona Department of Insurance ("ADOI") was represented by Assistant Attorney General Katrina Rogers, Esq. Respondents Toby Ray Nelson ("Nelson") and Colonial Bonds, Inc. ("Colonial") were represented by Jeffrey Proper, Esq. Respondent St. Louis Fire and Marine Insurance Co., Ltd. ("St. Louis") was represented by T. Michael Daggett, Esq. Respondent Robert Peterson appeared in propria persona.

The record in this matter was held open pending receipt of post-hearing memoranda on June 24, 1993 and reply memoranda on June 30, 1993. The record was closed on July 1, 1993.

Based upon the evidence presented at the hearing, we find as follows.

RESPONDENTS

1. Respondent Toby Ray Nelson ("Nelson") is licensed by the ADOI as a property and casualty broker. Nelson's life and disability agent's license expired on April 30, 1993.
2. Respondent Colonial Bonds, Inc. ("Colonial") held a property and casualty agent's license which expired May 31,

1 1992 and held a life and disability agent's license which
2 expired on May 31, 1993. Nelson is identified as the President,
3 Director and Vice President of Colonial.

4 3. Respondent St. Louis Fire and Marine Insurance
5 Co. Ltd. ("St. Louis") was incorporated under the laws of the
6 British Virgin Islands ("B.V.I.") for the purpose of carrying on
7 the business of an insurance company, among other things. St.
8 Louis received a Certificate of Incorporation from the B.V.I.
9 dated February 15, 1990 stating that it was incorporated under
10 the Companies Act, and that the Company was limited.

11 4. Prior to June, 1990, any entity that was
12 registered as a corporation in the B.V.I. could carry on the
13 business of an insurance company. No special or additional
14 license was required. In early 1991, the B.V.I. passed
15 legislation requiring all existing insurance companies to apply
16 for an a insurance license. An insurance company that was doing
17 insurance business prior to June, 1990 was permitted to continue
18 doing business while its application was pending. Insurance
19 companies that were not doing business prior to June, 1990 were
20 not permitted to do business until granted a license.

21 5. In August, 1991, St. Louis submitted an insurance
22 license application to the B.V.I. Supervisor of Insurance. Both
23 in its application and in subsequent correspondence, St. Louis
24 represented to the B.V.I. that it had been dormant since its
25 incorporation. St. Louis' application was denied by the B.V.I.
26 Supervisor of Insurance in April, 1992. The letter advising St.
27 Louis of this denial was sent to St. Louis' local B.V.I. agent
28

1 at its registered address. In December, 1992, St. Louis was
2 removed from the B.V.I. register of corporations.

3 6. St. Louis has never registered with the Arizona
4 Corporation Commission as a foreign corporation. St. Louis has
5 not been issued a certificate of authority to transact the
6 business of insurance in the State of Arizona, nor has St. Louis
7 qualified to transact surplus lines insurance as an approved
8 unauthorized insurer in the State of Arizona.

9 7. We find that although St. Louis was not licensed
10 or registered in Arizona, St. Louis was properly registered as a
11 corporation in the B.V.I. until December 1992 and that at all
12 material times St. Louis was maintained as a separate corporate
13 entity.

14 8. Respondent Louis Redondo ("Redondo") was an
15 incorporator and President of St. Louis and the President,
16 Treasurer and Director of National Commerce Management, Inc..
17 We find that it was not shown by substantial evidence that
18 Redondo and Robert Peterson operated St. Louis as a
19 partnership or that Redondo was acting as an insurer for the
20 policies offered and sold under the name "St. Louis".¹

21 9. Respondent Robert G. Peterson ("Peterson") was
22 the Secretary of National Commerce Management, Inc. and the
23

24

25

26 ¹In the Order on Redondo's Motion to Quash
27 Service/Motion to Dismiss issued this date, we found that
28 Redondo was not properly served with the Corrected Second
Amended Notice of Hearing. For this reason, we make no further
findings of fact or conclusions of law as to Redondo in his
individual capacity.

29

1 Managing Director of St. Louis. We find that it was not shown
2 by substantial evidence that Redondo and Peterson operated St.
3 Louis as a partnership or that Peterson was acting as an insurer
4 for the policies offered and sold under the name "St. Louis".

