

STATE OF INDIANA )  
COUNTY OF MARION )

SS:

IN THE MARION \_\_\_\_\_ COURT

CAUSE NO. 49D11 09 01 PL 00 2 7 8 2

A. WILLIAM KING, III and  
CYNTHIA A. KING,

Petitioners,

vs.

INDIANA DEPARTMENT OF INSURANCE  
(an agency of the State of Indiana),

Respondent.

**FILED**

194

JAN 20 2009

*Elizabeth J. White*  
CLERK OF THE MARION CIRCUIT COURT

**VERIFIED PETITION FOR JUDICIAL REVIEW**  
**OF FINAL AGENCY ORDER**  
**AND PETITION FOR STAY OF ENFORCEMENT**

COME NOW the Petitioners A. WILLIAM KING, III and CYNTHIA A. KING who were Respondents below in the administrative proceedings for which judicial review is now sought, by and through its attorneys of record, and do hereto petition, pursuant to Indiana Code ("I.C.") §§ 4-21.5-5-1 *et seq.* for judicial review of the final agency order issued by the Indiana Department of Insurance as the ultimate authority in the cause denominated *In the Matter of A. W m. King, III, Cynthia A. King and Kings Title & Abstract Company*, Administrative Cause No. 6210-AG07-1022-280. In furtherance of which Verified Petition for Judicial Review, Petitioners allege and declare as follows:

including the Administrative Law Judge's earlier Findings of Fact, Conclusions of Law and Recommended Order dated November 7, 2008 which the Commissioner referred to in his Final Order, is attached to this Petition as **"Exhibit 1"**.

1.5 Pursuant to I.C. § 4-21.5-5-6 and Rule 75 of the Indiana Rules of Trial Procedure, venue is appropriate in this court as the offices of the Indiana Department of Insurance are located within Indianapolis, Marion County, Indiana.

## **II. PARTIES**

2.1 The Petitioners are individuals who were officers and directors of a corporation organized and doing business under the laws of the State of Indiana, known as Kings Title & Abstract Company, Inc. ("Kings Title & Abstract"). The primary office was located at, and its mailing address was: 1111 Broad Street, New Castle, Indiana 47362. When in business the Corporation had eight (8) offices, including one office in Shelbyville, Indiana, most pertinent to the Order before the Court. Kings Title & Abstract is a corporation that made available to the public title insurance and abstract services.

2.2 The name and mailing address of the agency whose actions and/or Orders are at issue is the Indiana Department of Insurance ("Department"), located at 311 West Washington Street, Suite 300, Indianapolis, Indiana, 46204. The current Chairman of the Department is James Atterholt. See *e.g.*, <http://www.in.gov/idoi/2416.htm>

2.3 In the administrative proceedings, *In the Matter of A. W m. King, III, Cynthia A. King and Kings Title & Abstract Company*, Administrative Cause No. 6201-AG07-1022-280, the Respondents were the Petitioners herein and the corporation in which they were officers, Kings Title & Abstract. The Petitioner/Complainant/Initiating Party was the Indiana Insurance Department, which is created by statute (I.C. § 27-1-1-1, *et seq.*).

### **III. PERTINENT FACTS**

3.1 Bill King for approximately 21 years has been an active licensed resident title insurance producer in the State of Indiana. Along with his wife, Cynthia King, he had developed over the years the business of Kings Title & Abstract, a Corporation in which both were directors, owners and officers. Bill King was President and Cynthia King was Secretary-Treasurer of Kings Title & Abstract.

3.2 Kings Title & Abstract has been for approximately 21 years an active licensed resident title insurance producer in the State of Indiana. During pertinent times the Corporation had eight (8) business offices located in New Castle, Shelbyville, Anderson, Marion, Muncie, Richmond, Rushville and Winchester.

3.3 In 2005 through 2007 the Kings began to encounter financial difficulties with the operation of Kings Title & Abstract, though they were unable to determine the source and nature of those difficulties. As a consequence, they were not in a position to pay premiums due to Old Republic National Title Insurance Company ("Old Republic") and First American Title

("First America"), and were required to sign promissory notes for significant sums of money with said title insurance companies. (More specifically see paragraphs 18, 20, 25, 26 and 36 of the Administrative Law Judge's Findings of Fact.)

3.4 An auditor of First American recommended that an employee of Kings Title & Abstract, Keith Branam ("Branam"), who worked in the Shelbyville office, be prohibited from signing Corporation checks because he also reconciled accounts at the office.

3.5 The Corporation reconciled each of its trust accounts on a monthly basis, but due to a bookkeeping delay the Corporation was two (2) months behind in reconciling the Shelbyville office trust account at the time of the discovery of the theft.

