

BEFORE THE DIVISION OF INSURANCE  
DEPARTMENT OF LABOR AND REGULATION  
STATE OF SOUTH DAKOTA

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IN THE MATTER OF	)	
AEU HOLDINGS, LLC EMPLOYEE BENEFIT	)	
PLAN; AEU HOLDINGS, LLC; AEU BENEFITS,	)	FINAL DECISION
LLC; BLACK WOLF CONSULTING, INC.;	)	
WILLIAMS-MANNY INC.	)	INS. 17-35

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After reviewing the record and the Proposed Order of the Hearing Examiner in this matter,

IT IS HEREBY ORDERED that pursuant to SDCL 1-26D-4, the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Proposed Order, dated January 8, 2018, are adopted in full.

IT IS FURTHER ORDERED that the temporary cease and desist order issued by the South Dakota Division of Insurance ("Division") on December 18, 2017 shall be made permanent and the prohibitions contained within that order will continue until the Division affirmatively lifts these prohibitions.

Parties are hereby advised of the right to further appeal the final decision to Circuit Court within (30) days of receiving such decision, pursuant to the authority of SDCL 1-26.

Dated this 11<sup>th</sup> day of January, 2018.



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Marcia Hultman, Secretary  
South Dakota Department of Labor and Regulation  
700 Governors Drive  
Pierre, SD 57501

BEFORE THE DIVISION OF INSURANCE  
DEPARTMENT OF LABOR AND REGULATION  
STATE OF SOUTH DAKOTA

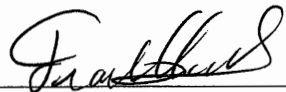
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IN THE MATTER OF	)	NOTICE OF ENTRY OF PROPOSED
AEU HOLDINGS, LLC EMPLOYEE BENEFIT	)	FINDS OF FACT, CONCLUSION OF
PLAN; AEU HOLDINGS, LLC; AEU BENEFITS,	)	LAW, AND FINAL DECISION
LLC; BLACK WOLF CONSULTING, INC.;	)	
WILLIAMS-MANNY INC.	)	INS. 17-35

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NOTICE IS HEREBY GIVEN, that attached hereto, is a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision entered by Marcia Hultman, Secretary of the South Dakota Department of Labor and Regulation, on January 11, 2018.

Dated this 12<sup>th</sup> day of January, 2018.

  
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Frank A. Marnell  
Insurance Division Senior Legal Counsel  
South Dakota Division of Insurance  
124 S. Euclid Ave  
Pierre, SD 57501  
(605) 773-3563

## CERTIFICATE OF SERVICE

I, Frank Marnell, the undersigned, do hereby certify that on the date shown below, a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, Final Decision, and Notice of Entry, with respect to the above-entitled action was sent U.S. First Class Mail thereon, to the following:

AEU Holdings  
8131 LBJ Freeway, Suite 750  
Dallas Texas, 75251

Black Wolf Consulting Inc.  
26113 S. Ridgeland Ave.  
Monee, Illinois, 60449

AEU Benefits  
8131 LBJ Freeway, Suite 750  
Dallas Texas, 75251

Williams-Manny Inc.  
555 S. Perryville, Rd.  
Rockford, Illinois, 61108

Dated this 12<sup>th</sup> day of January, 2018 in Pierre, South Dakota.



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Frank A. Marnell  
Insurance Division Senior Legal Counsel  
South Dakota Division of Insurance  
124 S. Euclid Ave  
Pierre, SD 57501  
(605) 773-3563

BEFORE THE DIVISION OF INSURANCE  
DEPARTMENT OF LABOR AND REGULATION  
STATE OF SOUTH DAKOTA

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IN THE MATTER OF	)	PROPOSED DECISION MAKING
AEU HOLDINGS, LLC EMPLOYEE BENEFIT	)	TEMPORARY ORDER TO CEASE
PLAN; AEU HOLDINGS, LLC; AEU BENEFITS,	)	AND DESIST PERMANENT
LLC; BLACK WOLF CONSULTING, INC.;	)	
WILLIAMS-MANNY INC.	)	INS. 17-35

