LAWRENCE G. WASDEN Attorney General

JUDY L. GEIER, ISB No. 6559 Deputy Attorney General State of Idaho Department of Insurance 700 W. State Street P.O. Box 83720 Boise, Idaho 83720-0043 Telephone No. (208) 334-4204 Facsimile No. (208) 334-4298 judy.geier@doi.idaho.gov

FILED AUG 19 2016 Department of Insurance State of Idaho

Attorneys for the Department of Insurance

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

IDAHO DEPARTMENT OF INSURANCE,

Complainant,

Docket No. 18-3163-16

ORDER OF DEFAULT

vs.

RULON LEE TOLMAN, Resident Producer License No. 4402,

Respondent.

The Director of the Idaho Department of Insurance ("Director") having reviewed the record herein; and RULON LEE TOLMAN ("RESPONDENT"), who currently holds Resident Producer License No. 4402, having been lawfully served the Amended Complaint and Notice of Right to Hearing, a copy of which is attached hereto as Exhibit A and incorporated herein, and, as evident from the Affidavit of Judy L. Geier, having failed to file an answer thereto and having failed to request a hearing regarding said Amended Complaint; and the Director having found as a result thereof that RESPONDENT has waived his rights regarding the opportunity for hearing; and in consideration of the above; IT IS HEREBY ORDERED that Resident Producer License No. 4402 issued to RESPONDENT is REVOKED effective immediately and that, pursuant to Idaho Code § 41-1026(3), RESPONDENT shall not be issued any license under title 41, Idaho Code, for a period of five (5) years.

IT IS HEREBY FURTHER ORDERED that an administrative penalty in the amount of One Thousand Dollars (\$1,000) is imposed against RESPONDENT for failure to report an administrative action that occurred after the filing of his bankruptcy petition and as detailed in the Amended Complaint attached hereto as Exhibit A.

IT IS FURTHER ORDERED, pursuant to Idaho Code § 41-1027(2), that RESPONDENT shall immediately return Resident Producer License No. 4402 to the Idaho Department of Insurance, P.O. Box 83720, Boise, Idaho 83720-0043.

IT IS SO ORDERED. DATED this 17^{17} day of August, 2016.

> STATE OF IDAHO DEPARTMENT OF INSURANCE

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DEAN L. CAMERON Director

NOTIFICATION REGARDING REPORTABLE PROCEEDINGS

This is considered a reportable administrative proceeding. As such, it is a public record and is public information that may be disclosed to other states and reported to companies of which you are actively appointed. This information will be reported to the National Association of Insurance Commissioners (NAIC) and will appear in the Idaho Department of Insurance's online searchable database. Be aware that you may be required to disclose this proceeding on any license application, and you may be required to report this action to any and all states in which you hold an insurance license.

NOTIFICATION OF RIGHTS

This constitutes a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal it by filing a petition for judicial review in the district court of the county in which: (1) the hearing was held; or (2) the final agency action was taken; or (3) the aggrieved party resides or operates its principal place of business in Idaho; or (4) the real property or personal property that was the subject of the agency decision is located. An appeal must be filed within twenty-eight (28) days of: (a) the service date of this final order, or (b) an order denying a petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for review to the district court does not itself stay the effectiveness or enforcement of the order under appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have, on this $\underline{\begin{subarray}{c} \begin{subarray}{c} \beg$

Rulon Lee Tolman 3539 W. Fir Creek Court Meridian, ID 83642-4229

Courtesy copy to:

Jeffrey P. Kaufman LAW OFFICE OF D. BLAIR CLARK, PLLC 1513 Tyrell Lane, Ste 130 Boise, ID 83706 Bankruptcy Counsel for Rulon Tolman

Courtesy copy to:

Kathleen A. McCallister CHAPTER 13 TRUSTEE P.O. Box 1150 Meridian, ID 83680 Bankruptcy Trustee for Rulon Tolman's Bankruptcy Estate

Best Life and Health Insurance Company 17701 Mitchell N. Irvine, CA 92614-6028

Blue Cross of Idaho Health Service, Inc. 3000 E. Pine Avenue Meridian, ID 83642

Delaware Life Insurance Company 1601 Trapelo Road, Suite 30 Waltham, MA 02451-7360



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Genworth Life Insurance Company 6610 West Broad Street Richmond, VA 23230

Lincoln National Life Insurance Company 1300 South Clinton Street Fort Wayne, IN 46802

Reliastar Life Insurance Company 5780 Powers Ferry Road NW Atlanta, GA 30327-4390

Time Insurance Company 501 West Michigan Street Milwaukee, WI 53203

Judy L. Geier Deputy Attorney General Idaho Department of Insurance 700 W. State Street, 3rd Floor P.O. Box 83720 Boise, ID 83720-0043

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LAWRENCE G. WASDEN Attorney General

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Department of Insurance State of Idaho

Attorneys for the Department of Insurance

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

IDAHO DEPARTMENT OF INSURANCE,

Complainant,

vs.