3.6 Kings Title & Abstract agreed with the auditor's suggestion, and thereupon removed Branam's authority to sign checks in the Shelbyville office. Instead, the Corporation designated a subordinate of Branam, Brenda Newton, as the person in the Shelbyville office authorized by the Corporation to sign checks.

3.7 Later the Petitioners learned that Branam had, without the authority or approval of the Petitioners or the Corporation, instructed the subordinate to pre-sign Corporation checks for Branam's use.

3.8 The Petitioners and the Corporation learned in October, 2007, that Branam had obtained the pre-signed checks, which he made payable to Kings Title & Abstract, and also made payable to Chase Bank.. Branam then

converted the funds instead to his own use, in the amount of over eight-hundred and fifty-six thousand six-hundred and fifty-nine dollars (\$856,659.04). The Corporation's Bank, JP Morgan / Chase Bank, N.A, improperly allowed Branam to abscond with funds from checks not made out to Branam, but instead to the Corporation and/or the Bank. Branam also made checks payable to a non-existent investment company, which he then cashed and converted to his own use. It is believed that Branam used said funds to feed his addiction to gambling, and that he has none of the funds presently. Criminal and civil cases are currently proceeding against Branam in Shelby County.

3.9 Kings Title & Abstract ceased doing title insurance business in all of its offices shortly after receiving a Cease and Desist Order from the Department in October, 2007. The Petitioners worked to locate a number of other title insurance companies to close transactions which had previously been scheduled.

3.10 The Petitioners distributed tax escrow funds from all remaining Corporate escrow accounts, with the exception of the Shelbyville escrow account (which contained \$26,513.85), which account contained funds that could be payable to customers for tax calculation refunds, once the payees are determined. Both Bill and Cynthia King worked for several months to assist First American in locating files. The Petitioners were cooperative with First American in all instances.

3.11 Due to the delay in reassessment by the State of Indiana and local

assessing authorities, closings on real estate resulted in the Corporation holding 1.5 times the current tax amount to allow for the increase in taxes expected once the reassessment was completed. In each instance in the other nine (9) unaffected escrow accounts, all customers received their appropriate payment. The Shelbyville escrow account had a balance of \$26,513.85, currently available in a JP Morgan/Chase Bank escrow account until it can be determined whom to pay. Tax escrow funds could not be paid at the time Kings Title & Abstract stopped operations. Consumer refunds could not be calculated until Shelby County Treasurer invoices were available. The amount of \$47,033.56 as set forth in the ALJ's Finding of Fact Number 54 is actually part of the amount stolen by Branam from the account, thus the statements contained in said Finding of Fact are incorrect.

3.12 The ALJ's finding in Finding of Fact Number 55 is likewise in error. Not all policies were subject to the Title Insurance Enforcement Fund ("TIEFF"). Further, the amount as set forth in Number 55 is larger than the actual amount. Any funds owed are held in the underwriter's premium escrow account, so the Fund will not suffer a loss.

3.13 Petitioners are now filing this Verified Petition for Judicial Review within thirty (30) days of the Department issuing its Final Order of December 24, 2008.

#### **IV. ENTITLEMENT TO REVIEW**

4.1 Petitioners reallege the preceding paragraphs numbered 1.1 through 3.13 and all subsequent paragraphs and incorporates said allegations by this reference.

4.2 Given the content and nature of the Department's Final Order incorporated herein and attached hereto as **Exhibit 1**, Petitioners have both standing to initiate judicial review of said Order and have exhausted all administrative remedies available in *In the Matter of A. W m. King, III, Cynthia A. King and Kings Title & Abstract Company*, Administrative Cause No. 6201-AG07-1022-280.

4.3 As Petitioners are filing this Verified Petition for Judicial Review within thirty (30) days of the Department's Final Order, dated December 24, 2008, said Petition is timely for purposes of I.C. §§ 4-21.5-5-2 and 4-21.5-5-5.

#### **V. IDENTIFICATION OF AGENCY ACTION AND RESULTING PREJUDICE**

5.1 Petitioners reallege the preceding paragraphs numbered 1.1 through 4.3 and all subsequent paragraphs and incorporates said allegations by this reference.

5.2 As required by I.C. § 4-21.5-5-7(b)(3), Petitioners take issue with and seek judicial review of the Indiana Department of Insurance's Final Order of December 24, 2008, as well as with and of ALJ Korty's Recommended Order

in that the Commissioner's Final Order is premised on the ALJ's Recommended Order, and on the same evidentiary record before the ALJ.

