

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division File No. 82465
)	
TWO RIVERS INSURANCE COMPANY, INC.)	ORDER AND
NPN 3274643,)	CONSENT TO ORDER
d/b/a Two Rivers Insurance Services,)	
and Employee Benefit Systems;)	
)	
Respondent.)	

NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and consent of Respondent Two Rivers Insurance Company, Inc., pursuant to the provisions of Iowa Code Chapter 507B—Insurance Trade Practices and Iowa Code Chapter 522B—Licensing of Insurance Producers, the Commissioner enters the following consent order (“Order”):

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Doug Ommen, administers Iowa Code Chapter 507B—Insurance Trade Practices and Iowa Code Chapter 522B—Licensing of Insurance Producers pursuant to Iowa Code § 505.8. The Commissioner has designated staff in the Iowa Insurance Division to seek enforcement of these provisions. The Division has consented to the entry of this Order.
2. Two Rivers Insurance Company, Inc. (“Two Rivers”) is an Iowa corporation with a home office of 214 N. Main Street, Burlington, Iowa 52601. Two Rivers does business under several fictitious names, including, but not limited to “Two Rivers Insurance Services” and “Employee Benefit Systems.” Two Rivers has filed fictitious name registrations with the Iowa Secretary of State to do business under these names.

3. Two Rivers d/b/a Two Rivers Insurance Services is and has been licensed as a business entity insurance producer with the Division since October 29, 2010. Two Rivers is licensed under national producer number 3274643.

4. Two Rivers d/b/a Employee Benefit Systems is and has been licensed as a third party administrator with the Division since January 21, 2000.

5. The Commissioner of Insurance has jurisdiction over Two Rivers and this matter.

6. The Division has alleged that from January 1, 2005 to on or about May 1, 2014 (“2005 through 2014”), Two Rivers and others engaged in acts or practices constituting cause for probation, suspension, revocation, fines, orders requiring such persons to cease and desist from the acts, methods or practices, or other relief under Iowa Code §§ 505.8(10), 507B.3, 507B.4, 507B.6, 507B.7, 522B.11 and 522B.17 and rules adopted pursuant to Iowa Code Chapters 505, 507B and 522B.

7. Two Rivers is aware of its right to notice and a hearing on this matter, the right to be represented by counsel at a hearing, the right to present evidence and examine witnesses at a hearing, and the right to appeal from any adverse determination after a hearing. Two Rivers, by consenting to this Order, knowingly and voluntarily waives these rights, including all rights to appeal or otherwise contest the validity of this Order.

8. Two Rivers, by its officers and attorneys, knowingly and voluntarily enters into this Order. Two Rivers denies the allegations found herein and denies that it has engaged in any unlawful acts or practices.

II. STIPULATIONS OF FACT

9. In 2005, several public entities organized the Iowa Governmental Health Care Plan (“IGHCP”) under Iowa Code Chapter 28E. IGHCP was an agreement to pool risk for health and other welfare benefits as an insurance purchasing group of Iowa public employers.

10. Through the efforts of Two Rivers and others, Wellmark, Inc. began writing health insurance coverage for IGHCP from its inception. Wellmark, Inc. (“Wellmark”) is a mutual insurance company that was incorporated under the laws of the state of Iowa on September 14, 1939. Wellmark is authorized by the insurance commissioner to issue individual and group health insurance. Wellmark’s group health insurance plans are governed by various insurance laws including Iowa Code Chapter 509.

III. DIVISION’S ALLEGATIONS

11. Wellmark is required by Iowa Code § 432.1 to report to the state of Iowa gross premiums received during the preceding calendar year in order to determine premium tax liability. Wellmark filed premium tax returns for each of the years of 2005 through 2014, annually reporting gross direct written premium.

12. In establishing premiums for IGHCP, Wellmark established an initial premium for each member through the use of actuarial standards.

13. On an annual basis thereafter, Wellmark established premium rates for IGHCP for each renewal plan year from 2006 through 2014. A plan year for IGHCP ran from July 1 of any given year to June 30 of the subsequent year.

