

Government of the District of Columbia
Department of Insurance, Securities and Banking



OFFICE OF LEGAL AFFAIRS
810 FIRST STREET, NE, SUITE 701
WASHINGTON, D.C. 20002

IN THE MATTER OF:

District of Columbia Department of Insurance,
Securities and Banking

v.

BRITTIAN PERRY DAY
LICENSE NO: 0115090
and
A&D INSURANCE AGENCY, INC.
LICENSE NO: 9900807

SC # AB-04-03

SERVE:

Mr. Brittian Perry Day
4815 43rd Street, NW
Washington, DC 20016

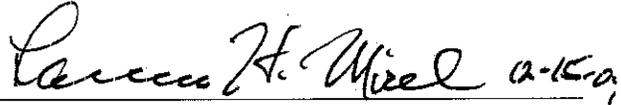
A&D Insurance Agency, Inc.
4815 43rd Street, NW
Washington, DC 20016
SERVE: Brittian Perry Day

**OFFICIAL ORDER IMMEDIATELY SUSPENDING LICENSES AND
NOTICE OF HEARING TO SHOW CAUSE**

In accordance with the provisions of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-509 (2001), and the Producers Licensing Act of 2002, D.C. Official Code §31-1131.12 as amended by the Producer Summary Suspension Emergency Amendment Act of 2004 (effective October 26, 2004 (D.C. Act 15-548; 51 D.C. Reg. 10332)), and finding that the further transaction of business by the subject licensees would be hazardous to the public or policyholders of the District as detailed in the below listed Specifications, **IT IS HEREDY ORDERED** that the **Producer License No. 0115090 of Brittian Perry Day** and the **Producer License No. 9900807 of A&D Insurance Agency, Inc. BE SUSPENDED** effective on the date of this Order and that Brittian Perry Day and A&D Insurance Agency, Inc are hereby directed to appear before the Department of Insurance, Securities and Banking (the

“Department”), 810 First Street, NE, Suite 701, Washington DC, 20002, on Wednesday January 5, 2005, at 10:00 a.m. to show cause why the above described insurance licenses should not be permanently revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Insurance, Securities and Banking of and in the District of Columbia.



Lawrence H. Mirel
Commissioner

Date

Pursuant to D.C. Official Code Section 31-1131.12 as amended, the Commissioner may, suspend, revoke, or refuse to issue or renew a producer's license; may levy a civil penalty in accordance with subsection (d) of the section; or take any combination of these actions, if after notice to the licensee and a hearing, he finds the licensee is in violation of any one or more of the conditions found therein, provided, that if the Commissioner shall find upon examination that the further transaction of business by the producer would be hazardous to the public or the policyholders or creditors of the producer in the District, the Commissioner may suspend the authority without giving notice as may otherwise be required, subject to a hearing within 30 days of the effective date of the order of suspension. The Code further provides that the license of a business entity may be suspended, revoked, or denied renewal if the Commissioner finds, after a hearing as provided, that (A) The occurrence of the license violation was known or should have been known by one or more partners, officers, or managers acting on behalf of the business entity; (B) The violation was not reported to the Commissioner; and (C) Corrective action was not taken.

The Department has sufficient evidence, which, if not refuted by you, would justify the proposed disciplinary action. The charges and specifications against Producer License No. 0115090 of Brittan Perry Day and the Producer License No. 9900807 of A&D Insurance Agency, Inc. are set forth below:

Violation I: D.C. Official Code § 31-1131.12(a)(2), whereby the licensees “violate[d] any insurance laws or any regulations, subpoena, or order of the Commissioner or of another state’s insurance commissioner.”

Violation II: D.C. Official Code § 31-1131.12(a)(4), whereby the licensees “improperly withholds, misappropriates, or converts any monies or properties received in the course of doing insurance business.”

Violation III: D.C. Official Code § 31-1131.12(a)(7), whereby the licensees “admits committing, or is found to have committed, any insurance unfair trade practice or fraud.” DC Official Code Sections 31-2231.01(9) and 31-31-1131.07(a) provide that it is an unfair trade practice to willfully collect a premium or charge for insurance that is not then provided with such frequency as to indicate a general business practice in such conduct.