5.3 As a result of the ALJ's Recommended Order and the Department Commissioner's Final Order, Petitioners has been undeniably prejudiced as these Orders make findings of liability against Petitioners for violations of I.C. § 27-1-15.6-12 (b) (4) and I.C. 27-1-15.6-12 (b) (8), and improperly impose personal liability on the Petitioners for acts of a Corporate employee, which acts of embezzlement did not in any way benefit the Petitioners, but, on the contrary destroyed their opportunity to continue as officers of the Corporation from whom the funds were stolen. See attached "**Exhibit 1**". As such, the Department's Final Order, if not reversed on review, will result in the Petitioners paying obligations of the Corporation, for which they had no legal or equitable obligation to so pay. Such Order will have a significantly adverse impact on Petitioners' financial well-being, amongst other matters of negative impact.

5.4 The Department's Final Order is inconsistent with and/or exceeds the scope of the Department's authority as set forth in I.C. § I.C. 27-1, *et seq.*. This statute endows the Department only with the authority to revoke a license or impose a penalty, but specifically does not grant to the Department the right or authority to impose personal liability on corporate officers for corporate obligations.

5.5 In finding liability and imposing prohibitions and restrictions on



Petitioners under I.C. § 27-1-15.6-12, first the ALJ, and then the Commissioner, acted arbitrarily, capriciously and/or contrary to the evidentiary record, as the uncontested evidentiary record demonstrated that Petitioners did not in any way benefit from the embezzlement of funds by an employee of the Corporation, and on the contrary, that the theft of the Corporate funds led directly to the closing of the business. Given the fact that the undisputed evidence demonstrated that the Petitioners did not withhold, misappropriate or convert any funds of the customers of Kings Title & Abstract, Conclusion of Law Number 8 by the ALJ, ratified by the Commissioner, that the Petitioners violated I.C. 27-1-15.6-12 (b) (4), is demonstrably false from the Record herein. Further, given the fact that the undisputed evidence demonstrated that the Petitioners did not demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of the business of Kings Title & Abstract, Conclusion of Law 9 by the ALJ, ratified by the Commissioner, that the Petitioners violated I.C. 27-1-15.6-12 (b) (8), is demonstrably false from the Record herein. A corporate employee who steals from his employer does not thereby demonstrate that the officers of the corporate employee were incompetent, untrustworthy nor were financially irresponsible. This is especially the case when the corporate officers, the Petitioners herein, took affirmative action to insure that a questioned employee could not sign checks. If the Department's Final Order is not reversed, the penalties imposed by the Department must be seen as excessive, unreasonable, arbitrary and unwarranted by the evidentiary record.

5.6 In finding any liability and imposing any penalty or costs under I.C. § 27-1-15.6-12, ALJ Kory and the Commissioner improperly ignored Petitioners' presentation of the underlying facts at the Hearing, most applicably that the Corporation's employee stole from the Corporation, in spite of the Corporate officers' actions to prevent thievery, and that as officers of the corporation they had no obligation to reimburse the Corporation, or any one else, for funds stolen from the Corporation by an employee of the Corporation. Further, the Commissioner may not impose obligations upon directors or officers of an Indiana corporation that conflict with standards of conduct as established by Indiana law, specifically I.C. 23-1-35, *et seq.* and I.C. 23-1-37-8. Nor may the Commissioner impose personal liability on corporate directors and officers when not authorized to do so by Indiana statutory or case law.

5.7 Petitioners are entitled to relief from agency actions/orders that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; without observance of procedure required by law; and/or unsupported by substantial evidence. In the briefing herein the Petitioners will set forth specific factual allegations and/or references to the evidence and Record as to the prejudicial and erroneous nature of the ALJ's and the Commissioner's Orders.

## **VI. RELIEF REQUESTED**

6.1 Petitioner realleges the preceding paragraphs numbered 1.1 through 5.7 and all subsequent paragraphs and incorporates said allegations by this reference.

6.2 As the ALJ's and the Commissioner's Orders have prejudiced Petitioners under I.C. § 4-21.5-5-14, Petitioners asks this Court to (a) set aside and nullify the Commissioner's Final Order of December 24, 2008, as well as ALJ Korty's Order of November 7, 2008, as contrary to law, the applicable statutory language and/or the evidentiary record and (b) remand this matter to the Department with directions to enter a finding of non-liability of the Petitioners individually for any remaining obligations of the Corporation and (c) for all or any other relief deemed just and proper in these circumstances.

