

AGR 8404

In re:

**The Cummings Agency Inc
Mechanic Falls, ME 04256**

**STATE OF MAINE
BUREAU OF INSURANCE**

**Docket No. INS 04 235
CONSENT AGREEMENT**

This document is a Consent Agreement authorized by Title 10 M.R.S.A. § 8003(5), entered into among The Cummings Agency Inc. of Mechanic Falls, Maine or its successor (hereafter, “the Producer Agency”); the Maine Bureau of Insurance; and the Maine Department of the Attorney General. Its purpose is to resolve, in lieu of an adjudicatory proceeding, violations of Title 24-A M.R.S.A. §1447 and §1449.

STATEMENT OF FACTS

1. The Superintendent of Insurance is the official charged with administering and enforcing Maine’s insurance laws and regulations, and the Bureau of Insurance is the administrative agency with such jurisdiction.
2. For all relevant periods, the Producer Agency represented Dairyland Insurance Company in a producer capacity.
3. Title 24-A M.R.S.A. §1447 requires producer licensees to maintain records for at least three years following the respective transactions, including information pertaining to premium payments and identity of insureds.
4. Title 24-A M.R.S.A. §1449 stated, for the time period relevant to this matter: “All premiums and return premiums received by an insurance producer are trust funds received by the licensee in a fiduciary capacity. The licensee shall account for and pay the premiums to the insured or apply the premiums to outstanding balances of any insured within 10 days from the date of receipt. The date of receipt is the date the money is actually received or the date the credit is posted by the insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization to the licensee’s account. The licensee shall promptly account for and pay premiums to the insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization in accordance with the contract between the insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization and the licensee.”
5. The Bureau has reviewed the Producer Agency’s records with regard to its handling of return premiums as an appointed producer of Dairyland.

CONCLUSIONS OF LAW

6. The Producer Agency failed to comply with the ten day requirement of §1449 in a number of instances. It paid or credited more than five percent (5%) of such refunds, totaling more than \$100.00, only after a period of 30 days had elapsed, and only after the Bureau’s review of this matter commenced.

7. The Producer Agency failed to respond to the Bureau of Insurance's audit requests mailed to The Cummings Agency on three occasions: On 10/19/01- the 1st mailing was issued for audit of premium refunds reported by Dairyland Insurance Company from Jan 1, 1999 to June 1, 2001 to the agency on their bi-weekly commission statements;

8. On 04/02/02 – the 2nd mailing was issued for follow-up with reference to the first mailing;

9. And, on 05/21/02 - the 3rd mailing was issued for follow-up with reference to the two prior mailings from the Bureau of Insurance and two phone calls from Bureau staff;

10. On 6/16/03, a letter was issued to advise that the agency was in violation of the Maine Insurance Code Title 24-A M.R.S.A. §220 a for its failure to respond to the Superintendent by providing information as originally requested. On 6/27/03, the audit report was received by the Bureau of Insurance.

COVENANTS

11. The Producer Agency, the Maine Bureau of Insurance, and the Maine Department of the Attorney General agree to the following.

12. This Consent Agreement is entered into in accordance with 10 M.R.S.A. § 8003(5)(B) and is not subject to review or appeal. This Consent Agreement is enforceable by an action in the Superior Court.

13. At the time of executing this Consent Agreement, the Producer Agency will remit to the Maine Bureau of Insurance a civil penalty in the amount of \$400.00, payable to the Treasurer of the State of Maine.

14. The Producer Agency will promptly make appropriate payments or credits concerning premiums and return premiums as required under the Maine Insurance Code, specifically 24-A M.R.S.A. §1449 as amended, at all times in the future.

15. The Producer Agency understands and acknowledges that this Agreement will constitute a public record within the meaning of 1 MRSA § 402, and will be available for public inspection and copying as provided for by 1 MRSA § 408, and will be reported to the NAIC "RIRS" database.

16. In consideration of the Producer Agency's execution of and compliance with the terms of this Consent Agreement, the Superintendent of Insurance, Bureau of Insurance, and Department of the Attorney General agree to forgo pursuing further disciplinary measures or other civil or administrative sanction for the actions described in this Consent Agreement, other than those agreed to herein. However, should the Producer Agency violate this Consent Agreement, it may be subject to any available legal remedy for the violation, including without limitation the suspension or revocation of all licenses issued under the Maine Insurance Code.

17. Nothing in this Agreement shall affect the rights or interests of any person who is not a party to this Agreement.

[Agency]

Dated: _____, _____

By _____

(printed name)

Its _____

State of Maine, _____, ss

Notary Public

Subscribed and Sworn to before me
this _____ day of _____, _____.

(printed name)

THE MAINE BUREAU OF INSURANCE

Dated: _____, _____

By Alessandro A. Iuppa, Superintendent

FOR THE DEPARTMENT OF THE ATTORNEY GENERAL

Dated: _____, _____

Assistant Attorney General

(printed name)