5 10. On June 24, 1993, the ADOI moved to dismiss all
6 allegations and counts against Respondent Rowse.

7 11. Respondent Quorum Management Corporation was
8 incorporated in the State of Nevada on June 30, 1992.

9 12. Respondent Quorum Finance Corporation ("Quorum
10 Finance") was alleged to be a premium finance company which
11 accepted premium payments for St. Louis. No evidence was
12 presented to show that Quorum Finance was incorporated in any
13 state. Quorum Finance is not registered with the ADOI as a
14 premium finance company.

15 13. Respondent National Commerce Management Inc.
16 ("National Commerce") is a Nevada corporation. Respondents
17 Peterson and Redondo are the only officers and directors of
18 National Commerce identified in filings made with the State of
19 Nevada. National Commerce was not authorized to do business as
20 a corporation in Arizona. National Commerce was purportedly the
21 management company for St. Louis.

22 COUNT ONE

23 SALE OF UNAUTHORIZED INSURANCE BY NELSON - FIRST ALLEGHANY

24 14. Pursuant to a stipulation by counsel, the ADOI
25 agreed to dismiss Count I of the Second Amended Notice of
26 Hearing ("Notice of Hearing") with the understanding that the
27 findings of any violations by Nelson while working at First
28 Alleghany would be used only for the purpose of showing that

1 Nelson had been involved in an unauthorized insurance business
2 in the past and would have reason to know that he should be more
3 careful in the future in checking the licensing and financial
4 status of insurance companies.

5 15. In June, 1988, Nelson was recruited by Walden O.
6 ("Ole") Peterson to set up and run a charitable foundation.
7 In November, 1988, Nelson was advised by Ole Peterson that
8 funding for the foundation had been delayed. Peterson offered
9 to train Nelson to work in his bonding business, First
10 Alleghany Corporation ("First Alleghany"). Nelson became
11 the manager of First Alleghany. Nelson sent bond packages to
12 persons identified by Peterson and assisted others in completing
13 portions of the package necessary to evaluate whether First
14 Alleghany would issue a bond.

15 16. In January, 1989, Nelson and Joyce Leslie
16 ("Leslie"), Nelson's secretary, were assigned by Ole Peterson
17 the responsibility of updating First Alleghany's financial
18 statement. In March, 1989, while attempting to verify assets
19 listed on First Alleghany's prior financial statement, Nelson
20 and Leslie learned that two certificates of deposit listed on
21 the financial statement as each having a value of \$2,500,000
22 were really only \$2,500 each. The following day, Nelson and
23 Leslie advised Ole Peterson of this discovery and were told by
24 Ole Peterson that he was aware of this situation. The
25 following day, Nelson terminated his employment with First
26 Alleghany.

27 17. Nelson contacted the FBI and the ADOJ regarding
28 First Alleghany and cooperated fully with the authorities.

1 Ultimately Ole Peterson was convicted of various criminal
2 offenses in connection with his operation of First Alleghany.

3 18. On or about June 4, 1992, Ole Peterson pled
4 guilty to one count of attempted fraudulent schemes and
5 artifices (a Class III Felony) and was ordered to pay
6 restitution in the amount of at least \$4,295,130.85 to
7 insureds. On June 15, 1992, a Civil Consent Judgment was
8 entered against First Alleghany Corporation and Ole
9 Peterson. The Civil Consent Judgment included findings of fact
10 that First Alleghany issued approximately 139 bonds covering
11 liabilities for a total of \$56,039,284 in 1988 and 1989, that
12 First Alleghany disseminated advertising brochures to
13 potential bond purchasers reflecting that First Alleghany
14 controlled assets of \$71,999,148 when in fact the assets were
15 worthless, that First Alleghany transacted insurance in the
16 State of Arizona without complying with the applicable
17 provisions of Title 20, A.R.S. and that First Alleghany
18 disseminated untrue, deceptive or misleading information and
19 willfully engaged in deceptive acts or practices.

