

**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of Financial and Insurance Regulation

In the matter of:

Enforcement Case No. 09-7169

**Richard R. Creed
5315 S. Nine Mile Road
Auburn, Michigan 48611
System ID No. 0077638**

**Evergreen Insurance Agency
205 W. Midland Road
Auburn, Michigan 48611
System ID No. 0014747**

Respondents.

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CONSENT ORDER AND STIPULATION

Issued and entered,
on October 27th, 2009,
by Stephen R. Hilker
Chief Deputy Commissioner

**I.
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

It is alleged that the following statements are true and correct:

1. At all pertinent times, Richard R. Creed ("Creed") was a licensed resident insurance producer authorized to transact the business of insurance in the State of Michigan. Evergreen Insurance Agency is a licensed resident insurance agency authorized to transact the business of insurance in the State of Michigan. Creed is an officer of Evergreen Insurance Agency ("Evergreen"). Creed and Evergreen Insurance Agency collectively are referred to as "Respondents."
2. As licensed insurance producers, Respondents knew or had reason to know that Section 1239(1)(b) of the Insurance Code provides that the Commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under Section 1244 of the Code or any combination of actions if an insurance producer violates any insurance laws.

3. Further, as licensed insurance producers, Respondents knew or had reason to know that Section 1207(1) of the Insurance Code requires an agent to be a fiduciary for all funds collected and that failure of an agent to timely remit premium to the company to whom it is owed violates the Insurance Code.
4. On October 12, 2006, [REDACTED] purchased auto insurance from Creed. Respondents then faxed a Certificate of No Fault Insurance Binder to the auto dealer, Rightway, naming Titan Insurance as the underwriter.
5. [REDACTED] mailed a money order for \$65.00 as the premium payment.
6. On November 2, 2006, [REDACTED] was in a car accident and contacted Creed about his insurance coverage.
7. On December 5, 2006, Creed informed [REDACTED] that he did not have insurance coverage because he failed to remit premium.
8. [REDACTED] contends that he paid the Respondents \$65.00 for coverage on October 12, 2006, and was never notified that this amount was insufficient for his premium.
9. Respondents maintain that [REDACTED] \$65 payment was never received. Therefore, the Respondents did not forward [REDACTED] application to Titan Insurance.
10. On April 13, 2007, Titan Insurance informed [REDACTED] through OFIR's complaint process that they were unable to locate any policy in his name and reiterated that Creed stated he never received payment.
11. [REDACTED] submitted to OFIR a copy of his No Fault Binder and the money order receipt, which he states was for insurance coverage.
12. In his response to OFIR, Creed stated that the payment [REDACTED] submitted was insufficient, since it was below the required amount.
13. On October 27, 2006, [REDACTED] purchased a new car at the Rightway car dealership, and while at the dealership [REDACTED] was informed that she could purchase insurance with Evergreen through their agent, Creed.
14. [REDACTED] then wrote a check for \$221.00 as her premium payment, and Respondents faxed Rightway a 45-day Certificate of No Fault Insurance Binder.
15. After 45 days, [REDACTED] did not receive a policy from the Respondents.
16. In a letter dated March 3, 2007, addressed to OFIR, Creed stated that [REDACTED] contacted him in January 2007, and questioned him about her policy because the 45-day insurance had expired. Creed made her aware that her application was never processed,

and that he could fix the problem. [REDACTED] refused the offer, and requested that her application be withdrawn and the premium returned.

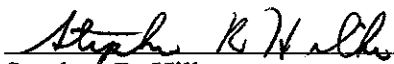
17. Creed could not find [REDACTED] original check that was dated October 27, 2006, for \$221.00; instead, Creed wrote and signed a check issued by Evergreen for \$221.00. [REDACTED] received the refunded check and cashed it.
18. On March 14, 2007, Titan Insurance responded to OFIR's letter, and stated that it never received an application for [REDACTED] from the Respondents.
19. On April 13, 2007, Titan informed OFIR that they had no record of receiving a signed application for [REDACTED]
20. On September 24, 2007, OFIR Investigators conducted an onsite interview and audit of Respondent Creed and his office.
21. The September 24, 2007 onsite audit revealed that Respondents' office filing system was deficient in that Respondents did not maintain sufficient documentation of customer premium payments, receipts, copies of applications, declaration pages, policy binders, and accountings of customer monies received in Respondents' fiduciary capacities.
22. Through these actions, the Respondents violated Sections 1207 (2) and 1239 (1) (h) of the Michigan Insurance Code, thereby subjecting Respondents to civil fines, license suspension, or revocation pursuant to Section 1244 (1) of the Insurance Code.

II. ORDER

Based upon the Findings of Fact and Conclusions of Law above and Respondents' stipulation, the Chief Deputy Commissioner ORDERS that:

1. Respondents shall immediately cease and desist from operating in such a manner as to violate Sections 1207 and 1239 of the Insurance Code.
2. Respondents shall pay to the State of Michigan, through the Office of Financial and Insurance Regulation, an administrative penalty of \$1,000.00. Upon execution of this Order, the Office of Financial and Insurance Regulation will send Respondents an Invoice for the administrative penalty, which will be due within 30 days of issuance of the Invoice.
3. Respondents shall immediately take all steps necessary to establish and maintain an account, separate from its operational account and all other accounts, in which all premiums received by Evergreen Insurance Agency and/or its producers/solicitors will be deposited immediately upon receipt.

