

NOV 6 1997

DEPT. OF INSURANCE  
BY Keith

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

4 <b>In the Matter of:</b>	)	Docket No. 97A-118-INS
	)	
5 <b>GEORGE A. PEACH,</b>	)	<b>ORDER</b>
	)	
6 <b>Petitioner.</b>	)	
	)	

8 On October 7, 1997, the Office of Administrative Hearings, through Administrative Law Judge  
 9 Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" ("Recommended  
 10 Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona  
 11 Department of Insurance has reviewed the Recommended Decision and enters the following order:

- 12 1. The Director accepts findings of fact ¶¶ 1 and 2.
- 13 2. The Director rejects findings of fact ¶3 and replaces it with the following:  
 14 "3. This case is a matter of first impression in Arizona under 18  
 15 U.S.C. § 1033 and the Insurance Fraud Prevention Act of 1994."

16 This change is made because the absence of reported decisions construing this three year old  
 17 enactment does not mean that no guidance or standards exist regarding this matter because the law itself  
 18 provides both guidance and notice to Vanliner and other insurers about the consequences that flow from  
 19 the employment of any individual convicted of a felony involving dishonesty or breach of trust. The  
 20 Federal law clearly prohibits Vanliner and other insurers from employing any individual convicted of a  
 21 felony involving fraud or dishonesty in the absence of consent given by the Director.

- 22 3. The Director rejects findings of fact ¶ 4 and replaces it with the following:

1                   “4. Pursuant to 18 U.S.C. § 1033 and the Insurance Fraud  
2 Prevention Act of 1994, Vanliner may not lawfully employ Mr. Peach or  
3 any other individual convicted of a felony involving dishonesty or breach of  
4 trust in the transaction of insurance in the absence of express consent from  
5 the Director of Insurance of the Department of Insurance.”

6                   This change is made because the federal law addresses the circumstances under which Vanliner  
7 and other insurers may transact insurance in this state through individuals who have been convicted of a  
8 felony involving dishonesty or breach of trust. This proceeding is a regulatory proceeding. As such, the  
9 proceeding determines only the extent to which Vanliner may lawfully employ Mr. Peach in the  
10 transaction of insurance. In the context of this case, the statement that “Mr. Peach’s right to employment  
11 is a property right . . . .” is unnecessary *dicta* and incorrect.

12                   4. The Director accepts findings of fact ¶¶ 5 through 21.

13                   5. The Director adopts a new findings of fact ¶ 22:

14                                 12. Vanliner (NAIC No. 21172) is an Arizona corporation and  
15 is authorized to transact insurance in Arizona.

16   **CONCLUSIONS OF LAW**

17                   The Director rejects the conclusions of law and replaces it with the following:

18                                 1. The Department has jurisdiction over this matter pursuant  
19 to A.R.S. §§ 20-142 and 20-161 and 18 U.S.C. § 1033.

20                                 2. The Insurance Fraud Prevention Act of 1994 and 18 U.S.C.  
21 § 1033 were enacted to protect the public, insurers, and policyholders from  
22 the employment in the business of insurance of individuals who have been  
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1 convicted of felonies involving dishonesty or breach of trust. Peach's  
2 convictions constitute felonies involving dishonesty or breach of trust.  
3 Thus, in the absence of the Director's consent, Vanliner may not lawfully  
4 employ Peach.

5 3. The application of 18 U.S.C. § 1033 to the determination of  
6 whether Vanliner may employ Peach in the business of insurance does not  
7 constitute an ex post facto violation of either the Arizona or United States  
8 constitutions.

9 4. The Insurance Fraud Prevention Act of 1994 and 18 U.S.C.  
10 § 1033 are not vague or indefinite. These laws provide sufficient notice  
11 and guidance to Vanliner that it may not lawfully employ Peach in the  
12 absence of the consent of the Director.

13 5. Mr. Peach has sustained his burden of establishing that his  
14 continued employment with Vanliner perform the duties identified above in  
15 Findings of Fact ¶¶ 10 and 12 and does not pose a threat to the public,  
16 Vanliner or its policyholders.

17 These change are made to the conclusions of law to clarify the authority and basis of the entry of  
18 this order by the Director.

19 **ORDER**

20 Pursuant to 18 U.S.C. § 1033(e)(2), the Director of the Arizona Department of Insurance  
21 consents to the employment of George A. Peach by Vanliner Insurance Company to be employed in the  
22 business of insurance to perform the duties identified above in Findings of Fact ¶¶ 12 and 14 or any  
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1 similar duties, provided that Mr. Peach will, at all times, be subject to oversight, audit and supervision by  
2 Vanliner to protect against the recurrence of the acts which led to his felony conviction.

