

05-11-09

Tennessee Department of Commerce and Insurance
Insurance Division

Petition for Declaratory Order
Notice of Hearing

Pursuant to Tennessee Code Annotated § 4-5-224, the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division") gives the following notice of hearing on a petition for a declaratory order:

1. Petitioners.

ISG Holding Company, Inc., f/k/a Insurance Servicer Group, Inc.;
William H. Arowood;
Bobbie P. Arowood; and
William M. Arowood

Petitioners' address:
800 Oak Ridge Turnpike
Suite A-1000
Oak Ridge, Tennessee 372830

2. Summary of the relief requested.

The Petitioners request a declaratory order from the Division declaring that:

- (1) Persons identified in 18 U.S.C. § 1033(e)(1)(A) may engage in the business of insurance or participate in such business in each and every state, if such person has the written consent of any regulatory official authorized by any state or political subdivision thereof to regulate the insurer.
- (2) Persons identified in Tenn. Code Ann. § 56-53-103(b)(1) may participate in the business of insurance in Tennessee as long as such persons have been granted a waiver by the commissioner of insurance of any state, or such commissioner's designee.
- (3) The "commissioner" as that term is used in Tenn. Code Ann. § 56-53-106(b) refers to the commissioner of insurance of any state, or such commissioner's designee.
- (4) The five-year limitation period set forth in Tenn. Code Ann. § 56-53-107 applies to actions brought by the State of Tennessee, including the Department of Commerce and Insurance and the Insurance Division, regarding the purported violations of the Tennessee Code Annotated set forth in the pending petitions against ISG, Bobbie Arowood, and William M. Arowood.

- (5) When the commissioner, in the exercise of her duties pursuant to Tenn. Code Ann. § 56-1-202 (2008), § 56-6-112 (2008), and § 56-2-305, has been involved in decision regarding investigation, enforcement, and settlement, she must recuse herself as the final decision maker in any administrative contested case proceedings under the Tennessee Uniform Administrative Procedures Act and the regulations promulgated thereunder, respectively Tenn. Code Ann. § 4-5-101 to -325 (2005) and Tenn. Comp. R. & Regs. Rules 1360-4-1-.01 *et seq.* (2004).

3. Statutes the Division is called upon to interpret or upon which it is to rule.

The Petitioners cite the following statutes on which a declaratory order is sought:

▪ 18 U.S.C. § 1033(e)

- (1) (A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce who willfully permits the participation described in subparagraph (1) shall be fined as provided in this title or imprisoned not more than five (5) years, or both.

- (2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

▪ Tenn. Code Ann. § 56-53-106 (2008)

- (b) (1) A person convicted of a felony involving dishonesty or breach of trust shall not participate in the business of insurance unless a waiver is granted by the commissioner.

(2) A person in the business of insurance shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance unless a waiver has been granted by the commissioner pursuant to subdivision (b)(1).

▪ Tenn. Code Ann. § 56-53-107 (2008)

- (e) Any cause of action under this section for violation of § 56-53-102 or § 56-53-103 must be brought within five (5) years of the commission of the acts

constituting the violation, or within five (5) years of the time the plaintiff discovered, or with reasonable diligence could have discovered, the acts, whichever is later.

- Tenn. Code Ann. §§ 56-1-202 (2008), 56-6-112 (2008), and 56-2-305 (2008)

Section 56-1-202:

The Commissioner shall be and act as the head of the department.

Section 56-6-112:

(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 those actions, for any one (1) or more of the following causes:

- (1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
- (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
- (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction;

- (11) Improperly using notes or any other reference material to complete an examination for an insurance license;
- (12) Knowingly directing any person to submit an application for health care benefits through the TennCare program at a time when the person is covered by a group policy or when the policy is being renewed, and then quoting a rate for a group health insurance policy if the insurance producer knows the person would otherwise have been eligible to participate or continue participation in the group policy;
- (13) Knowingly accepting insurance business from an individual who is not licensed;
- (14) Selling, soliciting or negotiating insurance for a company that is not authorized to transact the business of insurance in this state; and
- (15) Violating the unfair trade practices as enumerated in § 56-6-125.

Section 56-2-305:

(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:

- (1) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rise to the violation;
- (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; and
- (3) The suspension or revocation of the insurer's, person's, or entity's license.

(b) In determining the amount of penalty to assess under this section, or in determining whether the violation was a knowing violation for the purpose of

subdivision (a)(2), the commissioner shall consider any evidence relative to the following criteria:

- (1) Whether the insurer, person or entity could reasonably have interpreted its actions to be in compliance with the obligations required by a statute, rule or order;
- (2) Whether the amount imposed will be a substantial economic deterrent to the violator;
- (3) Whether the amount imposed would put the violator in a hazardous financial condition;
- (4) The circumstances leading to the violation;
- (5) The severity of the violation and the risk of harm to the public;
- (6) The economic benefits gained by the violator as a result of noncompliance;
- (7) The interest of the public; and
- (8) The insurer's, person's, or entity's efforts to cure the violation.

(c) Notwithstanding the limitations set forth in subdivision (a)(2), no aggregate penalty limits shall apply to the following:

- (1) Failure to file audited statements required pursuant to § 56-1-501(h) and rules promulgated under § 56-1-501(h);
- (2) Failure to file quarterly financial statements as required by statute or regulation;
- (3) Failure to file actuarial opinions pursuant to § 56-1-501(d) and rules promulgated under § 56-1-501(d);
- (4) Failure to file annual reports pursuant to §§ 56-19-119, 56-28-111, 56-29-113, 56-30-117, 56-31-116, 56-43-108, and 56-44-104;
- (5) Failure to file a risk-based capital report pursuant to § 56-46-103; and
- (6) Violations of orders issued after a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, and pursuant to subdivision (a)(1).

(d) This section does not apply to individual or business entity insurance producers licensed pursuant to chapter 6, part 1 of this title.

(e) (1) Notwithstanding any law to the contrary, civil penalties received under the authority of this section shall be utilized by the department, at the discretion of the commissioner, to:

(A) Defray its expenses related to the liquidation of insurance companies as provided by chapter 9 of this title;

(B) Promote consumer awareness of insurance; or

(C) Provide training or educational opportunities to employees of the division of insurance.

(2) Any subaccount currently used by the department for training and education may also be used for the promotion of consumer awareness.

4. Date, Time and Place of Hearing:

Oral arguments for this matter are scheduled for the 21st day August, 2009, at 9:00 a.m., Central Standard Time, in Conference Room A on the fifth floor of the Davy Crockett Tower, the Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243.

5. Administrative Procedures Division Docket No.: 12.04-102453J

Submitted for publication by:

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The Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the Department of State on the 13th day of May, 2009.