



OFFICE OF INSURANCE REGULATION

KEVIN M. McCARTY
COMMISSIONER

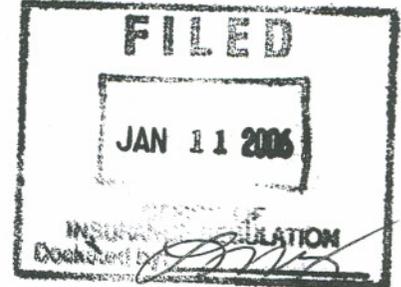
IN THE MATTER OF:

EMPLOYEE BENEFIT
MANAGERS, INC. OF AMERICA

and

CHARLES HENRY BELCH

CASE NO.: 83856-05



ORDER TO CEASE AND DESIST
AND TO ASSESS PENALTY

TO:

EMPLOYEE BENEFIT
MANAGERS, INC. OF AMERICA
6427-D Oak Brook Parkway
Fort Wayne, Indiana 46825

CHARLES HENRY BELCH
2630 Fox Chase Run
Fort Wayne, Indiana 46825

YOU ARE HEREBY NOTIFIED that pursuant to the Florida Insurance Code including, Sections 624.307, 624.317, 624.401, 626.437, 626.8805, 626.901, 626.9571, 626.9581, 626.9591, 626.9601 and 120.569, *Florida Statutes*, the Commissioner of the Office of Insurance Regulation of the State of Florida has caused an investigation to be made of the

insurance-related activities of Employee Benefit Managers, Inc. of America (hereinafter "EBM") and Charles Henry Belch (individually and in his capacities with EBM) with respect to their insurance-related activities in Florida. Pursuant to the Florida Insurance Code, the Commissioner of the Office of Insurance Regulation intends to enter a Final Order requiring EBM and Charles Belch to cease and desist from engaging in the business of insurance in the State of Florida and requiring the payment of fines, as set forth in the above referenced statutes. As grounds therefore, the Office alleges that:

1. The Florida Office of Insurance Regulation (hereinafter "Office") has jurisdiction over the subject matter hereof and the parties hereto.

2. EBM is an Indiana corporation that is not authorized to transact insurance business in the State of Florida, either as an insurer, a Multiple Employer Welfare Arrangement (hereinafter "MEWA") or as a Third Party Administrator (hereinafter "TPA").

3. EBM is not an eligible surplus lines carrier in Florida.

4. EBM has not applied for, nor received a Certificate of Authority to transact insurance business in the State of Florida.

5. EBM is not a registered corporation with the Florida Secretary of State.

6. Charles Belch currently resides in Fort Wayne, Indiana and was issued a Florida non-resident Life, Health and Variable Annuity license on March 12, 1990.

7. At all times relevant to the allegations in this Order, Charles Belch was the President and Chief Executive Officer of EBM.

8. Section 624.02, *Florida Statutes* defines "Insurance" as: *"Insurance" is a contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.*

9. Section 624.03, *Florida Statutes* defines “Insurer” as: *“Insurer” includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or annuity.*

10. Section 624.09, *Florida Statutes* defines “Authorized”, “Unauthorized insurer” as: *(1) An “authorized” insurer is one duly authorized by a subsisting certificate of authority issued by the office to transact insurance in this state. (2) An “unauthorized” insurer is one not so authorized.*

11. Section 624.10, *Florida Statutes* defines “Transacting insurance” as: *“Transact” with respect to insurance includes any of the following, in addition to other applicable provisions of the code: (1) solicitation or inducement. (2) Preliminary negotiations. (3) Effectuation of a contract of insurance. (4) Transaction of matters subsequent to the effectuation of a contract of insurance and arising out of it.*

12. No person shall transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, without complying with the applicable provisions of this code. [Section 624.11, *Florida Statutes*];

13. No person shall act as an insurer, and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the office, except as to such transactions as are expressly otherwise provided for in this code. [Section 624.401(1), *Florida Statutes*];

14. Section 624.437(1), *Florida Statutes* defines “Multiple Employer Welfare Arrangement” as: *[a]n employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health insurance benefits or*

any other benefits, described in s. 624.33, other than life insurance benefits, to the employees of two or more employers, or to their beneficiaries.

15. No person shall operate, maintain, or, after October 1, 1983, establish a multiple employer welfare arrangement unless such arrangement has a valid certificate of authority issued by the office. [Section 624.437(2), *Florida Statutes*];

16. Section 626.88(1), *Florida Statutes* defines “Administrator” as: *[a]ny person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage or coverage of any other expenses described in s.624.33(1), other than any of the following persons... (none of which exceptions are applicable).*

17. Section 626.8805(1), *Florida Statutes* provides, in pertinent part: *It is unlawful for any person to act as or to hold himself or herself out to be an administrator in this state without a valid certificate of authority issued by the office pursuant to ss. 626.88-626.894.*

18. No person shall, from offices or by personnel or facilities located in this state, or in any other state or country, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact insurance in this state in:

- (a) The solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts, or renewals thereof;
- (b) The dissemination of information as to coverage or rates;
- (c) The forwarding of applications;
- (d) The delivery of policies or contracts;
- (e) The inspection of risks

- (f) The fixing of rates;
- (g) The investigation or adjustment of claims or losses; or
- (h) The collection or forwarding of premiums;

or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. [Section 626.901(1), *Florida Statutes*];

19. EBM and Charles Belch developed, marketed and sold health insurance benefit plans to employer/members through multiple national trade associations, including The Custom Electronic Design and Installation Association (hereinafter "CEDIA"), a national trade organization for audio installers.