20 19. No allegation was made by the ADOI that Nelson
21 had knowledge that First Alleghany's assets were worthless or
22 that First Alleghany was transacting insurance in violation of
23 the Insurance Code. While Nelson, as an employee of First
24 Alleghany, did sell bonds underwritten by First Alleghany,
25 we find that the unfair trade practices, deceptive acts and
26 misrepresentations that were made in the course of the sale of
27 such bonds are not attributable to Nelson.
28

COUNT TWO

SALE OF UNAUTHORIZED INSURANCE BY NELSON - COLONIAL BONDS

20. After terminating his employment with First Alleghany, Nelson incorporated and operated Colonial. Colonial was engaged primarily in the surety business and operated as an agent for an individual surety, W. K. Jenkins.

21. In approximately November, 1991, Nelson met Respondent Robert Peterson and discussed the possibility of full-time employment for Nelson to do bond underwriting for National Commerce. Prior to hiring Nelson, Peterson gave Nelson twenty to thirty financial packages and asked Nelson to review and evaluate each package. Nelson perceived this to be a pre-employment test of Nelson's underwriting skills. Nelson was unaware of whether these packages were designed to promote issuance of any bond and was unaware of what insurance company, if any, would be involved.

22. No evidence was presented to show that St. Louis or any other insurer solicited, negotiated, procured or effectuated insurance on any of the packages that Nelson was asked to review. In addition, Nelson testified that he did not even know of St. Louis' existence until some time after he began working for National Commerce. Therefore, we cannot conclude that Nelson's pre-employment review of these packages constitutes aiding by Nelson in the procurement of unauthorized insurance policies as alleged by the ADOI.

23. Nelson was hired as an underwriter for National Commerce in November, 1991. Nelson also solicited bonding business for National Commerce but was unsuccessful in selling

1 any bonds. Nelson was asked to be an officer of National
2 Commerce but declined.

3 24. Sometime after Nelson commenced his employment
4 with National Commerce, he learned that National Commerce was
5 the management company for St. Louis. Nelson did make efforts
6 to ascertain whether St. Louis was authorized to conduct
7 business. It was undisputed that Nelson was told by Redondo
8 and Peterson that St. Louis was appropriately licensed in the
9 B.V.I. and that Nelson saw a Certificate of Good Standing
10 purportedly furnished to St. Louis by the B.V.I. Nelson did not
11 contact the ADOI to inquire as to the status of St. Louis in
12 Arizona.

13 25. Between May 19, 1992 and June 23, 1992, Nelson
14 executed eight surety bonds underwritten by St. Louis as its
15 Attorney-in-Fact. For some time prior to May, 1992, St. Louis
16 had a relationship with Stephen E. Bass ("Bass") whereby Bass
17 was authorized to write bonds underwritten by St. Louis. In
18 May, 1992, Bass and St. Louis had a dispute and St. Louis
19 terminated the relationship with Bass.

20 26. Peterson asked Nelson to go to Bass' office to
21 review files relating to eight bonds which Bass had authorized
22 and negotiated on behalf of St. Louis, and if in order, to
23 execute the bonds on behalf of St. Louis. Nelson reviewed the
24 bond files and was advised by Bass that each of the bond
25 applicants qualified as industrial insureds. Nelson executed
26 the bonds on behalf of St. Louis.

27 27. It is undisputed that Nelson did not meet with
28 any of these bond applicants. Nelson executed these bonds based

1 solely on his review of the files and upon assurances received
2 from Bass that these applicants qualified as industrial insureds.

3 28. We find that at the time that Nelson executed
4 these bonds, he believed that St. Louis was properly registered
5 in the B.V.I. Nelson knew that St. Louis was not licensed to
6 transact insurance in Arizona but believed that St. Louis could
7 lawfully issue bonds to industrial insureds. As discussed more
8 fully in Count Four, we find that Nelson executed bonds for
9 Westscape, Ray Stevens Paving and McAtlin Electric when they
10 did not qualify as industrial insureds.

