

**IN RE:**

**BANKERS LIFE AND CASUALTY  
COMPANY, GARY R. SMITH,  
MARK D. LECLERC, AND  
JOHN A. HOLT,  
DOCKET NO. INS-04-2001**

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) **CONSENT AGREEMENT**  
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**INTRODUCTION**

Mark D. Leclerc, the Superintendent of the Maine Bureau of Insurance, and the Maine Office of the Attorney General hereby enter into this Consent Agreement pursuant to 10 M.R.S.A. § 8003(5)(B) to resolve, without an adjudicatory proceeding, violations of the insurance code arising from Mr. Leclerc’s conduct under a license issued by the Superintendent. As more fully set out below, Mr. Leclerc demonstrated incompetence and untrustworthiness in the conduct of his business when he improperly sold an \$82,748.04 deferred annuity and a \$49,000.00 immediate annuity to an 81 year old widow, and recommended the purchase of a Medicare supplement policy, funded by money she obtained from a reverse mortgage on her home.

**FACTS**

1. The Superintendent of Insurance is the State official charged with administering and enforcing Maine’s insurance laws and regulations.
2. The Superintendent has jurisdiction over this matter pursuant to the Insurance Code generally, Title 24-A Maine Revised Statutes Annotated, and, in particular, 24-A M.R.S.A. §§ 12-A and 229, as well as other provisions.
3. Mark D. Leclerc is licensed by the Superintendent as a resident insurance producer under License Number PRR 45341 and National Producer Identification Number 3683911.
4. Mr. Leclerc was at all times relevant to this matter an appointed insurance producer for Bankers Life and Casualty Company, Maine License No. LHF127, based at its branch sales office in South Portland, Maine.
5. John Holt is licensed by the Superintendent as a resident insurance producer under License Number PRR 63597 and National Producer Identification Number 3688604.
6. Bankers Life and Casualty Company is an Illinois domiciled insurance company that is authorized to transact insurance in Maine under Maine License No. LHF127.
7. The Superintendent has entered into separate agreements with Bankers Life and Gary Smith addressing their respective roles in this matter.

8. An 81-year-old widow (hereafter “Consumer”) residing in Maine filed a formal complaint with the Bureau, dated November 30, 2004, after purchasing two Bankers Life annuities from Mr. Leclerc as more fully described below.

9. In September 2004, Mr. Leclerc and Mr. Holt met with Consumer to discuss Medicare supplement insurance. Mr. Leclerc has advised the Bureau that Consumer was interested in a Medicare supplement policy because she believed she would not have coverage under MaineCare while traveling out of state and she did not like being dependent on the State.

10. Consumer was enrolled both in Medicare and in MaineCare, the Maine Medicaid program. MaineCare paid Consumer’s Medicare Part B premium as well as Medicare deductibles and Medicare co-insurance. In addition, MaineCare covers some services not covered by Medicare.

11. Under state and federal law, it is illegal to sell a Medicare supplement policy to a person covered under MaineCare because a Medicare supplement policy would duplicate coverage to which the enrollee is already entitled under Maine Care.

12. Mr. Leclerc and Mr. Holt determined that Consumer’s status as a MaineCare recipient made her ineligible to apply for a Bankers Life Medicare supplement policy and her lack of liquid assets and income made purchasing a Bankers Life annuity unfeasible.

13. Mr. Leclerc and Mr. Holt referred Consumer to a company specializing in reverse mortgages.

14. Mr. Leclerc and Mr. Holt maintained contact with Consumer and told her to call them when she was approved for the reverse mortgage and to let them know when she received funds from the reverse mortgage.

15. In November of 2004, Consumer told Mr. Leclerc and Mr. Holt that she had received funds totaling over \$152,000.00 from the reverse mortgage.

16. Mr. Leclerc and Mr. Holt then came to Consumer’s home and advised her to purchase a single premium immediate annuity in the amount of \$49,000.00 and a single premium deferred annuity in the amount of \$82,748.04.

17. Mr. Leclerc and Mr. Holt advised Consumer that the use of money from the reverse mortgage to purchase these annuities was in her best interest.

18. On or about November 27, 2004, Mr. Leclerc and Mr. Holt helped Consumer complete applications for the annuities, and following their advice, Consumer made out separate checks for \$49,000.00 and \$82,748.04.

19. The annuities were purchased with money Consumer obtained from the reverse mortgage.

20. Mr. Leclerc did not compare the interest rate Consumer was required to pay on the money from the reverse mortgage with the interest rate Consumer would be entitled to receive from the

Bankers Life annuities, in order to determine if purchasing the annuities was in Consumer's interest.

21. The \$49,000 immediate annuity was set up to provide Consumer with an immediate guaranteed monthly income of \$304.86 for 15 years certain and life thereafter.

22. Because Consumer would lose her eligibility for coverage under MaineCare upon receiving the funds from the reverse mortgage, Mr. Leclerc and Mr. Holt recommended that she purchase a Medicare supplement policy.

23. Mr. Leclerc and Mr. Holt then helped Consumer contact the Maine Department of Health and Human Services for the purpose of canceling her MaineCare benefits, so that she would be eligible to apply for a Medicare supplement insurance policy.

24. The Bankers Life deferred annuity that the consumer applied for would pay an interest rate of 5.25 % the first year, after which the guaranteed minimum interest rate would be 3.25%.

25. Mr. Leclerc and Mr. Holt repeatedly described the deferred annuity to Consumer as a "growth annuity." However, after the first year Consumer and her estate stood to lose money every month as a result of purchasing the deferred annuity with money available from the reverse mortgage.

26. Mr. Leclerc and Mr. Holt did not explain to Consumer that the interest rate she would receive on the deferred annuity after the first year was lower than the interest rate she would be paying on the money she borrowed through the reverse mortgage.