20. EBM and Charles Belch set up self-funded group health insurance plans on behalf of employers and acted as plan administrator and trustee.

21. Although EBM and Charles Belch purport to set up health plans as a single employer trust, they funded payments of health insurance claims through use of the following methods:

- a. Collection of monthly fees from employers, in amounts determined by EBM, which were used to fund:
 - i. a separate claims paying bank account for each employer into which approximately half of the employer's monthly fee was deposited; and
 - ii. a single large claims bank account into which the remaining balance of all employer's monthly fees were deposited and commingled;

b. The commingled funds were then further supplemented by non-employer payments from one or more purported "funding sources" which agreed to fund health insurance payments in excess of five thousand dollars (\$5,000) in exchange for each employer agreeing to repay to EBM such claim payments made on its behalf;

c. Additionally, EBM agreed to provide stop-loss coverage for claims in excess of one hundred twenty-five thousand dollars (\$125,000).

22. As over half of all funds forwarded to EBM and Charles Belch from employers were commingled and deposited with an outside "funding source" rather than being deposited into individual employer trust accounts, the office has determined that EBM and Charles Belch have been operating as an unauthorized MEWA, TPA or Insurer, in violation of the above referenced statutes.

23. On or about December 3, 2003, EBM and Charles Belch solicited and ultimately contracted with Definitive Electronic Solutions, Inc., a Jupiter, Florida, based electronic design and installer, to set up, administer and act as trustee for a self-funded employee health plan.

24. The unlicensed transaction of business as an Insurer, as a MEWA, as a TPA, or any other unlicensed transaction of insurance business by EBM and Charles Belch places Florida residents at grave and immediate risk.

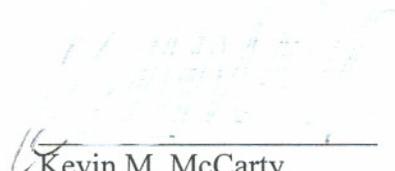
WHEREFORE, because EBM and Charles Belch transacted insurance, acted as a Third Party Administrator, operated or maintained a Multiple Employer Welfare Arrangement or aided and abetted an unauthorized insurer in the State of Florida and with Florida residents without being properly licensed in violation of Sections 624.401, 626.437, 626.8805, 626.901, Florida

Statutes, the Office intends to issue a Final Cease and Desist Order against EBM and Charles Belch pursuant to Sections 626.9571, 626.9581, 626.9591, 626.9601, Florida Statutes; and

WHEREFORE, because EBM and Charles Belch violated the above referenced Statutes, EBM and Charles Belch are liable for a fine not less than five-thousand dollars (\$5,000.00) or more than one-hundred thousand dollars (\$100,000.00) for each violation.

DONE and ORDERED this 11th day of January, 2006




Kevin M. McCarty
Commissioner
Office of Insurance Regulation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order to Cease and Desist and to Assess Penalty has been sent by Certified Mail this ~~11th~~ day of Jan, 2006 to: Employee Benefit Managers, Inc. Of America, 6427-D Oak Brook Parkway, Fort Wayne, Indiana 46825 and to Charles Henry Belch, 2630 Fox Chase Run, Fort Wayne, Indiana 46825.

for

Anoush Brangaccio

Jeffrey W. Joseph
Assistant General Counsel
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399-4206
Telephone: 850/ 413-4294
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NOTICE OF RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes and Rule Chapters 28-106 and 28-107, Florida Administrative Code (F.A.C.), you have a right to request a proceeding to contest this action by the Office of Insurance Regulation (hereinafter the "Office"). You may request a proceeding by filing a Petition. Your Petition for a proceeding must be in writing and must be filed with the General Counsel acting as the Agency Clerk, Office of Insurance Regulation. If served by U.S. Mail the Petition should be addressed to the Florida Office of Insurance Regulation at 612 Larson Building, Tallahassee, Florida 32399-4206. If Express Mail or hand-delivery is utilized, the Petition should be delivered to 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300. The written Petition must be received by, and filed in the Office no later than 5:00 p.m. on the twenty-first (21) day after your receipt of this notice. Unless your Petition challenging this action is received by the Office within twenty-one (21) days from the date of the receipt of this notice, the right to a proceeding shall be deemed waived. Mailing the response on the twenty-first day will not preserve your right to a hearing.

If a proceeding is requested and there is no dispute of material fact the provisions of Section 120.57(2), Florida Statutes would apply. In this regard you may submit oral or written evidence in opposition to the action taken by this agency or a written statement challenging the grounds upon which the agency has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary one will be conducted in Tallahassee, Florida or by telephonic conference call upon your request.

If you dispute material facts, which are the basis for this agency's action, you may request a formal adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. If you request this type of proceeding, the request must comply with all of the requirements of Rule Chapter 28-106.201, F.A.C., must demonstrate that your substantial interests have been affected by this agency's action, and contain:

- a) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- b) A concise statement of the ultimate facts alleged, including the specific facts the Petitioner contends warrant reversal or modification of the agency's proposed action;
- c) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- d) A statement of the relief sought by the petitioner, stating precisely the action Petitioner wishes the agency to take with respect to the agency's proposed action.

These proceedings are held before a State hearing officer of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Office will request that the hearing be conducted in Tallahassee.

In some instances you may have additional statutory rights than the ones described herein.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. Any request for administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.