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

TENNESSEE INSURANCE DIVISION,	)	
	)	
Petitioner,	)	
	)	**TID No.: 15-073**
vs.	)	
	)	
CAREY R. CARROLL, JR.,	)	
	)	
Respondents.	)	
	)	

ORDER OF SUMMARY SUSPENSION

This Order issues as a result of a Notice of Hearing and Charges ("Notice") filed by the Insurance Division ("Division") of the Tennessee Department of Commerce and Insurance and is based upon the following:

JURISDICTION

The Commissioner of the Department ("Commissioner") has jurisdiction over this action pursuant to the Tennessee Insurance Law (the "Law"), Title 56 of the Tennessee Code Annotated ("Tenn. Code Ann."), specifically Tenn. Code Ann. §§ 56-1-202, 56-6-112, 56-6-116, and 56-2-305. The Division is the lawful agent through which the Commissioner discharges this responsibility for the protection of the public.

FINDINGS OF FACT
(FOR THE PURPOSE OF SUMMARY SUSPENSION ONLY)

1. Carey R. Carroll, Jr. ("Carroll") is a licensee of the Division who is responsible for being compliant with the insurance laws and regulations of the State of Tennessee.

2. Carroll holds a Tennessee insurance producer license, number 0037525, which became active on or about September 9, 1981.

3. Carroll's insurance producer license expired on January 31, 2015; however, Carroll's one (1) year right to renewal will not expire until on or about February 5, 2016.

4. Upon information and belief, and records on file with the Division, Carroll's address of record is 340 Suburban Road, Knoxville, Tennessee 37919.

Commercial Property and Inland Marine Policy

5. Between August 1, 2011 and August 31, 2012, Carroll sent approximately thirteen (13) invoices to US Xpress Enterprises, Inc. ("USXE") in the aggregate amount of eight hundred nineteen thousand sixteen dollars and twenty-nine cents ($819,016.29) for premiums and related charges due and owing under USXE's policy for commercial property and inland marine coverage, policy number 20UUMJD0772 ("the policy"), with Hartford Fire Insurance Company ("The Hartford").

6. USXE paid the invoices listed in Paragraph five (5) at various times from August 1, 2011 to August 31, 2012.

7. The actual amount due to The Hartford under the policy was five hundred forty-five thousand seven hundred seventy-nine dollars and eighty-five cents ($545,779.85) for the policy year September 1, 2011 through September 1, 2012.

8. Carroll overbilled USXE in the amount of two hundred seventy-three thousand two hundred thirty-six dollars and forty-four cents ($273,236.44) for the period from September 1, 2011 through September 1, 2012, of the policy.

9. After Carroll and USXE discussed the overbilling issue, Carroll began to offset the premium USXE owed to The Hartford for the policy year September 1, 2012 through September 1, 2013.

10. Also, Carroll changed the policy address to his business P.O. Box address preventing USXE from receiving any policy notifications from The Hartford.

11. USXE remitted two hundred ninety-eight thousand four hundred sixty-two dollars and thirty-one cents ($298,462.31) to Carroll from August 30, 2012 through February 19, 2013, to be applied to its September 1, 2012 through September 1, 2013, policy year.

12. The total premium due to The Hartford from USXE for the policy year of September 1, 2012 through September 1, 2013, was five hundred thirteen thousand eighty-six dollars and thirty-six cents ($513,086.36).

13. Carroll failed to remit USXE's premium payments to The Hartford.

14. On or about January 7, 2013, The Hartford cancelled the insurance coverage for the policy due to non-payment of premiums.

15. Carroll received notification from The Hartford that the policy had been cancelled for non-payment.

16. On March 18, 2013, a hail storm caused severe structural and water damage to a USXE truck terminal in Richland, Mississippi ("Richland loss") which was supposed to be covered by the policy.

17. On or about March 19, 2013, USXE informed Carroll of the Richland loss.

18. Carroll represented to USXE that the property still had insurance coverage with The Hartford and provided USXE with a fraudulent claim number.

19. About July 2013, Carroll hired an adjuster in the Jackson, Mississippi area to provide an estimate of the repair costs.

20. The repair costs for the Richland loss were six hundred ninety-five thousand five hundred one dollars and twenty-eight cents ($695,501.28).

21. Due to the cancellation of the policy, the Richland loss was not insured at the time of the loss.

22. On or about September 3, 2014, Carroll admitted in a signed statement to The Hartford investigator, Randall W. McCartney ("McCartney"), that Carroll had accepted the premium payments from USXE and not forwarded the premiums to The Hartford.

23. Also in his interview with McCartney, Carroll conceded that he was aware that the USXE truck terminal in Richland, Mississippi did not have insurance coverage during the time the loss was sustained.