Violation IV: D.C. Official Code § 31-1131.12(a)(8), whereby the licensees “uses fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in the District or elsewhere.”

SPECIFICATIONS

Brittian Perry Day, as President and through A&D Insurance Agency, Inc, sold various insurance products to a number of Employee Benefit Plans. Many, if not all, of these Plans or Funds are employee benefit trust funds governed by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). They were required by ERISA to purchase fidelity bonds and were also prudentially required to obtain fiduciary liability insurance. Day and A&D Insurance Agency, Inc. purported to sell the Funds these insurance products but instead converted the Fund’s monies and provided fraudulent policies of insurance. As claims on these policies are unusual, the scheme continued for a number of years from approximately 1994 until it was discovered in 2002. The basis of this proceeding is the fraud perpetrated against the parties listed in the below described indictment and/or civil suits including Food and Friends, Inc. (See Attachments 1 & 2)

Part of A&D’s business also included selling property and casualty insurance. Among A&D’s customers for property and casualty insurance was Food & Friends, Inc. Food & Friends is a charitable organization headquartered in Washington, DC that provides meals and groceries to people living with illnesses including HIV/AIDS in the metropolitan area.

Day has been indicted in the United States District Court for the District of Columbia in Criminal Case No. 04-358 (PLF) relating to these sales including (6) counts of mail fraud, (10) counts of wire fraud (5) counts of theft or embezzlement from employee benefit plan, (1) count of fraud in the first degree, and other allegations including forfeiture and aiding and abetting, causing an act to be done. The customers listed in the indictment are found in Attachment 1.

In general terms, Day collected premium and converted the money to his own use that resulted in the clients not obtaining insurance. The indictment outlines the steps that Day took to perpetrate and conceal his scheme. It is alleged that the purpose of the scheme was to enrich himself by stealing approximately \$1.5 million from these clients.

Two civil actions have been filed in the United States District Court for the District of Columbia regarding these allegations. The first is by the Department of Labor styled Elaine L. Chao, Secretary of Labor, United States Department of Labor v. Brittian P. Day and A&D Insurance Agency, Inc., Civil Action No. 02-1516 (LFO) in which there is demanded restitution in the principal amount of \$669,810.00 plus other damages. The second action to the allegations, is brought by a number of these funds in the same District Court styled Trustees of the Ironworkers Local Union No.16 Pension Fund et. al. v. A&D Insurance Agency, Inc., and Brittian P. Day, Civil Action No. 03-01205 (LFO) demanding a judgment for the principal loss in excess of \$850,000 plus other damages. The Plaintiffs in this Complaint are found in Attachment 2.

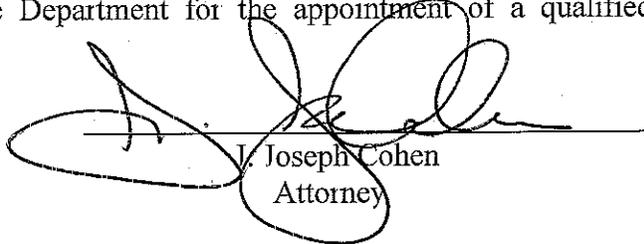
You may appear personally at the hearing and may be represented by legal counsel. You have the right to produce witnesses and evidence on your behalf, and to cross-examine witnesses. The strict rules of evidence will not govern the administrative hearing. The hearing officer shall exclude irrelevant, immaterial, and unduly repetitious evidence.

J. Joseph Cohen, Attorney, Office of Legal Affairs will represent the Department. A copy of any pleading or other written communication should be addressed to the Department of Insurance, Securities and Banking delivered to Mr. Cohen, Department of Insurance, Securities and Banking, Suite 701, 810 First Street, NE, Washington, D.C. 20002.

If you, or any witness(es) to be called, are deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language, you or your witnesses may apply to the Department for the appointment of a qualified interpreter.

12-15-04

Date


J. Joseph Cohen
Attorney

CONDUCT OF HEARING

The hearing in this matter will be conducted by Hearing Officer Leslie Johnson, and governed in accordance with the Producer Licensing Act of 2002, Official Code § 31-1131 *et seq.* (2003) and the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-509 (2001). The Hearing Officer shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. Oral or documentary evidence may be received at the hearing. However, the Hearing Officer shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present

in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for full and true disclosure of the facts.

