

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

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Proceedings by the Commissioner of Banking )  
 and Insurance, State of New Jersey, to fine, suspend )  
 and/or revoke the insurance producer licenses of )  
 Russell W. Emrick, Jr. d/b/a Kebalo Insurance Agency, )  
 The Insurance Advisory Service Agency, and )  
 My Insurance Man Agency, Ref. No. 8026975; )  
 Insurance Management Group Inc., Ref. No. 9844698; )  
 Joseph J. Gallagher Insurance Agency Inc. d/b/a )  
 Gallagher Insurance Agency and J J Gallagher Insurance )  
 Agency, Ref. No. 8012406; and )  
 Renee R. Cherowitz, Ref. No. 8214974 )

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**ORDER  
TO  
SHOW CAUSE**

To: Russell W. Emrick, Jr.  
508 Paige Drive  
Vincentown, NJ 08088

Insurance Management Group Inc.  
28 High St.  
Mt. Holly, NJ 08060

Joseph J. Gallagher Insurance Agency, Inc.  
28 High St.  
Mt. Holly, NJ 08060

Renee R. Cherowitz  
860 Lower Ferry Road, Apt. 2-C  
Trenton, NJ 08628

This matter, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon information that Russell W. Emrick, Jr. d/b/a Kebalo Insurance Agency, The Insurance Advisory Service Agency, and My Insurance Man Agency (“Emrick”), Insurance Management Group Inc. (“IMG”), Joseph J. Gallagher Insurance Agency Inc. d/b/a Gallagher Insurance Agency and J J Gallagher Insurance Agency (the “Gallagher Agency”) and Renee R. Cherowitz (“Cherowitz”) (Emrick, IMG,

Gallagher Agency and Cherowitz collectively, “Respondents”), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Emrick was formerly licensed as a resident individual insurance producer in the State of New Jersey, pursuant to N.J.S.A. 17:22A-32a, until May 31, 2014, when his license expired; and

WHEREAS, Emrick conducted insurance business under the trade names Kebalo Insurance Agency, The Insurance Advisory Service Agency, and My Insurance Man Agency, which were approved by the Department of Banking and Insurance (the “Department”) pursuant to N.J.A.C. 11:17-2.8(a); and

WHEREAS, Cherowitz was formerly licensed as a resident individual insurance producer in the State of New Jersey, pursuant to N.J.S.A. 17:22A-32a, until December 31, 2011, when her license expired; and

WHEREAS, IMG was formerly licensed as a resident business entity insurance producer in the State of New Jersey, pursuant to N.J.S.A. 17:22A-32b, until May 31, 2014, when its license expired; and

WHEREAS, the Gallagher Agency was formerly licensed as a resident business entity insurance producer in the State of New Jersey, pursuant to N.J.S.A. 17:22A-32b, until May 31, 2012, when its license expired; and

WHEREAS, at all relevant times, Emrick was the owner of IMG and Emrick and Cherowitz were the Designated Responsible Licensed Producers (“DRLP”) for IMG and responsible for the activities of IMG and its compliance with the insurance laws, rules and regulations of this State, pursuant to N.J.S.A. 17:22A-32b(2); and

WHEREAS, Emrick owned and was the DRLP for the Gallagher Agency and responsible for the activities of the Gallagher Agency and its compliance with the insurance laws, rules and regulations of this State, pursuant to N.J.S.A. 17:22A-32b(2); and

