

**BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS**

**ARKANSAS INSURANCE DEPARTMENT,** )  
**Petitioner** )  
 )  
**vs.** )  
 )  
**FARMERS INSURANCE EXCHANGE;** )  
**FARMERS INSURANCE COMPANY, INC.;** )  
**FARMERS NEW WORLD LIFE** )  
**INSURANCE COMPANY;** )  
**MID-CENTURY INSURANCE COMPANY;** )  
**TRUCK INSURANCE EXCHANGE;** )  
**FIRE INSURANCE EXCHANGE;** )  
**FOREMOST INSURANCE COMPANY; and** )  
**BRISTOL WEST INSURANCE COMPANY;** )  
**Respondents** )

A.I.D. NO. 2013- 021

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**CONSENT ORDER**

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On this day, the matter of Farmers Insurance Exchange, Farmers Insurance Company, Inc., Farmers New World Life Insurance Company, Mid-Century Insurance Company, Truck Insurance Exchange, Fire Insurance Exchange, Foremost Insurance Company, and Bristol West Insurance Company (collectively referred to as “Respondents”), came before Jay Bradford, Arkansas Insurance Commissioner (“Commissioner”). The Arkansas Insurance Department (“Department”) is represented by Amanda J. Andrews, Associate Counsel, and Respondent is represented by Thomas T. Rogers and Richard E. Griffin of Jackson Walker, L.L.P. From the facts and law before the Commissioner, he finds as follows:

## **FINDINGS OF FACT**

1. Respondents are individual insurance companies doing business under the trade name “Farmers Insurance Group,” with a business address of Post Office Box 1628, Grand Rapids, Michigan 49501, and are authorized to do business in the state of Arkansas:

Farmers Insurance Exchange, NAIC # 21628;

Farmers Insurance Company, Inc., NAIC # 21652;

Farmers New World Life Insurance Company, NAIC # 63177;

Mid-Century Insurance Company, NAIC # 21687;

Truck Insurance Exchange, NAIC # 21709;

Fire Insurance Exchange, NAIC # 21660;

Foremost Insurance Company, NAIC # 11185;

Bristol West Insurance Company, NAIC # 19658.

2. On two (2) separate occasions during 2011 – 2012, Respondent terminated appointments with two (2) Arkansas Resident Producers on grounds that each producer mishandled premiums collected from consumers. The facts set forth below are the result of the two (2) separate investigations.

### **Termination of Allen Kerr**

3. On November 2, 2011, Respondents filed with the Department a notice of termination for cause against one of its appointees, Allen Kerr, an Arkansas resident producer, and in the notice, Respondents alleged that Kerr misappropriated funds belonging to others, and the were obtained in Kerr’s capacity as an agent of Respondents.

4. The Department opened an investigation and requested proof of the allegations from Respondent.

5. On or before November 28, 2011, Respondents notified the Department that they were sending a revised Notice of Termination that alleges that Kerr made “willful misrepresentations” to Respondents.

6. By December 9, 2011, the Department had not received a revised Notice of Termination from Respondents as to Kerr, and the Department requested a meeting with Respondents’ representatives. At that meeting Charlie Snyder appeared on behalf of Respondents, and he provided a copy of a letter dated November 28, 2011, modifying the grounds for termination for cause to “willful misrepresentation.”

7. Snyder also provided applications and underwriting materials for 80 risks bound by Kerr. Respondents alleged that of these risks, 9 were outside Respondents’ appetite and 78 contained misrepresentations by Kerr. Respondents claim to have found 78 misrepresentations out of a total commercial book of 406 policies.

8. The Department requested additional information from Respondents, through Snyder, but Respondents failed to provide the requested information. Further, the Department’s Licensing Division never received the original letter dated November 28, 2011 modifying the basis of Kerr’s termination, which Respondents claimed was sent via U.S. mail. Instead, on December 2, 2011, the Department received appointment termination forms from Respondents stating that Kerr was terminated for “misrepresentation.”

9. Per Respondents’ request, on January 17, 2012, Tom Moore, Respondents’ Director of Agency Services, and Respondents’ counsel met with the Department, during which the Department requested a retraction letter from Respondents explaining how the original, erroneous termination notice was sent to the Department and what procedures are in place to prevent the mistake from occurring in the future.

10. On January 25, 2012, the Department, again, requested the retraction letter. The requested letter was not received; however, on January 26, 2012, the Department received a different termination notice from Foremost Insurance Company, stating that Kerr was terminated for "misrepresentation of the company."

11. Again, at the request of Respondents, the Department met with aforementioned counsel on February 9, 2012, during which the Department made another request for the information it initially requested from Respondents in December 2011.

12. On February 24, 2012, Respondents provided to the Department a withdrawal of the first termination letter stating that Kerr was terminated for "mishandling premiums," an explanation of how the erroneous termination notice was sent to the Department and assurances that such an error will not happen in the future, including revised termination procedures, and a description of the internal process that was followed for terminating Kerr.

13. By letter dated July 31, 2012, the Commissioner set forth his conclusions: 1) Kerr did not misappropriate funds, and any such allegation was admitted as false by Respondents and was, in fact, repudiated by Snyder; 2) Kerr did not violate Arkansas law or any provision of his appointment agreement with Respondents, as he did nothing to willfully misrepresent anything that would be detrimental to his Agency, Allen Kerr Insurance Agency, Inc.; 3) It is evident from Respondents' proffered proof that the issues and/or problems lie in Respondents' own underwritings systems and procedures; 4) Upon review of Respondents' proprietary information regarding risks, applications and other information regarding certain insureds, there was found no justification for a breach of Kerr's agreement with Respondents for "willful misrepresentation" that would have a detrimental effect on Mr. Kerr's agency was found, let alone any potential violation of Arkansas law; 5) Kerr's license history reveals no prior issues

and has been in good standing for 31 years and shall remain in good standing; and 6) The termination will be viewed by the Department as one of unilateral termination.