No postponement will be granted unless good cause is shown in writing to the Hearing Officer Leslie Johnson, Department of Insurance, Securities and Banking, 810 First St., N.E., #701, Washington, D.C. 20002, no later than five (5) days prior to the hearing date. The Hearing Officer's office hours are 8:00 AM to 4:00 PM. Her telephone number is (202) 442-7756.

A copy of any pleading or other written communication addressed to the Department of Insurance, Securities and Banking in this matter should also be sent to Mr. Cohen at the Department's Office of Legal Affairs, 810 First Street, N.E., Washington, D C. 20002, and to all parties involved.

If you, any corporate officer, or any witness to be called, are deaf or because of a hearing impediment cannot readily understand or communicate the spoken English language, you or your witness may apply to the Department for the appointment of a qualified interpreter. In addition, if you or any witnesses to be called require any other special accommodations, please contact Hearing Officer Johnson at least five business days prior to the hearing.

Your failure to appear at the time and place set for the hearing in either person or through counsel, or both, may result in the entry of a default concerning the issues set forth in this notice.

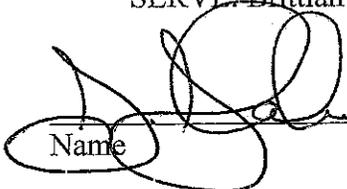
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Official Order Immediately Suspending Licenses And Notice of Hearing To Show Cause was:

Sent by certified mail, [] Fax, [] Hand Delivery on 12-15, 2004, to:

Mr. Brittian Perry Day
4815 43rd Street, NW
Washington, DC 20016

A&D Insurance Agency, Inc.
4815 43rd Street, NW
Washington, DC 20016
SERVE: Brittian Perry Day

 12-15-04
Name Date

Hand Delivery- _____
Name Date

Bricklayers and Allied Craftsmen Local #1 of Maryland Pension Fund
Bricklayers and Allied Craftsmen Local #1 of Maryland Health and Welfare Fund
Bricklayers and Allied Craftsmen Local #1 of Maryland Annuity Fund
Bricklayers and Allied Craftsmen Local #1 of Maryland Vacation Fund
Bricklayers Local #2 of Virginia Pension Fund
Bricklayers Local #2 of Virginia Welfare Fund
Bricklayers Local #2 of Norfolk Apprenticeship Fund
International Union of Painters and Allied Trades District Council #51 Pension Fund
International Union of Painters and Allied Trades District Council #51 Welfare Fund
International Union of Painters and Allied Trades District Council #51 Apprenticeship Plan
Ironworkers Local #5 Pension Fund
Ironworkers Local #5 Health & Welfare Fund
Ironworkers Local #5 Apprentice & Training Fund
Ironworkers Local #16 Annuity Fund
Ironworkers Local #16 Health & Welfare Fund
Ironworkers Local #16 Pension Fund
Ironworkers Local #16 Vacation Fund
Marble, Tile & Terrazzo Workers Pension Fund
Marble, Tile & Terrazzo Workers Health & Pension, Welfare Fund
Marble, Tile & Terrazzo Workers Individual Account Fund
Brewery & Beverage Drivers Local #67 Pension Fund
Brewery & Beverage Drivers Local #67 Health & Welfare Fund
Shopmen Local #486 Retirement Fund / Criss Brothers, Inc.
Washington Area Carpenters' Pension Fund
Washington Area Carpenters' Health & Welfare Fund
Washington Area Carpet Layers Welfare Fund
Teamsters (Warehousemen) Local #730 Pension Fund
Teamsters (Warehousemen) Local #730 Health & Welfare Fund
Rodman Local #201 Vacation Fund
Rodman Local #201 Apprentice Fund
Rodman Local #201 Health Fund
Rodman Local #201 Pension Fund
Food & Friends, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TRUSTEES OF THE IRONWORKERS)
LOCAL UNION NO. 16 PENSION FUND,)
c/o GEMGroup)
8600 LaSalle Road, Suite 600)
Towson, Maryland 21286,)

TRUSTEES OF THE IRONWORKERS)
LOCAL UNION NO. 16 HEALTH FUND,)
c/o GEMGroup)
8600 LaSalle Road, Suite 600)
Towson, Maryland 21286,)