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This matter came for hearing before the Office of Hearing Examiners on January 5, 2017, pursuant to a Notice of Hearing contained within the temporary Order to Cease and Desist issued by the South Dakota Division of Insurance (“Division”) on December 18, 2017. Clayton Grueb and Frank Marnell appeared as counsel for the Division. WILLIAMS-MANNY INC. (hereinafter referred to as “WILLIAMS-MANNY”) appeared, through a stipulation entered into by their counsel, Jason Sutton, and the Division. The Division admitted its Exhibits 1 through 6 into evidence and moved that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a default disposition to this contested case against the parties that failed to appear and to enter this proposed decision regarding WILLIAMS-MANNY via stipulation. AEU HOLDINGS, LLC EMPLOYEE BENEFIT PLAN (hereinafter referred to as the “AEU PLAN”), AEU HOLDINGS, LLC, AEU BENEFITS, LLC (hereinafter collectively referred to as the “AEU RESPONDENTS”), and BLACK WOLF CONSULTING, INC (hereinafter referred to as “BLACK WOLF”) did not appear, either in person or through counsel.

**ISSUE**

Whether the respondents engaged in a course of conduct that violates the South Dakota Insurance Code by failing to obtain a certificate of authority in this state and by directly or indirectly representing an unauthorized insurer in violation of SDCL §§ 58-1-5, 58-6-1, and 58-8-1.

**FINDINGS OF FACT**

1. The Division issued a Temporary Cease and Desist Order to the Respondents on December 18, 2017. (Exhibit 1)
2. Prior to issuing the Temporary Cease and Desist Order, the Division had acquired information that the AEU PLAN had failed to pay the claims of a South Dakota consumer. (Exhibit 1)
3. R. Alexander Acosta, the Secretary of the U.S. Dept. of Labor, has issued an Order to Cease and Desist against WILLIAMS-MANNY and 52 other business entities across the country, forbidding the respondents from promoting, marketing, or enrolling new applicants, in the AEU PLAN. (Exhibit 2)
4. The AEU PLAN was determined to be a Multiple Employer Welfare Arrangement (“MEWA”) by the Secretary of the U.S. Dept. of Labor. (Exhibit 2)

**SCANNED**

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5. The Secretary of the U.S. Dept. of Labor also found that the AEU PLAN has engaged in fraudulent conduct and the AEU PLAN created an immediate danger to the public safety and welfare. (Exhibit 2)
6. The AEU PLAN is comprised of numerous voluntary employee beneficiary association trusts which do not have a Certificate of Authority to conduct insurance business in the State of South Dakota.
7. The Honorable Manish Shaw, Federal District Court Judge for the Northern District of Illinois, has issued an Injunction against the AEU RESPONDENTS and BLACK WOLF, removing their access to any and all assets held by the AEU PLAN and appointing an independent fiduciary to manage the assets of the AEU Plan. (Exhibit 3)
8. The AEU RESPONDENTS were exercising authority and control over the assets of the AEU PLAN before the Federal District Court for the Northern District of Illinois issued an injunction against the AEU RESPONDENTS. (Exhibit 3)
9. BLACK WOLF was also exercising authority and control over the assets of the AEU PLAN before the Federal District Court for the Northern District of Illinois issued an injunction against the BLACK WOLF. (Exhibit 3)
10. An agent of the independent fiduciary appointed to manage the assets of the AEU PLAN has filed a declaration and has found that the AEU PLAN presently has approximately \$10,401,405.10 in cash reserves; has a minimum of \$29.1 million in unpaid claims; and has at least 6,472 claims that have not yet been processed as of November 13, 2017. (Exhibit 4)
11. A South Dakota consumer is one of many entities with outstanding claims that the AEU PLAN has failed to pay;
12. WILLIAMS-MANNY holds an active Business Entity License in the State of South Dakota and was involved with the sale of the AEU PLAN in South Dakota. (Exhibit 5)
13. WILLIAMS-MANNY and the Division have stipulated to the entry of a permanent Cease and Desist Order in the matter without a determination that WILLIAMS-MANNY or any of their employees or agents violated the South Dakota Insurance Code. (Exhibit 6)
14. To the extent any of the foregoing are improperly designated and are instead conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

