

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 23002-AG24-0617-103
23002-AG24-0617-104

IN THE MATTER OF:)
)
Mutual Underwriters, LLC)
571 Monon Blvd.)
Suite 200)
Carmel, IN 46032)
License Number: 825834)
)
Sean P. Murray)
18400 Little Chicago)
Noblesville, IN 46062)
Producer License Number: 2925410)
Surplus Lines License Number: 387889)
)
Respondents.)
)
Type of Agency Action: Enforcement)
)

FILED
JUN 20 2024
STATE OF INDIANA
DEPT. OF INSURANCE

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND EMERGENCY ORDER**

The Commissioner of the Indiana Department of Insurance (“Commissioner”), being duly advised, now issues the following Findings of Fact, Conclusions of Law, and Emergency Order:

FINDINGS OF FACT

A. Sean P. Murray (“Murray”) is a resident insurance producer holding license number 2925410 issued November 20, 1998, voluntarily surrendered December 8, 2010 due to an out of state move, reactivated June 15, 2012, and expired April 30, 2015. The license was reactivated July 14, 2017, expired March 31, 2024, and is currently pending renewal.

- B. Murray also holds resident surplus lines producer license number 387889 issued May 1, 2000. On December 8, 2010, the license was voluntarily surrendered when Murray moved out of state. The surplus lines license reactivated July 10, 2012 and expired April 30, 2015. The surplus lines license was reactivated October 10, 2017 and expires March 31, 2026.
- C. Mutual Underwriters LLC (“Mutual Underwriters”) is a licensed resident insurance producer organization holding license number 825834 since June 26, 2012. On July 30, 2016, the license status was inactivated for failure to submit the renewal fee. The license was reactivated on September 15, 2017, until October 30, 2019, when the license was again inactivated for failure to submit the renewal fee. On June 22, 2020, the license was renewed and remains active.
- D. Mutual Underwriters’ license expires September 30, 2025.
- E. Murray is Mutual Underwriters’ CEO, owner, and Designated Responsible Licensed Producer (“DRLP”).
- F. Mutual Underwriters is acting as an Managing General Agent (“MGA”) of three (3) Indiana farm mutual insurance companies.
1. On or about December 1, 2021, Respondents signed an “Administrative and Management Services Agreement” with Patrons Mutual Fire Insurance Company (“Patrons”), with an effective date of January 1, 2022.
 - a. The agreement was not filed with the Department.
 - b. The December 1, 2021 agreement requires, among other things, Patrons install four (4) of Respondents’ representatives onto the Board of Directors of Patrons after a vote of policyholders. Two of those representatives are officers of Mutual Underwriters, including Murray.

- c. The December 1, 2021 agreement asserts Mutual Underwriters has the “personnel and professional qualifications, knowledge, experience, and expertise to effectively administer all facets of the COMPANY’s day-to-day operations; and” that “the Bylaws of the COMPANY authorize its Board of Directors to manage its business and affairs which includes entering into such administrative and management services agreements as are necessary for the COMPANY’s day-to-day business operations.”
- d. Article I of the agreement asserts the Company appoints Mutual Underwriters “to provide COMPANY with all of the administrative and management services described herein; [Mutual Underwriters] accepts such appointment and agrees to provide COMPANY with all necessary and appropriate administrative and management services upon the terms and conditions, and for the compensation herein specified.”
- e. The Scope of Services, Article II, includes, but is not limited to:
 - [Mutual Underwriter’s] duties are screening and processing applications for membership in COMPANY, accepting or rejecting such applications for membership, underwriting, policy issuance and billing, collecting premium, assessments, fees and all other amounts due from members of the COMPANY coordinating inspections, administering informal complaints and disputes, administering coverage disputes, providing risk management services, claims investigations and contracting for legal defense, maintaining reinsurance, and such other business operations of the COMPANY incidental to these duties. COMPANY, upon consultation with [Mutual Underwriter], shall establish policies and procedures to be applied by [Mutual Underwriter] in the underwriting and acceptance of insurance, in the handling and payment of claims, and in the day-to-

day performance of its duties under this AGREEMENT. [Mutual Underwriter] shall conduct the day-to-day operations of the COMPANY in accordance with the provisions of the Indiana Code Title 27 (Insurance).

