

BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO

In the Matter of:

STATE OF IDAHO, Department of Finance,
Securities Bureau,
Complainant,

vs.

Conestoga Settlement Trust,
Conestoga Settlement Services, LLC, and
Conestoga International, LLC

Respondents.

Docket No. 2017-7-17

AGREEMENT AND ORDER

The Director of the Department of Finance, State of Idaho ("Director") has conducted an investigation into the conduct of Conestoga Settlement Trust, Conestoga Settlement Services, LLC, Conestoga International, LLC, and CI Trust (collectively "Conestoga"). Pursuant to said investigation, it appears that violations of the *Idaho Uniform Securities Act (2004)* ("Act"), *Idaho Code §30-14-101 et seq.* have occurred. The Director and Conestoga have agreed to resolve this matter without a public hearing. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order ("Order") be entered. Conestoga consents to the entry of this Order.

RESPONDENTS

1. **Conestoga Settlement Trust** ("Conestoga Trust") is a trust that was formed in May 2010 in Delaware and serves as the owner and beneficiary of life insurance policies, which are sold as a fractional interest to investors. In February 2015, by amendment to the Agreement and Declaration of Trust, the name of Conestoga Settlement Trust was changed to Conestoga Trust.
2. **Conestoga Settlement Services, LLC** ("CSS") was formed in May 2010 in Delaware. CSS serves as the trustor for all investments into the Conestoga Trust from its inception through July 16, 2011. Conestoga Settlement Services, LLC sole member is Michael McDermott, who resides in San Juan, Puerto Rico.
3. **Conestoga International, LLC** ("CI") was formed in May 2011 in Puerto Rico. CI serves as the trustor for all investments into the Conestoga Trust made after July 16, 2011. Conestoga International, LLC sole member is Michael McDermott. In April 2015, Mr. McDermott transferred his interest in CI to CI Trust. CI Trust is a trust that was formed on April 1, 2015 in, South Dakota.

CI Trust was created for the purpose of holding/owning the membership interests of Conestoga International, LLC. Michael C. McDermott and Mary Ann McDermott established CI Trust and are the beneficiaries of CI Trust.

BACKGROUND

4. None of the Respondents, nor any Conestoga entity, has any employees. All duties are performed by independent contractors and third parties.
5. Conestoga Trust acquires and owns certain life insurance policies and is the issuer of certain beneficial participations in the proceeds at maturity of such life insurance policies.
6. Conestoga Trust is the owner and beneficiary of the life insurance policy and investors are beneficiaries of the trust for the fractional interest in the future benefits payable under the specific life insurance policy they invested in.
7. In exchange for their investment funds, investors receive an investment contract titled *Life Insurance Policy Funding/Trust Participation Agreement* and a Private Placement Memorandum (“PPM”)¹ from Conestoga.
8. Investors select the life insurance policy they desire to invest in from Conestoga’s Policy Selection Sheet (“PSS”). The PSS shows the investment funds placed in the selected life insurance policy, the fixed payout amount based upon the insured person’s expected life expectancy, the estimated annual premium, and the funds designated for premiums.
9. When the insured person dies, the insurance company pays Conestoga Trust, as the policy beneficiary, and Conestoga Trust places the funds in escrow. The escrow agent distributes the death benefit proceeds to the investors in accordance with their fractional ownership interest in the policy.
10. Conestoga filed a Rule 506 Regulation D with the Idaho Department of Finance (“Department”) claiming an exemption from registration under the securities act of 1933.

¹ PPMs were not published until April 2012. Investors prior to this date received a document titled *Important Disclosures* that disclosed the risks of the investment.

11. Conestoga, through its independent contractors (hereafter agents), offered and sold the aforementioned participations. The participations were consummated in the form of life settlement investment contracts (“investment contracts”), which the Act defines as a security. From June 2010 through November 2016, eleven Idaho residents provided Conestoga with investment funds totaling \$859,470.33. As of June 28, 2017, nine Idaho residents remain investors for a total of \$641,098.33.

