

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **M. Linda Momberger**) **FINAL ORDER**
dba Jack Barber Insurance) Case No. INS 10-01-006

History of the Proceeding

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against M. Linda Momberger dba Jack Barber Insurance (JBI).

On 4/13/10, the director issued a notice of proposed action informing the party that the director proposed to take enforcement action against the party, the party was entitled to a hearing pursuant to ORS 183.415, and if the party wanted a hearing then the party had to send to the director a written request for a hearing so that the director received it by 5/4/10. The notice also informed the party that if a hearing was not conducted then the designated portion of the Insurance Division's file and all materials submitted by the party in this case would automatically become part of the contested case record for the purpose of proving a *prima facie* case.

On 5/3/10, the director timely received from the party a written request for a hearing.

On 5/7/10, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH).

On 5/17/10, OAH scheduled a hearing to be conducted on 7/14/10, and mailed to the party a written notice informing the party of the date, time and place of the hearing.

On 7/14/10, the party did not appear for the scheduled hearing, or communicate with OAH to explain why the party did not appear or to request OAH to reschedule the hearing. OAH did not conduct a hearing.

The director finds that the record of this proceeding to date, including information in the designated portion of the Insurance Division's file and all materials submitted by the party, proves a *prima facie* case.

The director now makes the following final decision in this proceeding.

Findings of Fact and Conclusions of Law

Licensing Information

JBI has been licensed in Oregon as a resident business entity insurance producer since 8/22/78. JBI's license number is 13570. JBI's last recorded *principal street address* is 20595 SW Tualatin Valley Highway Suite 204, Aloha, OR 97006-1763, last recorded *principal mailing address* is PO Box 7279, Aloha, OR 97007-7279; and telephone number is 503-591-7100. JBI is a sole proprietorship. M. Linda Momberger (L. Momberger) is the sole proprietor of JBI. At all relevant times, L. Momberger was not licensed in Oregon as an insurance producer. At all relevant times, William "Bill" P. Momberger (B. Momberger) was licensed in Oregon as a resident insurance producer and was the only licensee affiliated with JBI. JBI's Oregon Secretary of State, Corporation Division, business name registry number was 773924-89 (registered on 9/22/00 but failed to renew on 9/23/02), and currently is 529081-92 (registered on 6/23/08). JBI's federal employer identification number (FEIN) is 93-1052554.

Prior Action

The director has taken enforcement action against JBI twice as follows:

On 5/28/04, in case number INS 04-04-004, the director issued an order assessing JBI a civil penalty of \$3,000 pursuant to ORS 731.988(1) for violating for violating *former* ORS 744.013(2)(d) (*currently* ORS 744.074(1)(d)) in two instances, and ORS 731.296 in three instances.

On 5/19/09, in case number INS 08-10-007, the director issued an order assessing JBI a civil penalty of \$2,000 for violating ORS 731.296 in one instance.

General Description of Misconduct Related to Friends of Columbia Park, Inc.

At all relevant times, the Friends of Columbia Park, Inc. (FCP), of Portland, Oregon, was a non-profit organization that promoted the facilities of Columbia Park. FCP managed the maintenance and use of a building called Columbia Cottage at the park. FCP rented Columbia Cottage to the public. Since about 1992, FCP has purchased liability insurance each year. FCP procured the liability insurance through JBI since at least about 1994. In the past, before an existing liability insurance policy expired, JBI normally sent to FCP a communication informing FCP the amount of the premium for the renewal of the existing liability insurance policy. FCP was insured for liability through American Insurance Managers, Inc. (AIM) by First Financial Insurance Company (FFIC) under policy number 308F000359, from 9/8/07 to 9/8/08. Sometime between about 8/1/08 and 9/27/08, JBI sent to FCP a communication soliciting FCP to pay the premium of \$800 for the renewal of the policy for the period from 9/8/08 to 9/8/09. On 8/1/08 at 3:20 PM, American Insurance Managers, Inc. (AIM) faxed to JBI at 503-649-3171 a memo saying "As of today's date our office has not received the Acord forms and/or supplemental applications required before processing the renewal quote [of the premium to renew the liability insurance policy issued to FCP]. Enclosed with this fax is an indication [or renewal proposal] which is based [o]n information provided during the prior policy period. In order to amend the indication we request the items listed below. Please provide the information with adequate time for underwriting and processing of the quote." The renewal proposal indicated that insured was to be FCP, the insurer was to be FFIC, the premium was estimated to be \$800, and the indication was valid until 9/8/08. The document was successfully faxed to JBI. AIM did not receive from JBI any response to AIM's fax on 8/1/08. On 9/11/08 at 2:05 PM, AIM faxed to L. Momberger of JBI at 503-649-3171 another memo saying "This is a final note concerning the above named [proposed renewal of] policy [number 308F000359] effective 9/08/2008 ... for the following reasons: [x] We did not receive a response to our renewal proposal. ... At this time we will be closing