## **VII. PETITION FOR STAY**

7.1 Petitioner realleges the preceding paragraphs numbered 1.1 through 6.2 and all subsequent paragraphs and incorporates said allegations by this reference.

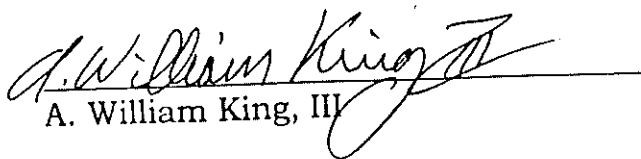
7.2 Given the plain language of I.C. 27-1-15.6-12 and the content of the evidentiary record actually before and ruled on by the ALJ and the Commissioner, there is a reasonable probability that the Orders for which Petitioners now petitions for judicial review are invalid or illegal.

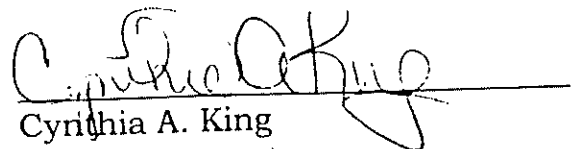
7.3 Moreover, Petitioners stand ready to obtain a bond in the amount and with the surety approved by the above-captioned Court.

7.4 Accordingly and pursuant to I.C. § 4-21.5-5-9, Petitioners respectfully request that this Court stay any further proceedings between or involving Petitioners, the Indiana Department of Insurance, with any such stay to include without limitation any attempt to implement or enforce the Commissioner's Final Order of December 24, 2008 in *In the Matter of A. W m. King, III, Cynthia A. King and Kings Title & Abstract Company*, Administrative Cause No. 6201-AG07-1022-280., as any final order or judgment in these court proceedings will be determinative and control over the Department's ruling.

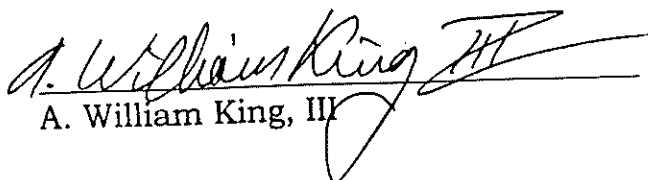
WHEREFORE, having asserted various bases for judicial review and alleging and/or incorporating facts in support thereof, the Petitioners pray for the relief requested above, and for all other legal and/or equitable relief this Court deems just and proper in the premises.

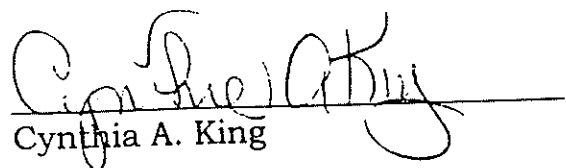
DATED this \_\_\_\_ day of January, 2008.

  
A. William King, III

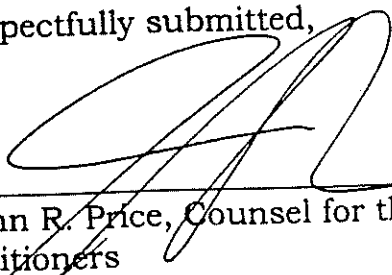
  
Cynthia A. King

I hereby swear and affirm under the penalties of perjury that the foregoing is true and accurate to the best of my memory and belief.

  
A. William King, III

  
Cynthia A. King

Respectfully submitted,

  
\_\_\_\_\_  
John R. Price, Counsel for the  
Petitioners

John R. Price  
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King/Pet for Jud Review

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NO. 6201-AG07-1022-280

IN THE MATTER OF:

A WM KING, III,  
260 LN 201B LAKE GEORGE  
FREMONT, Indiana 46737  
Respondent,  
License Number 1973500

Cynthia A. King,  
409 ELLIOTT POINT DRIVE  
NEW CASTLE, Indiana 47362  
Respondent,  
License Number: 2319500

Kings Title & Abstract Company,  
Inc.  
1111 BROAD STREET  
NEW CASTLE, IN 47362-0000  
Respondent,  
License No. 2167170

Type of Agency Action: Enforcement

**FILED**

DEC 24 2008

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER**  
**DENYING DEPARTMENT'S OBJECTIONS AND**  
**DENYING RESPONDENTS' OBJECTION**  
**AFFIRMING ALJ's FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**  
**RECOMMENDED ORDER**

The Commissioner of the Indiana Department of Insurance, James Atterholt, having read and reviewed the Administrative Law Judge (ALJ) Tina Korty's Findings of Fact, Conclusions of Law, and Recommended Order, Department's Objections to Findings of Fact, Conclusions of Law and Recommended Order of November 7, 2008, and Respondents' Objection to Recommended Order, and now being duly advised in the premises **DENIES** Respondents' Objection and **GRANTS** in part Department's Objections pursuant to Indiana Code 4-21.5-3-29.