14. On December 13, 2012, the Department received a notice from Respondents terminating Kerr's appointments upon mutual consent of the parties.

#### **Termination of Eric Preyer**

15. On May 10, 2012, Wes Fallis, Agency Administration Manager, sent a Notice of Termination to the Department stating that Preyer mishandled premiums belonging to the company. Per the Department's request, on June 12, 2012, Respondents sent supplemental information to support the termination, including a Summary of Investigation, Glossary and Premium Handling Procedure, Preyer's Signed Statement, and accounting reports.

16. Respondents' June 12, 2012, correspondence to the Department stated that "Former Respondents Agent Eric Preyer is responsible for the embezzlement of \$769.67 in premium paid by five Respondents' insureds, which premium was not remitted by Preyer to Respondents."

17. According to Preyer's statement to Respondents, Preyer lost or misplaced insurance premiums in the amount of \$1,282.67 in January 2012, and despite his efforts over several months to find the money, he could not. Preyer believed that the premiums were lost in an automobile that he sold in January 2012. Respondents did not dispute Preyer's statements that he lost the premiums and that he did not use the premiums for his own use. Preyer reimbursed Respondents for \$513.00 of the missing premium and was making his best efforts to pay the remainder of the premiums owed to Respondents.

18. After reviewing the information provided by Respondents, it appears that Preyer made an error and misplaced premiums collected from customers during one (1) day of business

in January 2012, and he reimbursed the company for the mistake. Respondents submitted no evidence that Preyer “mishandled” premiums, or that Preyer knowingly exercised control over money that did not belong to him with the intent to deprive Respondents thereof.

19. By letter to Respondent’s dated July 31, 2012, the Commissioner concluded that Preyer did not misappropriate funds and committed no violation of Arkansas law.

**CONCLUSIONS OF LAW**

From the Findings of Fact contained herein, the Commissioner concludes as follows:

20. The Commissioner has jurisdiction over the parties and the subject matter pursuant to Arkansas Code Annotated § 23-61-103.

21. A violation of a statute or regulation enforceable by the Insurance Commissioner is punishable by the refusal, suspension, revocation, or nonrenewal of a license or certificate of authority and/or a monetary fine. Ark. Code Ann. § 23-60-108.

22. The Commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he or she finds that the insurer: is using such methods and practices in the conduct of its business, as to render its further transaction of insurance in Arkansas hazardous or injurious to its policyholders or to the public; Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner; or Has knowingly, or with reckless disregard of same, violated or failed to comply with any applicable provision of the Arkansas Insurance Code, or with any lawful rule, regulation, or order of the Commissioner. Ark. Code Ann. § 23-63-213(a)(1), (2), (5).

23. It is unlawful for any person to file any statement, application, form, or other document required to be filed by the Arkansas Insurance Code knowing the statement or information contained in the document to be false or misleading in any material respect.

24. On two (2) separate occasions Respondents provided to the Department information believed to be false and misleading related to the grounds on which Respondent terminated the appointment agreements of two (2) Arkansas Resident Producers, wherein Respondents asserted that the producers “mishandled” premiums, and in the supplemental documentation supporting Preyer’s termination, Respondents asserted in writing that he “embezzled” premium money.

25. During the Kerr investigation, the Department requested supplemental documentation and a revised notice of termination of Kerr’s appointment, but Respondents refused to produce the documents.

26. At the conclusion of the Kerr investigation, Respondents promised to implement a plan to avoid erroneous transmissions to the Department. However, as evidenced by the termination notice for Preyer, Respondents did not implement and/or follow the corrected termination procedure.

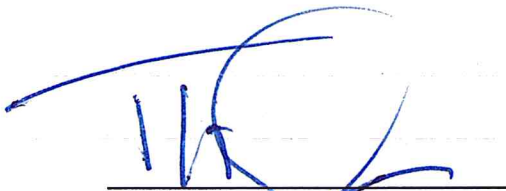
27. Respondents’ actions resulted in the Department expending extensive resources in investigating erroneous allegations against two (2) Arkansas Resident Producers of illegal and criminal activity.

28. Respondents disagree with the Department’s conclusions of law and findings of fact set forth herein, and deny that they have liability for any of the conduct asserted herein, but wishes to enter into this Consent Order to avoid further proceedings in this matter.

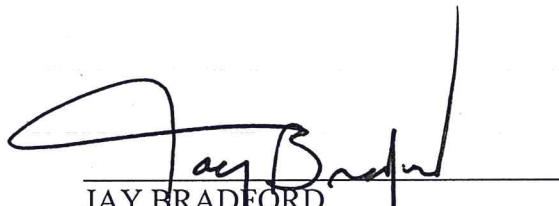
**IT IS HEREBY ORDERED:**

Based upon the foregoing, the parties hereto agree that the Respondents will pay a monetary fine in the amount of \$5,000.00, to be paid within thirty (30) days of the date of this Order. Failure to comply with the Order will result in immediate suspension of Respondents' Certificates of Authority to conduct business in the state of Arkansas.

IT IS SO ORDERED THIS 11<sup>th</sup> DAY OF February, 2013.



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