WHEREAS, Respondents are subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 et seq. (“Producer Act”), the Producer Licensing regulations, N.J.A.C. 11:17-1.1 et seq. and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 et seq. and N.J.A.C. 11:17C-1.1 et seq.; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40d, the Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Producer Act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with violations of the Producer Act or Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes even if the person’s license or registration has been surrendered or has lapsed by operation of law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-29, a person shall not sell, solicit or negotiate insurance in this State unless the person is licensed for that line of authority in accordance with the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance law, regulation, subpoena or order of the Commissioner or of another state’s insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(4), an insurance producer shall not improperly withhold, misappropriate, or convert any monies or properties received in the course of doing insurance business; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(8), an insurance producer shall not use fraudulent, coercive or dishonest practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.A.C. 11:17-2.10(b)4, an employer shall be responsible for the insurance-related conduct of an employee; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.3(a), with certain exceptions, no person shall act as an insurance producer or maintain or operate any office in this State for the transaction of the business of an insurance producer, or receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer, without first obtaining a license from the Commissioner granting authority for the kind of insurance transacted; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.6(c), licensed partners, officers and directors, and all owners with an ownership interest of 10 percent or more in the organization shall be held responsible for all insurance related conduct of the organization licensee, any of its branch offices, its other licensed officers or partners, and its employees; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.1(a), all premium funds shall be held by an insurance producer in a fiduciary capacity and shall not be misappropriated, improperly converted to the insurance producer's own use, or illegally withheld by the licensee; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.2(a), all premium funds shall be remitted to the insurer or other insurance producer, as applicable, within five business days after receipt of the funds except as otherwise required and provided by any of the following: (1) the insurance producer's contract with the insurer or written agreement with the insured; (2) any controlling statute or administrative rule; or (3) the rules of any residual market mechanism created by or pursuant to any statute; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.6(b), all records, books and documents required to be maintained by the provisions of N.J.A.C. 11:17C-1.1 et seq. shall, upon his or her request, be produced for examination by the Commissioner or his or her duly authorized representatives; and

### **FACTS RELEVANT TO COUNTS 1 THROUGH 3**

IT APPEARING, that D.M. was the owner of a home in New Jersey (the "Property") and the owner and/or operator of a construction company located in New Jersey; and

IT FURTHER APPEARING, that at all times relevant hereto, IMG was D.M.'s insurance agent for his personal and business needs; and

#### **A. Policy with Max Specialty Insurance Company**

IT FURTHER APPEARING, that Cherowitz submitted an application to Jimcor Agency Inc. ("Jimcor"), a managing general agent and insurance wholesaler, and requested that Jimcor bind a commercial general liability insurance policy insuring D.M.'s business with Max Specialty Insurance Company ("Max Specialty"), with a policy period from November 20, 2009 to November 20, 2010 and an annual premium, including taxes and fees, of \$3,770; and

IT FURTHER APPEARING, that Jimcor bound a commercial general liability policy with Max Specialty (the “Max Specialty Policy”) based on the application submitted by Cherowitz; and

IT FURTHER APPEARING, that on or about November 20, 2009, D.M. remitted \$3,770 in cash to Cherowitz for the Max Specialty Policy; and

IT FURTHER APPEARING, that Cherowitz failed to remit the \$3,770 to Jimcor for the Max Specialty Policy; and

IT FURTHER APPEARING, that the Max Specialty Policy was cancelled effective January 20, 2010 for nonpayment of premium; and

**B. Policy with Zurich American Insurance Company**

IT FURTHER APPEARING, that on January 26, 2010, Emrick, IMG and Cherowitz, acting under the approved trade name Kebalo Insurance Agency, submitted an application to Zurich American Insurance Company (“Zurich”) for a builders risk insurance policy for D.M. (the “Builders Risk Policy”), which had a policy period from January 26, 2010 to January 26, 2011 and an annual premium of \$2,197.60, and which would have covered the Property; and

IT FURTHER APPEARING, that Zurich bound the Builders Risk Policy based on the application that was submitted; and

IT FURTHER APPEARING, that Emrick, IMG and Cherowitz did not ask D.M. to remit any additional money for the Builders Risk Policy because D.M. had already remitted \$3,770 for the Max Specialty Policy, which had been cancelled because Respondents failed to remit that money to Jimcor; and

IT FURTHER APPEARING, that Emrick, IMG and Cherowitz failed to remit the annual premium of \$2,197.60 for the Builders Risk Policy to Zurich, despite having already received \$3,770 from D.M.; and