11 29. The ADOI alleged that Nelson's conduct
12 constituted violations of A.R.S. §§20-316(A)(2) (wilful
13 noncompliance with the Insurance Code) and 20-316(A)(7)
14 (incompetence). We find that substantial evidence was not
15 presented to show Nelson was incompetent or that he wilfully
16 violated the Insurance Code. Rather, the evidence showed that
17 Nelson, along with a number of others, was deceived by St. Louis
18 regarding the licensing status of St. Louis. We also find that
19 while Nelson should have exercised more independent judgment in
20 reviewing these applications, Nelson's reliance on the bond
21 applications and certifications completed by the applicants
22 indicating they met the industrial insured requirements does not
23 constitute wilful noncompliance with the Insurance Code nor
24 does it show Nelson to be incompetent.

25 COUNT THREE

26 SALE OF UNAUTHORIZED LIABILITY INSURANCE BY ST. LOUIS

27 30. In the Notice of Hearing, the ADOI alleged that
28 Peterson and Redondo made the following misrepresentations:

1 (1) that St. Louis was licensed to sell insurance in the B.V.I.;
2 (2) that the "financial statement" of St. Louis provided to the
3 brokers by Redondo and Peterson led the brokers to believe
4 that St. Louis was sufficiently capitalized; (3) an
5 informational package prepared by Redondo and Peterson and
6 provided to the brokers contained misrepresentations; and (4)
7 that St. Louis was very close to purchasing an
8 Oklahoma-domiciled insurer known as Twickenham Insurance
9 Company ("Twickenham"). The ADOI further alleged that these
10 misrepresentations were made to brokers outside Arizona and that
11 as a result of these misrepresentations, these brokers sold St.
12 Louis policies in Illinois, California and Florida.

13 31. We find that Redondo and Peterson, in their
14 capacities as President and Managing Director of St. Louis
15 respectively, knew that St. Louis was not authorized to
16 transact insurance by the B.V.I. This was evidenced by the
17 letter authored by Redondo to the B.V.I. on May 12, 1992
18 wherein Redondo expressed concern about the length of time it
19 was taking to obtain approval from the B.V.I. to operate St.
20 Louis. In this letter, Redondo acknowledged that St. Louis
21 was unable to operate because permission to operate had not been
22 granted by the B.V.I. Yet at the same time St. Louis was
23 soliciting brokers and issuing policies in Arizona, Illinois,
24 California and Florida. Based upon the foregoing, we find that
25 at the time that St. Louis solicited brokers and issued policies
26 in Illinois, California, Florida, Redondo and Peterson knew
27 that St. Louis was not authorized to transact insurance in the
28 B.V.I. or anywhere else, and Peterson and Redondo

1 intentionally misrepresented to these brokers that St. Louis was
2 in fact authorized to transact insurance by the B.V.I.

3 32. We find that such misrepresentations are
4 prohibited by A.R.S. §20-443. We expressly do not make any
5 findings of fact or conclusions of law as to whether issuance of
6 these policies by St. Louis in Illinois, California or Florida
7 was in compliance with the laws of those respective states.

8 33. The financial statement that was distributed to
9 the brokers was an audited financial statement prepared by a
10 certified public accountant using generally accepted accounting
11 principles. No evidence was presented to show that the
12 financial statement itself was misleading or false. The fact
13 that St. Louis was subsequently unable to pay claims does not
14 support the conclusion that the financial statement was not
15 accurate at the time it was prepared. We find that distribution
16 of St. Louis' financial statement to experienced insurance
17 brokers does not constitute a misrepresentation.

18 34. As to the informational package entitled
19 "National Commerce Family of Companies", the only evidence
20 regarding distribution of this package was the testimony of
21 Nelson. Nelson's recollection was not clear and his testimony
22 was inconsistent on this point. In an examination under oath,
23 Nelson testified that a few copies of this package were
24 distributed. At the hearing, Nelson testified that the package
25 was not distributed, but stated that he would defer to his
26 examination under oath when this inconsistency was pointed out.
27 Given the uncertainty of Nelson's recollection, we cannot
28 conclude that this package was ever distributed, and if so, to

1 whom. Since we cannot find that the package was distributed, we
2 cannot conclude that its distribution constitutes a
3 misrepresentation.

