

LAWRENCE G. WASDEN
Attorney General

MICHAEL K. NAETHE
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, Idaho 83720-0043
Telephone: (208) 334-4219
Facsimile: (208) 334-4298
Idaho State Bar #7190

FILED

SEP 10 2008

**Department of Insurance
State of Idaho**

Attorneys for Department of Insurance

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
STATE OF IDAHO**

In the Matter of:)

GREGORY A. CUNNINGTON,)
an individual holding)
Producer License No. 76152)

) Docket No. 18-2470-08

) **STIPULATION AND ORDER**

STIPULATION

COMES NOW the Department of Insurance, State of Idaho (Department), by and through its counsel, Michael K. Naethe, Deputy Attorney General, and GREGORY A. CUNNINGTON, by and through his counsel Michael S. Leavitt, Associate General Counsel for Leavitt Group Enterprises, Inc. agree as follows:

1. GREGORY ALAN CUNNINGTON (CUNNINGTON) is a licensed insurance producer in the state of Idaho, holding license No. 76152, and is

therefore subject to the provisions of Title 41, Idaho Code, and to the rules of the Department of Insurance promulgated thereunder.


2. On or about December 18, 2007, CUNNINGTON sent application forms for professional liability insurance coverage with several insurance companies to a consumer via electronic mail. The email did not mention an agency fee.
3. On or about December 22, 2007, the consumer sent signed application forms to CUNNINGTON via email.
4. On or about December 28, 2007, CUNNINGTON sent offers from two insurance companies showing "Total Cost," which included a Five Hundred Dollar (\$500) agency fee, to the consumer via email. The email did not expressly mention or disclose the agency fee.
5. On or about January 19, 2008, the consumer sent CUNNINGTON an email accepting the policy from Philadelphia Insurance Company ("Philadelphia").
6. On or about January 25, 2008, CUNNINGTON mailed a check in the amount of Five Hundred Twenty-five Dollars (\$525) to Philadelphia as premium for the policy and retained the remaining Five Hundred Dollars (\$500) in a trust account.
7. On or about April 4, 2008, the consumer contacted CUNNINGTON regarding the policy fee disclosure. That same day CUNNINGTON sent a letter to the consumer, refunding the Five Hundred Dollar (\$500) fee and advising the consumer that he would request that the policy be cancelled

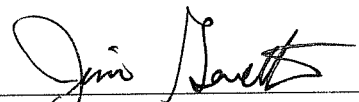
and that certificate holders would be notified of the cancellation. Later that day the consumer advising that he no longer wanted to do business with CUNNINGTON, but did not want the policy cancelled.

8. Idaho Code § 41-1030(2)(a) states that “[b]efore charging a fee to a consumer, a retail producer shall provide to the consumer a written statement that describes the services the retail producer will perform and the fees the retail producer will receive. Acceptance by the consumer of a fee agreement shall be evidenced by the consumer signing and dating the fee statement.”
9. IDAPA 18.01.52.011.01 states that prior charging a fee to a consumer, a retail producer shall furnish to each consumer a written disclosure statement containing “[a] description of the nature of the work to be performed by the insurance producer” and “[t]he fee schedule and any other expenses that the insurance producer charges, and whether fees may be negotiated.”
10. By failing to disclose in writing the Five Hundred Dollar (\$500) fee to the consumer, CUNNINGTON violated Idaho Code §41-1030(2)(a) for not obtaining a written disclosure statement containing the information set forth in IDAPA 18.01.52.011.01.
11. CUNNINGTON agrees to pay an administrative penalty of Five Hundred Dollars (\$500) for violating Idaho Code § 41-1030(2)(a) within thirty (30) days of the adoption of the attached ORDER by the Director.

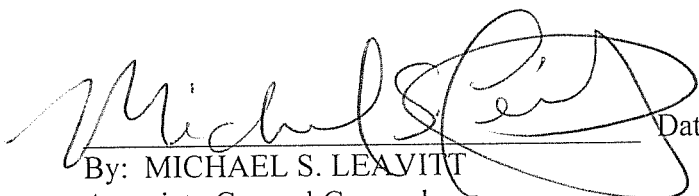
12. The parties agree that the terms of this Stipulation are appropriate and proper under the circumstances referenced herein, and that they have entered into this Stipulation knowingly, voluntarily, and with full knowledge of any rights they may be waiving thereby. Additionally, the parties hereby waive the right to seek reconsideration and judicial review of the attached order.

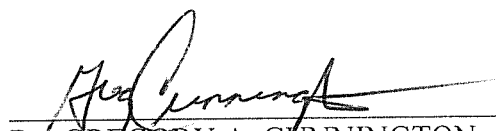
DEPARTMENT OF INSURANCE
STATE OF IDAHO

 Dated this 10th day of September 2008.
By: MICHAEL K. NAETHE
Deputy Attorney General

 Dated this 10 day of September 2008.
By: JIM GENETTI
Bureau Chief, Consumer Affairs

GREGORY A. CUNNINGTON


 Dated this 2 day of September 2008.
By: MICHAEL S. LEAVITT
Associate General Counsel
Leavitt Group Enterprises, Inc.

 Dated this 4 day of September 2008.
By: GREGORY A. CUNNINGTON

ORDER

IT APPEARING FROM THE FOREGOING THAT GOOD CAUSE EXISTS, IT IS HEREBY ORDERED that the foregoing Stipulation of the parties is adopted and accepted in full and made a part of this Order, effective as of the date executed by the Director.

DATED this 10TH day of September 2008.



WILLIAM W. DEAL
Director

CERTIFICATE OF SERVICE

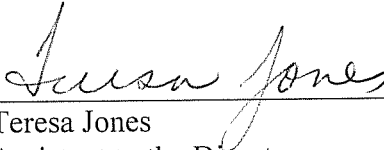
I HEREBY CERTIFY that I have on this 10th day of August 2008, caused a true and correct copy of the foregoing document to be served upon the following by the designated means:

Michael S. Leavitt
Associate General Counsel
Leavitt Group Enterprises, Inc.
216 South 200 West
Cedar City, UT 84720

- first class mail
- certified mail
- hand delivery
- via facsimile

Michael K. Naethe
Deputy Attorney General
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83720 – 0043

- first class mail
- certified mail
- hand delivery
- via facsimile



Teresa Jones
Assistant to the Director