

IN THE
COURT OF APPEALS OF INDIANA

Donald Culberson,

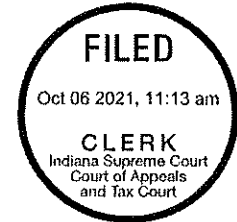
Appellant,

v.

Indiana Department of Insurance, et al.,

Appellees.

Court of Appeals Case No.
21A-PL-1476



Order

- (1) Appellant, by counsel, has filed a Motion to Dismiss Appeal.
- (2) Having reviewed the matter, the Court finds and orders as follows:
1. Appellant's Motion to Dismiss Appeal is granted, and this appeal is dismissed with prejudice.
 2. The Clerk of this Court is directed to send a copy of this order to the parties, the trial court, and the Marion Circuit and Superior Courts Clerk.
 3. The Marion Circuit and Superior Courts Clerk is directed to file a copy of this order under Cause Number 49D13-2004-PL-13862, and, pursuant to Indiana Trial Rule 77(D), the Clerk shall place the contents of this order in the Record of Judgments and Orders.

Ordered 10/6/2021

A handwritten signature in black ink, appearing to read "Caleb Brinkley".

Chief Judge

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO: 17135-AG18-0501-074

IN THE MATTER OF:)

Donald Culberson)
5350 Ralfe Road)
Indianapolis, IN 46234)

Respondent.)

Type of Agency Action: Enforcement)

License Number: 477363)

FILED

MAR 16 2020

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On January 15, 2020, the Administrative Law Judge, Reuben B. Hill, filed his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Recommended Order on Respondent's counsel.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

~~3. Respondent's counsel timely objected to ALJ Hill's Recommended Order on February 3, 2020, the Department filed a response to Respondent's Objection on February 28, 2020. Respondent then filed a Reply to Department's Response to Respondent's Objection to ALJ's Recommended Order.~~

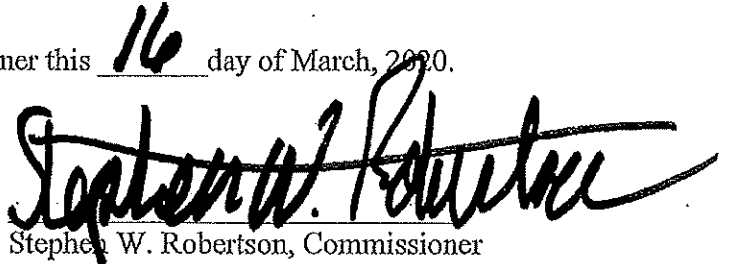
Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Respondent's Resident Producer License Number 477363 is permanently revoked.

Under Ind. Code §4-21.5-5-5, Respondent has the right to appeal this Final Order by filing a petition for Judicial review in the appropriate court within thirty (30) days.

ALL OF WHICH IS ORDERED by the Commissioner this 16 day of March, 2020.



Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

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Robert York and Assoc.
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Indianapolis, IN 46250

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311 W. Washington St., Suite 103
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STATE OF INDIANA)
COUNTY OF MARION)

) BEFORE THE INDIANA
) SS: COMMISSIONER OF INSURANCE

) CAUSE NUMBER: 17135-AG18-0501-074

IN THE MATTER OF:)

Donald Culberson)
5350 Ralfe Road)
Indianapolis, IN 46234)

) Respondent.)

FILED

JAN 15 2020

STATE OF INDIANA
DEPT. OF INSURANCE

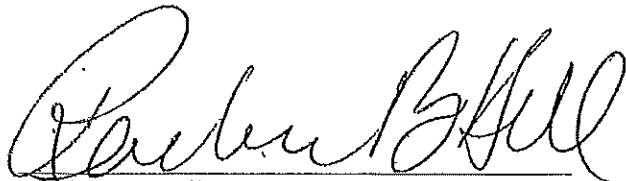
Type of Agency Action: Enforcement

License NO.: 477363

NOTICE OF FILING OF RECOMMENDED ORDER

The parties of this action are hereby notified that the Administrative Law Judge's Recommended Order is deemed filed as of this date.