Civil Action No. 03-01205 (LFO)

TRUSTEES OF THE IRONWORKERS)
LOCAL UNION NO. 16 ANNUITY FUND,)
c/o GEMGroup)
8600 LaSalle Road, Suite 600)
Towson, Maryland 21286,)

TRUSTEES OF THE IRONWORKERS)
LOCAL UNION NO. 16 VACATION FUND)
c/o GEMGroup)
8600 LaSalle Road, Suite 600)
Towson, Maryland 21286,)

TRUSTEES OF THE BRICKLAYERS)
& ALLIED CRAFTSMEN LOCAL NO. 1)
OF MARYLAND, VIRGINIA AND THE)
DISTRICT OF COLUMBIA --)
BALTIMORE CHAPTER PENSION FUND)
c/o GEMGroup)
8600 LaSalle Road, Suite 600)
Towson, Maryland 21286,)

TRUSTEES OF THE BRICKLAYERS)
& ALLIED CRAFTSMEN LOCAL NO. 1)
OF MARYLAND, VIRGINIA AND THE)
DISTRICT OF COLUMBIA --)
BALTIMORE CHAPTER HEALTH &)
WELFARE FUND)
c/o GEMGroup)
8600 LaSalle Road, Suite 600)
Towson, Maryland 21286,)

ATTACHMENT 2

TRUSTEES OF THE BRICKLAYERS)
& ALLIED CRAFTSMEN LOCAL NO. 1)
OF MARYLAND, VIRGINIA AND THE)
DISTRICT OF COLUMBIA –)
BALTIMORE CHAPTER VACATION)
FUND)
c/o GEMGroup)
8600 LaSalle Road, Suite 600)
Towson, Maryland 21286,)

TRUSTEES OF THE BRICKLAYERS)
& ALLIED CRAFTSMEN LOCAL NO. 1)
PENSION FUND OF VIRGINIA)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

TRUSTEES OF THE BRICKLAYERS)
& STONEMASONS LOCAL NO. 2)
PENSION FUND)
OF NORFOLK, VIRGINIA)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

TRUSTEES OF THE BRICKLAYERS)
& STONEMASONS LOCAL NO. 2)
WELFARE FUND)
OF NORFOLK, VIRGINIA)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

TRUSTEES OF THE IRON WORKERS)
LOCAL UNION NO. 5 AND)
IRON WORKERS EMPLOYERS)
ASSOCIATION EMPLOYEES PENSION)
FUND,)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

TRUSTEES OF THE IRON WORKERS)
TRUST FUND LOCAL UNION NO. 5)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

TRUSTEES OF THE IRON WORKERS)
LOCAL UNION NO. 5 AND)
IRON WORKERS EMPLOYERS)
ASSOCIATION APPRENTICESHIP)
FUND,)
9110 Old Marlboro Pike)
Upper Marlboro, Maryland 20772-3627,)

TRUSTEES OF THE MARBLE, TILE)
& TERRAZZO WORKERS PENSION)
FUND)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

TRUSTEES OF THE MARBLE, TILE)
& TERRAZZO WORKERS WELFARE)
FUND)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

TRUSTEES OF THE MARBLE, TILE)
& TERRAZZO WORKERS INDIVIDUAL)
ACCOUNT FUND)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

TRUSTEES OF THE RODMAN)
LOCAL 201 PENSION FUND)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

TRUSTEES OF THE RODMAN)
LOCAL 201 WELFARE FUND)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

TRUSTEES OF THE RODMAN)
LOCAL 201 VACATION FUND)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

and)

TRUSTEES OF THE RODMAN)
LOCAL 201 APPRENTICE FUND)
c/o GEMGroup)
6009 Oxon Hill Road, Suite 416)
Oxon Hill, Maryland 20745,)

Plaintiffs,)

vs.)

A&D INSURANCE AGENCY, INC.,)
4815 43rd Street, NW)
Washington, D.C. 20016,)

Serve: Brittian P. Day)
Registered Agent)
4815 43rd Street, NW)
Washington, D.C. 20016,)

and)

BRITTIAN P. DAY,)
4815 43rd Street, NW)
Washington, D.C. 20016,)

Defendants.)