IT FURTHER APPEARING, that on February 22, 2010, the Builders Risk Policy was cancelled for non-payment of premium; and

**C. D.M. Suffers a Loss**

IT FURTHER APPEARING, that as a result of a severe storm on March 13, 2010, D.M. experienced a loss on the Property when a tree fell onto the garage; and

IT FURTHER APPEARING, that on March 13, 2010, D.M. contacted Cherowitz to report the loss and that Cherowitz said she would take care of the matter; and

IT FURTHER APPEARING, that D.M.'s loss on the Property was not covered by insurance but would have been covered by Zurich if the premium for the Builders Risk Policy had been paid by Respondents; and

**COUNT 1**

IT FURTHER APPEARING, that Emrick, IMG and Cherowitz failed to remit the premium on the Builder's Risk Policy within five business days, causing D.M. to be without coverage when he experienced a loss at the Property on March 13, 2010, in violation of N.J.S.A. 17:22A-40a(2), (4), (8), and (16); and N.J.A.C. 11:17C-2.1(a) and 11:17C-2.2(a); and

**COUNT 2**

IT FURTHER APPEARING, that Emrick, IMG and Cherowitz failed to remit insurance premiums on the Max Specialty Policy to Jimcor within five business days, in

violation of N.J.S.A. 17:22A-40a(2), (4), and (8); and N.J.A.C. 11:17C-2.1(a) and 11:17C-2.2(a); and

### **COUNT 3**

IT FURTHER APPEARING, that despite numerous requests by the Department to Respondents between February 2014 and July 2014 for Respondents' complete records concerning D.M.'s insurance policies, Emrick, IMG and Cherowitz failed to provide required records during the Department's investigation, in violation of N.J.S.A. 17:22A-40a(2) and (8) and N.J.A.C. 11:17C-2.6(b); and

### **FACTS RELEVANT TO COUNTS 4 THROUGH 11**

IT FURTHER APPEARING, that Emrick, IMG and the Gallagher Agency were the insurance producers for several condominium associations in New Jersey; and

IT FURTHER APPEARING, that the condominium associations all maintained commercial property insurance policies, procured through the surplus lines market; and

IT FURTHER APPEARING, that Emrick, IMG and the Gallagher Agency were not authorized to place business in the surplus lines insurance market and utilized the McSweeney Agency, LLC ("McSweeney Agency"), a surplus lines agent and representative of certain underwriters at Lloyds of London, to procure and bind the policies; and

IT FURTHER APPEARING, that Emrick, IMG and the Gallagher Agency procured surplus lines insurance policies for the condominium associations from Scottsdale Insurance Company ("Scottsdale") through the McSweeney Agency; and



**COUNT 4**

IT FURTHER APPEARING, that M.I. and S.S. were the representatives of a condominium association that maintained a commercial insurance policy with Scottsdale, with a policy period of December 1, 2014 to December 1, 2015, which policy covered condominiums located in New Jersey; and

IT FURTHER APPEARING, that on or about November 28, 2015, M.I. wrote a check in the amount of \$1,569.35, payable to the Gallagher Agency, and sent it to the Gallagher Agency for half of the annual premium; and

IT FURTHER APPEARING, that on or about November 29, 2015, S.S. wrote a check in the amount of \$1,569.35, payable to The Insurance Advisory Service Agency, one of Emrick's trade names, and sent it to the Gallagher Agency for the second half of the annual premium; and

IT FURTHER APPEARING, that on or about December 2, 2015, M.I.'s check and S.S.'s check were deposited into a trust account owned by the Gallagher Agency; and

IT FURTHER APPEARING, that Emrick and the Gallagher Agency failed to remit the premium to the McSweeney Agency within five days of receipt; and

IT FURTHER APPEARING, that on or about January 4, 2016, Scottsdale sent a Notice of Cancellation for non-payment to M.I. and S.S.; and

IT FURTHER APPEARING, that on or about January 21, 2016, the McSweeney Agency received the payment from the Gallagher Agency for the renewal of the Scottsdale policy; and