INVESTMENTS

2010 – 2011 Investors

12. From June 2010 through January 2011, Conestoga provided three investors, RB, JS, and IS, a document titled *Life Insurance Policy Funding Agreement* as part of their application package that, within the “Recitals” section, states “Participant and Conestoga understand and agree that their relationship is that of principal and agent, and that the proposed purchase of certain ownership interest in the life insurance policy death benefits does not constitute the sale of a security.”
13. The *Important Disclosures* document, provided to investors RB, JS, and IS, generally disclosed that a portion of the investor’s funds would be used to pay a commission to the investor’s financial consultant (or agent) but did not disclose the amount or percent the agent would be paid.
14. The *Important Disclosures* document did not disclose that commissions would be paid to other agents, registered investment advisors, and/or broker-dealers.
15. Conestoga sold investment contracts to Idaho investors and paid commissions to the following agents, promoters, registered investment advisors (“RIA”), and broker-dealers (“BD”):
- a. **RB investment of \$100,000** on June 3, 2010 – Commissions total \$20,000 (20%)
 - Kenneth P. Petticolas – \$10,000 (10%)
 - Dayspring Financial, LLC – \$4,000 (4%)
 - Michael C. McDermott – \$4,000 (4%)
 - Creative Wealth Designs, LLC – \$1,000 (1%)
 - Steven E. Sander – \$1,000 (1%)
 - b. **JS investment of \$25,000** on December 30, 2010 – Commissions total \$5,000 (20%)
 - Kenneth P. Petticolas – \$2,750 (11%)
 - Dayspring Financial, LLC – \$1,250 (5%)
 - Michael C. McDermott – \$1,000 (4%)

- c. **IS investment of \$193,372** on January 12, 2011 – Commissions total \$38,674.40 (20%)
- Kenneth P. Petticolas – \$21,270.92 (11%)
 - Dayspring Financial, LLC – \$9,668.60 (5%)
 - Michael C. McDermott – \$7,734.88 (4%)

2014– 2016 Investors

16. From July 2014 through November 2016, Conestoga provided the remaining investors with a *Policy Funding/Participation Agreement* and a PPM, applicable to their investment date, which provided disclosures of the commission and risks of the investment.

17. Conestoga sold investment contracts to Idaho investors and paid commissions to the following agents, promoters, and RIAs:

- d. **HB investment of \$102,000** on July 23, 2014 – Commissions total \$14,280 (14%)
- Bill J. Grigorieff – \$7,140 (7%)
 - Fredrick “Rick” W. Rust – \$3,060 (3%)
 - Jace “JT” T. McDonald – \$3,060 (3%)
 - Tiffani B. Kitchen – \$1,020 (1%)
- e. **MR & BR investment of \$125,000** on October 30, 2014 – Commissions total \$17,500 (14%)
- Brandley Hofhines – \$8,750 (7%)
 - Fredrick “Rick” W. Rust – \$3,750 (3%)
 - Jace “JT” T. McDonald – \$2,500 (2%)
 - Stephen E. Gardner – \$2,500 (2%)
- f. **JG & JG investment of \$25,000** on December 10, 2014 – Commissions total \$3,500 (14%)
- Bradley K. Hofhines – \$1,750 (7%)
 - Fredrick “Rick” W. Rust – \$750 (3%)
 - Jace “JT” T. McDonald – \$500 (2%)
 - Stephen E. Gardner – \$500 (2%)
- g. **DJ investment of \$19,842.59** on June 24, 2015 – Commissions total \$1,190.56 (6%)
- Paul F. Johnson – \$1,190.56 (6%)
- h. **WJ investment of \$19,505.74** on June 24, 2015 – Commissions total \$1,170.34 (6%)

- Paul F. Johnson – \$1,170.34 (6%)
- i. **G, LLC investment of \$150,000** on July 8, 2015 – Commissions total \$21,000 (14%)
- Paul F. Johnson – \$9,000 (6%)
 - Fredrick “Rick” W. Rust – \$4,500 (3%)
 - Jace “JT” T. McDonald – \$3,000 (2%)
 - Stephen E. Gardner – \$3,000 (2%)
 - Kenneth S. Feyers – \$1,500 (1%)
- j. **BB investment of \$49,750** on October 2, 2015 – Commissions total \$6,965 (14%)
- Darin G. Maughan – \$4,477.50 (9%)
 - Kenneth S. Feyers – \$497.50 (1%)
 - Fredrick “Rick” W. Rust – \$1,492.50 (3%)
 - Stephen E. Gardner – \$497.50 (1%)
- k. **JH & LH investment of \$50,000** on November 4, 2016 – Commissions total \$7,000 (14%)
- Kenneth S. Feyers – \$7,000 (14%)

CONESTOGA’S SALES AGENTS

18. Investors are solicited by Conestoga’s agents. The agents are trained by other agents titled “field leaders” and training material consists of the PPMs and application packages.

19. Conestoga represents the following:

- a. They maintain a list of states in which a securities license is required for agents to present the Conestoga investment to accredited investors.
- b. They request that agents, who reside in one of the states in which a securities license is required, provide a copy of their securities license.
- c. They independently verify the agent’s license status online through the Financial Industry Regulatory Authority (“FINRA”) website.
- d. In the “Independent Contractor Agreement”, signed by Conestoga and the agents, states that the agent agrees that they are in full compliance with the laws of each state and jurisdiction in which agent solicits prospective participants for Conestoga’s products and services.