RULON LEE TOLMAN, Resident Producer License No. 4402,

Respondent.

Docket No. 18-3163-16

AMENDED COMPLAINT AND NOTICE OF RIGHT TO HEARING

The Idaho Department of Insurance, by and through its undersigned counsel of record, hereby files this Verified Complaint and Notice of Right to Hearing and complains and alleges as follows:

JURISDICTION

1. Jurisdiction is founded in the Idaho Insurance Code, Idaho Code §§ 41-101 *et seq.*, including Idaho Code § 41-210, which authorizes the Department's Director ("**Director**") to enforce the provisions of title 41, Idaho Code, including those that relate to Respondent's activities as a resident producer.

EXHIBIT	
A	

AMENDED COMPLAINT AND NOTICE OF RIGHT TO HEARING - Page 1

2. Jurisdiction is further founded in Idaho Code § 41-213, which authorizes the Department to institute such proceedings as deemed necessary for the enforcement of any provision of the Idaho Insurance Code, including but not limited to suspension or revocation of insurance licenses and the imposition of administrative penalties.

RESPONDENT

3. Rulon Lee Tolman ("**Respondent**") resides in Meridian, ID 83642 and holds Resident Producer License No. 4402, which license was originally issued on July 24, 1987, and is due to expire on November 30, 2017.

FACTUAL ALLEGATIONS

4. Respondent has sold annuities and disability insurance products since 1987.

5. On March 18, 2016, Respondent executed an Agreement and Order (the "Order") in the case of *State of Idaho, Department of Finance, Securities Bureau, v. Rulon Lee Tolman* filed as an administrative case before the Director of the Department of Finance of the State of Idaho, Docket No. 2015-7-02-B. Respondent admitted that he made misrepresentations and material omissions to some of his insurance clients to encourage their investment in life settlement contracts.

- 6. Respondent stipulated in the Order to the following violations:
 - a) That Respondent made material misrepresentations to Idaho investors and failed to state certain material facts to the same in violation of the anti-fraud provisions of Idaho Code § 30-14-501(2);
 - b) That Respondent transacted business in Idaho as an investment advisor and failed to register as an investment advisor, both in violation of Idaho Code § 30-14-403(a);

- c) That Respondent sold or offered for sale in Idaho securities in the form of notes and life settlement contracts that were not registered with the Department of Finance as required by Idaho Code § 30-14-301; and
- d) That Respondent transacted business in Idaho as an agent of issuer Consolidated Wealth Holdings, Inc. ("CWH") and sold CWH's securities to his insurance clients without first registering as a securities agent with the Department of Finance in violation of Idaho Code § 30-14-402(a).

7. The Order states that Respondent sold the interests in life settlement contracts on behalf of CWH to four (4) Idaho investors, collecting an aggregate amount of approximately seven hundred eighty-two thousand seven hundred thirty-one dollars and thirteen cents (\$782,731.13) from these investors. The factual allegations and legal conclusions regarding the violations that occurred as to the victims are set forth and admitted to in the stipulated Order.

8. The Order was finalized and took effect on March 22, 2016. To date, Respondent has failed to report the Order to the Department of Insurance (the "**Department**") as required by Idaho Code § 41-1021.

9. Respondent used his personal knowledge of his insurance clients' assets to solicit and sell securities products, such as promissory notes, fractional interests in life settlement contracts, and charitable bargain installment sale transactions that were not properly registered with the state of Idaho. Further, Respondent was not licensed as a securities broker and not authorized to sell securities products within the state of Idaho.

10. Mary Leona Huskey is one such former annuity client whom Respondent convinced to surrender several annuities and to invest in a promissory note/life settlement contract and a charitable installment benefit transaction.

AMENDED COMPLAINT AND NOTICE OF RIGHT TO HEARING - Page 3

11. On or about March 7, 2012, shortly after Respondent's misrepresentations regarding the life settlement contract investment became known, Respondent filed a petition pursuant to chapter 13 of the U.S. Bankruptcy Code as case number 12-00476-TLM (the "Bankruptcy").