- f. Mutual Underwriters does not hold a fidelity bond to act as an MGA for Patrons.
2. On or about September 1, 2022, Respondents signed a nearly identical Administrative and Management Services Agreement (“Management Agreement”) with St. Celestine Mutual Fire Insurance Company (“St. Celestine”) as well as an Affiliation Agreement between Patrons and St. Celestine (“Affiliation Agreement”), with an effective date of October 1, 2022.
- a. The September 1, 2022 agreements were filed with the Department on or about October 8, 2022.
 - b. The Management Agreement provides, among other things, including the language listed above in the nearly identical Patrons Management Agreement, that Mutual Underwriters “shall be entitled to designate up to four (4) representatives to serve as on the COMPANY’S Board of Directors, subject to a vote of the COMPANY’S policyholders.”
 - c. The Affiliation Agreement requires St. Celestine enter into the Management Agreement, noted above, with Mutual Underwriters, “provided prior approval of the Indiana Department of Insurance is provided.” However, the September 1, 2022 agreement was entered into and became effective prior to any submission to the Department.

- d. The Affiliation Agreement provides St. Celestine reinsurance under the same reinsurance agreement with Mid-Hudson Co-operative Insurance Company, a New York company, (“Mid-Hudson”) that also reinsures Patrons.
- e. The Affiliation Agreement gives Patrons:
 - the right to propose its representatives for appointment or election to St. Celestine’s Board of Directors so that such representatives constitute not less than a majority of the Board. [Patrons’] representatives shall also constitute a majority of each committee of St. Celestine’s Board, including its Executive Committee. St. Celestine’s Nominating Committee will agree to accept the names of the candidates offered by [Patrons] in order to maintain [Patrons’] control of St. Celestine’s Board of Directors and its Committees.
- f. Further, the Affiliation Agreement effective October 1, 2022 requires, without a policyholder meeting, Murray be appointed as the Chief Executive Officer “of St. Celestine by the Board of Directors of St. Celestine and shall serve in such capacity unless and until a successor is duly appointed by the Board of Directors of St. Celestine.”
- g. Nevertheless, the Department did not disapprove the St. Celestine agreements, and the Department sent a letter indicating the same with a date of January 28, 2023.
- h. The Board of Directors of St. Celestine includes at least two (2) officers of Respondent Mutual Underwriters.
- i. Mutual Underwriters does not hold a fidelity bond to act as an MGA for St. Celestine.

3. On or about September 13, 2023, Respondents signed a nearly identical Administrative and Management Services Agreement with S&O Farmers Mutual Insurance Company (“S&O”), with an effective date of October 1, 2023.
 - a. The September 13, 2023, agreement was filed with the Department on November 15, 2023.
 - b. The September 13, 2023 agreement included nearly identical language as that presented above in the December 1, 2021 Patrons Management Agreement.
 - c. Patrons also entered into an affiliation agreement with S&O, on November 13, 2023, effective date of January 1, 2024, with terms similar to those described above in the St. Celestine Affiliation Agreement, namely:
 - i. S&O be added onto Patrons’ reinsurance agreement with Mid-Hudson;
 - ii. S&O agrees to appoint or elect board members proposed by Patrons, and the Patrons representatives constitute a majority of the Board of Directors of S&O as well as all board committees of S&O;
 - iii. The S&O Board of Directors shall appoint Murray as the Chief Executive Officer of S&O; and
 - iv. All agreements are subject to the prior approval of the Department.
 - d. The Department has not approved of the September 13, 2023 or November 13, 2023 agreements.
 - e. The Board of Directors of S&O now includes at least two (2) officers of Respondent Mutual Underwriters.
 - f. Mutual Underwriters does not hold a fidelity bond to act as an MGA for S&O.