14. To facilitate the IGHCP yearly insurance renewals, Two Rivers received up to twenty plans from Wellmark each year. Two Rivers then structured approximately three times as many plans with various levels of self-funding dependent upon the needs of each IGHCP member.

15. From the years 2005 through 2013, Mutual Med Insurance Services, LLC (“Mutual Med”) was the wholesale agency for Wellmark. Wellmark required Two Rivers to operate through a wholesaler to receive Wellmark plans. Wellmark’s premiums included commission of 1%. For the time period of 2005 through approximately July 2013, Two Rivers did not receive any portion of the commission paid to Mutual Med. In approximately July 2013, Mutual Med negotiated an increase in the commission percentage and forwarded .25% of its commission to Two Rivers. Mutual Med was terminated by Wellmark as the wholesale agency effective approximately October 1, 2013 and Two Rivers then received all of the commission that previously went to Mutual Med until approximately March 2014. Two Rivers held, in a separate ledger account, both the .25% received from Mutual Med and the full commission received after Mutual Med’s termination pending advice.

16. Two Rivers added compensation, whether described internally as “EBS billing fee” or “Commission to Two Rivers,” to Wellmark’s premium rates for each member of the IGHCP for each plan year from 2005 until April 2014.

17. During the years of 2005 through 2014 Two Rivers’s compensation was totaled with Wellmark rates and then presented to each member of IGHCP on rate summaries on an annual basis and on monthly billings in various ways as premium (e.g. “insurance company premium,” “medical premium,” or “IGHCP Premium”). Two Rivers did not separately itemize or disclose its fees and/or commissions in the materials provided to IGHCP members.

COUNT I
Iowa Code § 507B.3

18. Iowa Code § 507B.3 provides:

A person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.

19. Iowa Code § 507B.6 provides:

Whenever the commissioner believes that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in section 507B.4, 507B.4A, or 507B.5 and that a proceeding by the commissioner in respect to such method of competition or unfair or deceptive act or practice would be in the public interest, the commissioner shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing on such charges to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service of such notice.

20. Iowa Code § 507B.7(1) provides that upon determining that a person has engaged in an unfair method of competition or an unfair or deceptive act or practice, the Commissioner shall order the person to cease desist and may order a civil penalty not to exceed ten thousand dollars, unless the person knew or should have known that they were in violation of this subtitle, in which case the penalty may not exceed fifty thousand dollars in any six-month period.

21. Iowa Code § 505.8(10) provides:

The commissioner may, after a hearing conducted pursuant to chapter 17A, assess fines or penalties; assess costs of an examination, investigation, or proceeding; order restitution; or take other corrective action as the commissioner deems necessary and appropriate to accomplish compliance with the laws of the state relating to all insurance business transacted in the state.

22. The Division has alleged that during the period of 2005 through 2014, Two Rivers engaged in unfair and deceptive acts and practices in violation of Iowa Code § 507B.3 by presenting various monetary amounts as “premium” on rate summaries provided on an annual basis and on monthly billings to each of the members of IGHCP that, in fact, included Wellmark premium rates plus Two Rivers’ compensation and that such representations had the capacity to mislead members into believing the presented amounts were entirely premium established by Wellmark and concealed the amounts of Two Rivers’ compensation.

23. Violations of Iowa Code § 507B.3 and applicable rules as alleged would constitute grounds for the imposition of a civil penalty, an order of restitution, and an order requiring such person to cease and desist from the unfair and deceptive acts, methods or practices pursuant to Iowa Code §§ 507B.6 and 507B.7.

COUNT II
Iowa Code § 522B.11

24. Iowa Code § 522B.11(1) provides:

The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty as provided in section 522B.17 for any one or more of the following causes:

b. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.

h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

25. Iowa Code § 522B.17(1) provides:

An insurer or insurance producer who, after hearing, is found to have violated this chapter may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty pursuant to chapter 507B.

26. The Division has alleged that during the period of 2005 through 2014, Two Rivers violated Iowa Code §§ 522B.11(1)(*b*) and (*h*) in the conduct of business in this state by adding compensation to the Wellmark premiums and presenting the increased dollar amounts to members of IGHCP as “premium.”