12. On April 12, 2012, Ms. Huskey filed a complaint initiating an Adversary Proceeding 12-06022-TLM (the "Adversary Complaint") and seeking damages totaling \$800,000. These damages represented the sum of funds that she had invested over the years in reliance upon Respondent's advice.

13. In the Adversary Complaint, Ms. Huskey asserted her claims were nondischargeable in bankruptcy, pursuant to 13 U.S.C. §§ 523(a)(2)and (4), and based on Respondent's alleged fraud as a fiduciary, embezzlement, larceny, false pretenses, false representations, and actual fraud.

14. During a deposition taken in the Adversary Proceeding, Respondent admitted that he advised Ms. Huskey on purchasing annuities, rolling over inherited annuities, on surrendering annuities to purchase an interest in a life settlement contract procured by CWH, and on surrendering annuities to purchase a charitable bargain installment sale transaction through Legacy Tree Foundation. He testified that he advised her on "five or six" transactions over a timespan of approximately 5 ½ years, commencing in late 2004 and continuing through 2010. He also admitted in deposition that he advised Ms. Huskey regarding all of these transactions without doing an accredited investor analysis as required by Idaho's securities laws.

15. Upon information and belief, Respondent also advised Ms. Huskey without first conducting a suitability analysis as required by Idaho Code § 41-1940 and IDAPA 18.01.09.015.

16. Ms. Huskey was approximately 83 years of age when she met Respondent through her sister in 2004. In August of 2006, Respondent convinced Ms. Huskey to surrender approximately \$800,000 in annuities that she inherited from her sister and to repurchase annuities in her own name. Respondent gave this advice without first conducting a suitability analysis.

17. Thereafter, in 2008 and in 2010, Respondent advised Ms. Huskey to relinquish several of the annuities purchased in 2006 to purchase more speculative, unregistered securities instruments, despite knowing she would incur both surrender penalties and taxable events in addition to commission fees on the transactions. Respondent made these recommendations also without conducting a suitability analysis. The details of these transactions are recited in the Adversary Complaint and are evidenced by Respondent's testimony in deposition.

COUNT ONE:

SOURCE OF INJURY OR LOSS TO PUBLIC IN VIOLATION OF IDAHO CODE §§ 41-1016(1)(h) and 41-1026(3)

18. Paragraphs 1 through 17 are re-alleged as if set forth in full.

19. Idaho Code \S 41-1016(1) provides in part:

The director may impose an administrative penalty not to exceed one thousand dollars (\$1,000), for deposit in the general fund of the state of Idaho, and may suspend for not more than twelve (12) months or may revoke or refuse to issue or continue any license issued under [chapter 10], ...title 41, Idaho Code ..., if the director finds that as to the licensee or applicant any one (1) or more of the following causes or violations exist: ... (h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and loss to the public or others, in the conduct of business in this state or elsewhere.

20. Respondent's repeated use of fraudulent, coercive and untrustworthy practices,

i.e., his misrepresentations and omissions, and being the source of injury in the conduct of business

in this state constitutes violations of Idaho Code § 41-1016(1)(h) in such number as shall be proved at hearing.

21. Each violation of Idaho Code § 41-1016(1)(h) establishes a separate basis for the revocation of Respondent's Resident Insurance Producer License No. 4402 and for the imposition of penalties.

22. Pursuant to Idaho Code § 41-1026(3), a license is revoked for a period of five (5) years and, upon a licensee's application for re-licensure, the Director may require "the applicant to show good cause why the prior revocation or refusal to continue [the prior] license shall not be deemed a bar to the issuance of a new license."

23. Based on the authorities recited above and in acknowledgment that Respondent's acts may have predated the filing of his bankruptcy petition, the Department seeks only to enforce its police power through an order revoking Respondent's Idaho Resident Producer License No. 4402 for a period of five (5) years.

COUNT TWO:

FAILURE TO REPORT ADMINISTRATIVE ACTION IN VIOLATION OF IDAHO CODE §§ 41-1021; 41-1016(1)(b) & 41-1026(3)

24. Paragraphs 1 through 23 are re-alleged as if set forth in full.

25. Idaho Code § 41-1021 states in part:

(1) A producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

26. Idaho Code § 41-1016(1)(b) provides for sanctions against a licensed producer who "violat[es] any provision of title 41, Idaho Code" and authorizes the Department to seek an administrative penalty not to exceed One Thousand Dollars (\$1,000) per violation. 27. Idaho Code § 41-1026(3) provides that any such revocation shall be for a period of five (5) years and that upon a licensee's application for re-licensure, the Director may require "the applicant to show good cause why the prior revocation or refusal to continue [the prior] license shall not be deemed a bar to the issuance of a new license."