CONCLUSIONS OF LAW

- A. An emergency exists such that an emergency order is appropriate under Indiana Code § 4-21.5-4-1 in that Respondents, while holding valid producer licenses, are managing three (3) farm mutual companies, engaging in insurance business in violation of Indiana law and without the required regulation of the Commissioner, placing Indiana consumers and Indiana farm mutual companies at risk.
- B. Respondents are per se MGAs, Indiana Code § 27-5.1-2-25(d), for three (3) Indiana farm mutual insurance companies but do not hold registration with the Department.
- C. Indiana Code § 27-1-33-9 holds acts of the MGA are to be considered acts of the insurer on whose behalf the MGA is acting.
- D. Indiana Code § 27-1-15.6-12(b)(2)(A) provides, in part, that the Commissioner may suspend an insurance producer's license for violating an insurance law or a regulation.
- E. Indiana Code § 27-5.1-2-25(a), is an insurance law that provides those who "intend to enter into a contract for the exclusive or dominant right to manage or control a farm mutual insurance company shall file notice of the contract with the commissioner at least thirty (30) days before entering into the contract."
- F. Indiana Code § 27-5.1-2-25(d) stipulates:
 - [a] person that enters into a contract for the exclusive or dominant right to manage or control a farm mutual insurance company is the managing general agent (as defined in IC 27-1-33-4) of the farm mutual insurance company and shall comply with the requirements that apply to a managing general agent under IC 27.

- G. Additionally, the agreements entered into by each farm mutual insurance company with Mutual Underwriters or with Mutual Underwriters as the MGA of Patrons, create a relationship between the Mutual Underwriters and the respective farm mutual insurance company that meets the definition of an MGA as stipulated in Indiana Code § 27-1-33-4(a).
- H. 760 IAC 1-52-3 requires MGAs register with the Department.
- I. Indiana Code § 27-1-33-6(c) and 760 IAC 1-52-4 require an MGA acquire and maintain a fidelity bond.
- J. An MGA must structure contracts in compliance with Indiana Code § 27-1-33-7.
- K. Indiana Code § 27-1-33-8(d) requires any binding authority for reinsurance contracts shall rest with an officer of the insurer, and that officer may not be affiliated with the MGA.
- L. Indiana Code § 27-1-33-8(g) is an insurance law that requires “An insurer shall not appoint to its board of directors an officer, a director, an employee, a subproducer, or a controlling shareholder of its MGAs.”
- M. This Emergency Order is issued pursuant to Indiana Code § 4-21.5-4-2(a)(1).


ORDER

With the Findings of Fact and Conclusions of Law, as stated above, the Commissioner now orders:

1. Respondents Mutual Underwriters Indiana resident producer organization license #825834 is hereby immediately suspended for ninety (90) days, renewable as necessary per Indiana Code § 4-21.5-4-5;
2. Respondent Murray's resident producer license #2925410 and surplus lines producer license #387889 are hereby immediately suspended for ninety (90) days, renewable as necessary per Indiana Code § 4-21.5-4-5.

Under Indiana Code § 4-21.5-4-3, this Emergency Order is effective when issued. **Respondents have the right to request a hearing on this Emergency Order by filing a request for a hearing with the Department**, and if requested, an evidentiary hearing will be set on the matter as soon as practicable.

June 20, 2024
Dated



Amy L. Beard, Commissioner
Indiana Department of Insurance

Distributed to:

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Carmel, IN 46032

Sean P. Murray
18400 Little Chicago
Noblesville, IN 46062

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311 West Washington St. #103
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Type of Agency Action: Enforcement)
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STATE OF INDIANA
DEPT. OF INSURANCE

MOTION FOR EMERGENCY SUSPENSION

The Enforcement Division of the Indiana Department of Insurance (“Enforcement Division”), pursuant to Indiana Code § 4-21.5-4, files its petition for emergency suspension against Mutual Underwriters LLC (“Mutual Underwriters”), and Sean P. Murray (“Murray”) (Collectively, “Respondents”), and states:

- A. Murray is a resident insurance producer holding license number 2925410 issued November 20, 1998, voluntarily surrendered December 8, 2010 due to an out of state move, reactivated June 15, 2012, and expired April 30, 2015. The license was reactivated July 14, 2017, expired March 31, 2024, and is currently pending renewal.
- B. Murray also holds resident surplus lines producer license number 387889 issued May 1, 2000. On December 8, 2010, the license was voluntarily surrendered when Murray moved

out of state. The surplus lines license reactivated July 10, 2012 and expired April 30, 2015.