**"EXHIBIT I"**

and as ultimate authority in this case issues this Final Order **MODIFYING** ALJ Korty's Findings of Fact, Conclusions of Law and Recommended Order of November 7, 2008.

### **FINDINGS OF FACT**

The Commissioner incorporates ALJ's Korty's Findings of Fact save #48 which is modified to:

48. After the defalcation, First American discovered over one thousand eight hundred (1,800) transactions where title insurance premium had been collected but policies had not been issued or reported and no premium had been remitted to First American. Approximately six hundred (600) of those transactions occurred six months to a year prior to Kings Title closing. Approximately six hundred (600) more were transactions that occurred over a year before Kings Title closed.

### **CONCLUSIONS OF LAW**

The Commissioner incorporates ALJ Korty's Conclusions of Law in this Final Order .

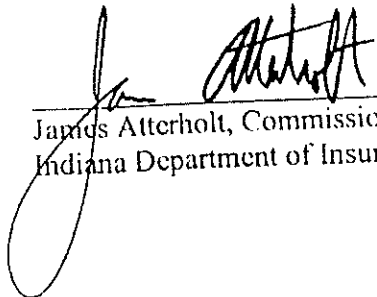
### **ORDER**

The Commissioner now Orders:

1. Respondent shall pay restitution, on or before June 30, 2009, in the amounts in Column I of the attached Exhibit A, which was adapted from Exhibit O entered into evidence at the hearing. Total restitution pursuant to Exhibit A is Forty-Seven Thousand Thirty-Three Dollars and fifty-six cents (\$47,033.56).
2. Respondents shall pay restitution, to the Department in the amount of Five Thousand Dollars (\$5,000) for moneys collected but not forwarded to the TIEFF.

3. Respondent shall pay a civil monetary fine of Ten Thousand Dollars (\$10,000).
4. Kings Title's insurance producer license shall be permanently revoked.
5. Bill King's insurance producer license shall be revoked for two (2) years. At the end of two (2) years, if he has provided evidence acceptable to the Commissioner that all above restitution and penalties have been paid, Bill King shall be allowed to reapply for a title insurance producer license.
6. Cindy King's insurance producer license shall be revoked for two (2) years. At the end of two (2) years, if she has provided evidence acceptable to the Commissioner that all above restitution and penalties have been paid, Cindy King shall be allowed to reapply for a title insurance producer license.

ALL OF WHICH IS ORDERED by the Commissioner this 24 day of December, 2008.



James Atterholt, Commissioner  
Indiana Department of Insurance

Distribution:

A. William King, III  
260 LN 201B Lake George  
Fremont, Indiana 46737

Kathy Carr Hulbert, Attorney  
Indiana Department of Insurance  
311 West Washington Street, Suite 300  
Indianapolis, Indiana 46204-2787



STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

**BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE**

**CAUSE NO.6201-AG07-1022-280**

**IN THE MATTER OF:**  
**AWMKING, III,**  
**260 LN 201B LAKE GEORGE**  
**FREMONT, Indiana 46737**  
**Respondent,**  
**License Number 1973500**

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**FILED**

NOV 07 2008

STATE d\*NSURANCE  
DEPT. OF

**Cynthia A. King,**  
**409 ELLIOTT POINT DRIVE**  
**NEW CASTLE, Indiana 47362**  
**Respondent,**  
**License Number: 2319500**

) )

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**Kings Title & Abstract Company,**  
**Inc.**  
**1111 BROAD STREET**  
**NEW CASTLE, IN 47362-0000**  
**Respondent,**  
**License No. 2167170**

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**Type of Agency Action: Enforcement**

**FINDINGS OF FACT, CONCLUSIONS OF LAW,**  
**AND RECOMMENDED ORDER**

Administrative Law Judge Tina L. Korty, having considered and reviewed all of the evidence, will now render a decision in the matter of A. William King, III ("Bill King"); Cynthia A. King ("Cynthia King"); and Kings Title & Abstract Company, Inc. ("Kings Title") (hereafter, these respondents will collectively be referred to as "Respondents"). This matter came to be heard by Tina L. Korty, designated Administrative Law Judge, on August 12, 2008, at 10 a.m.

The Indiana Department of Insurance ("Department") was represented by counsel, Kathy Hulbert. Respondent Bill King appeared in person and represented all Respondents. Witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

Based upon the evidence presented at said hearing, the Administrative Law Judge now makes the following Findings of Fact and Conclusions of Law, and issues her Recommended Order.