To preserve an objection to this order for judicial review, you must object to the order in a writing that: 1) identifies the basis for your objection with reasonable particularity; and 2) is filed with the ultimate authority for the Final Order, the Commissioner of the Department of Insurance within eighteen (18) days from the date of this Order.



Reuben B. Hill
Administrative Law Judge

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)

Donald Culberson)
5350 Ralfe Road)
Indianapolis, Indiana 46234)

Respondent.)

Type of Agency Action: Enforcement)

License Number: 477363)

CAUSE NO.: 17135-AG18-0501-074

FILED

JAN 15 2020

STATE OF INDIANA
DEPT. OF INSURANCE

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

Administrative Law Judge Reuben B. Hill ("ALJ"), having heard, reviewed and considered all of the evidence, now renders a decision concerning the matter of Donald Culberson ("Respondent"). This matter came on to be heard by the ALJ in a two (2) day Evidentiary Hearing beginning on September 18, 2019 at 10:00 a.m. at the Indiana Department of Insurance at 311 West Washington Street, Indianapolis, Indiana.

The Enforcement Division of the Indiana Department of Insurance ("Department") was represented by counsel, Erica J. Dobbs and Edward J. Fujawa. Respondent appeared in person

and by counsel, James D. Masur. Testimony was heard, and exhibits were received into evidence.

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

FINDINGS OF FACT

1. Respondent has been a licensed Resident Insurance Producer since September 1, 2005. Respondent held an appointment with American Family Insurance Company, as a captive agent meaning he could not simultaneously be appointed by any other company. Respondent's appointment with American Family was terminated for cause on March 20, 2018, following an investigation by American Family's Corporate Compliance department. American Family uses a computer-based system for receiving and maintaining consumer insurance applications, policies, and file information. This system is called "Policy Center". When American Family agents prepare an application for automotive insurance for a potential American Family customer, they must provide the consumer's prior automotive insurance history.
2. When American Family agents prepare an application for Automotive Insurance for a potential American Family customer, they must provide the consumer's prior Automotive Insurance history. A consumer's insurance history, including the prior carrier(s) policy terms, liability limits and length of time with the prior carrier, factors into whether American Family will accept a consumer's application for insurance, if so, what rate the consumer will be charged and what discounts or surcharges may be applicable. Typically, reporting a consumer's prior insurance information to American Family is

accomplished through an automated process in Policy Center where a report is generated from Lexis Nexis (a "Pre-Fill Report"), automatically populating the prior carrier information section of the application. If the consumer previously had coverage that is not included in the "Pre-Fill Report", the agent has the ability to amend the prior carrier information manually to add the missing coverage.

3. When an agent manually adds prior carrier information to a consumer's application, he or she must then submit documentation to American Family to support the manually added information. Per American Family's underwriting guidelines, which are accessible to all American Family agents through the Policy Center reference manual, acceptable documentation to support manually added prior carrier information includes the applicant's current declarations page, renewal offer, current billing notice, current carrier proof-of-insurance card, current certificate of insurance, letter from prior carrier indicating coverage to American Family effective date, or current screen print. None of the acceptable forms of proof of prior insurance from a carrier other than American Family are something that would be created or edited by any American Family agent. Documentation provided as proof of prior insurance must contain the name of the insured, coverage limits, and the coverage term.

4. Respondent prepared an application for consumer Justin Washington on January 18, 2018, wherein he manually added prior coverage through Progressive Paloverde Insurance Company ("Progressive Paloverde") from December 28, 2017 through June 28, 2017. On or about January 24, 2018, Respondent uploaded proof of prior insurance

information for Mr. Washington to the American Family Policy Center system, indicating prior insurance coverage through Progressive Paloverde from December 28, 2017 through June 28, 2018 under Policy Number 901312526 with \$50,000/\$100,000 bodily injury liability limits.