27. Violations of Iowa Code § 522B.11(1) and applicable rules as alleged would constitute grounds for revocation, suspension, censure, the imposition of a civil penalty, an order of restitution, and an order requiring such person to cease and desist from the unfair and deceptive acts, methods or practices pursuant to Iowa Code §§ 522B.11, 522B.17, 507B.6 and 507B.7.

IV. AGREED CEASE AND DESIST ORDER

Two Rivers, consents to entry of a voluntary cease and desist order and, prior to the entry of this Order, changed the practices at issue in this Order by disclosing the amount of the Wellmark-established premiums and by entering into consulting agreements with members of IGHCP in order to charge and disclose fees for Two Rivers' services.

NOW THEREFORE, IT IS ORDERED that Two Rivers Insurance Company, Inc., and its officers, directors, agents and representatives, shall not engage in any act or practice in violation of Iowa Code §§ 507B.3 and 507B.6 and shall not engage in the following practices:

- A. Adding Two Rivers' compensation to an insurer-established premium and representing such monetary amount as "premium" on rate summaries or on monthly billings provided to members of IGHCP, or using any similar representations or formats that have a capacity to mislead members into believing the represented amounts are entirely premium established by the insurer; and
- B. Failing to separately disclose or itemize Two Rivers' fees or other compensation, apart from the insurer-established premium, to the extent they are included on rate summaries or on monthly billings provided to members of IGHCP.

This Order does not prohibit Two Rivers from using an insurer-established premium to structure partial self-funding plans so long as the insurer-established premium; any partial self-funding contributions; and any commissions, fees or other compensation apart from the insurer-established premium are disclosed as separate line items to the extent they are included on rate summaries and on monthly billings.

V. RESTITUTION

IT IS FURTHER ORDERED that Two Rivers Insurance Company, Inc. shall pay contemporaneous with its consent to this order the amount of \$1,314,029.10 to the state of Iowa to the credit of the Settlement Fund of the Iowa Insurance Division, as restitution to be distributed to past and current IGHCP members in accordance with the allocations in Exhibit A, attached and incorporated herein.

As a condition of receiving the allocated restitution, the IGHCP member must agree to sign the Election to Participate and Release which is attached as Exhibit B and incorporated herein by reference. If the IGHCP member does not sign the Election to Participate and Release, the allocated restitution sum will be distributed amongst the participating members. The Division will notify the IGHCP members of this within thirty (30) days of the issuance of this Order. IGHCP members will have sixty (60) days following the notification period to return the signed Election to Participate and Release to the Division.

VI. RIGHT TO REOPEN

IT IS FURTHER ORDERED that the Division's agreement to, and the Commissioner's issuance of, this Order, is expressly premised upon the truthfulness, accuracy, and completeness of the Two Rivers's representations concerning its ability to pay a financial penalty, including a restitution amount. If, upon motion by the Division, the Commissioner finds that Two Rivers failed to disclose material assets, misrepresented the value of any asset, or made other material misrepresentations or omissions, this matter may be reopened for the purpose of assessing additional restitution amounts and civil penalties.

VII. RELEASE

IT IS FURTHER ORDERED that upon finalization of this Order and payment of the required funds, the Division, and the Commissioner, acknowledge that this Order releases the Respondent, Two Rivers Insurance Company, Inc., its current and former board members, directors, officers, employees, with the express exception of Kerry Erts, Scott Saveraid, and Kevin Carr, from liability for any additional civil or administrative penalties or actions by the Commissioner, the Division, or the staff of the Division in connection with Two Rivers's billing practices relating to fees, commissions, or other compensation charged to groups organized under 28E agreements and any conduct and violations of Iowa insurance laws as described in this Order.

Upon finalization of this Order and payment of the required funds, the Division and the Commissioner, acknowledge that this Order releases Two Rivers Financial Group, Two Rivers Bank & Trust, and Two Rivers's successors from liability for any additional civil or administrative penalties or actions by the Commissioner, the Division, or the staff of the Division in connection with Two Rivers's billing practices relating to fees, commissions, or other compensation charged to groups organized under 28E agreements and any conduct and violations of Iowa insurance laws as described in this Order.

