

**BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA**

**FILED**

JUL 21 2011

INSURANCE COMMISSIONER  
OKLAHOMA

STATE OF OKLAHOMA, ex rel. JOHN )  
D. DOAK, Insurance Commissioner, )  
 )  
Petitioner, )  
v. )  
 )  
ROBERTS/REED-CULVER )  
FUNERAL HOME, )  
 )  
Respondent. )

Case No. 11-0503-DIS

**CONSENT ORDER**

COMES NOW the State of Oklahoma, *ex rel.* John D. Doak, Insurance Commissioner, and Roberts/Reed-Culver Funeral Home ("the Permit Holder" or "Respondent") and enter into the following Consent Order.

**JURISDICTION**

1. The Insurance Commissioner has jurisdiction of this cause pursuant to the provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101 et seq. and the Prepaid Funeral Benefits Act, 36 O.S. §§ 6121-6136.18.

2. Respondent has been apprised of its rights including the right to a public hearing and has knowingly and freely waived said rights and enters into this Consent Order as a voluntary settlement to the issues and questions raised in the above captioned case.

**AGREED STIPULATIONS OF FACT**

1. On or around December 2, 2010, the verified Report of Examination (Prepaid Funeral Benefit Services) of the Permit Holder was filed with the Oklahoma Insurance Department covering the period of January 1, 2007 through December 31, 2008.

2. The Permit Holder was afforded a period of twenty (20) days within which to submit a response to the Oklahoma Insurance Department concerning matters contained in the Report of Examination pursuant to Section 309.4(B) of Title 36. The Permit Holder presented a written response within this time frame addressing many of the issues identified in the Report of Examination (Prepaid Funeral Benefit Services). The Insurance Commissioner carefully reviewed and considered the Permit Holder's written response.

3. The Insurance Commissioner adopted the Report of Examination (Prepaid Funeral Benefit Services) on January 28, 2011.

4. The Respondent did not appeal the Adoption Order by filing a Petition for Judicial Review in the District Court of Oklahoma County within thirty (30) days of receipt of this Order, as it had a right to do.

5. On May 12, 2011, the Insurance Commissioner issued a Notice of Hearing and Conditional Order of Disciplinary Action relating to the Report of Examination adopted in Case No. 10-1590-EXM. This Consent Order addresses and resolves the matters in said Disciplinary Action.

6. This Permit Holder was individually operated until it was sold to Service Corporation International. The current owner, Paxus Services, Inc., ("Paxus") purchased the Permit in January of 2007. At about the same time, Paxus purchased six other funeral homes in Oklahoma permitted to do prepaid funeral business. Paxus placed the trust funds deposited for each of the seven funeral homes into one trust account. Therefore, the findings that relate specifically to this single trust account encompass all seven funeral homes and were factored into the analysis of each Paxus Permit Holder's performance under the Prepaid Funeral Benefits Act.

7. The Report of Examination (Prepaid Funeral Benefit Services) observed when Paxus acquired the Permit and the prepaid trust funds from the sellers, the transfer payments of trust funds were made over almost a year and a half, therefore making it difficult for Paxus to determine the amount of funds that should have been included for each account and attributable to each trust member. In essence, Paxus received information from the seller(s) of the funeral homes that made clear record keeping and accounting difficult. However, Paxus did not take steps to fully correct the situation before the Insurance Commissioner's examination and failed to file information in a timely manner, thus violating 36 O.S. §6128 and O.A.C. 365: 25-9-3.

8. Additionally, when the Paxus Permit Holders received the trust funds, 29% of the funds were invested in equities. Paxus continued this prohibited practice until instructed by the Examiner during the Examination process to discontinue such prohibited investments. By keeping the funds partially invested in equities, each of the Paxus Permit Holders violated 36 O.S. §6125(A) (1), a serious breach of the Prepaid Funeral Benefits Act.

9. As a result of the partial investment of prepaid trust funds in equities, the Paxus trust fund made a good return on investment in 2007, earning more than conservative interest investment returns for trust account holders provided by allowable investments. However, in 2008 and 2009, the trust account was underfunded by approximately \$5,600 and \$6,500 respectively, due to a lesser return from equities in the recession environment. The Insurance Commissioner made Paxus aware of the inappropriate equity investments during the examination process and Paxus converted the equity investment into a short-term cash fund in June, 2010.



10. The Insurance Commissioner's recommended approach to rectifying the losses of 2008 and 2009 was to apply the standard interest rate as a benchmark for earnings in each of the three years in question, which would ascertain the normal return of interest expected for the prepaid trust account in each year. The excess interest, or gain, of 2007 would then be applied to make up the underfunding of 2008, 2009 and 2010 (to date of examination), fortunately making all trust account holders whole. This reallocation was done and the changes equalizing the rate of interest to a normative level for sanctioned investments are reflected in the most recent annual reports Paxus submitted to the Insurance Commissioner for this Permit Holder. *See* 36 O.S. § 6125(D).