27. On November 29, 2004 Mark Leclerc signed a Bankers Life suitability questionnaire, stating in part:

Is this a replacement? NO

Are there any surrender charges or penalties associated with this transaction? NO

A. Why is the issuance of the proposed insurance in the best interest of the client?

This is money from a reverse mortgage being set up for a lifetime income and a growth account for future use.

28. On or about November 29, 2004, Bureau staff received a call from an employee at Consumer's bank who was concerned because Consumer did not seem to understand what she had invested in.

29. Consumer submitted a formal complaint to the Bureau, dated November 30, 2004, regarding the annuities she purchased from Mr. Leclerc and Mr. Holt. The complaint stated in part: "I did the Reverse Mortgage as advised by John and Mark. I got the check for \$152,748.04 on November 27, 2004 via UPS. John and Mark came right out that day. I am not sure what I

purchased from them. I only have one piece of paper from them; a 'suitability questionnaire' that is a receipt for two checks I wrote out to Bankers Life and Casualty. One Check for \$82,748.04 and the other for \$49,000.00. They also contacted DHS for me to cancel my MaineCare."

30. When the annuity documents for Consumer arrived at the Bankers Life branch sales office in South Portland, Mr. Leclerc and Mr. Holt made an appointment with Consumer to deliver them on December 22, 2004.

31. Mr. Leclerc met with his manager on or about December 21, 2004 or December 22, 2004, during which they discussed suitability issues raised by Consumer's complaint.

32. Mr. Leclerc, Mr. Holt, and their manager met again with Consumer on December 22, 2004 to deliver the two annuities that she had purchased, and to complete the sale of a Medicare supplement policy.

33. At this meeting, Consumer told Mr. Leclerc, Mr. Holt, and their manager that she was confused about the annuities.

34. At this meeting, Consumer told the producers that she had stopped payment on the two checks.

35. Consumer then issued two new checks in the amount of \$49,000.00 and \$82,748.04.

36. At the December 22, 2004 meeting, Mr. Leclerc and Mr. Holt did not advise Consumer that the interest on the reverse mortgage would exceed the interest she would recoup from the deferred annuity, and again told Consumer that they were acting in her interest.

## **STATUTORY AUTHORITY**

37. Pursuant to 24-A M.R.S.A. § 1420-K(1)(H), insurance producers are prohibited from using fraudulent or dishonest practices or demonstrating incompetence or untrustworthiness in the conduct of business.

38. Insurance Rule Chapter 275 Section 21, Appropriateness of Recommended Purchase and Excessive Insurance, provides:

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate a producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

## **CONCLUSIONS OF LAW**

39. Mr. Leclerc committed multiple violations of the Maine Insurance Code, 24-A M.R.S.A. § 1420-K(1)(H) because he demonstrated incompetence or untrustworthiness in the conduct of business on multiple occasions during the solicitation of Bankers Life insurance products to the above referenced Consumer.

40. Mr. Leclerc violated Insurance Rule Chapter 275 Section 21 by recommending the purchase of a Medicare supplement policy without making reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

## **COVENANTS**

41. 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.

42. Mr. Leclerc agrees to the imposition of a civil penalty of \$3,500 pursuant to 24-A M.R.S.A. § 12-A(1), for the violations admitted herein. Payments of at least \$350 per month shall be made on the first day of each month following Mr. Leclerc's execution of this agreement. The Superintendent may immediately suspend Mr. Leclerc's license if payments required under this agreement are not received by the first day of the month as required.

43. Mr. Leclerc agrees to suspension of his insurance producer license for a period of 210 days, all of which period of license suspension is itself suspended pending his satisfactory compliance with this Consent Agreement, specifically including the timely payment of the penalty installments as set forth in Paragraph 42. In the event that he does not comply with any terms of this Consent Agreement, the Superintendent may summarily impose all or any portion of the period of suspension.

44. Mr. Leclerc agrees that he will not place any sales of annuities for which the premiums are derived from a reverse mortgage.

45. Mr. Leclerc agrees that for a period of three (3) years, he will promptly report to the Superintendent any and all investigations, proceedings, and customer complaints of which he is a subject.

46. Mr. Leclerc agrees that for a period of three (3) years following the reinstatement of his producer's license, he shall provide the Superintendent with free and open access to all records, cold calls, and other customer interactions.

47. Mr. Leclerc agrees that for each of the next three continuing education cycles he will complete at least one course in ethics or product suitability.

48. In consideration of Mr. Leclerc's execution of and compliance with the terms of this Consent Agreement, the Superintendent and the Attorney General agree to forgo pursuing further

disciplinary measures or other civil or administrative sanctions against Mr. Leclerc for the violations described above, other than those agreed to in this Consent Agreement. However, should Mr. Leclerc violate this Consent Agreement, the Superintendent and the Attorney General reserve the right to pursue any available legal remedy for the violations, including without limitation the suspension or revocation of all licenses issued to Mr. Leclerc by the Superintendent.

49. The Parties to this Agreement understand that nothing herein shall affect any rights or interest that any person not a party to this Agreement may possess.

50. Mr. Leclerc understands and acknowledges that this Agreement will constitute a public record within the meaning of 1 M.R.S.A. § 402, will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408, and will be reported to the National Association of Insurance Commissioners' "RIRS" database.

51. Mr. Leclerc has been advised of his right to consult with counsel before executing this Agreement.

52. This Consent Agreement may be modified only by a written agreement executed by all of the parties.

**SIGNATURE PAGE**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mark D. Leclerc

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Date of commission expiration

**MAINE BUREAU OF INSURANCE**

Dated:

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Alessandro A. Iuppa  
Superintendent of Insurance

**MAINE OFFICE OF THE ATTORNEY GENERAL**

Dated:

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