our files for this account.” The document was successfully faxed to JBI. Also on 9/11/08 @ 2:19 PM, JBI faxed to AIM a memo saying “We never received a renewal quote.” Also on 9/11/08 @ 3:24 PM, AIM faxed to JBI another copy of the indication and a copy of a fax transmission report showing that AIM had successfully faxed to JBI on 8/1/08 the original renewal proposal. The document was successfully faxed to JBI. AIM did not receive from JBI any response AIM’s fax on 9/11/08 until sometime in October 2008 when JBI called AIM. Thus, JBI knew as of 9/11/08 that the insurance policy had not been and would not be renewed for the period from 9/8/08 to 9/8/09, and no premium was due for the renewal of the policy, and JBI had solicited FCP to pay the premium for the renewal of the policy. However, JBI did not inform FCP that the policy had not been and would not be renewed, and did not inform FCP that FCP should not send to JBI payment of any premium until further notice. Also, AIM and FFIC did not inform FCP that the policy had not been and would not be renewed. On 9/27/08, FCP issued a check, number 2189, dated 9/27/08, made payable to “Jack Barber Insurance,” in the amount of \$800, for “liability insurance.” On or about 10/4/08, JBI received the check. On 10/6/08, JBI deposited the check into JBI’s premium trust bank account, number 153602337161, at US Bank. Since the policy had not been and would not be renewed for the period from 9/8/08 to 9/8/09, JBI was not authorized to retain the proceeds of the check or use the proceeds to purchase any other insurance without further authorization from FCP. However, JBI did not forward the proceeds to AIM, or return the proceeds to FCP, but instead as described below, retained the proceeds from 10/6/08 to at least 6/30/09, and on 6/30/09 and 11/11/09 used the proceeds to procure insurance for FCP. FCP did not discover that JBI had retained and later used the proceeds until 3/5/10. As indicated above, sometime in October 2008, JBI called AIM about FCP. AIM requested JBI to provide certain information. AIM did not receive from JBI any response to AIM’s verbal request in October 2008. Purportedly, “in early November [2008], [JBI’s computer network] server crashed, and all information had to be transferred to the new server and

computers.... [JBI] suspended [FCP's] file for 11/6/08. Due to the problems with the computers [JBI] did not follow up on [the] diary" until on or about 6/5/09. About seven months later, in late May 2009, FCP called and talked to an unidentified woman at JBI requesting proof that FCP was currently insured for liability coverage, and the woman indicated that the proof would be sent to FCP. However, FCP did not receive from JBI any proof of current insurance. Instead, on 6/1/09 at about 3:14 PM, JBI faxed to FCP a memo dated 6/1/09 saying "We received a request for a copy of the dec[larations] page, [but we] have no clue as to who to forward this to, please advise." Also on 6/1/09, FCP called and spoke to an unidentified woman at JBI, and provided a fax number of 503-240-7278 for JBI to fax the proof of current insurance to FCP. The woman said she could send by fax to FCP the proof of current insurance. However, FCP did not receive from JBI any proof of current insurance. On 6/3/09, FCP called JBI and left two voice mail messages requesting proof of current insurance. However, FCP did not receive from JBI any proof of current insurance. On 6/4/09, FCP sent by fax to JBI a memo dated 6/4/09 describing FCP's urgent need for and attempts to obtain proof of current insurance, and again requesting proof of current insurance. On 6/4/09 at about 3:00 PM, FCP called and spoke to an unidentified man from JBI. FCP again requested proof of current insurance. The unidentified man said that FCP would need to speak to L. Momberger. FCP told the unidentified man that that an unidentified woman at JBI told FCP on 6/1/09 that the unidentified woman would send to FCP proof of current insurance, but FCP did not receive any such proof. The unidentified man said that he would have L. Momberger call FCP. On 6/5/09 at about 1:00 PM, L. Momberger called FCP, explained that JBI was having "computer problems," but promised to send to FCP proof of current insurance. L. Momberger also "assured [FCP] that we have \$1 million in coverage." However, FCP did not receive from JBI any proof of current insurance. Furthermore, the representation that FCP was currently insured for liability coverage was false and L. Momberger knew that it was false because the previous policy expired on 9/8/08 and was not

