

**STATE OF MAINE
BUREAU OF INSURANCE**

Docket No. INS 05-224

CONSENT AGREEMENT

This document is a Consent Agreement authorized by Title 10 M.R.S.A. § 8003(5), entered into among Swett & Crawford; the Maine Bureau of Insurance; and the Maine Department of the Attorney General. Its purpose is to resolve, in lieu of an adjudicatory proceeding, issues implicating Title 24-A M.R.S.A. §220, §1413, §1420-E, §1417(1) and §1420-K(1)(A).

STATEMENT OF FACTS

First application

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. In August 2000, Swett & Crawford initially applied for a Maine Nonresident Business Entity Producer License for its location in Minneapolis, Minnesota.
3. Item 22 (2) on the NAIC "Uniform Application for Business Entity Insurance License / Registration" form which the applicant filed with the Bureau required a response to the following question:

"Has the business entity or any owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license?"

" 'Involved' means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, placed on probation or surrendering a license to resolve an administrative action. 'Involved' also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license. 'Involved' also means having a license application denied or the act of withdrawing an application to avoid a denial. You may exclude terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee."
4. The applicant answered "No" to Item 22 (2).
5. The application included Douglas Allen Falls's signature as "Branch Manager" of the applicant, dated "6 - 23 - 00," under the statement:

"The undersigned owner, partner, officer or director of the business entity hereby certifies, under penalty of perjury, that: 1) All of the information submitted in this application and attachments is

true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the business entity to civil or criminal penalties....”

6. Staff of the Maine Bureau of Insurance discovered, through its routine application review process, that the applicant had settled a regulatory matter in 1999 in the State of Alaska for activity under a lapsed license which resulted in a penalty of \$13,544.00, and was also the subject of an order relating to a complaint investigation in the State of Missouri, resulting in a penalty of \$100.00.

7. The Supervisor of Licensing for the Maine Bureau of Insurance requested, by letter dated September 8, 2000, an explanation for the applicant’s failure to disclose the Alaska and Missouri matters.

8. The Bureau has no record of receiving a response to the September 8, 2000 request for information.

Second application

9. As indicated above, the Bureau did not receive a direct response to its inquiry about the first application. However, in October 2000, Swett & Crawford initially applied for a Maine Nonresident Business Entity Producer License for its location in Los Angeles, California. The application referenced the same Federal Identification Number for the corporate entity as that referenced in the earlier application for the Minnesota application, indicating, therefore, that this application was for the same entity.

10. Item 22 (2) on the NAIC “Uniform Application for Business Entity Insurance License / Registration” form which the applicant filed with the Bureau required a response to the following question:

“Has the business entity or any owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license?”

“ ‘Involved’ means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, placed on probation or surrendering a license to resolve an administrative action. ‘Involved’ also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license. ‘Involved’ also means having a license application denied or the act of withdrawing an application to avoid a denial. You may exclude terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.”

11. The applicant answered “No” to Item 22 (2).

12. The application included Craig Lawrence Rubin's signature as Corporate Operations Vice President of the applicant, dated "9 18 2000," under the statement:

"The undersigned owner, partner, officer or director of the business entity hereby certifies, under penalty of perjury, that: 1) All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the business entity to civil or criminal penalties...."

13. By letter dated December 1, 2000, the Supervisor of Licensing for the Maine Bureau of Insurance requested an explanation for the applicant's failure to disclose the Alaska and Missouri matters, and noted that no response had been received to the earlier request dated September 8, 2000 for the same information. The December 1 letter also requested clarification regarding which location was intended to be the primary licensee and which would be a branch, as an application for licensing of both Los Angeles and Minneapolis as primary locations had now been filed, whereas only one primary location is possible.

14. The Bureau has no record of receiving a response to the December 1, 2000 request for information.

Third application

15. As indicated above, the Bureau did not receive direct responses to its inquiries about the first and second applications. However, in March 2001, Swett & Crawford filed another Maine Nonresident Business Entity Producer License application for its location in Los Angeles, California. The application referenced the same Federal Identification Number for the corporate entity as that referenced in the earlier applications, indicating, therefore, that this application was for the same entity.

16. Item 22 (2) on the NAIC "Uniform Application for Business Entity Insurance License / Registration" form which the applicant filed with the Bureau required a response to the following question:

"Has the business entity or any owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license?"

" 'Involved' means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, placed on probation or surrendering a license to resolve an administrative action. 'Involved' also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license. 'Involved' also means having a license application denied or the act of withdrawing an application to avoid a denial. You may exclude terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee."