**FINDINGS OF FACT**

1. Bill King is an active licensed resident title insurance producer in the State of Indiana.
2. Cynthia King is an active licensed resident title insurance producer in the State of Indiana.
3. King's Title is an active licensed resident title insurance producer in the State of Indiana.
4. Bill King is the president of Kings Title, and Cynthia King is the vice president of Kings Title. (Hearing Transcript, p. 7, l. 7-10.)
5. All witnesses in this matter testified under oath. (Hearing Transcript, p. 8, l. 2-16.)
6. Title insurance producers generally issue a title insurance commitment to a consumer and then notify the underwriting insurer of the policy and pay the underwriter's portion of the premium to the underwriter. (Hearing Transcript, p. 15, l. 4-18.)
7. Title insurance underwriters generally do not know a policy has been issued until the producer reports the policy to the underwriter. (Hearing Transcript, p. 15, l. 4-7.)
8. Typically in title insurance situations, a title insurance producer will collect an estimated amount of property taxes accrued but not due at the time of the closing. (Hearing Transcript, p. 34, l. 3-22.)

9. When a property tax amount is overestimated and overcollected, the title insurance producer then refunds any overage to the party that paid the taxes at closing. (Hearing Transcript, p. 35, 1. 2-9.)

10. On February 8, 1995, Kings Title and Old Republic National Title Insurance Company ("Old Republic") entered into a contractual agency agreement for Kings Title to issue title insurance policies on behalf of Old Republic. (Department's Exhibit J.)

11. Under that agency agreement, Kings Title was required to notify Old Republic monthly of new title policies issued and to process applications in a timely manner. (Hearing Transcript, p. 17, 1. 3-10.)

12. Also under the agency agreement, Kings Title was required to remit premium due to Old Republic on the tenth day of the second month following the closing. (Hearing Transcript, p. 17, 1. 16-25.)

13. Robert Liebrich is an agency representative for Old Republic. (Hearing Transcript, p. 12, 1. 16-17.)

14. Part of Mr. Liebrich's job responsibilities included evaluating Kings Title. (Hearing Transcript, p. 18, 1. 1-3.)

15. Mr. Liebrich audited Kings Title accounts, answered underwriting questions, and monitored its reporting. (Hearing Transcript, p. 18, 1. 4-17.)

16. During more than one audit, Liebrich discovered that Kings Title was not fully reporting policies and had not remitted proper premium to Old Republic. (Hearing Transcript, p. 19, 1.2-5; p. 19, 1.22-24.)

17. On more than one occasion, Kings Title could not remit the full amount due to Old Republic when the omissions were discovered. (Hearing Transcript, p. 20, 1. 11-20.)

18. On May 24, 2006, Kings Title entered into a promissory note with Old Republic to pay Ninety-Five Thousand Six Hundred Seventy-Five Dollars and eighty-nine cents (\$95,675.89) in unremitted premiums for title insurance policies that had been issued. (Department's Exhibit K.)

19. On February 23, 2007, Old Republic terminated its agency relationship with Kings Title for continued unremitted premiums. (Department's Exhibit L.)

20. On or about May 7, 2007, Kings Title entered into a new promissory note with Old Republic to pay an additional Sixty-Nine Thousand Six Hundred Sixty-Four Dollars and twenty-two cents (\$69,664.22) in unremitted premiums. Bill King and Cindy King guaranteed payment under that agreement. (Department's Exhibit M.)

21. First American Title ("First American") is a title insurance company that performs audits of producers through auditors. (Hearing Transcript, p. 42, l. 2-11.)

22. Kings Title became an agent of First American on January 1, 1988. (Department's Exhibit A.)

23. As part of its agency, Kings Title was authorized to issue title insurance policies on behalf of First American and accept premium for those policies. (Department's Exhibit A; Hearing Transcript, p. 43, l. 22-25; p. 46, l. 18-24.)

24. Under the agency agreement, Kings Title was required to prepare a monthly policy report and remittance sheet to First American. (Hearing Transcript, p. 45, l. 13-20.)

25. On February 14, 2005, Kings Title and Bill King executed a Promissory Note in favor of First American for Two Hundred Thousand Dollars (\$200,000), representing unpaid insurance premiums. (Department's Exhibit D.)

26. On December 15, 2006, Kings Title, Bill King, Cindy King, and First American entered into a loan agreement in the amount of Three Hundred Six Thousand Seven Hundred Seventy-Three Dollars and seventy-five cents (\$306,773.75), which represented the unpaid balance on the 2005 note, unpaid invoices, and unpaid premium discovered at a recent audit. (Department's Exhibit E.)