renewed, JBI only applied for a replacement insurance policy on 6/5/09, and the replacement insurance policy did not become effective until 6/29/09. Also on 6/5/09, at 1:15 PM, JBI sent by fax to CK Specialty Insurance Associates, Inc. (CK Specialty) an application dated 6/5/09 for a liability insurance policy to be issued to FCP insuring FCP for the period from 6/5/09 to 6/5/10. CK Specialty received the fax. The application was purportedly signed by “Bill Minard” as the applicant. Although William “Bill” R. Minard (Minard) was the president of FCP in 2007, Minard was not an officer of and did not actively participate in FCP’s affairs in 2009. Minard never saw the application, did not sign the application, and did not authorize anyone to sign his name on the application. Instead, L. Momberger forged Minard’s name on the application. Thus, JBI, by and through L. Momberger, forged Minard’s signature on the application. FCP did not apply for the policy and did not authorize JBI to apply for the policy on its behalf. JBI knew that FCP did not apply or authorize JBI to apply for the insurance on its behalf because JBI did not present the application to FCP, JBI did not discuss the application with FCP either before or after JBI sent the application to CK Specialty, and FCP did not sign the application. JBI did not inform FCP that it had retained the proceeds of FCP’s check dated 9/27/08 and intended to use or used the proceeds to pay the premium for the insurance applied for on 6/5/09. On 6/17/09, FCP sent by fax to JBI two letters. One letter was from the City of Portland, Oregon, Parks & Recreation to FCP dated 6/8/09 requesting proof of current insurance. The second letter was from FCP to JBI dated 6/17/09 again requesting proof of current insurance and that such proof be sent to both FCP and the City of Portland no later than 6/30/09. The documents were successfully faxed to JBI. On 6/30/09, JBI issued a check, number 25788, dated 6/30/09, made payable to “CK Specialty,” in the amount of \$321.00 as the first of two partial payments of the premium due for the policy. JBI faxed the check to CK Specialty. CK Specialty received the fax. Also, on 6/30/09, CK Specialty issued to FCP, a liability insurance policy, number OL2081, effective from 6/29/09 to 6/29/10. The insurer was a group of certain but

unidentified Underwriters at Lloyd's, London, and the premium was \$831.00. Thus, FCP was uninsured from 9/9/08 to 6/28/09. JBI knew as of 6/30/09 that FCP was insured from 9/9/08 to 6/28/09. However, JBI did not inform FCP that it was uninsured for the period. Sometime in August 2009, FCP discovered from an unidentified person other than JBI and CK Specialty that CK Specialty had issued the policy to FCP. FCP called CK Specialty about the policy. On 8/5/09, CK Specialty sent an e-mail to FCP attaching a copy of the policy. On 8/10/09, about two months after JBI applied and one month after CK Specialty issued the policy, JBI faxed to FCP a copy of the declarations page of the policy. On 9/9/09, CK Specialty faxed to JBI a letter dated 9/9/09 requesting JBI confirm in writing by 10/9/09 that two specified conditions of the property insured under the policy, called Columbia Cottage, were corrected and that the correction of these conditions "are critical to the continuance of coverage." The fax was successfully sent to JBI. CK Specialty did not receive from JBI any response to CK Specialty's fax on 9/9/09. On 11/11/09, JBI issued another check, number 25809, dated 11/11/09, made payable to "CK Specialty," in the amount of \$1,041.82, of which \$496.00 was the second of two partial payments of the premium due for the policy. On 11/17/09, CK Specialty received the check. Thus, without authority from FCP, JBI retained the proceeds of FCP's check dated 9/27/08 from 10/6/08 to at least 6/30/09, and on 6/30/09 and 11/11/09 used the proceeds to procure insurance for FCP.