IT FURTHER APPEARING, that Emrick and the Gallagher Agency failed to remit the premium within five business days to the McSweeney Agency, in violation of N.J.S.A. 17:22A-40a(2), (4), and (8); and N.J.A.C. 11:17C-2.1(a) and 11:17C-2.2(a); and

**COUNT 5**

IT FURTHER APPEARING, that P.H. and E.B were the representatives of a condominium association that maintained a commercial insurance policy with Scottsdale for condominiums in New Jersey; and

IT FURTHER APPEARING, that on or about March 1, 2016, P.H. wrote a check in the amount of \$848.53, payable to Scottsdale, and sent it to the Gallagher Agency for half of the annual premium; and

IT FURTHER APPEARING, that on March 3, 2016, P.H.'s check was deposited into the Gallagher Agency's trust account, despite the check being made payable to Scottsdale; and

IT FURTHER APPEARING, that on or about March 7, 2016, E.B. wrote a check in the amount of \$848.53, payable to the Gallagher Agency, and sent it to the Gallagher Agency for the second half of the annual premium; and

IT FURTHER APPEARING, that on March 9, 2016, E.B.'s check was deposited into the Gallagher Agency's trust account; and

IT FURTHER APPEARING, that the total of \$1,697.06 in premiums were never remitted to the McSweeney Agency by the Gallagher Agency; and

IT FURTHER APPEARING, that on or about April 13, 2016, Scottsdale sent P.H. and E.B. a Notice of Cancellation for nonpayment of premium; and

IT FURTHER APPEARING, that P.H. and E.B. issued new checks to Scottsdale so that the policy would not be cancelled; and

IT FURTHER APPEARING, that Emrick and the Gallagher Agency misappropriated \$1,697.06 in premiums from P.H. and E.B., in violation of N.J.S.A. 17:22A-40a(2), (4) and (8), and N.J.A.C. 11:17C-2.1(a); and 11:17C-2.2(a); and

### COUNT 6

IT FURTHER APPEARING, that R.G. and M.S. were the representatives of a condominium association that maintained a commercial insurance policy with Scottsdale for condominiums in New Jersey; and

IT FURTHER APPEARING, that on or about January 5, 2016, R.G. wrote a check in the amount of \$1,108.93, payable to the Gallagher Agency, and sent it to the Gallagher Agency for half of the annual premium; and

IT FURTHER APPEARING, that on January 7, 2016, R.G.'s check was deposited into the Gallagher Agency's trust account; and

IT FURTHER APPEARING, that on or about January 10, 2016, M.S. wrote a check in the amount of \$1,108.93, payable to IMG, and sent it to IMG for the second half of the annual premium; and

IT FURTHER APPEARING, that on January 13, 2016, M.S.'s check was deposited into the Gallagher Agency's trust account, despite the check being made payable to IMG; and

IT FURTHER APPEARING, that the premium was never remitted to the McSweeney Agency; and

IT FURTHER APPEARING, that R.G. and M.S. issued new checks to Scottsdale so that the policy would not be cancelled; and

IT FURTHER APPEARING, that M.S. filed a complaint with the local police department where the condominiums were located and that the police department contacted Emrick; and

IT FURTHER APPEARING, that on or about December 24, 2016, Emrick returned \$1,108.93 to M.S.; and

IT FURTHER APPEARING, that on or about June 19, 2017, Emrick returned \$1,108.93 to R.G.; and

IT FURTHER APPEARING, that Respondents failed to remit premiums within five business days to the McSweeney Agency, in violation of N.J.S.A. 17:22A-40a(2), (4), and (8) and N.J.A.C. 11:17C-2.1(a); and 11:17C-2.2(a); and

#### **COUNT 7**

IT FURTHER APPEARING, that K.G. and P.L. were the representatives of a condominium association that maintained a commercial insurance policy with Scottsdale for condominiums in New Jersey; and