11. The remaining findings were not detrimental to any contract holders. After consultation and work with the Examiner, the Permit Holder addressed all deficiencies and had no other noteworthy issues with reporting, record keeping or deposits.

12. The Permit Holder's prepaid trust account reports to the Insurance Commissioner now balance. In addition to no financial harm occurring to any contract holders, the Examiner and the Insurance Commissioner find that the Permit Holder's actions were mistaken, but not willful or intentional. The findings of fact indicate that the violations found in the examination had their origin in the prior Permit Holder's actions, and were not caused by the accounting and compliance system created by the Permit Holder. The Permit Holder rectified the violations as part of a process after being notified of them by the Examiner. The Permit Holder notified the Insurance Commission of its progress throughout the correction process. The current Permit Holder, after being made aware of any past violations, made changes to comply with the Insurance Commissioner's recommendations and current laws.

### **AGREED CONCLUSIONS OF LAW**

1. The Insurance Commissioner finds that the violations had their origin in the system the Current Permit Holder inherited from the Prior Permit Holder. However, because the Current Permit Holder continued with the accounting and compliance systems it inherited, there are unintentional violations of §§6128 and 6125(A)(1) of the Prepaid Funeral Benefits Act and O.A.C 365:25-9-3 by the Current Permit Holder in this matter.

2. Under 36 O.S. §619, the Insurance Commissioner has the authority to assess a civil penalty and/or to revoke, suspend or refuse to renew the Company's permit if the Company is found by the Insurance Commissioner to have violated any applicable provisions of the Insurance Code. The Insurance Commissioner's authority still holds in this matter where the Permit Holder has committed unintentional violations of the Prepaid Funeral Benefits Act and taken actions to rectify the flawed accounting and compliance system it inherited from the Prior Permit Holder.

3. The Insurance Commissioner further makes a conclusion of law that, pursuant to 36 O.S. §§ 619 the Permit Holder should be assessed a civil penalty in the amount of Eight Hundred Dollars (\$800.00) for the matters set out in the Findings of Fact and the Conclusions of Law set out above.

### **ORDER AND CONSENT**

IT IS THEREFORE ORDERED that the Permit Holder is assessed a civil penalty by the Oklahoma Insurance Commissioner in the amount of Eight Hundred Dollars (\$800.00) to be paid by August 31, 2011.

IT IS FURTHER ORDERED that within thirty (30) days of receipt of a fully executed and file stamped Order of this Consent Order, the Permit Holder shall provide a

copy of the Order to the Oklahoma Funeral Board and provide the Insurance Commissioner proof of compliance with this requirement.

IT IS FURTHER ORDERED that upon payment of such civil fine this matter shall be completely resolved and concluded.

WITNESS My Hand and Official Seal this 20th day of July, 2011.



  
PAUL WILKENING

Deputy Commissioner of  
Administration  
Oklahoma Insurance Department

APPROVED:



KELLEY C. CALLAHAN  
Senior Attorney  
Oklahoma Insurance Department  
Five Corporate Plaza  
3625 N.W. 56th Street, Suite 100  
Oklahoma City, OK 73112

ATTORNEYS FOR PETITIONER  
INSURANCE COMMISSIONER



AUTHORIZED REPRESENTATIVE OF  
RESPONDENT ROBERTS/REED-CULVER  
FUNERAL HOME

**CERTIFICATE OF MAILING**

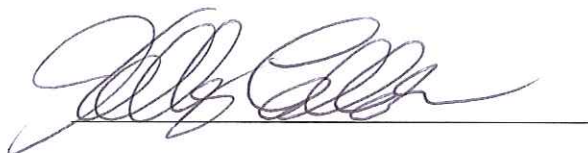
I, Kelley Callahan, hereby certify that a true and correct copy of the above foregoing Consent Order was mailed postage prepaid with return receipt requested on this 21<sup>st</sup> day of July, 2011, to:

Mr. David Roberts  
Roberts/Reed-Culvert Funeral Home  
801 West Locust Street  
Stilwell, OK 74960

Poul Lemasters  
Lemasters Consulting  
142 Spyglass Court  
Cincinnati, OH 45238

Attorney for Respondent

and that a copy was delivered to the Oklahoma Insurance Department Financial and Examination Division (Prepaid Funeral).

A handwritten signature in cursive script, appearing to read 'Kelley Callahan', is written over a horizontal line.

Kelley Callahan  
Senior Attorney



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1. Article Addressed to: OKLAHOMA II

Mr. David Roberts  
 Roberts/Reed-Culvert Funeral Home  
 801 W. Locust St.  
 Stilwell, Ok 74960  
 sms/11-0503-DIS/Cons. Ord.

Legal Division

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*Marla S. Brummett 7-25-11*

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## Sherry Standerfer

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