5. Respondent presented an affidavit from Mr. Washington at the hearing, wherein he states he told Respondent or his assistant that he was insured with Progressive via his father's policy at the time he made application to American Family. It does not, however, indicate the policy number, policy term, whether Mr. Washington was a named driver on the policy, or provide the liability limits of any such policy. It does not indicate that Mr. Washington provided the proof of insurance document uploaded to Policy Center, or any of the information contained therein, to Respondent. A note in Mr. Washington's Policy Center file, authored by Respondent, states "Insurance Verification (Prior Insurance is uploaded)" on January 24, 2018 at 11:24 a.m.
6. The insurance verification document referred to in the Policy Center note was reviewed by Elizabeth Wieczorek, District Underwriter, on January 29, 2018. Respondent took Ms. Wieczorek's deposition on August 22, 2019, and a transcript of the same was stipulated into evidence in its entirety, including all attached exhibits. Ms. Wieczorek believed the proof of insurance document to be suspicious due to it being in Microsoft Word Document format and containing unusual margins and alignment. Ms. Wieczorek forwarded the proof of insurance document to American Family's Corporate Compliance department, which initiated an investigation.

7. Compliance and Ethics Consultant Heidi Jo Soukup was assigned to the investigation due to her background as a former American Family underwriter. Ms. Soukup began working in the insurance industry as an underwriter in 2012, joining American Family's underwriting department in August, 2014. Thereafter, in January 2017, Ms. Soukup joined American Family's Compliance and Ethics Department as an analyst. After conducting investigations as an analyst for approximately one (1) year and obtaining designation as a Certified Fraud Examiner, she was promoted to the position of consultant in January, 2018. Ms. Soukup testified via telephone at the hearing in this matter on September 18, 2019.

8. Ms. Soukup reviewed the proof of prior insurance document from Mr. Washington's file and observed significant formatting errors in the document, including the alignment, spacing, and words placed outside of the typical margin areas, which she believed to be "red flags". Ms. Soukup contacted Progressive Paloverde and learned that the policy number appearing on the verification of insurance document was a legitimate Progressive Paloverde policy number, but no one named Justin Washington was associated with the policy. Additionally, the policy number was issued in the State of Wisconsin, not Indiana. Due to the Microsoft Word Format of the document, Ms. Soukup was able to review the document's properties to determine its author, date of last modification, and who last modified it.

9. The properties revealed that the original author of the document was Kacey Myers and it was last modified by Respondent January 24, 2018 at 11:23 a.m. Ms. Soukup discovered that Ms. Myers is another of Respondent's clients and reviewed her file, in which she found an earlier version of the same document uploaded as verification of prior insurance for Ms. Myers. Respondent prepared an application for Ms. Myers on June 14, 2016 wherein he manually added prior coverage through Progressive Paloverde from June 30, 2010 to June 30, 2016. According to the Policy Center notes for Ms. Myers' file, on June 26, 2016 at 11:41 a.m., service personnel in American Family's Personal Lines department declined prior carrier information for Ms. Myers' previously uploaded automotive insurance application due to a lack of documentation supporting the manually added prior carrier information. At 11:55 a.m., Ms. Myers created a verification of insurance letter from Progressive Paloverde. She proceeded to send this document to Respondent via email, and Respondent uploaded the same to the Policy Center system, noting at 4:11p.m. "Prior Insurance ... I have uploaded prior insurance information". Respondent testified he uploaded what Ms. Myers gave him.

10. Ms. Soukup contacted Progressive Paloverde and confirmed that Ms. Myers had a policy through the company from December 17, 2015 through June 17, 2016. Progressive Paloverde confirmed that they did not and would not supply an insured with verification of insurance in Microsoft Word document format and provided Ms. Soukup with an authentic verification of insurance letter for Myers wherein the information presented is nearly identical to the verification letter Respondent had submitted, but the text and margins properly aligned.

