TN- 729658

NPN- 552279

BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
vs.	)	**No.: 10-026**
	)	
EDWARD A. PRATER,	)	
Respondent.	)	

CONSENT ORDER

The Insurance Division of the Tennessee Department of Commerce and Insurance (the "Division"), by and through counsel, and Edward A. Prater ("Respondent") hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance ("Commissioner"), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by its entry by the Commissioner.

2. The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable, and in the best public interest.

3. This Consent Order is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts and/or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions specified herein. Respondent further understands and agrees that this Consent Order may be used by the Commissioner or any Commissioner, Department or Board to revoke or refuse to issue any license currently held by Respondent or for which he applies in the future.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulation and imposition of discipline contained herein, and the consideration and entry of this Consent Order by the Commissioner.

FINDINGS OF FACT

1. The Commissioner of the Department of Commerce and Insurance has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), Title 56 of Tennessee Code Annotated, and the Law places the responsibility for the administration of its provisions on the Commissioner.

2. The Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

3. Respondent is a citizen and resident of the State of Tennessee.

4. On August 6, 1992, the Division granted Respondent an insurance producer license, numbered 729658.

5. On October 6, 2008, an investigation was initiated against U. S. Insurance Group, LLC and Edward A. Prater pursuant to Inquisitorial Order No. 08-005.

6. U. S. Insurance Group ("USIG") was formed in 1996 as a privately-owned retail insurance agency. It specialized in placing insurance coverage for clients throughout the United States who were engaged in the transportation industry. USIG was owned by Edward A. Prater ("Prater") (50%) and Russell H. Huston (50%). USIG was headquartered in Chattanooga, Tennessee, and was dissolved in bankruptcy in 2009.

7. In 2002, Bennett International Group, Inc. ("Bennett"), a large scale trucking and transportation provider headquartered in McDonough, Georgia, became a client of Prater and USIG. Prater, representing USIG, became the insurance broker for Bennett at that time.

8. From in or about 2002 through in or about 2008, Prater unlawfully, willfully and knowingly devised a scheme to defraud Bennett in order to obtain money and property by means of false and fraudulent pretenses, representations and promises, and engaged in a scheme to defraud Bennett by mailing and causing others to mail fraudulently altered insurance policy documents, contracts, and resulting financial agreements, and payments to and from Bennett, for the purpose of hiding undisclosed commissions and fees that USIG was receiving on those policies and contracts, in violation of Title 18, United States Code, §§ 1341 and 2.

9. As a result of the scheme to defraud Bennett as set forth hereinabove, USIG fraudulently and illegally received the sum of $2,495,979 in undisclosed commissions and fees.

CONCLUSIONS OF LAW

1. On the dates prior to December 31, 2002 that Respondent engaged in the acts described in paragraph 8 herein, Tenn. Code Ann. § 56-6-155 (2000) was in effect and stated, in pertinent part:

> **56-6-155. Grounds for suspension, etc. – Civil penalty.** – (a) The commissioner may suspend, revoke, or refuse to issue or renew any license under this part for any one (1) or more of the following causes:

...

(5) Improperly withholding, misappropriating, or converting to personal use any moneys belonging to policyholders, insurers, beneficiaries or others received in the course of the licensee's insurance business;

...

(8) Using, in the conduct of affairs under such license, fraudulent, coercive, or dishonest practices; [or]

...

(10) Being demonstrably incompetent, untrustworthy, or financially irresponsible [.]

...

(b) In addition to or in lieu of any denial, suspension, or revocation of a license hereunder, the commissioner may access a civil penalty against any person violating this part in an amount not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation. [Acts 1988, ch. 1019, § 25.]

2. On those dates that Respondent engaged in the acts described in paragraph 8 herein that occurred between January 1, 2003 through June 30, 2008, Tenn. Code Ann. § 56-6-112 (2002) was in effect and stated, in pertinent part:

56-6-112. License denial, nonrenewal, suspension or revocation.- (a) The commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with subsection (e) or take any combination of such actions, for any one or more of the following causes:

...

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business; [or]

...

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere [.]

...

(e) With respect to any person licensed or required to be licensed under this part, and in addition to or in lieu of any applicable denial, suspension or revocation of a license, the commissioner may access a civil penalty against such person in an amount not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each separate violation of a statute, rule or order pertaining to the sale, solicitation or negotiation of insurance in this state. Each day of continued violation constitutes a separate violation.