## REASONING

This case involves a request by the Division to order several respondents to cease and desist selling, soliciting or marketing the AEU PLAN in the State of South Dakota. SDCL § 58-4-7 provides that if the Director of the Division believes from substantial evidence that a party is violating the South Dakota Insurance Code, the Director may issue an order requiring the party to cease and desist their illegal activity. SDCL 1-26-1(9) defines substantial evidence, as such relevant and competent evidence as a reasonable mind might accept as being sufficiently adequate to support a conclusion. Thus to issue a temporary cease and decision order, the Division needs to show the Director relied

on relevant and competent evidence that would reasonably show that a respondent violated the South Dakota Insurance Code.

SDCL 58-4-7 further provides that the Divisions temporary cease and desist order is contingent on a hearing pursuant to Chapter 1-26. The burden of proof for administrative hearings such as those held under Chapter 1-26 is preponderance of the evidence.” In re Black Hills Power, Inc., 2016 S.D. 92, ¶ 17. Thus to have a temporary order to cease and desist made permanent, the Division must show by the preponderance of the evidence that a respondent violated the South Dakota Insurance Code.

SDCL § 58-1-5 states that “No person shall engage in or transact an insurance business in South Dakota... without complying with the applicable provisions of [the South Dakota Insurance Code].” SDCL § 58-6-1 states that “No person may act as an insurer and no insurer or its (agents) may directly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the director...” SDCL § 58-8-1 states that “No person may in this state, directly or indirectly, act as insurance producer for, or otherwise represent any insurer not... authorized to transact insurance business in this state.”

The evidence indicates that the Director relied on substantial evidence when he issued the temporary order to cease and desist. The evidence further indicates AEU PLAN was operating as unlicensed insurer in this state. The evidence further indicates that the AEU RESPONDENTS and BLACK WOLF were violating the South Dakota Insurance Code by either directly or indirectly representing, aiding, managing, operating, or acting as an insurance producer on behalf of the AEU PLAN. The Division and WILLIAMS-MANNY have also stipulated to the entry of a permanent cease and desist order in this matter.

### **CONCLUSIONS OF LAW**

1. The Division has jurisdiction over the respondents and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the Director relied on substantial evidence when it issued the temporary order to cease and desist to the respondents.
3. The Division bears the burden of establishing by the preponderance of the evidence that the respondents have violated the South Dakota Insurance Code to make the temporary order to cease and desist permanent.
4. The Division established that the Director relied on substantial evidence that was both relevant and competent in issuing the temporary order to cease and desist.
5. The Division established by the preponderance of the evidence that the AEU PLAN violated SDCL §§ 58-1-5 and 58-6-1.
6. The Division established by the preponderance of the evidence that the AEU RESPONDENTS violated SDCL §§ 58-1-5 and 58-8-1.

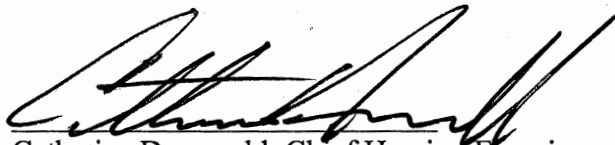
7. The Division established by the preponderance of the evidence that BLACK WOLF violated SDCL §§ 58-1-5 and 58-8-1;
8. The Division and WILLIAMS-MANNY have stipulated to the entry of a permanent Cease and Desist Order in the matter without a determination that WILLIAMS-MANNY or any of their employees or agents violated the South Dakota Insurance Code.
9. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
10. To the extent any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as Findings of Fact.

Based on the above Findings of Fact, Reasoning, and Conclusions of Law, the Hearing Examiner enters the following:

#### PROPOSED DECISION

The Division's Temporary Order to Cease and Desist issued on December 18, 2017 should be made permanent.

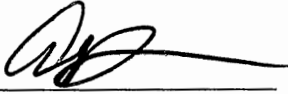
Dated this 8<sup>th</sup> day of January, 2018.