3 **NOTIFICATION OF RIGHTS**

4 The aggrieved party may request a rehearing with respect to this Order by filing a written  
5 petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth  
6 the basis for such relief pursuant to A.A.C. R20-6-114(B).

7 The final decision of the Director may be appealed to the Superior Court of Maricopa  
8 County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of  
9 Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal,  
10 pursuant to A.R.S. §41-1092.10.

11 DATED this 6 day of November, 1997

12  
13   
14 John A. Greene  
Director of Insurance

15 A copy of the foregoing mailed  
16 this 6 day of November, 1997

17 Charles R. Cohen, Deputy Director  
18 Gregory Y. Harris, Executive Assistant Director  
19 Gary Torticill, Assistant Director  
20 Catherine O'Neil, Assistant Director  
Scott Greenberg, Business Administrator  
Arizona Department of Insurance  
2910 N. 44th Street, Suite 210  
Phoenix, AZ 85018

21 Office of Administrative Hearings  
1700 W. Washington, Suite 602  
22 Phoenix, AZ 85007

23 Shelby L. Cuevas

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 In the Matter of:

97A-118-INS

4 **GEORGE A. PEACH,**

**RECOMMENDED DECISION  
OF ADMINISTRATIVE  
LAW JUDGE**

5 Petitioner.

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8 **HEARING:** September 11, 1997. The record closed on September 23, 1997.

9 **APPEARANCE:** Steven R. Henry, Esq. for the Petitioner; Assistant Attorney  
10 General Shelby L. Cuevas for the Arizona Department of Insurance

11 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

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13 Based on the entire record, the following recommended Findings of Fact,  
14 Conclusions of Law and Recommended Order are made:

15 **FINDINGS OF FACT**

16 1. On January 23, 1997, William R. Peach ("Mr. Peach") requested that the  
17 Director of the Arizona Department of Insurance ("the Department") give his consent for  
18 Mr. Peach to engage and participate in the business of insurance in Arizona through  
19 employment with Vanliner Insurance Company ("Vanliner").

20 2. As a result of Mr. Peach's request, the Director of the Department set this  
21 matter for hearing before the Office of Administrative Hearings.

22 3. Counsel for the parties represented that this case is a matter of first  
23 impression in Arizona and there are no federal guidelines or reported cases in any  
24 jurisdiction to provide guidance as to the standard to be applied at this hearing. Both  
25 counsel characterized this hearing as being in the nature of fact finding rather than  
26 adversarial.

27 4. The Administrative Law Judge determines that this matter is similar to a  
28 licensing matter in that the Petitioner, Mr. Peach, is requesting that the Director of the  
29 Department issue a consent pursuant to 18 U.S.C. §1033 so that Mr. Peach may  
30 engage in the business of insurance in Arizona. However, this matter is dissimilar to a  
licensing matter in that in licensing matters the Department has denied a license  
application while in the instant matter, no action has been taken by the Department  
other than to set this matter for hearing. Further, but for 18 U.S.C. §1033, Mr. Peach's

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1 employment would not fall within the jurisdiction of the Department and Mr. Peach's  
2 right to employment is a property right while obtaining a license is a privilege rather than  
3 a property right. Under the circumstances, it is determined that Mr. Peach has the  
4 burden of proving that his continued employment with Vanliner does not pose a threat  
5 to the public, Vanliner or its policyholders.

6 5. It is undisputed that in 1994, Mr. Peach pleaded guilty to 4 counts of  
7 Stealing, a felony, in the Circuit Court of Cole County, Missouri. As a result of that  
8 conviction, Mr. Peach was sentenced to 5 years of probation, 600 hours of community  
9 service, fined \$500.00 for each count and ordered to make restitution in the sum of  
10 \$4,934.00.

11 6. Prior to the above-mentioned criminal conviction, Mr. Peach served as the  
12 Circuit Court Attorney for the City of St. Louis for approximately 16 years.

13 7. It was established that Mr. Peach was a highly regarded member of the  
14 Missouri bar prior to his conviction of the above-mentioned crimes.

15 8. The above-mentioned conviction involved Mr. Peach's use of monies for his  
16 personal use that were obtained from a special fund established for use in performance  
17 of his duties as a Circuit Attorney. Mr. Peach admitted his wrongdoing in using monies  
18 from that fund and showed remorse for having committed those crimes.

19 9. On March 12, 1996, Mr. Peach was hired by Vanliner as a paralegal.  
20 Based on his excellent job performance, in April, 1997, Mr. Peach was promoted to the  
21 position of account representative.

22 10. Mr. Peach is currently an account representative and based out of his  
23 residence located in Ohio. In that capacity, Vanliner required Mr. Peach to obtain an  
24 insurance agent and broker license.