3. On those dates that Respondent engaged in the acts described in paragraph 8 herein that occurred after July 1, 2008, Tenn. Code Ann. §§ 56-6-112 (2008) and 56-2-305 were in effect and stated, in pertinent part:

56-6-112. License denial, nonrenewal, suspension or revocation.- (a) The commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with § 56-2-305 or take any combination of such actions, for any one (1) or more of the following causes:

...

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business; [or]

...

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere [.]

56-2-305. Violations – Commissioner's orders – Penalties. – (a) If, after providing notice consistent with the process established by § 4-5-320(c) and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized by the division of insurance has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

...

> (2) Payment of a monetary penalty of not more than one thousand dollars ($1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars ($25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars ($250,000). This subdivision (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this [ ] subdivision (a)(2), each day of continued violation shall constitute a separate violation [.]

4. Based upon the Findings of Fact cited above and the Conclusions of Law contained herein, the Commissioner considers the actions of Respondent to be in violation of Tenn. Code Ann. § 56-6-155(a) (5) (8) (10) (1988), subjecting Respondent to the penalties set forth in Tenn. Code Ann. § 56-6-155(b); Tenn. Code Ann. § 56-6-112(a) (4), (8) (2000), subjecting Respondent to the penalties set forth in Tenn. Code Ann. § 56-6-112(e); and Tenn. Code Ann. § 56-6-112(a) (4), (8) (2008), subjecting Respondent to the penalties set forth in Tenn. Code Ann. § 56-2-305.

5. Respondent does not deny the Findings of Fact stated in paragraphs 1-9 above, understands that such Findings subject him to the sanctions specified in Tenn. Code Ann. §§ 56-6-155(a) (1988), 56-6-112(a) (2002) and 56-6-112(a) (2008), and to the penalties set forth in paragraph 4 in the Conclusions of Law, acknowledges the Commissioner's authority to administer the statutes cited herein, and concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law is reasonable and enforceable. Therefore, Respondent, in order to avoid any further expenses or costs associated with litigating this matter, hereby agrees to the entry of this Consent Order including each of the sanctions ordered by the Commissioner.

6. Respondent further agrees to the entry of this Consent Order in the interest of cooperation and settlement, and to avoid the costs associated with future administrative and

judicial proceedings with respect to the above matter.

ORDER

NOW, THEREFORE, based on the foregoing and the waiver by Respondent of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that Respondent, Edward A. Prater, has agreed to the entry of this Consent Order and that this Consent Order is appropriate, in the public interest, and necessary for the protection of the public.

IT IS THEREFORE ORDERED, pursuant to Tenn. Code Ann. §§ 56-6-155(a) (1988), 56-6-112(a) (2000) and 56-6-112(a) (2008), that:

1. The insurance producer license, numbered 729658, issued to Respondent, Edward A. Prater, is hereby permanently **REVOKED;**
2. Respondent is permanently barred from applying for any type of insurance producer license in this State; and
3. Respondent shall no longer conduct further business for which a license is required under the Law.

This Consent Order represents the complete and final resolution and discharge of administrative remedies available to the Commissioner under Tenn. Code Ann. §§ 56-6-155(a) (1988), 56-6-112(a) (2000) and 56-6-112(a) (2008) against Respondent for violations of the Law arising out of the Findings of Fact set forth in paragraphs 1-9 above. However, this Consent Order shall in no way preclude a third party or other authority from pursuing civil remedies or criminal action against Respondent which may otherwise be available.

This Consent Order is in the public interest and in the best interests of the parties,

represents a compromise and settlement of the controversy between the parties, and is for settlement purposes only. By signature affixed below, Respondent, Edward A. Prater, affirmatively states that he has: (a) freely agreed to the entry of this Consent Order; (b) consulted with legal counsel in this matter; (c) reviewed the Findings of Fact and Conclusions of Law contained herein; and (d) waived his right to a hearing on the matters underlying this Consent Order. Respondent further states that no threats or promises of any kind have been made by the Commissioner, the Division or any agent or representative thereof with regard to this Consent Order.

By signing this Consent Order, the parties affirm their agreement to be bound by the terms of this Consent Order and confirm that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

IT IS SO ORDERED.

ENTERED this the 14th day of January, 2010.

Leslie A. Newman

Leslie A. Newman, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

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