4 35. Finally, it is undisputed that representations
5 were made to brokers regarding the proposed acquisition of
6 Twickenham. In fact, one broker was offered a position with
7 Twickenham upon completion of the acquisition. Endorsements
8 were issued indicating that policies issued by St. Louis would
9 be assumed by Twickenham upon completion of the acquisition.
10 The brokers were advised that the acquisition was subject to
11 obtaining approval from the Oklahoma Department of Insurance.
12 St. Louis was committed to acquiring Twickenham and Peterson
13 and Nelson devoted most of their time to this effort. A lawyer
14 was retained in Oklahoma to handle the hearing on the Form A.
15 While Redondo, Peterson and Nelson may have been mistakenly
16 optimistic that the acquisition would be approved, there was no
17 evidence presented to show that anyone misrepresented the status
18 of the proposed acquisition of Twickenham.

19 SALE OF UNAUTHORIZED BONDS BY ST. LOUIS

20 36. On June 10, 1992, St. Louis, through its
21 attorney-in-fact, Nelson, issued a Statutory Performance Bond
22 number SL-20-024-92PP in the amount of \$20,000 to Westscape
23 Environmental guaranteeing the City of Tempe on a landscape and
24 lawn maintenance services contract per purchase order number
25 5536, contract number 900107, project number 58501.

26 37. It is undisputed that Westscape had more than 25
27 employees, and purchased more than \$25,000 annually in
28 insurance. Westscape has paid to the ADOI the premium tax on

1 this bond but has not filed a certificate with the ADOI in
2 accordance with A.A.C. R4-14-207. In the "Certified Statement
3 of Qualification as Industrial Insured", Westscape identified
4 Mark Shockley of Alliance Ins. as its "insurance manager". No
5 evidence was presented to show that Shockley in any way assisted
6 insurance. No evidence was presented to show that the insurance
7 purchased from St. Louis was not readily obtainable from
8 insurers authorized to transact insurance.

9 38. On or about June 10, 1992, St. Louis advised Tom
10 Buffington of Kirkland Silver Cloud of Kirkland, Washington by
11 letter that St. Louis would issue a financial guarantee bond
12 subject to certain conditions. The letter does not disclose the
13 terms of the bond, the principal or the obligee or the amount
14 of the bond.

15 39. We find that this is insufficient evidence to
16 conclude that such a bond was issued to Kirkland Silver Cloud by
17 St. Louis.

18 40. Between March 25, 1992 and June 23, 1992, St.
19 Louis, through its attorneys-in-fact, issued Bid Bonds,
20 Performance Bonds and Labor and Material Bonds to William
21 McAtlin d/b/a McAtlin Electrical for a number of projects.

22 41. On or about March 24, 1992, McAtlin executed a
23 "Certified Statement of Qualification as Industrial Insured"
24 stating that McAtlin Electrical projected it would have at
25 least 25 full time employees and total annual aggregate annual
26 premiums on all risks of at least \$25,000. McAtlin identified
27 Cheryl Lacy of AJS Insurance Services as his qualified
28 insurance consultant. McAtlin testified that after AJS

1 referred him to Construction Surety, McAtlin purchased bonds
2 directly from Construction Surety.

3 42. Richard Stephens ("Stephens"), president of
4 AJS, testified that he became familiar with Construction
5 Surety and Bass and assisted his clients in filling out
6 Construction Surety's questionnaires for contract bonding.
7 Stephens indicated that he would forward the completed
8 questionnaires to Construction Surety. Stephens testified that
9 he perceived Construction Surety as a "general agency or
10 wholesaler" that provided services to Stephens and others as a
11 "retail" agent.

12 43. McAtlin testified that he relied upon AJS to
13 provide him with appropriate bonds and to make the determination
14 as to whether McAtlin Electric qualified as an industrial
15 insured for the purpose of obtaining the bonds in question.
16 Stephens testified that he was not aware that there were special
17 requirements for an industrial insured at the time he referred
18 his clients to Construction Surety and therefore could not have
19 made any pre-determination that these clients qualified as
20 industrial insureds. Stephens further testified that as to the
21 McAtlins, he was not requested to act as a consultant to
22 evaluate the St. Louis bonds pursuant to the industrial insured
23 statutes.