The surplus lines license was reactivated October 10, 2017 and expires March 31, 2026.

- C. Mutual Underwriters is a licensed resident insurance producer organization holding license number 825834 since June 26, 2012. On July 30, 2016, the license status was inactivated for failure to submit the renewal fee. The license was reactivated on September 15, 2017, until October 30, 2019, when the license was again inactivated for failure to submit the renewal fee. On June 22, 2020, the license was renewed and remains active.
- D. Mutual Underwriters' license expires September 30, 2025.
- E. Murray is Mutual Underwriters' CEO, owner, and Designated Responsible Licensed Producer ("DRLP").
- F. Mutual Underwriters is acting as an Managing General Agent ("MGA") of three (3) Indiana farm mutual insurance companies.
 - 1. On or about December 1, 2021, Respondents signed an "Administrative and Management Services Agreement" with Patrons Mutual Fire Insurance Company ("Patrons"), with an effective date of January 1, 2022.
 - a. The December 1, 2021 agreement was not filed with the Department.
 - b. The December 1, 2021 agreement requires, among other things, Patrons install four (4) of Respondents' representatives onto the Board of Directors of Patrons after a vote of policyholders. Two of those representatives are officers of Mutual Underwriters, including Murray.
 - c. The December 1, 2021 agreement asserts Mutual Underwriters has the "personnel and professional qualifications, knowledge, experience, and expertise to effectively administer all facets of the COMPANY's day-to-day

operations; and” that “the Bylaws of the COMPANY authorize its Board of Directors to manage its business and affairs which includes entering into such administrative and management services agreements as are necessary for the COMPANY’s day-to-day business operations.”

d. Article I of the Management Agreement asserts the Company appoints Mutual Underwriters “to provide COMPANY with all of the administrative and management services described herein; [Mutual Underwriters] accepts such appointment and agrees to provide COMPANY with all necessary and appropriate administrative and management services upon the terms and conditions, and for the compensation herein specified.”

e. The Scope of Services, Article II, includes, but is not limited to:

[Mutual Underwriter’s] duties are screening and processing applications for membership in COMPANY, accepting or rejecting such applications for membership, underwriting, policy issuance and billing, collecting premium, assessments, fees and all other amounts due from members of the COMPANY coordinating inspections, administering informal complaints and disputes, administering coverage disputes, providing risk management services, claims investigations and contracting for legal defense, maintaining reinsurance, and such other business operations of the COMPANY incidental to these duties. COMPANY, upon consultation with [Mutual Underwriter], shall establish policies and procedures to be applied by [Mutual Underwriter] in the underwriting and acceptance of insurance, in the handling and payment of claims, and in the day-to-day performance of its duties under this AGREEMENT. [Mutual Underwriter] shall conduct the day-to-day operations of the COMPANY in accordance with the provisions of the Indiana Code Title 27 (Insurance).