28. The final Order and Agreement in the matter of the of *State of Idaho, Department* of *Finance, Securities Bureau, v. Rulon Lee Tolman* was issued on March 22, 2016.

29. Respondent failed to report to the Department the governmental agency action in the case of *State of Idaho, Department of Finance, Securities Bureau, v. Rulon Lee Tolman* within thirty (30) days after entry of the final order as required by Idaho Code § 41-1021(1) and also failed to provide a copy of the final order to the Department.

30. Such failure constitutes a violation of Idaho Code § 41-1021(1) and establishes a basis for the revocation of Respondent's Resident Insurance Producer License No. 4402 for a period of five (5) years and for the imposition of an administrative penalty not to exceed One Thousand Dollars (\$1,000) per violation pursuant to Idaho Code §§ 41-1016(1)(b) and 41-1026.

31. Respondent's acts in failing to report as required by statute occurred post-petition, *i.e.*, after the filing of his chapter 13 bankruptcy case, and are therefore subject to an administrative penalty as well as revocation of his license without violation of the bankruptcy stay.

32. Based on the authorities recited above, the Department seeks an order revoking Respondent's Idaho Resident Producer License No. 4402 for a period of five (5) years and imposing an administrative penalty not to exceed One Thousand Dollars (\$1,000).

COUNT THREE:

FAILURE TO CONDUCT SUITABILITY ANALYSIS IN VIOLATION OF IDAHO CODE §§ 41-1940 & 41-1016(1)(b) and IDAPA 18.01.09.015

33. Paragraphs 1 through 31 are re-alleged as if set forth in full.

34. Idaho Code § 41-1940, codified as of March 21, 2005, states in part:

41-1940. SUITABILITY OF ANNUITY SALES TO SENIOR CONSUMERS.

- (1) In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in an insurance transaction or a series of insurance transactions, the insurance producer....shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to the senior consumer's investments and other insurance products and as to the senior consumer's age, financial situation and needs.
- (2) For purposes of this section, "senior consumer" means a person of sixty-five (65) years of age or older...
- (3) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer...shall make reasonable efforts to obtain information concerning:
 - (a) The senior consumer's financial status;
 - (b) The senior consumer's tax status;
 - (c) The senior consumer's investment objectives; and
 - (d) Such other information used or considered to be reasonable by the insurance producer...in making recommendations to the senior consumer.¹

35. Respondent did not have reasonable grounds for believing "five or six" separate transactions within a span of five years were suitable for Ms. Huskey, an elderly woman of approximately 83.

36. Respondent's misrepresentations and omissions and his failure to obtain, consider and give weight to information regarding Ms. Huskey's financial status, tax status and investment objectives prior to recommending the transactions establishes that Respondent did not have reasonable grounds for making the recommendations.

¹ Idaho Code § 41-1940 was amended in 2008 to delete the term "senior" from the heading and throughout the section and to delete subsection (2) which contained the definition of senior.

37. Upon information and belief, Respondent made similar transactional recommendations to elderly consumers without first obtaining sufficient information to establish reasonable grounds for his recommendations.

38. Failure to establish reasonable grounds that the recommendations were suitable for an elderly consumer is a violation of Idaho Code § 41-1940 and IDAPA 18.01.09.015. Such failure establishes a basis for the revocation of Respondent's Resident Insurance Producer License No. 4402 for a period of five (5) years and for the imposition of an administrative penalty not to exceed One Thousand Dollars (\$1,000) per violation pursuant to Idaho Code §§ 41-1016(1)(b) and 41-1026(3).

39. Based on the authorities recited above and in acknowledgment that Respondent's acts may have predated the filing of his bankruptcy petition, the Department seeks only to enforce its police power through an order revoking Respondent's Idaho Resident Producer License No. 4402 for a period of five (5) years.

REQUEST FOR RELIEF

40. Based on the violations of Sections 41-1021; 41-1016(1)(b) and (h); 41-1026; and 41-1940, Idaho Code, and IDAPA 18.01.09.015, the Department prays for relief that the Director enter an order revoking Respondent's Idaho Resident Insurance Producer License No. 4402 for a period of five (5) years; and, that the Director enter an administrative penalty in an amount not to exceed One Thousand Dollars (\$1,000) for failure to report an administrative action that occurred after he filed his chapter 13 bankruptcy petition.