27. Cheryl Burton is an agency state account manager for First American who interacted with Kings Title in the course and scope of her employment with First American. (Hearing Transcript, p. 41, l. 17-24.)

28. Michael Poppe is a special services account manager with First American and spent five years as an audit manager for First American. (Hearing Transcript, p. 66, l. 6-8; p. 67, l. 1-3.)

29. As audit manager, Poppe performed audits of Kings Title and supervised other employees who performed audits of Kings Title. (Hearing Transcript, p. 67, l. 6-10.)

30. In a November 9, 2004 escrow audit report, First American documented a finding that "[t]he same person who reconciles the account also has the ability to sign checks." and recommended that the person reconciling an account not have the ability to sign checks. (Department's Exhibit G; Hearing Transcript, p. 69, l. 12-21.)

31. The audit that led to the November 2004 audit report revealed a defalcation of One Hundred Forty-Three Thousand Dollars (\$143,000) by Keith Branam ("Branam"), manager of the Shelbyville Kings Title office. (Hearing Transcript, p. 73, l. 2-7; p. 72, l. 9-11.)

32. First American recommended that the person reconciling an account should not have the capability to move money and that an officer of the company should review

reconciliations to set internal controls over the accounts. (Hearing Transcript, p. 72, l. 17-25; p. 73, l. 1.)

33. After the audit report was issued, Kings Title removed Branam's authority to sign checks on the Shelbyville office's accounts. (Hearing Transcript, p. 73, l. 8-11.) Signing authority was granted to one of Branam's subordinates. (Hearing Transcript, p. 73, l. 12-18.)

34. Kings Title did not terminate Branam's employment after learning of the 2004 defalcation. (Hearing Transcript, p. 73, l. 2-4.)

35. Kings Title reconciled the accounts for a time, but ceased after June or July of 2007. (Hearing Transcript, p. 74, l. 6-24.)

36. In October 2007, Kings Title discovered that Branam defalcated with Eight Hundred Fifty-Six Thousand Six Hundred Fifty-Nine Dollars and four cents (\$856,659.04). (Department's Exhibit I; Hearing Transcript, p. 49, l. 21-24.)

37. Branam wrote at least three checks: for Forty-Two Thousand Nine Hundred Two Dollars and seventeen cents (\$42,902.17), Six Hundred Sixty-Three Thousand Two Hundred Sixty-Two Dollars and fifty-five cents (\$663,262.55), and One Hundred Fifty Thousand Four Hundred Ninety-Four Dollars and thirty-two cents (\$150,494.32). Testimony indicated that Branam told his subordinate with signature authority to pre-sign checks for his use. (Department's Exhibit I; Hearing Transcript, p. 100, l. 14-19.)

38. Upon learning of the defalcation in October 2007, First American sent several employees, including Burton, to Kings Title to monitor the situation. (Hearing Transcript, p. 96, l. 22-25; p. 97, l. 1-9.)

39. Upon learning of the defalcation, First American terminated its agency relationship with Kings Title. (Department's Exhibit C.)

40. Burton met personally with Bill King and Cindy King on the day after First American learned of the defalcation. (Hearing Transcript, p. 97,1. 1-9.)

41. Kings Title ceased doing business in October 2007, on or about the second day after learning about the defalcation. (Hearing Transcript, p. 50,1.21-25.)

42. Upon ceasing business, Kings Title did not undertake to close out its business. Instead, it produced a letter signed by Bill King directing insureds to contact First American. (Department's Exhibit B.)

43. When Kings Title ceased doing business, employees of Old Republic and First American attempted to resolve Kings Title's unresolved title business. (Hearing Transcript, p. 52, 1. 1-24.)

44. Bill and Cindy King helped close down escrow accounts that did not contain shortages, and Cindy King helped First American locate files. (Hearing Transcript, p. 82,1. 1823.)

45. In October 2007 First American took over Kings Title's operations and closed loans that had been scheduled before Kings Title ceased operations. (Hearing Transcript, p. 53,1. 19-21.)

46. In or about October 2007, First American hired two employees to type and issue policies after Kings Title ceased business. (Hearing Transcript, p. 85,1. 13-19.)

47. When First American took over the process of typing and issuing policies, it discovered some Old Republic policies that had been issued by Kings Title but had not been reported to Old Republic. (Hearing Transcript, p. 30,1. 13-25; p. 31,1. 1-2.)