Withheld and Misappropriated Money Received in Course of Insurance Business

JBI is subject to enforcement action pursuant to ORS 744.074(1)(d) because of the following circumstances. ORS 744.074(1)(d) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person improperly withheld, misappropriated, or converted, any moneys or properties received by the person in the course of doing insurance business. As generally described above and specifically described below, JBI improperly withheld, and then misappropriated, money received by JBI in the course of doing insurance business by on 10/4/09

receiving from FCP \$800 as payment of the premium for the renewal of an insurance policy insuring FCP for the period from 9/8/08 to 9/8/09, knowing as of 9/11/08 that the policy has not and would not be renewed, on 10/6/09 negotiating the check, and without authority from FCP, retaining the \$800 from 10/6/08 to at least 6/30/09, and on 6/30/09 and 11/11/09 using the proceeds to procure insurance for FCP.

Used a Dishonest Practice in Business

JBI is subject to enforcement action pursuant to ORS 744.074(1)(h) because of the following circumstances. ORS 744.074(1)(h) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person used a fraudulent, coercive, or dishonest practice, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in Oregon or elsewhere. As generally described above and specifically described below, JBI used a dishonest act or practice by engaging in the following conduct:

1. On 6/5/09, JBI, by and through L. Momberger, called and assured FCP that FCP was currently insured when such representation was false and L. Momberger knew that it was false because the previous policy expired on 9/8/08 and was not renewed, JBI only applied for a replacement insurance policy on 6/5/09, and the replacement insurance policy did not become effective until 6/29/09.
2. Also on 6/5/09, JBI sent by fax to CK Specialty an application dated 6/5/09 for a liability insurance policy to be issued to FCP insuring FCP for the period from 6/5/09 to 6/5/10. CK Specialty received the fax. FCP did not apply for the insurance and did not authorize JBI to apply for the insurance on its behalf. JBI knew that FCP did not apply or authorize JBI to apply for the insurance on its behalf.

Demonstrated Incompetence or Untrustworthiness in Business

JBI is subject to enforcement action pursuant to ORS 744.074(1)(h) because of the following circumstances. ORS 744.074(1)(h) permits the director to take any

authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person used a fraudulent, coercive, or dishonest practice, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in Oregon or elsewhere. As generally described above and specifically described below, JBI demonstrated incompetence or untrustworthiness by, from 8/1/08 to 9/9/09, receiving from AIM, CK Specialty, and FCP, requests for information relative to insurance but failing to respond or timely respond to such requests, or sending to or receiving from FCP communications and subsequently receiving information material to such communications but failing to send such material information to FCP.

1. JBI did not respond to AIM's fax on 8/1/08.
2. JBI did not respond to AIM's fax on 9/11/08 until sometime in October 2008.
3. JBI knew as of 9/11/08 that the insurance policy had not been and would not be renewed for the period from 9/8/08 to 9/8/09, and no premium was due for the renewal of the policy, and JBI had solicited FCP to pay the premium for the renewal of the policy, but JBI did not inform FCP that the policy had not been and would not be renewed, and did not inform FCP that FCP should not send to JBI payment of any premium until further notice.
4. JBI did not respond to AIM's verbal request in October 2008.
5. JBI planned to review FCP's insurance on 11/6/08 but, due to purported problems with JBI's computers, JBI did not follow up on until on or about 6/5/09.
6. JBI failed to provide to FCP proof of current insurance which FCP requested in late May 2009
7. JBI failed to provide to FCP proof of current insurance which FCP requested on 6/1/09.
8. JBI failed to provide to FCP proof of current insurance which FCP requested twice on 6/3/09.
9. JBI failed to provide to FCP proof of current insurance which FCP requested on 6/5/09.

10. JBI knew as of 6/30/09 that FCP had been requesting proof of current insurance since at least late May 2009, and that FCP was uninsured from 9/9/08 to 6/28/09, but JBI failed to inform FCP that it was uninsured during the period.