11. Respondent obtained an affidavit from Ms. Myers stating that she told Respondent she had insurance through Progressive. It does not indicate why she provided inauthentic proof of that insurance to Respondent. As part of the investigation, American Family's IT department created a "clone of Respondent's computer, which was property of American Family. A clone is a copy of documents and files contained on a computer, as well as the internet history and live access to the computer's email system. Ms. Soukup obtained this clone of Respondent's computer from American Family's IT department, and discovered a Microsoft Word document saved on Respondent's computer desktop with the title "Other Insurance Dec Template.docx [sic] (hereinafter, the "Template")

12. Respondent testified that the Template is a folder on his desktop where he saves prior carrier information forwarded to him by his staff. The Template is a Microsoft Word document, not an electronic file folder, and contained the same text and spacing, alignment, and margin errors as the proof of insurance document uploaded to Justin Washington's Policy Center file.

13. Ms. Soukup requested the Personal Lines department compile a list of Respondent's clients with applications submitted between February, 2017 and February, 2018 that included manually added prior carrier information, and was provided a list of twenty-one (21) consumers' files. Fourteen (14) of those were determined to not actually have involved manually added prior carrier information or contained apparently legitimate information. Seven (7) of the consumers' files contained proof of prior carrier

documentation similar in appearance to those uploaded with the Washington and Myers files. The Seven (7) additional individuals were identified as Roy Wilson, Paris Gordan, Ngyuen Le, Alicia Smith, Jack Morgan, Gustavo Aguilar, and Francisca Euceda.

14. Respondent testified that he does not recall submitting any of the prior insurance verification letters at issue, other than that which was submitted for Mr. Washington. Respondent also testified he was one of American Family's top producers, writing Fifty (50) to Seventy (70) automotive policies per month, and generating over Two Thousand Six Hundred (2,600) insurance policies over the course of his American Family career. Respondent testified that he focused his efforts within his agency on large commercial accounts while his staff tended to individual clients. Respondent admitted that anything submitted to American Family via Policy Center was uploaded by him because his staff did not have the level of authorization necessary to upload documentation to Policy Center.

15. Every American Family agent and each member of his or her staff has a unique American Family User I.D. and Password for accessing the Policy Center system, and it is company policy that login information is not to be shared. Respondent acknowledged his American Family User I.D. was "DOC002", which is the User I.D. associated with each note that proof of insurance had been uploaded to these Nine (9) consumers' Policy Center files. Respondent testified that he and each member of his staff had individual computers, which were all property of American Family. Despite claiming that he does not remember any of these clients or their files, Respondent testified that what he

uploaded to Policy Center for each of these accounts was prepared by his staff and not by him. Respondent also stated that once his staff sends him a client's information "I go in and look at the policy, call the client. . .if insurance is not there, we are able to manually add it based on what the client has told me", indicating that Respondent bears responsibility for manually adding prior insurance.

16. The "other insurance dec template.docx" Microsoft Word Document was observed on a clone of Respondent's American Family-issued computer, not a computer issued to any member of his staff. Each proof of prior insurance Microsoft Word document Respondent uploaded to Policy Center, with the exception of Ms. Myers's shows it was last modified by Respondent and not a member of his staff. Respondent argued that none of the uploaded documents were intended to serve as proof of prior insurance and placed great importance on an unchecked "verification of insurance" box appearing on the first page of each document. Respondent testified that these documents were submitted as "only an indicator that [proof of] insurance is on its way".

17. Rhavy Murray, Respondent's friend and a former American Family agent, testified that sometimes clients do not have proof of their prior insurance coverage, in which case agents "Produce documents that state that okay, here's the policy number, but this doesn't constitute proof of verifiable insurance". Mr. Murray continued that he "Never produced anything that came close to what constituted proof of prior insurance", and if he ever was in a situation to submit such a document, the first step is to "Let underwriting know that this doesn't constitute proof of insurance, and that's going to be clearly stated

on there". Respondent, however, uploaded each document to Policy Center with a comment specifically stating he was uploading proof of prior insurance. Each of the uploaded documents then states, rather than clearly indicating they were not proof of prior insurance "Please accept this letter as verification of insurance for this policy". This language also appears verbatim on authentic Progressive insurance verification letters. Ms. Soukup testified that the authentic Progressive Insurance verification letter does not bear the "verification of insurance" box relied on by Respondent. Respondent further argues that American Family's underwriting department should have noticed his "mistake" before the Washington upload, stating "there is no way [he] can get anything by an underwriter".

