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

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
v.	)	**Docket No.: 12.01-097515J**
	)	
DAVID A. NICHOLS,	)	
Respondent.	)	

AGREED ORDER

The Tennessee Insurance Division ("Division") and David A. Nichols ("Respondent") agree to the entry of this Agreed Order subject to the approval of the Commissioner of Commerce and Insurance ("Commissioner").

GENERAL STIPULATIONS

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

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

3. Respondent fully understands that this Agreed Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts or omissions not specifically addressed in this Agreed Order or for facts and/or omissions that do not arise from the

facts or transactions herein addressed. All testimony, documents and other evidence obtained by the Commissioner pursuant to the Division's investigation of the facts alleged in the Petition shall remain absolutely privileged. Respondent also understands that the facts contained in this Agreed Order may be used to deny any future application for licensure which Respondent may file with the Commissioner.

4. 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 the Agreed Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Agreed Order by the Commissioner.

FINDINGS OF FACT

1. The Tennessee Insurance Law, as amended, TENN. CODE ANN. §§ 56-1-101, *et seq.* ("Law"), places the responsibility for the administration of the Law on the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. Respondent is a citizen of Tennessee and a resident of Knoxville, residing at 2845 Gibbs Dr., Knoxville, Tennessee 37918. Respondent is an insurance producer licensed with the Division, and at all times relevant herein held insurance producer license numbered 320056, which was obtained on or about July 1, 1976.

3. The Petition filed by Petitioner in this matter against Respondent sets out numerous alleged facts relating to Respondent's alleged conduct. For purposes of this settlement and Agreed Order only, Respondent does not contest those alleged allegations. Respondent does not contest that, if the factual allegations are true, the conclusions of law herein are fair and reasonable. The parties agree that this Agreed Order would be in the public interest and in the best interests of the

parties and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 56-6-112(a) provides, in pertinent part, that "[t]he 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:

> (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
>
> . . .
>
> (4) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;
>
> . . .
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
>
> . . .
>
> (10) Forging another's name to an application for insurance or to any document related to an insurance transaction."

2. TENN. CODE ANN. § 56-6-112(e) provides that:

> 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 assess 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. TENN. CODE ANN. § 56-6-116 provides that the Commissioner may suspend or revoke an insurance producer license upon finding that an insurance producer has failed to hold money received for soliciting, negotiating or selling insurance in a fiduciary capacity, and the insurance producer shall not for misappropriate, convert or improperly withholding funds.

4. TENN. CODE ANN. § 56-53-103 provides, in pertinent part, that any person who commits, or participates in any of the following acts with an intent to induce reliance, has committed an unlawful insurance act:

> (1) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, claimant or applicant to an insurer, insurance professional or a premium finance company in connection with an insurance transaction or premium finance transaction, any information which the person knows to contain false representations, or represents the falsity of which the person has recklessly disregarded, as to any material fact, or which withholds or conceals a material fact, concerning any of the following:
>
> (A) The application for, rating of, or renewal of, any insurance policy;
> (B) A claim for payment or benefit pursuant to any insurance policy;
> (C) Payments made in accordance with the terms of any insurance policy; or
> (D) The application for the financing of any insurance premium.

5. 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. § 56-6-112(a)(2), (4), (8) & (10), TENN. CODE ANN. § 56-6-116, TENN. CODE ANN. § 56-53-103(1), which provide grounds for imposition of sanctions set forth in TENN. CODE ANN. § 56-6-112(a).

ORDER

NOW, THEREFORE, on the basis of the foregoing, and the waiver by Respondent of his rights to a hearing and appeal under Tennessee Insurance Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, ("Act") and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that Respondent has agreed to the entry of this Order and that this Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED, pursuant to TENN. CODE ANN. § 56-6-112 that:

Respondent David A. Nichol's insurance producer license, numbered 320056, and all other licenses authorizing Respondent to sell any type of insurance in the State of Tennessee are hereby **REVOKED**.

IT IS FURTHER ORDERED that the Order represents the complete and final resolution and discharge of all administrative actions and causes of action by the Commissioner against Respondent for violations of the Act arising out of the Findings of Fact above.

This Agreed Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, Respondent affirmatively states that he has freely agreed to the entry of the Agreed Order, that he has been advised that he may consult legal counsel in this matter and has had the opportunity to consult with legal counsel should he have desired to do so, has reviewed the Findings of Fact and Conclusions of Law contained herein, waives his right to a hearing on the matters underlined in this Agreed Order and the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Agreed Order, affirmatively state their agreement to be bound by the terms of the Agreed Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in the Agreed Order, are binding upon them.

IT IS SO ORDERED.

Entered this 30th day of April, 2008.

Leslie A. Newman, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

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Assistant Commissioner for Insurance
Department of Commerce and Insurance
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