25 11. In the application for a Missouri insurance agent and broker license, Mr.  
26 Peach disclosed his felony convictions and was granted an insurance agent and broker  
27 license by the Missouri Department of Insurance.

28 12. The evidence presented established that during his employment with  
29 Vanliner, Mr. Peach demonstrated himself to be an exemplary employee as evidenced  
30 by receiving several performance awards for his accomplishments.

13 Mr. Peach testified that he has been rehabilitated. It is uncontroverted that  
14 Mr. Peach's probation was terminated early, that he paid all fines, restitution and  
15 completed 600 hours of community as required.

16 14. In his positions at Vanliner, Mr. Peach has not had and currently does not  
17 have check signing authority or settlement authority. Further, Mr. Peach has not and

1 does not prepare financial statements or rate filings or actuarial reports for Vanliner.

2 15. Mr. Keith Phoenix, an attorney admitted to practice law in the States of  
3 Missouri and Illinois testified as a character witness for Mr. Peach. Mr. Phoenix testified  
4 that he has known Mr. Peach for years and believes him to be trustworthy and of good  
5 character. Mr. Phoenix testified that other than the criminal convictions set forth above,  
6 Mr. Peach has served the citizens of St. Louis well and was a well respected member of  
7 the Missouri bar.

8 16. George Fitzsimmons, an attorney admitted to practice law in the State of  
9 Missouri, testified as a character witness for Mr. Peach. Mr. Fitzsimmons testified that  
10 Mr. Peach was held in high regard in the St. Louis community prior to his criminal  
11 conviction. According to Mr. Fitzsimmons, Mr. Peach is a man of integrity and is  
12 trustworthy. Mr. Fitzsimmons has known Mr. Peach for 41 years.

13 17. The evidence established that after Mr. Peach's conviction, Mr. Peach  
14 engaged in performing investigative and paralegal work on an hourly basis for  
15 attorneys. He did not have steady hours or certainty as to work and nor were there any  
16 benefits. As a result of a friend's interest, Mr. Peach met with Morton Golder to inquire  
17 as to whether there were any positions within the Vanliner group for which Mr. Peach is  
18 qualified.

19 18. Mr. Golder testified that the creation of the paralegal position with Vanliner  
20 was in progress prior to meeting with Mr. Peach and was not created for Mr. Peach.  
21 Mr. Golder and Vanliner was aware of Mr. Peach's criminal conviction prior to hiring Mr.  
22 Peach.

23 19. Mr. Golder testified that based on Mr. Peach's job performance with  
24 Vanliner as well as Mr. Peach's current duties and the policies Vanliner follows, should  
25 Mr. Peach be permitted to continue his employment with Vanliner, he does not pose a  
26 threat to the public, to Vanliner or its policyholders.

27 20. The testimony of Messrs. Peach, Phoenix, Fitzsimmons and Golder as set  
28 forth above, was unrefuted and determined to be credible.

29 21. Petitioner contended that 18 U.S.C. §1033 did not pertain to him because  
30 the intent of that legislation was to target complex insurance fraud schemes involving  
interstate and international transactions and repeat white collar criminal offenders.  
Petitioner also contended that Petitioner's due process rights have been violated  
because 18 U.S.C. §1033 is vague and indefinite. However, despite those legal  
arguments, Petitioner still requests that the Director of the Department issue his  
consent for Petitioner to continue employment with Vanliner.

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**CONCLUSIONS OF LAW**

Mr. Peach sustained his burden of establishing that his continued employment to Vanliner does not pose a threat to the public, Vanliner or its policyholders. As a result of this determination, there is no need for the Administration Law Judge to address the issues raised by Petitioner concerning due process or any other issue raised by Petitioner concerning this matter.


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**RECOMMENDED ORDER**

Based on the above, the Administrative Law Judge recommends that the Director of the Department issue a consent pursuant to 18 U.S.C. §1033, that Mr. Peach may continue his employment with Vanliner.

Done this day, October 7, 1997.

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LEWIS D. KOWAL  
Administrative Law Judge

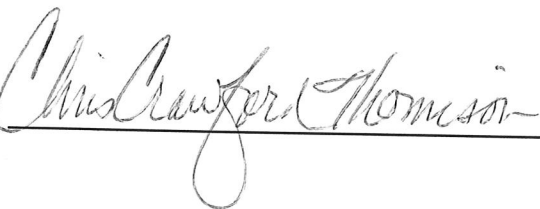
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Original transmitted by mail this  
7 day of October, 1997, to:

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Mr. John A. Greene, Director  
Department of Insurance  
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By   
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