18. Respondent testified that American Family underwriters have historically contacted him with questions on his files so that he could provide additional information when there were problems, such as, missing facts or typographical errors. Mr. Murray also testified that he had been contacted by American Family underwriters with questions on his files as well. Ms. Soukup states that, while this may be a common practice in a typical underwriting situation, it is not typical to contact the target of a fraud investigation, so as to protect potential evidence. Proof of prior insurance documents uploaded by Respondent to Policy Center for his clients was not reviewed by underwriters, but by service personnel in the Personal Lines department. The Personal Lines service personnel serve an administrative role, as opposed to the analytical role of underwriters. The review process undertaken by the Personal Lines service personnel application is very cursory. Such would review verify that supporting documentation exists and the

liability limits on the document match those manually added to the application. The veracity of the document is not investigated.

19. Respondent argued that Personal Lines service personnel are not involved in application review, only underwriters. The Respondent has never been employed or received training as an underwriter or worked in American Family's corporate offices. The only American Family employee involved with any of the Nine (9) counterfeit insurance verification documents at issue and identified as an underwriter was Elizabeth Wieczorek, who determined the document to be suspicious and forwarded the same to the Corporate Compliance department for review, per company policy.

20. Until Ms. Wieczorek observed the proof of insurance document uploaded for Justin Washington's application and recognized its counterfeit nature, the underwriting and compliance departments were not aware of Respondent's conduct. Respondent argued that the state of Georgia, where he holds Non-Resident License, elected not to take administrative action against his license based on his termination from American Family. Respondent's home state is Indiana.

21. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

CONCLUSIONS OF LAW

1. The Commissioner of the Indiana Department of Insurance ("Commissioner") 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. As a preliminary matter before the start of the hearing, Respondent objected to Ms. Soukup's telephone appearance.
4. Indiana Code 4-21.5-3-25 states that the ALJ "shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts".
5. The ALJ notes that a prehearing conference on January 30, 2019, Ms. Soukup's telephone appearance was discussed and agreed to by both parties.
6. At the final prehearing conference on August 28, 2019, Respondent made an oral motion that the witness appear in person.
7. The ALJ ordered Respondent to put his request in writing, which he failed to do.
8. Indiana Code 27-1-15.6-12(b) states, in part, that the Commissioner may permanently revoke an Insurance Producer License for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

9. Respondent's arguments that his termination from American Family was racially motivated rather than a result of his submission of fraudulent documents in support of multiple clients' applications is unsupported by the evidence.
10. Respondent saved the document to his computer, subsequently, modifying it for use with each of Eight (8) additional clients' applications.

11. The evidence does not support Respondent's assertion that members of his staff were responsible for the uploaded documents.
12. The Microsoft Word document template was located on Respondent's computer.
13. The properties of each uploaded document show it was "last modified" on Respondent's desktop computer.
14. Respondent admits he uploaded the documents to Policy Center, because only his User I.D. afforded the requisite authorization to do so.
15. Respondent's argument that none of the uploaded documents were intended to be treated as proof of prior insurance is disingenuous and without merit.
16. The documents themselves specifically request the receiver to accept them as verification of prior insurance.
17. While the documents in question are imprecise copies of Progressive's legitimate verification letter format, it is clear that the documents were intended to be presented as authentic verification letters.
18. Indiana Code 4-21.5-3-14(c) states that the person requesting an agency take action has the burden of persuasion and the burden of going forward. The Department is requesting that the Commissioner permanently revoke Respondent's Resident Producer License and therefore bears the burden.
19. The Department has met its burden of showing by a preponderance of the evidence that Respondent violated Indiana Code 27-1-15.6-12(b)(8).
20. The evidence shows that the Respondent submitted Nine (9) such fraudulent documents
21. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated.