IT FURTHER APPEARING, that on or about March 10, 2016, P.L. wrote a check in the amount of \$1,773.53, payable to the Gallagher Agency, and sent it to the Gallagher Agency for half of the annual premium; and

IT FURTHER APPEARING, that on March, 14, 2016, P.L.'s check was deposited into the Gallagher Agency's trust account; and

IT FURTHER APPEARING, that on or about March 11, 2016, K.G. wrote a check in the amount of \$1,773.52, payable to Gallagher Agency, and sent it to the Gallagher Agency for the second half of the annual premium; and

IT FURTHER APPEARING, that on March 16, 2016, K.G.'s check was deposited into the Gallagher Agency's trust account; and

IT FURTHER APPEARING, that the premium payments were never remitted to the McSweeney Agency; and

IT FURTHER APPEARING, that P.L. and K.G. issued new checks to Scottsdale so that the policy would not be cancelled; and

IT FURTHER APPEARING, that Emrick and the Gallagher Agency misappropriated \$3,547.05 in premiums from K.G. and P.L., in violation of N.J.S.A. 17:22A-40a(2), (4) and (8) and N.J.A.C. 11:17C-2.1(a) and 11:17C-2.2(a); and

#### **COUNT 8**

IT FURTHER APPEARING, that P.D. was a representative of a condominium association that maintained a commercial insurance policy with Scottsdale for condominiums in New Jersey; and

IT FURTHER APPEARING, that on or about February 15, 2016, P.D. wrote a check in the amount of \$1,029.60, payable to the Gallagher Agency, and sent it to the Gallagher Agency for half of the annual premium; and

IT FURTHER APPEARING, that on March 18, 2016, P.D.'s check was deposited into the Gallagher Agency's trust account; and

IT FURTHER APPEARING, that another representative of the condominium association wrote a check in the amount of \$1,029.60, payable to Scottsdale, and Scottsdale received the check; and

IT FURTHER APPEARING, that P.D.'s premium was never remitted to the McSweeney Agency; and

IT FURTHER APPEARING, that P.D. issued a new check to Scottsdale so that the policy would not be cancelled; and

IT FURTHER APPEARING, that Emrick and the Gallagher Agency misappropriated a \$1,029.60 premium payment from P.D., in violation of N.J.S.A. 17:22A-40a(2), (4), and (8), and N.J.A.C. 11:17C-2.1(a) and 11:17C-2.2(a); and

### **COUNT 9**

IT FURTHER APPEARING, that P.M. was a representative of a condominium association that maintained a commercial insurance policy with Scottsdale for condominiums in New Jersey; and

IT FURTHER APPEARING, that on or about January 3, 2016, P.M. wrote a check in the amount of \$2,361.75, payable to the Gallagher Agency, and sent it to the Gallagher Agency for the full annual premium; and

IT FURTHER APPEARING, that on January 7, 2016, P.M.'s check was deposited into the Gallagher Agency's trust account; and

IT FURTHER APPEARING, the premium was never remitted to the McSweeney Agency; and

IT FURTHER APPEARING, that P.M.'s policy was cancelled effective May 2, 2016 for nonpayment of premium; and

IT FURTHER APPEARING, that Emrick and the Gallagher Agency misappropriated the \$2,361.75 premium payment from P.M., in violation of N.J.S.A. 17:22A-40a(2), (4), and (8) and N.J.A.C. 11:17C-2.1(a) and 11:17C-2.2(a); and

**COUNT 10**

IT FURTHER APPEARING, that M.D. and A.E. were representatives of a condominium association that maintained a commercial insurance policy with Scottsdale for condominiums in New Jersey; and

IT FURTHER APPEARING, that on or about March 22, 2016, M.D. wrote a check in the amount of \$1,405.03, payable to the Gallagher Agency, and sent it to the Gallagher Agency for half of the annual premium; and

IT FURTHER APPEARING, that on April 12, 2016, M.D.'s check was deposited into the Gallagher Agency's trust account; and