Catherine Duenwald, Chief Hearing Examiner  
Office of Hearing Examiners  
523 East Capitol  
Pierre, SD 57501

**CERTIFICATE OF SERVICE**

I certify on January 8<sup>th</sup>, 2018, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Ashley Couillard  
Office of Hearing Examiners

AEU Holdings  
8131 LBJ Freeway, Suite 750  
Dallas Texas, 75251

Black Wolf Consulting Inc.  
26113 S. Ridgeland Ave.  
Monee, Illinois, 60449

AEU Benefits  
8131 LBJ Freeway, Suite 750  
Dallas Texas, 75251

Williams-Manny Inc.  
555 S. Perryville, Rd.  
Rockford, Illinois, 61108

Clayton Grueb  
Division of Insurance  
124 S. Euclid Ave., 2<sup>nd</sup> Floor  
Pierre, SD 57501



BEFORE THE DIVISION OF INSURANCE  
DEPARTMENT OF LABOR AND REGULATION  
STATE OF SOUTH DAKOTA

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IN THE MATTER OF ) AEU HOLDINGS, LLC EMPLOYEE BENEFIT ) PLAN; AEU HOLDINGS, LLC; AEU BENEFITS, ) LLC; BLACK WOLF CONSULTING, INC.; ) WILLIAMS-MANNY INC. )	TEMPORARY ORDER TO CEASE AND DESIST AND NOTICE FOR HEARING  INS. 17-35
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The South Dakota Division of Insurance ("Division") finds the following:

1. AEU Holdings, LLC Employee Benefit Plan, ("AEU Plan") is a Multiple Employer Welfare Arrangement ("MEWA") comprised of numerous voluntary employee beneficiary association trusts which does not have a Certificate of Authority to conduct insurance business in the State of South Dakota;
2. AEU Holdings, LLC and AEU Benefits, whose addresses are 8131 LBJ Freeway, Suite 750, Dallas Texas, 75251 are Limited Liability Companies which exercise authority and control over the assets of the AEU Plan;
3. Black Wolf Consulting Inc., whose address is 26113 S. Ridgeland Ave., Monee, Illinois, 60449, is Illinois Corporation which exercises authority and control over the assets of the AEU Plan;
4. Williams-Manny Inc. whose address is 555 S. Perryville, Rd., Rockford, Illinois, 61108 is an Illinois Corporation and is a sub-broker for the AEU plan. Williams-Manny Inc. holds an active Business Entity License in the State of South Dakota;
5. AEU Holdings, LLC, AEU Benefits, Black Wolf Consulting Inc., and Williams-Manny Inc. have represented, aided, managed, operated, controlled, supervised, and/or abetted the AEU Plan, a MEWA, in violation of federal law and the laws of the State of South Dakota;
6. The Honorable Manish Shaw, Federal District Court Judge for the Northern District of Illinois, has issued an Injunction against AEU Holdings, LLC, AEU Benefits, and Black Wolf Consulting Inc. removing their access to any and all assets held by the AEU Plan and appointing an independent fiduciary to manage the assets of the AEU Plan. Exhibit #1;
7. An agent of the independent fiduciary appointed to manage the assets of the AEU plan has filed a declaration and has found that the AEU Plan presently has approximately \$10,401,405.10 in cash reserves; has a minimum of \$29.1 million in unpaid claims; and has at least 6,472 claims that have not yet been processed. Exhibit #2;
8. R. Alexander Acosta, the Secretary of the U.S. Dept. of Labor, has issued an Order to Cease and Desist against Williams-Manny Inc. and 52 other business entities across the country, forbidding the respondents from promoting, marketing, enrolling new applicants, or even

making any recommendations that anyone enroll in the AEU Plan. Exhibit #3;