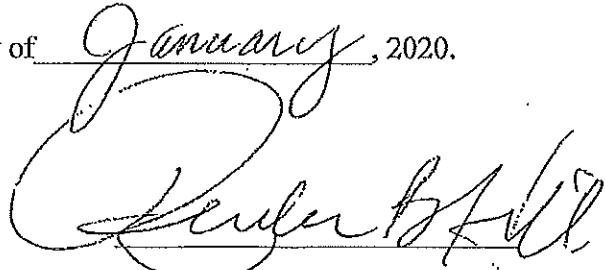
RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED:

In consideration of the foregoing Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the **Commissioner of Insurance** the following:

1. Respondent's Resident Producer License Number 477363 shall be permanently **REVOKED**, effective the date this Final Order is issued.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner of Insurance this 15th day of January, 2020.

A handwritten signature in cursive script, appearing to read "Reuben B. Hill". The signature is written in black ink and is positioned above the printed name and title of the signatory.

Reuben B. Hill, Esq.
Administrative Law Judge

Distribution:

James D. Masur
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Edward J. Fujawa, Deputy General Counsel
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Indianapolis, Indiana 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
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CAUSE NO: 17135-AG18-0501-074

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Respondent.)
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Type of Agency Action: Enforcement)
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License Number: 477363)

FILED

JAN 08 2019

STATE OF INDIANA
DEPT. OF INSURANCE

STATEMENT OF CHARGES

The Enforcement Division of the Indiana Department of Insurance (“Department”), by counsel, Erica J. Dobbs, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5-1 *et seq.*, files its Statement of Charges against Donald Culberson (“Respondent”) as follows:

FACTS

1. Donald Culberson (“Respondent”) is a licensed resident insurance producer, holding license number 477363 since September 1, 2005. His license is due for renewal on December 31, 2019.
2. Respondent ^{held an ~~em~~ appointment w/} was an employee of American Family Insurance. Respondent was terminated for cause effective March 20, 2018.
3. On or about January 26, 2018, Respondent uploaded and submitted proof of prior insurance through Progressive Paloverde for a new American Family applicant.
4. Said document was submitted as a Word document with significant formatting errors.

5. After an internal review of the document, the properties showed the document was created prior to the effective date of the alleged Progressive policy.
6. The author of the word document was another of Respondent's clients.
7. The document was saved on Respondent's computer with the title "Other Insurance dec templete.docx" and was discovered to have been used as proof of prior insurance for seven (7) of Respondent's new clients' policies.

CHARGES


COUNT I

1. Averments 1 through 7 are incorporated fully herein by reference.
2. Respondent's conduct is in violation of Indiana Code § 27-1-15.6-12(b)(8), which provides, in part, that the Commissioner may permanently revoke an insurance producer's license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

WHEREFORE, the Enforcement Division of the Indiana Department of Insurance, by counsel, Erica J. Dobbs, requests that the Commissioner set this matter for a hearing pursuant to Indiana Code § 4-21.5, and:

1. Issue an order permanently revoking Respondent's insurance producer license;
2. All other relief just and proper in the premises.

Respectfully submitted,


Erica J. Dobbs, #30588-49
Attorney, Enforcement Division

Erica J. Dobbs
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Enforcement Division
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Indianapolis, Indiana 46204-2787
Telephone: (317) 234-5887
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon the following Respondent by
United States first class mail, postage prepaid, the same day as filing.

Donald Culberson
5350 Ralfe Road
Indianapolis, Indiana 46234

James D. Masur, Counsel for Respondent
ROBERT YORK & ASSOCIATES
7212 N. Shadeland Ave., Suite 150
Indianapolis, IN 46250


Erica J. Dobbs