48. After the defalcation, First American discovered over One Thousand Eight Hundred (1,800) First American policies that had been issued but not reported, for which no

premium had been remitted to First American. Approximately six hundred (600) of those policies were issued six months to a year prior to Kings Title closing. Approximately six hundred (600) more were issued over a year before Kings Title closed. (Hearing Transcript, p. 80,1. 16-25; p. 81,1. 1-9.)

49. In approximately May of 2008, Kings Title stopped providing documents to First American. (Hearing Transcript, p. 83, 1. 1-2.)

50. Old Republic paid \$13,095.13 in unpaid property tax liabilities for properties closed by Kings Title not transmitted to the proper taxing authority. (Hearing Transcript, p. 33,1. 10-16.)

51. As of the date of the hearing, Old Republic was still being contacted by consumers regarding title insurance policies. (Hearing Transcript, p. 31, 1. 16-18.)

52. As of the date of the hearing, a portion of Old Republic's unremitted premiums were still outstanding. (Hearing Transcript, p. 31,1. 3-8.)

53. As of the date of the hearing, First American was still being contacted regarding outstanding issues for policies issued by Kings Title. (Hearing Transcript, p. 83, 1. 16-25; p. 84, 1. 1-25; p.85,1. 1-4.)

54. First American determined that Kings Title had overestimated many property tax liabilities and had not provided a refund to consumers. These amounts total Forty-Seven Thousand Thirty-Three Dollars and fifty-six cents (\$47,033.56). (Hearing Transcript, p. 87,1.25; p. 88,1.1-6.)

55. First American has also determined that over Five Thousand Dollars (\$5000) in Title Insurance Enforcement Fund ("TIEFF") moneys was collected from



consumers but not

forwarded to the Department, as required by hid. Code § 27-7-3.6-7. (Hearing Transcript, p. 89, l. 20-23.)

56. Findings of Fact that are properly considered Conclusions of Law are incorporated as such.

#### CONCLUSIONS OF LAW

1. The Commissioner of the Department has jurisdiction over both the subject matter and the parties to this action.
2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code.
3. The Department had the burden of supporting the statement of charges, and the Department met its burden.
4. Respondents failed to properly supervise employees and safeguard monies paid by customers.
5. Respondents failed to properly document, account for, and refund overestimated property tax payments collected from its real estate customers.
6. Respondents failed to report numerous title insurance policies that consumers purchased and paid for.
7. Respondents failed to responsibly wind down the business after the defalcation.
8. Through the failures described in Conclusions 4, 5, and 6 Respondents improperly withheld, misappropriated, or converted monies or properties received in the course of doing insurance business, in violation of hid. Code § 27-1-15.6-12(b)(4).

9. Through the failures described in Conclusions 4, 5, 6, and 7, Respondents demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana, in violation of IC 27-1-15.6-12(b)(8).

10. Conclusions of Law that are properly considered Findings of Fact are incorporated as such.

### **RECOMMENDED ORDER**

Based on the foregoing, the Administrative Law Judge now recommends to the Commissioner of the Department of Insurance the following Recommended Order:

1. Respondents should pay restitution, on or before June 30, 2009, in the amounts in Column I of the attached Exhibit A, which was adapted from Exhibit O entered into evidence at the hearing. Total restitution pursuant to Exhibit A is Forty-Seven Thousand Thirty-Three Dollars and fifty-six cents (\$47,033.56).

2. Respondents should pay restitution, to the Department in the amount of Five Thousand Dollars (\$5,000) for moneys collected but not forwarded to the TIEFF.

3. Respondents should pay a civil monetary fine of Ten Thousand Dollars (\$10,000).

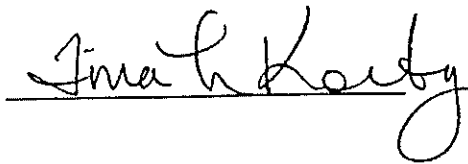
4. Kings Title's insurance producer license should be permanently revoked.

5. Bill King's insurance producer license should be revoked for two (2) years. At the end of two (2) years, if he has provided evidence acceptable to the Commissioner that all above restitution and penalties have been paid, Bill King should be allowed to reapply for a title insurance producer license.

6. Cindy King's insurance producer license should be revoked for two (2) years. At the end of two (2) years, if she has provided evidence acceptable to the Commissioner that all above

restitution and penalties have been paid, Cindy King should be allowed to reapply for a title insurance producer license.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this \_\_\_\_\_ day of November, 2008.

A handwritten signature in cursive script, reading "Tina L. Kory", is written over a horizontal line.

Distribution:

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Tina L. Kory  
Administrative Law Judge