

# Anchor Bay Insurance Managers, Inc.

---

*Surplus Lines Brokers / Underwriters*

December 12, 2011

For Immediate Release...

For more information, please contact:

Bill Tanner  
360-613-5455, ext. 202

## Anchor Bay Issues Challenge to Washington Insurance Commissioner

Anchor Bay Insurance Managers, a Silverdale wholesale broker who specializes in a Restaurant, Bar & Tavern Program, has made more than a dozen legislative recommendations to Washington Insurance Commissioner Mike Kreidler and the Washington State Legislature.

These recommendations deal principally with financial audits performed on insurance licensees by the Office of Insurance Commissioner (OIC) and spring from an audit that the OIC did on Anchor Bay a year ago that found the company to be out of trust. Anchor Bay appealed and the OIC's disciplinary order was set aside by the Chief Hearing Officer.

"In the course of conducting our defense", said Bill Tanner, Anchor Bay's President, "we learned that the OIC has never adopted and published a formula for determining trust adequacy. Worse, in a review of 21 audits, the OIC used five different, and necessarily conflicting, formulae."

"If you call and ask, the OIC will give you a formula over the phone. But the financial examiner may decide to use an entirely different formula at audit. In our case", Tanner said, "the change in formula made a \$12.3 million difference in the calculation over a 45 month audit period over the formula that they had given us and that we had relied on. In addition to that, they left almost \$10.6 million of verifiable trust assets out of the calculation. So the difference in our calculations was a whopping \$23 million. Needless to say, we are pleased that the matter was resolved favorably and the order dismissed."

In his letter transmitting the recommendations to the Commissioner, Tanner said, "My concerns spring principally from a lack of legislative and administrative clarity as to what constitutes a trust asset and a trust obligation, as well as from the OIC's use of multiple, conflicting formulae to determine trust adequacy. Absent clarity in the definition of assets and obligations, and absent the consistent application of a pre-determined and well-publicized formula for determining trust adequacy, there are necessarily irresolvable questions as to the accuracy and fairness of every financial examination performed by the OIC."

"If a formula has never been adopted and published," he continued, "and if it can be changed and the changes applied retroactively and without notice, then licensees have no way of ever knowing whether or not they are in

trust, and that is an untenable position for any licensee to be in. It is clearly inappropriate to hold licensees accountable for failing to meet trust requirements when the OIC itself doesn't appear to know exactly what those requirements are, and varies them from one audit to the next."

"This isn't just about Surplus Line Brokers," Tanner said. "There is absolutely no legislative distinction between the trust obligations of Insurance Producers and Surplus Line Brokers. The fiduciary and trust requirements set out in WAC 284-12-080 apply equally to BOTH."

Nine of the recommendations call for greater legislative and administrative clarity as to what constitutes trust assets and trust obligations, and would require the OIC to hold hearings on, adopt and publish a specific formula for determining trust adequacy. Three of the recommendations call for clarifying and stating a specific legislative intent as to whether or not premium taxes are a fiduciary responsibility and a trust obligation. The last is a recommendation that all OIC personnel be required to complete 8 hours of Ethics training each year.

"We were pleased that the order was set aside, as it clearly should have been", said Tanner, "and we thought about just tip-toeing away and getting on with trying to rebuild and grow our business. But we realized that what happened to us could still happen to any Insurance Producer, so we decided to make these recommendations and to make them public."

According to Anchor Bay, the insurance laws are "a mess". Said Tanner, "The problem isn't so much the policy that the OIC is trying to enforce; the problem is that the laws have been piecemealed together for so long that they are a hodgepodge of contradictions and confusions and they don't begin to say what the OIC wants them to say. We challenge the Commissioner to work with this state's Insurance Producers and Surplus Line Brokers to fix this mess."

"The laws should be written in such a way that their meaning is clear to non-attorney licensees", he continued. "And if they aren't, then the Commissioner should meet his "Special Duties" under RCW 48.02.160 (2) by providing written guidance to licensees as to the trust requirements imposed by the law - written guidelines that are as binding on the OIC as they are enforceable on licensees."

Downloadable copies of the Anchor Bay letter to the Commissioner, including its recommendations, are available at [www.surpluslines.com](http://www.surpluslines.com)