20. Five agents solicited, and sold, investment contracts to Idaho residents. These agents, located in Idaho, Utah, and Oregon were paid over \$74,499.32 in commissions for the sale of these investment contracts. An additional \$62,783.48 in commissions were paid to other agents, promoters, RIAs, and/or BDs. Only one agent was registered to sell securities.
21. None of Conestoga's agent agreement documents supported that these agents, who solicited, offered, and/or sold investment contracts, were registered to sell securities in Idaho.
22. Conestoga did not conduct any due diligence to verify that their agents were in compliance with Idaho securities laws, nor did they verify that their agents had a valid securities license to offer and sell Conestoga's products.

FINDINGS OF VIOLATIONS

Unregistered Agents

23. Agents, associated with Conestoga, assisted Conestoga by effecting, or attempting to effect, the sales of Conestoga's investment contracts to Idaho residents.
24. Pursuant to *Idaho Code §30-14-402(d)* it is unlawful for an issuer engaged in offering, selling or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of issuers unless the agent is registered under subsection (a) of this section or is exempt from registration under subsection (b) of this section.
25. Conestoga associated with and compensated agents that were not registered to sell securities, nor did the agents qualify for a registration exemption at the time the investment contracts were sold, in violation of *Idaho Code §30-14-402(d)*.

Misrepresentations & Omissions

26. Pursuant to *Idaho Code §30-14-501*, it is unlawful for any person, in connection with the offer, sale, or purchase of a security, directly or indirectly: (2) To make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

27. Misrepresentations:

- a. Conestoga represented, to investors RB, JS, and IS, that the investment contracts were not securities.

28. Omissions:

- a. Conestoga did not disclose to investors RB, JS, and IS that 20% of their investment funds would be used to pay commissions to agents, registered investment advisors, and/or broker-dealer.
- b. Conestoga did not disclose, to all investors, that the agents were not registered to sell the investment contracts as required by the Act.
- c. Conestoga did not disclose to investors HB, JG & JG, and MR & BR that Conestoga entered into settlement agreements alleging securities violations with securities regulators in Arkansas, California, and Utah.

29. Conestoga violated *Idaho Code §30-14-501(2)* by misrepresenting and omitting material facts in connection with the sale of a security.

ACKNOWLEDGEMENTS & REMEDIES

30. Respondents voluntarily agree to the entry of the Order.

31. Respondents admit to the findings of violations of Idaho law set forth in this Order.

32. Respondents agree to provide all Idaho investors, who have invested since January 1, 2010, a written supplemental disclosure describing the Department's regulatory concerns relating to Respondents. The supplemental disclosure shall specifically disclose that the Department's Order does not limit any investor's private right of action. The supplemental disclosure shall also disclose to investors that Respondents have agreed not to assert any statute of limitations against any investor's private right of action for eighteen (18) months after the supplemental disclosure is made. The supplemental disclosure shall be provided to Idaho investors no later than sixty (60) days from this Order's execution date.

33. Respondents agree to pay the Department a civil penalty in the amount of thirty thousand dollars (\$30,000) for the violations of Idaho's Uniform Securities Act, pursuant to *§30-14-604(d)*. Payment shall be made payable to the "Idaho Department of Finance".

34. Respondents agree to make civil penalty payments as follows:
- a. Payment of five thousand dollars (\$5,000) per month, for a period of six (6) months, shall be remitted on or before the 15th of each month, starting July 15, 2018, until the \$30,000 has been repaid.
 - b. Payment of penalty will be paid in full no later than December 15, 2018.
35. Respondents voluntarily agree not to conduct any business, regarding the offer or sale of securities, in Idaho for eighteen (18) months following the execution date of this Order.
36. Once allowed to operate in Idaho, Respondents agree that they will verify, and retain supporting documents, that agents who solicit, offer, or sell Conestoga's products in, into, or from Idaho are registered to sell securities in Idaho.
37. In conjunction with this Order, Respondents agree to fully cooperate with the Department in any further related investigation or enforcement action against the individuals that solicited, offered, or sold the investment contracts noted in this Order.
38. Respondents agree that any complaint received by the Department which contains an allegation involving facts or information not previously disclosed to the Department by the Respondents may be investigated by the Department and further action, including but not limited to, legal or administrative proceedings may be taken.
39. In the event that the Respondents commit future violations of the Act or fail to adhere to the terms of this Order, Respondents acknowledge that the Department can incorporate the allegations giving rise to this Order in any future proceeding.

AGREED TO and ACKNOWLEDGED this 19 day of July, 2018.



CONESTOGA SETTLEMENT TRUST

 Bilal Malik- Trustee
 Printed Name and Title



**CONESTOGA SETTLEMENT SERVICES,
 LLC**

 R. Dunne- Managing Member
 Printed Name and Title


CONESTOGA INTERNATIONAL, LLC

R. Dunne-Managing Member

Printed Name and Title

IT IS SO ORDERED

DATED this 23RD day of July, 2018.

STATE OF IDAHO
DEPARTMENT OF FINANCE


GAVIN M. GEE, Director of Finance