- f. Mutual Underwriters does not hold a fidelity bond to act as an MGA for Patrons.
2. On or about September 1, 2022, Respondents signed a nearly identical Administrative and Management Services Agreement (“Management Agreement”) with St. Celestine Mutual Fire Insurance Company (“St. Celestine”) as well as an Affiliation Agreement between Patrons and St. Celestine (“Affiliation Agreement”), with an effective date of October 1, 2022.
- a. The September 1, 2022 agreements were filed with the Department on or about October 8, 2022.
 - b. The Management Agreement provides, among other things, including the nearly identical language as that presented above in the Patrons Management Agreement, that Mutual Underwriters “shall be entitled to designate up to four (4) representatives to serve as on the COMPANY’S Board of Directors, subject to a vote of the COMPANY’S policyholders.”
 - c. The Affiliation Agreement requires St. Celestine enter into the Management Agreement, noted above, with Mutual Underwriters, “provided prior approval of the Indiana Department of Insurance is provided.” However, the September 1, 2022 agreement was entered into and became effective prior to any submission to the Department.
 - d. The Affiliation Agreement provides St. Celestine reinsurance under the same reinsurance agreement with Mid-Hudson Co-operative Insurance Company, a New York company, (“Mid-Hudson”) that also reinsures Patrons.
 - e. The Affiliation Agreement gives Patrons:
 - the right to propose its representatives for appointment or election to St. Celestine’s Board of

Directors so that such representatives constitute not less than a majority of the Board. [Patrons'] representatives shall also constitute a majority of each committee of St. Celestine's Board, including its Executive Committee. St. Celestine's Nominating Committee will agree to accept the names of the candidates offered by [Patrons] in order to maintain [Patrons'] control of St. Celestine's Board of Directors and its Committees.

- f. Further, the Affiliation Agreement effective October 1, 2022 requires, without a policyholder meeting, Murray be appointed as the Chief Executive Officer "of St. Celestine by the Board of Directors of St. Celestine and shall serve in such capacity unless and until a successor is duly appointed by the Board of Directors of St. Celestine."
 - g. Nevertheless, the Department did not disapprove the St. Celestine agreements, and the Department sent a letter indicating the same with a date of January 28, 2023.
 - h. The Board of Directors of St. Celestine includes at least two (2) employees of Respondent Mutual Underwriters.
 - i. Mutual Underwriters does not hold a fidelity bond to act as an MGA for St. Celestine.
3. On or about September 13, 2023, Respondents signed a nearly identical Administrative and Management Services Agreement with S&O Farmers Mutual Insurance Company ("S&O"), with an effective date of October 1, 2023.
- a. The September 13, 2023 agreement was filed with the Department on November 15, 2023.

- b. The September 13, 2023 agreement included nearly identical language as that presented above in the December 1, 2021 Patrons Management Agreement.
 - c. Patrons also entered into an Affiliation Agreement with S&O, on November 13, 2023, effective date of January 1, 2024, with terms similar to the described above in the St. Celestine Affiliation Agreement, namely:
 - i. S&O be added onto Patrons' reinsurance agreement with Mid-Hudson;
 - ii. S&O agrees to appoint or elect board members proposed by Patrons, and the Patrons representatives constitute a majority of the Board of Directors of S&O as well as all board committees of S&O;
 - iii. The S&O Board of Directors shall appoint Murray as the Chief Executive Officer of S&O; and
 - iv. All agreements are subject to the prior approval of the Department.
 - v. This Affiliation Agreement was signed by S&O and Patrons on November 13, 2023.
 - d. The Department has not approved of the September 13, 2023 or November 13, 2023 agreements.
 - e. The Board of Directors of S&O now includes at least two (2) employees of Respondent Mutual Underwriters.
 - f. Mutual Underwriters does not hold a fidelity bond to act as an MGA for S&O.
- G. Under Indiana Code § 27-5.1-2-26, the Commissioner of the Indiana Department of Insurance ("Commissioner") holds the authority to enforce the laws related to farm mutual insurance companies.

H. Indiana Code § 27-5.1-2-25(a), is a farm mutual insurance company law that provides those who “intend to enter into a contract for the exclusive or dominant right to manage or control a farm mutual insurance company shall file notice of the contract with the commissioner at least thirty (30) days before entering into the contract.”

I. Additionally, Indiana Code § 27-5.1-2-25(d) stipulates:

[a] person that enters into a contract for the exclusive or dominant right to manage or control a farm mutual insurance company is the managing general agent (as defined in IC 27-1-33-4) of the farm mutual insurance company and shall comply with the requirements that apply to a managing general agent under IC 27.