24 44. At the time that the St. Louis bonds were
25 purchased, McAtlin testified that he did not have 25
26 employees. In addition, McAtlin testified that he did have a
27 line of bonding credit from an authorized insurer, but chose to
28 use St. Louis so as not to use all his available bonding

1 credit. We find that McAtlin did not have 25 or more
2 employees at the time the bond was purchased and that McAtlin
3 did not use a full-time employee acting as insurance manager or
4 a regularly and continuously retained qualified insurance
5 consultant to procure these bonds.

6 45. In May and June, 1992, St. Louis, through its
7 attorney-in-fact, issued bid bonds, performance bonds and labor
8 and materials bonds to Ray Stevens Paving Co. On May 21, 1992,
9 Dick Stevens, President of Ray Stevens Paving Co., executed a
10 "Certified Statement of Qualification as Industrial Insured"
11 wherein he certified that he projected Ray Stevens Paving Co.
12 would have total aggregate annual premiums on all risks of at
13 least \$25,000 and at least 25 full time employees. Dick Stevens
14 identified himself as the full time employee who acts as an
15 insurance manager or buyer of insurance for Ray Stevens Paving
16 Co.

17 46. Dick Stevens testified that he has been in the
18 paving and grading business for 35 years. Stevens testified
19 that prior to purchasing the St. Louis bonds, Seven Bass advised
20 him of the qualifications for industrial insureds. He did not
21 know that St. Louis was not licensed to transact insurance in
22 Arizona. Stevens further testified it would not have mattered
23 to him whether or not St. Louis was licensed because he needed
24 the bonds.

25 47. Stevens testified that he considers himself to be
26 the insurance manager for Ray Stevens Paving Co. because he is
27 the person at Ray Stevens Paving Co. that makes the final
28 decisions regarding insurance. He testified that he does not

1 have any specialized insurance training and procures most of his
2 insurance through agents. We find that Stevens' reliance on
3 insurance agents to purchase insurance indicates that Stevens is
4 not an "insurance manager" or "insurance consultant" within the
5 meaning of A.R.S. §20-401.07.

6 48. Stevens testified that at the time he purchased
7 the St. Louis bonds, he was having difficulty obtaining bonds
8 because Ray Stevens Paving Co. had defaulted on a number of
9 bonds in 1991 and ultimately filed a Chapter 11 bankruptcy
10 petition.

11 49. On June 16, 1992, St. Louis, through its
12 attorney-in-fact, issued a statutory discharge of lien bond to
13 W.M. Grace Construction, Inc. Richard R. Best, Senior Vice
14 President of W.M. Grace Construction, Inc. testified that he was
15 familiar with the general requirements of an industrial insured
16 at the time he procured the bond from St. Louis through Bass.
17 He did not know that St. Louis was not licensed, nor was he
18 aware of what benefits, if any, are associated with using a
19 licensed insurer.

20 50. Best testified that W.M. Grace Construction had
21 more than 25 employees and purchased at least \$25,000 in annual
22 aggregate insurance premiums. Best testified that he considers
23 Howard Grace to perform the function of insurance manager for
24 W.M. Grace Construction, Inc. because he was responsible for
25 locating and acquiring insurance quotations. Best testified
26 that these responsibilities are in addition to Howard Grace's
27 other responsibilities and that Howard Grace relies upon
28 insurance agents to help him place coverage.

1 51. We find that Howard Grace's reliance on insurance
2 agents to procure insurance indicates that Howard Grace is not
3 an "insurance manager" or "insurance consultant" within the
4 meaning of A.R.S. §20-401.07. In addition, it appears that this
5 bond was procured by Best. No evidence was presented to show
6 that Howard Grace had anything to do with the procurement of
7 this bond.

8 52. On February 25, 1992, St. Louis, through its
9 attorney-in-fact, issued a performance bond and a labor and
10 material payment bond to Wayne B. Wissinger d/b/a Wissinger
11 Construction. The bonds indicate that the surety is "St. Louis
12 Fire & Marine Co., Ltd. as Individual Surety". According to the
13 questionnaire for contract bonding completed for Construction
14 Surety Services by Wayne B. Wissinger, Wissinger had two
15 full-time employees and spent approximately \$8,000 in annual
16 insurance premiums. No testimony or evidence was presented as
17 to why the phrase "individual surety" was included on these
18 bonds or whether St. Louis qualified as an individual surety.