11. JBI failed to respond to CK Specialty's fax on 9/9/09.

Forged Person's Name on Application for Insurance or Related Document

JBI is subject to enforcement action pursuant to ORS 744.074(1)(k) because of the following circumstances. ORS 744.074(1)(k) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person forged another person's name to an application for insurance or to any document related to an insurance transaction. As described above, on 6/5/09, JBI sent by fax to CK Specialty an application dated 6/5/09 for a liability insurance policy to be issued to FCP for the period from 6/5/09 to 6/5/10. The application was purportedly signed by "Bill Minard" as the applicant. Although Minard was the president of FCP in 2007, Minard was not an officer of and did not actively participate in FCP's affairs in 2009. Minard never saw the application, did not sign the application, and did not authorize anyone to sign his name on the application. Instead, L. Momberger forged Minard's name on the application. Thus, JBI, by and through L. Momberger, forged Minard's signature on the application.

Failed to Promptly and Truthfully Respond to Director's Inquiry

JBI is subject to enforcement action pursuant to ORS 731.296 because of the following circumstances. ORS 744.074(1)(b) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person violated any insurance statute; or any rule, order, or subpoena, of the director or the insurance regulator of another state. ORS 731.296 requires a person who is licensed in Oregon in any capacity under the Insurance Code to promptly and truthfully respond to an inquiry from the director. On 7/9/09, the director received from FCP a complaint dated 7/7/09 about JBI. FCP complained that FCP had communicated with JBI on

eight occasions from February 2008 to 6/17/09 requesting proof of current insurance but never received any proof. The eight instances were in or on February 2008, late May 2009, 6/1/09, twice on 6/3/09, 6/4/09, 6/5/09, and 6/17/09. On 7/16/09, the director sent by first class mail a letter dated 7/16/09 to JBI at 20553 SW Tualatin Valley Highway, Aloha, OR 97007 requesting certain information about the complaint within 21 days from receipt which would have been about 8/10/09. As stated above, on 8/10/09, JBI faxed to FCP a copy of the declarations page of the policy insuring FCP for the period from 6/29/09 to 6/29/10. On 8/18/09, when the director did not receive a response, the director mailed by certified mail a follow up letter dated 8/18/09 to JBI at its last recorded business mailing address of PO Box 7279 Aloha, OR 97007-7279. The director's letter dated 8/18/09 did not contain a copy of the complaint or the director's letter dated 7/16/09. On 8/20/09, the director received a telephone call from L. Momberger saying that she had received the director's letter dated 8/18/09, and requesting that a copy of the complaint be faxed to her at 503-649-3171. On 8/20/09, the director faxed a copy of the complaint to L. Momberger at JBI's fax number of 503-649-3171, and called L. Momberger and verified that L. Momberger received the complaint sent by fax. On 9/9/09, the director received from L. Momberger a letter dated 9/8/09 responding to the complaint. On 9/11/09, the director mailed by certified mail a letter dated 9/11/09 to L. Momberger at JBI's last recorded business mailing address of PO Box 7279 Aloha, OR 97007-7279 requesting more specific information about the complaint within 14 days of receipt. On 9/17/09, a person named "Bill Momberger," who is believed to be B. Momberger, signed for the letter. Thus, JBI was required to respond by 10/1/09. The director has not received from JBI a response to the director's letter dated 9/11/09.

Order

Pursuant to ORS 744.074(1), JBI's Oregon resident business entity insurance producer license is revoked on the date of this order.

Notice of Right to Judicial Review

A party has the right to judicial review of this order pursuant to ORS 183.480 and ORS 183.482. A party may request judicial review by sending a petition for judicial review to the Oregon Court of Appeals. The court must receive the petition within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the date the party received the order. If the order was mailed to a party, then the date of service is the date the order was mailed to the party, not the date the party received the order. If a party files a petition, the party is requested to also send a copy of the petition to the Insurance Division by delivering it to the Labor and Industries Building, 350 Winter Street NE Room 300, Salem, Oregon 97301-3880; or mailing it to PO Box 14480, Salem, OR 97309-0405; or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

Dated July 15, 2010

/s/ Teresa D. Miller
Teresa D. Miller
Administrator
Insurance Division
Department of Consumer and Business Services