4. Respondents shall immediately take all steps necessary to establish and maintain agency books and records in a manner that clearly identifies receipts and expenditures on a customer-and insurer-account basis so that all monies received and held in a fiduciary capacity are clearly identified with the affected account, customer, and insurer.
5. Respondents shall immediately take all steps necessary to establish procedures under which all checks received from insureds as payment of insurance premiums shall, prior to deposit, reflect the insurer name and policy number of policy(s) for which payment is tendered.
6. Respondents shall immediately take all steps necessary to establish and implement "reasonable accounting methods," as required under MCL 500.1207(2).
7. Respondents shall ensure that all checks and payments made on account of any applicant, insured, claimant, or insurer shall be payable to Evergreen Insurance Agency or the affected insurance carrier, and not an individual producer.
8. Respondents must hereafter improve its file system organization by maintaining copies of applications, declaration pages, policy binders, and receipts of any premium payments. Also, all such documentation must be kept in a file designated for each client. The result should be a filing system in which hard copies of these documents can be readily obtained by Respondents and/or OFIR investigators when searching by client name. Such a system shall better serve Respondents, clients, and OFIR investigators examining Respondents' records.
9. Respondents shall cease and desist the practice of providing certificates of insurance to clients prior to the receipt of premium payments and a completed application, except when an existing client contacts Respondents and requests a revision or addition to an existing policy. In particular, Respondents may no longer fax or mail certificates of insurance to clients in exchange for a promise of future payment.
10. Respondents agree that OFIR staff will visit the Respondents' place of business 60 days after the entry of an agreed-upon Consent Order. Follow up examinations will be scheduled every four months for the next two years thereafter to ensure continued compliance with these terms. If follow-up onsite examinations are not feasible, Respondents will be notified. In lieu of an onsite examination, OFIR shall, in its sole discretion, require Respondents to submit a report confirming compliance with the terms of this Consent Order. Respondents shall cooperate with the scheduling and execution of such examinations or reporting requirements in lieu of onsite examinations. Failure to cooperate in a reasonable manner shall constitute a violation of the terms of the Consent Order.



Stephen R. Hilker
Chief Deputy Commissioner

III. STIPULATION

1. Respondents agree to immediately cease and desist from operating in such a manner as to violate Sections 1207 and 1239 of the Insurance Code.
2. Respondents agree to pay to the State of Michigan, through the Office of Financial and Insurance Regulation, an administrative penalty of \$1,000.00. Upon execution of this Order, the Office of Financial and Insurance Regulation will send Respondents an Invoice for the administrative penalty, which will be due within 30 days of issuance of the Invoice.
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5. Respondents agree to immediately take all steps necessary to establish procedures under which all checks received from insureds as payment of insurance premiums shall, prior to deposit, reflect the insurer name and policy number of policy(s) for which payment is tendered.
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10. Respondents agree that OFIR staff will visit the Respondents' place of business 60 days after the entry of an agreed-upon Consent Order. Follow up examinations will be scheduled every four months for the next two years thereafter to ensure continued compliance with these terms. If follow-up onsite examinations are not feasible, Respondents will be notified. In lieu of an onsite examination, OFIR shall, in its sole discretion, require Respondents to submit a report confirming compliance with the terms of this Consent Order. Respondents agree to cooperate with the scheduling and execution of such examinations or reporting requirements in lieu of onsite examinations. Failure to cooperate in a reasonable manner shall constitute a violation of the terms of the Consent Order.
 11. Respondents understand and agree that this Stipulation will be presented to the Chief Deputy Commissioner for approval. The Chief Deputy Commissioner may in his sole discretion, decide to accept or reject the Stipulation and Consent Order. If the Chief Deputy Commissioner accepts the Stipulation and Consent Order, Respondents waive the right to a hearing in this matter and consent to the entry of the Consent Order. Further, in consideration of the terms and conditions set forth herein, Respondents voluntarily waive and give up any and all right that they may now or hereafter have to administrative or judicial review concerning entry of the above Consent Order in this matter. If the Chief Deputy Commissioner does not accept the Stipulation and Consent Order, Respondents waive any objection to the Commissioner holding a formal administrative hearing and making his decision after such hearing. Respondents admit to the Findings of Fact and Conclusions of Law set forth in the above Consent Order and agree to the entry of the Consent Order.
 12. Respondents understand and agree that, after this Consent Order and Stipulation has been executed, Respondents failure to comply with any of the terms set forth herein shall result in OFIR, at its sole discretion, entering an Order for Summary Suspension against Respondents.

Dated: 10/27/09

Evergreen Insurance Agency
Richard R. Creed

By: Richard R. Creed
Its:

Dated: 10/27/09

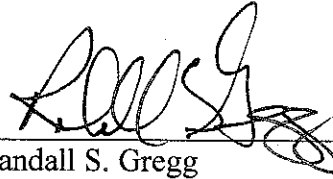
Richard R. Creed

Richard R. Creed

The Office of Financial and Insurance Regulation staff approves this stipulation and recommends that the Chief Deputy Commissioner issue the above Consent Order.

Dated:

10/27/2009



Randall S. Gregg
Staff Attorney