Earthquake Policy

24. On or about January 3, 2011, USXE paid Carroll a premium in the amount of fifty-six thousand seven hundred seventy-three dollars and seventy-five cents ($56,773.75) to be remitted to Hartford Pacifica ("The Hartford") for earthquake insurance coverage on a property in California.

25. On or about January 5, 2012, USXE paid Carroll a premium in the amount of thirty-one thousand nine hundred sixty-eight dollars and seventy-five cents ($31,968.75) to be remitted to The Hartford for earthquake insurance coverage on the same property in California.

26. On or about January 3, 2013, USXE paid Carroll a premium in the amount of thirty-nine thousand eight hundred nineteen dollars and eighty-one cents ($39,819.81) to be remitted to The Hartford for earthquake insurance coverage on the same property in California.

27. On or about February 4, 2014, USXE paid Carroll a premium in the amount of thirty-nine thousand eight hundred nineteen dollars and eighty-one cents ($39,819.81) to be remitted to The Hartford for earthquake insurance coverage on the same property in California.

28. Carroll misrepresented to USXE that an earthquake insurance policy existed when an effective insurance contract did not exist.

29. Subsequently, The Hartford informed USXE that an insurance policy for the property in California does not exist.

30. Carroll failed to remit the premiums for the USXE property in California to The Hartford.

31. The approximate loss to USXE due to Carroll improperly withholding premiums and failing to procure coverage is one million four hundred thirty-five thousand five hundred eighty-two dollars and fifteen cents ($1,435,582.15).

CONCLUSIONS OF LAW
(FOR THE PURPOSES OF SUMMARY SUSPENSION ONLY)

32. The Division has provided sufficient evidence to show that Carroll has violated the Law. Moreover, substantial evidence shows that Carroll has engaged in a continuous and ongoing pattern of violating the Law.

33. Carroll violated Tenn. Code Ann. § 56-6-112(a)(4) by improperly withholding insurance premium funds on a minimum of seventeen (17) separate occasions.

34. Carroll violated Tenn. Code Ann. § 56-6-112(a)(5) when he represented to USXE that the policy was still effective and that the Richland property was insured, when it was not. Specifically, Carroll intentionally misrepresented the terms of an actual or proposed insurance contract by providing USXE with a fraudulent claim number for the Richland loss. Carroll also misrepresented the terms of an actual or proposed insurance contract when he collected

premiums three (3) additional times from USXE for the property in California knowing that an insurance policy had not been procured for the property.

35. Carroll violated Tenn. Code Ann. § 56-6-112(a)(8) by improperly withholding funds on at least seventeen (17) separate occasions, not procuring insurance coverage after receiving premiums, and intentionally misrepresenting the existence of an insurance policy on at least four (4) separate occasions.

36. Since the conclusion of the Report of Investigation, at least one (1) insurance company has contacted the Division to validate the status of Carroll's insurance producer license, indicating that Carroll is still engaged in the business of insurance causing a risk to the public health, safety and welfare.

37. Tenn. Code Ann. § 4-5-320(c) states, in pertinent part, that if an agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

38. Based on the above Findings of Fact, continuation of Carroll's insurance producer license would be hazardous to the public due to evidence showing Carroll's misappropriation and fraudulent actions. Furthermore, evidence shows that Carroll has continued to engage in the business of insurance despite his admitted violation of the Law by improperly withholding insurance premiums. Therefore, the public health, safety, and welfare necessitate summary relief in this case.

NOW, THEREFORE, in consideration of the foregoing, it is **ORDERED** that:

1. Carroll's insurance producer license, number 0037525, issued by the State of

Tennessee is hereby **SUMMARILY SUSPENDED**, pursuant to Tenn. Code Ann. §§ 4-5-320(c) and (d), until such time as a hearing is held on the merits of the Division's Notice of Hearing and Charges.

2. If requested by Carroll, an informal conference shall be held within seven (7) business days upon issuance of this Order, pursuant to Tenn. Code Ann. § 4-5-320(d), to discuss the circumstances affecting the public health, safety and welfare which warranted the issuance of this Order of Summary Suspension. A date for such an informal conference will be set and Carroll will be notified of the date when such informal conference may occur, should Carroll request one.

3. A hearing date shall be established as to all other matters raised in the Notice, and Carroll shall be notified of the time, date, and place for such hearing.

Entry of this Order shall not in any way restrict the Division or the Commissioner from taking further action with respect to these or other possible violations by Carroll of Tennessee Law or any of the Rules promulgated thereunder.

This Order shall become a Final Order thirty (30) days from the date of its entry.

IT IS SO ORDERED.

ENTERED this the 24th day of July, 2015.

Julie Mix McPeak

Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

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