NOTICE OF RIGHT TO A HEARING

Pursuant to Idaho Code § 41-232A, Respondent has the right to a hearing on this matter. In order to exercise this right, a written request for a hearing must be filed and served upon the Department within twenty-one (21) days after service of this Complaint. Failure to file and serve a written request for a hearing upon the Department within the 21-day time period shall be deemed a waiver of the opportunity for a hearing and to contest the allegations in the Complaint, pursuant to Idaho Code § 41-232A(2).

Any written request for a hearing shall be served on the Director of the Idaho Department of Insurance, addressed as follows:

Dean L, Cameron, Director Idaho Department of Insurance P.O. Box 83720 Boise, ID 83720-0043

A copy shall also be provided to the Department's counsel in this matter, Judy L. Geier, Deputy Attorney General, at the following address:

Judy L. Geier Deputy Attorney General Idaho Department of Insurance P.O. Box 83720 Boise, ID 83720-0043

In lieu of a hearing, this matter may be resolved by negotiation, stipulation, agreed settlement, or consent order, pursuant to Idaho Code § 67-5241. Should you wish to discuss these options, please contact the undersigned deputy attorney general. If you fail to submit a timely written response to the allegations within 21 days of the service of this Complaint, a final order will be entered imposing the relief described above.

DATED this day of July, 2016.

OFFICE OF THE ATTORNEY GENERAL

JUDYL. GEIER

Deputy Attorney General Attorney for the Department of Insurance

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2/2⁵ day of July, 2016, and in compliance with Idaho Code § 41-232A, I caused a true and correct copy of the foregoing AMENDED COMPLAINT AND NOTICE OF RIGHT TO HEARING to be served upon the following by the designated means:

Rulon Lee Tolman 3539 W. Fir Creek Court Meridian, ID 83642-4229

Courtesy copy to:

Jeffrey P. Kaufman LAW OFFICE OF D. BLAIR CLARK, PLLC 1513 Tyrell Lane, Ste 130 Boise, ID 83706 Bankruptcy Counsel for Rulon Tolman

Courtesy copy to:

Kathleen A. McCallister CHAPTER 13 TRUSTEE P.O. Box 1150 Meridian, ID 83680 Bankruptcy Trustee for Rulon Tolman's Bankruptcy Estate

American Family Life Assurance Co. of Columbus 1932 Wynnton Road Columbus, GA 31999-0001

Athene Annuity and Life Company 7700 Mills Civic Parkway West Des Moines, IA 50266-3862

Best Life and Health Insurance Company 17701 Mitchell N. Irvine, CA 92614-6028

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AMENDED COMPLAINT AND NOTICE OF RIGHT TO HEARING - Page 11

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Delaware Life Insurance Company 1601 Trapelo Road, Suite 30 Waltham, MA 02451-7360

Delta Dental Plan of Idaho, Inc. P.O. Box 2870 Boise, ID 83701-2870

Fidelity Life Association A Legal Reserve Life Insurance Company 1211 W. 22nd Street, Suite 209 Oak Brook, IL 60523

Genworth Life and Annuity Insurance Company 6610 West Broad Street Richmond, VA 23230

Genworth Life Insurance Company 6610 West Broad Street Richmond, VA 23230

Lincoln National Life Insurance Company 1300 South Clinton Street Fort Wayne, IN 46802

Principal Life Insurance Company 711 High Street Des Moines, IA 50392-2300

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Security Benefit Life Insurance Company One Security Benefit Place Topeka, KS 66636-0001

Sentinel Security Life Insurance Company 1405 West 2200 South Salt Lake City, UT 84119

Time Insurance Company 501 West Michigan Street Milwaukee, WI 53203

Trustmark Insurance Company 400 Field Drive Lake Forest, IL 60045-2581

United Heritage Life Insurance Company 707 E. United Heritage Court Meridian, ID 83642-3527

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News	Name: TOLMAN, RULON LEE Address: 3539 W FIR CREEK CT MERIDIAN, ID 83642-4229			License Number: 4402 NPN: 2880841 Issued: 7/24/1987		
Orders	Business Phone: (208) 888-4843			Expires: 11/30/2017 License Status: Active License Type: Resident Producer		
Consumer Alerts				License Type, K	esident i roducer	
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Continuing Education	GENWORTH LIFE AND ANNUITY INSURANCE COMPANY	VA	1500	Disability (Health)	7/15/2008	
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