9. The Secretary of the U.S. Dept. of Labor has investigated the respondents and has made the following findings:
  - a. That the AEU Plan is a MEWA as defined by ERISA 29 U.S.C. §1002(40);
  - b. That the Respondents have engaged in conduct that is fraudulent;
  - c. That the Respondents have engaged in conduct that creates an immediate danger to the public safety or welfare;
  - d. That the Respondents have engaged in conduct that causes or can reasonably be expected to cause significant, immediate, and irreparable public injury;
  - e. That the Respondents are taking significantly more in fees from the AEU plan than the AEU Plan is paying out in claims;
  - f. That under the Respondents' management, AEU Plan is unable to function properly;
10. Respondents have engaged in course of conduct that violates the South Dakota Insurance Code by failing to obtain a certificate of authority in this state and by directly or indirectly representing an unauthorized insurer, in violation of SDCL §§ 58-1-5, 58-6-1, and 58-8-1;
11. The Division has acquired evidence showing that the AEU Plan has failed to pay insurance claims in this state;
12. Williams-Manny Inc., as a licensed business entity, was required to report any unauthorized health insurance products offered in this State and failed to do so in violation of SDCL § 58-33-98;
13. Williams-Manny Inc., as a licensed business entity, was required to perform a diligent investigation of all health benefit plans to ensure the health benefit plan is not an unauthorized health insurer before offering the health benefit plan to anyone located within this state. Williams-Manny Inc. failed to perform this investigation in violation of SDCL § 58-33-102.

THEREFORE, IT IS HEREBY ORDERED, pursuant to SDCL § 58-4-7, that AEU Holdings, LLC, AEU Benefits, Black Wolf Consulting Inc., and Williams-Manny Inc., will Cease and Desist from further selling, soliciting or marketing for the AEU Plan in the State of South Dakota as of the date of this Order.

IT IS FURTHER ORDERED that a contested case hearing before the Office of Hearing Examiners is set for 1:30 p.m., on the 5th day of January 2018, at the Office of Hearing Examiners, located in the Foss Building, Third Floor, at 523 E. Capitol Avenue, Pierre, SD 57501, to show cause why this Temporary Order should not be made permanent. The contested case hearing is to be held pursuant to the jurisdiction of the Director of the South Dakota Division of Insurance under the legal authority conferred by SDCL Chs. 1-26, 1-26D, 58-4, 58-6, and 58-8.

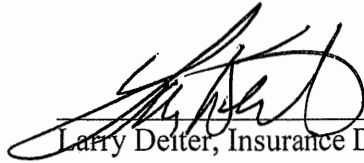
This is an adversary proceeding and any interested party has a right to be present at the hearing, to be represented by an attorney, and that these and other due process rights will be forfeited if they are not exercised at the hearing. A default order will be issued against any party not appearing at the hearing. Any action taken at the hearing may be appealed to the Circuit Court and the Supreme

Court pursuant to SDCL Chapter 1-26.

Handicapped persons who wish to attend should contact the South Dakota Division of Insurance so the hearing can be held in a place readily accessible to them.

A person who is not an original party to this contested case and whose pecuniary interests would be directly affected by the Division's Order made upon the hearing may become a party to the hearing by intervention if timely application therefore is made to the South Dakota Division of Insurance, pursuant to SDCL § 1-26-17.1.

Dated at Pierre, South Dakota this 18<sup>th</sup> day of December, 2017.



Larry Deiter, Insurance Director  
South Dakota Department of Labor & Regulation

### CERTIFICATE OF SERVICE

I, Clayton Grueb, the undersigned, do hereby certify that on the date shown below, a true and correct copy of the Notice of Hearing with respect to the above-entitled action was sent U.S. First Class Mail thereon, to the following:

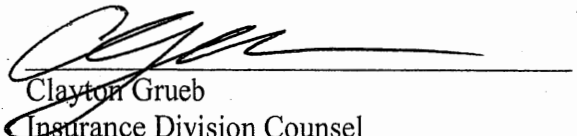
AEU Holdings  
8131 LBJ Freeway, Suite 750  
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Black Wolf Consulting Inc.  
26113 S. Ridgeland Ave.  
Monee, Illinois, 60449

AEU Benefits  
8131 LBJ Freeway, Suite 750  
Dallas Texas, 75251

Williams-Manny Inc.  
555 S. Perryville, Rd.  
Rockford, Illinois, 61108

Dated this 18 day of December, 2017 in Pierre, South Dakota.



Clayton Grueb  
Insurance Division Counsel  
South Dakota Dept. of Labor and Regulation  
445 East Capitol  
Pierre, SD 57501  
Phone (605) 773-3563  
Fax (605) 773-5369