IT FURTHER APPEARING, that on or about March 21, 2016, A.E. wrote a check in the amount of \$1,405.02, payable to the Gallagher Agency, and sent it to the Gallagher Agency for the second half of the annual premium; and

IT FURTHER APPEARING, that on April 12, 2016, A.E.'s check was deposited into the Gallagher Agency's trust account; and

IT FURTHER APPEARING, that the premium payments were never remitted to the McSweeney Agency; and

IT FURTHER APPEARING, that on April 1, 2016, the commercial insurance policy with Scottsdale was cancelled for nonpayment of premium; and

IT FURTHER APPEARING, that M.D. subsequently filed a complaint with the Mount Holly Police Department; and

IT FURTHER APPEARING, that on or about January 30, 2017, Emrick returned \$1,405.03 to M.D. after the Mount Holly Policy Department contacted Emrick; and

IT FURTHER APPEARING, that Emrick did not return the \$1,405.02 to A.E.; and

IT FURTHER APPEARING, that Emrick and the Gallagher Agency misappropriated the \$1,405.02 in premiums from A.E., and failed to remit M.D.'s premium payment within five business days, in violation of N.J.S.A. 17:22A-40a(2), (4) and (8) and N.J.A.C. 11:17C-2.1(a) and 11:17C-2.2(a); and

### COUNT 11

IT FURTHER APPEARING, that the insurance producer licenses of Emrick, the Gallagher Agency and IMG were expired when they acted as insurance producers for the policies as described in Counts 4 through 10, in violation of N.J.S.A. 17:22A-29; N.J.S.A. 17:22A-40a(2) and (8) and N.J.A.C. 11:17A-1.3(a); and

NOW, THEREFORE, IT IS on this 16<sup>th</sup> day of October, 2017;

ORDERED, that Respondents appear and show cause why their New Jersey insurance producer licenses should not be suspended or revoked and/or why they should not be subject to civil penalties by the Commissioner pursuant to N.J.S.A. 17:22A-40; and

IT IS FURTHER ORDERED, that Respondents appear and show cause why the Commissioner should not assess a fine of up to \$5,000 for the first violation and \$10,000 for each subsequent violation of the Producer Act and order Respondents to pay restitution of moneys owed any person, pursuant to the provisions of N.J.S.A. 17:22A-40 and N.J.S.A. 17:22A-45c; and

IT IS FURTHER ORDERED, that Respondents appear and show cause why, in addition to any other penalty, they should not be required to reimburse the Department for



the cost of the investigation and prosecution, including attorneys' fees, authorized pursuant to N.J.S.A. 17:22A-45c; and

IT IS PROVIDED, that Respondents have the right to request an administrative hearing, to be represented by counsel or other qualified representative at their own expense, to take testimony, to call or cross-examine witnesses, to have subpoenas issued and to present evidence or argument if a hearing is requested; and

IT IS FURTHER PROVIDED, that, unless a request for a hearing is received within twenty (20) days of the service of this Order to Show Cause, the right to a hearing in this matter shall be deemed to have been waived by the Respondents, and the Commissioner shall dispose of this matter in accordance with law. A hearing may be requested by mailing the request to Virgil Downtin, Chief of Investigations, Department of Banking and Insurance, P.O. Box 325, Trenton, New Jersey 08625, or by faxing the hearing request to the Department at (609) 292-5337. The request shall contain the following:

- (a) Respondent's full name, address and daytime telephone number;
- (b) A statement referring to each charge alleged in this Order to Show Cause and identifying any defense intended to be asserted in response to each charge. Where the defense relies on facts not contained in the Order to Show Cause, those specific facts must be stated;
- (c) A specific admission or denial of each fact alleged in this Order to Show Cause. Where the Respondent has no specific knowledge regarding a fact alleged in the Order to Show Cause, a statement to that effect must be contained in the hearing request. Allegations of this Order to Show Cause not answered in the manner set forth above shall be deemed to have been admitted; and
- (d) A statement requesting the hearing.

  
Peter L. Hartt  
Director of Insurance