J. The acts of the MGA are to be considered acts of the insurer on whose behalf the MGA is acting. Indiana Code § 27-1-33-9.

K. Under Indiana Code § 27-1-33-10, the Commissioner holds the authority to enforce the laws related to MGAs.

L. Under Indiana Code § 27-1-33-11, the Commissioner has the authority to enact regulations to implement and administer MGA requirements under Indiana Code § 27-1-33.


M. MGAs are held to requirements, that include:

1. 760 IAC 1-52-3 requires MGAs to be registered with the Department;
2. Holding a fidelity bond as required by Indiana Code § 27-1-33-6(c) and 760 IAC 1-52-4;
3. Constructing contracts in compliance with Indiana Code § 27-1-33-7;
4. Any binding authority for reinsurance contracts shall rest with an officer of the insurer, and that officer may not be affiliated with the MGA, Indiana Code § 27-1-33-8(d);

5. "An insurer shall not appoint to its board of directors an officer, a director, an employee, a subproducer, or a controlling shareholder of its MGAs." Indiana Code § 27-1-33-8(g).
- N. Respondents are per se MGAs, Indiana Code § 27-5.1-2-25(d), for three Indiana farm mutual insurance companies but do not hold registration with the Department.
- O. The Management Agreements entered into by each farm mutual insurance company with Mutual Underwriters also create a relationship between the Mutual Underwriters and the respective farm mutual insurance company that meets the definition of an MGA as stipulated in Indiana Code § 27-1-33-4(a), which states:
- (a) As used in this chapter, "managing general agent" or "MGA" means any person, firm, association, or corporation:
 - (1) That manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office);
 - (2) That acts as an agent for the insurer, whether known as a managing general agent, manager, or other similar term;
 - (3) That, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium at least five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one (1) quarter or year; and
 - (4) That does at least one (1) of the following activities related to the business produced:
 - (A) Adjusts or pays claims in excess of an amount determined by the commissioner.
 - (B) Negotiates reinsurance on behalf of the insurer.
- P. The Department has serious consumer protection concerns regarding Respondents' detriment to the public interest and good faith.

- Q. An emergency exists in that Respondents, while holding valid producer licenses, are managing three (3) farm mutual companies, engaging in insurance business in violation of Indiana law and without the required regulation of the Commissioner, placing Indiana consumers and Indiana farm mutual companies at risk.
- R. Indiana Code § 27-1-15.6-12(b)(2)(A) provides, in part, that the Commissioner may suspend an insurance producer's license for violating an insurance law.
- S. Under Indiana Code § 4-21.5-4-2(a)(1), the Commissioner may, in an emergency, issue orders without notice or an evidentiary proceeding. However, Indiana Code § 4-21.5-4-4 provides that upon issuance of an emergency order, Respondents, both Mutual Underwriters as a resident producer organization and Murray as an individual resident producer, may request a hearing as quickly as practicable.
- T. Respondents shall be required to cease practice as resident producers until the Department can be sure that Respondents either cease acting as MGAs or comply with Indiana law to act as MGAs.

WHEREFORE, the Enforcement Division requests that the Commissioner issue an order suspending the insurance producer licenses of Mutual Underwriters LLC and Sean P. Murray under Indiana Code § 4-21.5-4-2, and for all other necessary and proper relief.

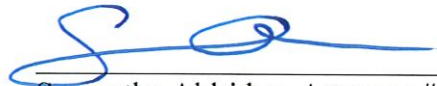

Samantha Aldridge, Attorney #35162-49
Indiana Department of Insurance
Enforcement Division
311 West Washington Street
Indianapolis, IN 46204

CERTIFICATE OF SERVICE

I certify that copies of the foregoing has been served upon the Respondents by United States
First Class mail, postage prepaid, the same day as filing.

Mutual Underwriters, LLC
571 Monon Blvd.
Suite 200
Carmel, IN 46032

Sean P. Murray
18400 Little Chicago
Noblesville, IN 46062



Samantha Aldridge, Attorney #35162-49