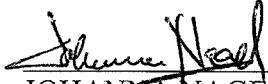
This Order does not release Respondent from civil or criminal liabilities, if any, that may be asserted by any other governmental entity.

SO ORDERED on this 22nd day of May, 2017.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Respectfully submitted,



JOHANNA NAGEL

Compliance Attorney

Iowa Insurance Division

Two Ruan Center

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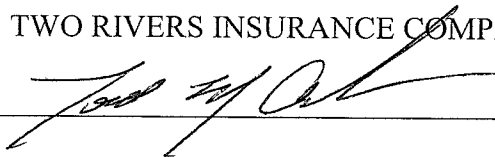
CONSENT TO ORDER AND AGREEMENT

I, Todd M Ackerman as president and on behalf of Two Rivers Insurance Company, Inc., Respondent in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this consent, I understand that Two Rivers Insurance Company, Inc. is waiving its rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

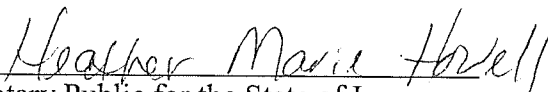
I further understand that this Order is considered final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22 that will be disclosed to other state regulatory authorities, upon request, pursuant to Iowa Code section 505.8(8)(d). I also understand that the Order will be posted to the Division's web site and a notation will be made to the publicly available web site record that administrative action has been taken against me.

Dated this 15th day of May, 2017.

TWO RIVERS INSURANCE COMPANY, INC.

By: 

Subscribed and sworn before me on this 15 day of May, 2017.


Notary Public for the State of Iowa

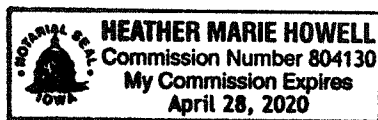


EXHIBIT A

Central Lee (w/PSF)	\$ 41,023.73
Chickasaw Co.	1,876.72
City of Clive	32,856.94
City of Council Bluffs	253,428.10
City of Fairfield	28,315.60
City of Grinnell	3,273.67
City of Harlan	21,321.00
City of Keokuk	53,247.26
City of Pella	25,835.43
City of Perry	8,878.00
City of Spencer	20,330.70
City of Waukee	25,541.47
City of Waverly	1,981.12
City of Webster City	9,823.98
Clay County	35,480.28
Clayton County	35,670.11
Council Bluffs Public Library	8,201.95
Council Bluffs Waterworks	24,511.65
Dubuque County	11,894.56
Emmet County	21,094.58
Grundy County	52,322.10
Guthrie County	21,551.95
Hancock County	50,994.04
Henry County	63,502.99
Humboldt County	43,395.22
Jefferson County	37,586.91
Keokuk CSD	135,315.05
Monona County	18,725.22
Pottawattamie County	143,356.02
Seymour CSD	18,374.12
Spencer CSD	50,551.36
Union County	8,054.57
Winnebago County	5,712.71
Total	<u>\$ 1,314,029.10</u>

NOTE: The above-reference amounts are subject to change with the amounts going up should a listed member decline to participate.

EXHIBIT B

ELECTION TO PARTICIPATE AND RELEASE

I, _____, as _____(position)_____ and on behalf of _____(entity name)_____ elect to participate in the distribution of the restitution amount ordered pursuant to the consent order (“Order”) entered into by the Iowa Insurance Division and Two Rivers Insurance Company, Inc., on _____, 2017 regarding matter number 82465.

By executing this election and receiving a payment for restitution, _____(entity)_____ agrees to release Two Rivers Insurance Company, Inc., its current and former board members, directors, officers, employees, with the express exception of Kerry Erts, Scott Saveraid, and Kevin Carr, from liability for any civil claims or penalties in connection with Two Rivers’s conduct as described in the Order. _____(entity)_____ further agrees to release Two Rivers Financial Group, Two Rivers Bank & Trust, and Two Rivers Insurance Company, Inc.’s successors from liability for any civil claims or penalties in connection with Two Rivers’s conduct as described in the Order.

Dated this ____ day of _____, 2017.

(ENTITY NAME)

By (*)

Subscribed and sworn before me on this ____ day of _____, 2017.

Notary Public for the State of Iowa