17. The applicant again answered “No” to Item 22 (2).

18. The application included Benjamin D. Beazley’s signature as Senior Vice President of the applicant, dated “3 1 2001,” under the statement:

“The undersigned owner, partner, officer or director of the business entity hereby certifies, under penalty of perjury, that: 1) All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the business entity to civil or criminal penalties....”

19. By letter dated July 13, 2001, the Supervisor of Licensing for the Maine Bureau of Insurance requested an explanation for the applicant’s failure to disclose the Alaska and Missouri matters, and clarification of the primary location versus branch location issue. The letter noted that it was a third attempt to obtain the information, and included copies of the earlier two letters.

20. The Bureau has no record of receiving a response to the July 13, 2001 request for information.

Further communications

21. By facsimile dated June 6, 2002, following a phone conversation with Deborah Evans, a licensing representative of Swett & Crawford, the Maine Supervisor of Licensing sent copies of the previously described letters, along with an explanation that to continue to pursue licensing, new applications and explanations concerning the previous nondisclosures should be filed.

22. By e-mail later on June 6, 2002, Ms. Evans asserted that the Bureau had received all necessary information, and attached an unsigned letter dated September 27, 2000 describing the nature of the Alaska and Missouri matters, and stating: “As for your question regarding failure to disclose this information, please know with (*sic*) was a (*sic*) unfortunate oversight. The clerk who completed the application was/is new to the corporation and had no idea of the past sins of Swett & Crawford and did not ask the proper people for guidance.”

23. The Bureau’s Licensing Supervisor responded by e-mail dated June 18, 2002, noting that there was no record of receiving the September 27, 2000 response letter, and restating that due to the original applications being outdated, a new licensing application would be required for the primary location and branch registrations would be required for any other locations doing business in Maine. The e-mail message also requested a written explanation of the previous nondisclosures signed by an officer, together with the necessary documentation, rather than the unsigned copy which had been attached to the June 6 e-mail.

Fourth application

24. The Bureau has no record of receiving a direct response to the June 18, 2002 e-mail message described in Paragraph 23. However, in July 2002, Swett & Crawford filed another Maine Nonresident Business Entity Producer License application for its location in Los Angeles, California. The application referenced the same Federal Identification Number for the corporate entity as that referenced in the earlier applications, indicating, therefore, that this application was for the same entity.

25. Item 26 (2) on the NAIC “Uniform Application for Business Entity Insurance License / Registration” form which the applicant filed with the Bureau required a response to the following question:

“Has the business entity or any owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license?”

“ ‘Involved’ means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, placed on probation or surrendering a license to resolve an administrative action. ‘Involved’ also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license. ‘Involved’ also means having a license application denied or the act of withdrawing an application to avoid a denial. You may exclude terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.”

26. The applicant answered “No” to Item 26 (2).

27. The application included Mary C. King’s signature dated “7 8 2002,” but with no title indicating her position with the applicant, under the statement:

“The undersigned owner, partner, officer or director of the business entity hereby certifies, under penalty of perjury, that: 1) All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the business entity to civil or criminal penalties....”

28. The license was not issued, and the application was referred internally for legal review as to possible enforcement action.

Fifth application

29. By telephone conversation on February 20, 2004, the Bureau’s Supervisor of Licensing explained to Tara Scott, a licensing representative of Swett & Crawford, the series of events

concerning their applications, and the need for a new application with complete disclosure and explanations for previous nondisclosed items.

30. In August 2004, Swett & Crawford filed another Maine Nonresident Business Entity Producer License application for its location in Los Angeles, California. The application referenced the same Federal Identification Number for the corporate entity as that referenced in the earlier applications, indicating, therefore, that this application was for the same entity.

31. The application did not include any licensing fees as required for a new application, but requested that the applicant be advised if such would be needed.

32. Item 29 (2) on the NAIC “Uniform Application for Business Entity Insurance License / Registration” form which the applicant filed with the Bureau required a response to the following question:

“Has the business entity or any owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license?”

“ ‘Involved’ means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, placed on probation or surrendering a license to resolve an administrative action. ‘Involved’ also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license. ‘Involved’ also means having a license application denied or the act of withdrawing an application to avoid a denial. You may exclude terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.”

33. The applicant answered “Yes” to Item 29 (2).

34. The application included Curtis L Biersch’s signature as Executive Vice President of the applicant, dated “3 1 2001,” under the statement:

“The undersigned owner, partner, officer or director of the business entity hereby certifies, under penalty of perjury, that: 1) All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the business entity to civil or criminal penalties....”