19 53. The ADOI alleged that St. Louis issued other
20 bonds to the following companies: Facility Food Service,
21 National Big Four, Wissinger, Tiffany, Lake Havasu Roofing,
22 Mel Price, Quality U and A-O Painting. The only evidence
23 regarding these bonds was a written statement purportedly
24 authored by Peterson wherein he identified bonds written through
25 Nelson and Bass. The statement further provides that Bass'
26 power of attorney was rescinded on May 26, 1992. Since we do
27 not have copies of these bonds or even the dates upon which they
28 were issued, we cannot conclude that Bass was St. Louis'

1 attorney-in-fact when he purportedly issued the bonds to
2 Wissinger, Tiffany, Lake Havasu Roofing, Mel Price, Quality U
3 and A-O Painting. The statement also indicates that the
4 Facility Food Service bond was "rejected".

5 54. We find that Westscape, Ray Stevens Paving,
6 McAtlin Electrical and W.R. Grace Construction, Inc. are not
7 industrial insureds within the meaning of A.R.S. §§20-401.01 and
8 20-401.07. Since St. Louis did not hold a certificate of
9 authority from the Director at the time that these bonds were
10 issued, it was unlawful for St. Louis to transact insurance
11 business in Arizona pursuant to A.R.S. § 20-401.01.

12 COUNT FIVE

13 SALE OF UNAUTHORIZED INSURANCE BY COLONIAL BONDS, INC.

14 55. In the Notice of Hearing, the ADOI alleged that
15 on or about November 1, 1989 Colonial, through Nelson, issued a
16 bid bond to Olson Diversified, Inc. for the benefit of the State
17 of Arizona Department of Transportation. According to the bond,
18 Colonial Bonds, Inc. was the surety and was acting as agent for
19 an individual surety. The individual surety was not identified
20 in the bond. The ADOI alleged that this constituted the
21 unauthorized transaction of insurance by Nelson and Colonial
22 within the meaning of A.R.S. §§20-106 and 20-401.01.

23 56. It was stipulated that any penalty, license
24 suspension or revocation received by Nelson will also be
25 received by Colonial. No evidence or testimony was presented as
26 to whether Colonial would qualify as an individual surety. We
27 find that the bid bond issued to Olson Diversified by Colonial
28

1 constitutes the unauthorized transaction of insurance by
2 Colonial within the meaning of A.R.S. 20-401.01.

3 IT IS HEREBY ORDERED THAT:

4 1. St. Louis shall cease and desist from the
5 unauthorized transaction of insurance in Arizona.

6 2. St. Louis, including Redondo and Peterson in
7 their capacities as President and Managing Director of St. Louis
8 respectively, shall cease and desist from engaging in any unfair
9 method of competition or any unfair or deceptive act or practice
10 defined in or prohibited by Title 20. A.R.S.

11 3. St. Louis shall pay a civil penalty in an amount
12 to be determined. Counsel for the ADOI may file a statement
13 setting forth the ADOI's attorney's fees and costs on or before
14 August 9, 1993. Counsel for Respondents may file a response to
15 the ADOI's statement on or before August 19, 1993. The ADOI may
16 file a reply on or before August 26, 1993.

17 DATED this 30th day of July, 1993.

18
19 
20 _____
21 SUSAN CALLINGER
22 Director of Insurance

23
24 
25 _____
26 SARA M. BEGLEY
27 Chief Hearing Officer
28

1 COPY of the foregoing mailed/delivered
2 this 30th day of July, 1993, to:

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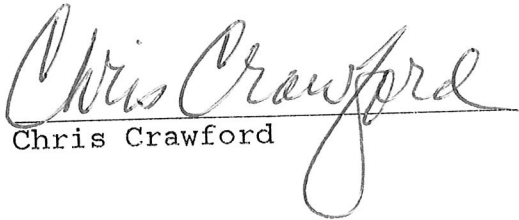
27
28

1 National Commerce Management
2 c/o Robert G. Peterson
3 12496 N. 76th Street
4 Scottsdale, Arizona 85260

5 Quorum Finance
6 c/o Louis Redondo
7 1068 E. 2nd Place
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18 Chris Crawford

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