35. The application materials included a letter from Paulette Solinski, Associate General Counsel, explaining that previous nondisclosures were due to a recordkeeping system based upon local offices rather than a centralized system. She indicated that previous individuals who had completed license forms were probably unaware of the events, and stated that the firm had updated its systems to avoid such problems in the future. In addition, this letter included descriptions of the following administrative matters:

1) The 1999 Alaska consent order referred to above, which resulted in a fine of \$13,544.00, \$7,500.00 of which was suspended;

- 2) A California consent order in 1977 for transacting surplus lines business without the required surplus lines license, resulting in a fine of \$50,000.00;
- 3) The 1993 Missouri matter referred to above, resulting in a “voluntary forfeiture” of \$100.00;
- 4) A 1994 Missouri matter relating to charging brokerage fees and operating an unlicensed agency, resulting in a “voluntary forfeiture” of \$12,000.00; and
- 5) A penalty of \$250.00 in October 2002 levied by the Commonwealth of Virginia for failure to timely file a quarterly surplus lines report.

CONCLUSIONS OF LAW

36. The provision of incorrect, misleading, incomplete or materially untrue information in a license application constitutes grounds for the Superintendent to deny the license application or take other appropriate action, including the imposition of a civil penalty, under 24-A M.R.S.A. §1420-K(1)(A).

37. The application form’s disclosure questions specifically require disclosure of insurance administrative matters. Swett & Crawford provided incorrect, misleading, incomplete or materially untrue information in four Maine applications for nonresident producer business entity licensing by failing to disclose the 1977 California consent order, 1999 Alaska consent order, 1993 Missouri forfeiture, and 1994 Missouri forfeiture when it applied in August 2000, October 2000, March 2001, and July 2002, with each application certified by the signature of an individual on behalf of the corporation that the information was true and complete.

38. Further, the Superintendent may deny the license application or take other appropriate action, including the imposition of a civil penalty, under §1420-K(1)(B) for violating any insurance laws. The Maine Insurance Code, at 24-A M.R.S.A. §220(2), provides that: “All insurers and other persons required to be licensed pursuant to this Title shall respond to all lawful inquiries of the superintendent that relate to resolution of consumer complaints involving the licensee within 14 days of receipt of the inquiry and to all other lawful inquiries of the superintendent within 30 days of receipt. If a substantive response can not in good faith be provided within the time period, the person required to respond shall so advise the superintendent and provide the reason for the inability to respond.”

39. Swett & Crawford did not respond as required by statute to the requests for information which the Bureau’s Supervisor of Licensing presented in the letters dated September 8, 2000, December 1, 2000, and July 13, 2001 as more specifically described above. All three letters requested specific explanations regarding the nondisclosure of administrative actions, and the second and third letters also requested information relating to primary location licensing versus branch location registration.

COVENANTS

40. Swett & Crawford, the Maine Superintendent of Insurance, and the Maine Department of the Attorney General agree to the following.

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. At the time of executing this Consent Agreement, Swett & Crawford will remit to the Maine Bureau of Insurance a civil penalty in the amount of \$1,500.00, payable to the Treasurer of the State of Maine.

43. Swett & Crawford will provide an update of the information contained in and accompanying the August, 2004 application, specifically including updated responses to the disclosure items, or a statement that all such information remains current.

44. Swett & Crawford will promptly report any matters to the Maine Bureau of Insurance during all times as it is licensed through the Bureau, to the extent such reporting is required under the Maine Insurance Code, and will comply in all other respects with the provisions of the Maine Insurance Code, as applicable.

45. Swett & Crawford will remit the licensing and application fees required under 24-A M.R.S.A. §601 for business entity licensing, which were not included with the application for the Los Angeles location filed in August, 2004.

46. Swett & Crawford will apply for branch location registration for any of its branches doing business in Maine.

47. In consideration of the applicant's execution of this Consent Agreement and payment of the penalty required under Paragraph 42 and required fees as referenced in Paragraph 45, and upon the Bureau's satisfactory review of any additional disclosure information provided pursuant to Paragraph 43, the State of Maine Bureau of Insurance shall issue the Nonresident Producer Business Entity License for which Swett & Crawford has applied.

48. Swett & Crawford 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.

49. In consideration of the applicant'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 Swett & Crawford 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 to the applicant under the Maine Insurance Code.

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

Executed by:

Swett & Crawford, Inc.

By:

Dated: _____, _____

(printed name)

Its: _____

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

Notary Public

(printed name)

THE MAINE SUPERINTENDENT OF INSURANCE

Dated: _____, _____

Alessandro A. Iuppa, Superintendent

FOR THE DEPARTMENT OF THE ATTORNEY GENERAL

Dated: _____, _____

Assistant Attorney General

(printed name)