

*Bus. Entity 2179*

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
FOR THE STATE OF TENNESSEE**

**TENNESSEE INSURANCE DIVISION,** )  
**Petitioner,** )  
 )  
**vs.** )  
 )  
**BRENDA MULHERIN BARKLEY,** )  
**Respondent.** )

**No: 10-055**

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**CONSENT ORDER**

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The Insurance Division of the Tennessee Department of Commerce and Insurance ("Insurance Division"), by and through counsel, and Brenda Mulherin Barkley ("Respondent") hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance ("Commissioner"), as follows:

**GENERAL STIPULATIONS**

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.
2. The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable and in the best public interest.
3. This Consent Order is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

*PDB Entity # 3385700*

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent if it is subsequently determined that she has engaged in acts and/or omissions arising outside of the facts or transactions described herein and not specifically addressed in this Consent Order. Respondent also understands that this Consent Order may be used by the Commissioner to revoke or refuse to issue any license Respondent currently holds or for which she applies in the future but not for imposition of any other penalty by the Commissioner. The foregoing limitation shall not apply to any other Commissioner, Department or Board of the State of Tennessee.

5. Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulation and imposition of discipline contained herein and the consideration and entry of said Consent Order by the Commissioner.

#### **JURISDICTION**

6. The Commissioner has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), TENN. CODE ANN. § 56-6-101 *et seq.*, and the Law places the responsibility for the administration of the Law on the Commissioner.

#### **PARTIES**

7. The Insurance Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

8. Respondent is a citizen and resident of Tennessee, residing at 9366 Dogwood Road, Germantown, Tennessee 38139. Respondent's insurance producer license, numbered 733864, was issued in 1993.

9. Respondent conducts insurance business as a principal at Barkley Insurance Group, Inc. ("Barkley Insurance") located at 641 Oak Leaf Office Lane, Memphis, Tennessee 38117.

Barkley Insurance was issued an insurance business entity license, number 2179, in 2004.

### FINDINGS OF FACT

10. On approximately February 4, 2010, Arthur J. Gallagher Risk Management Services, Inc. ("AJG"), a managing general underwriter for The Travelers Indemnity Company, notified the Insurance Division that Respondent had received multiple premium payments totaling one hundred eleven thousand nine hundred sixty-eight dollars (\$111,968) from multiple policyholders that were intended for AJG.

11. Respondent deposited the premium payments into Barkley Insurance's operational account but failed to remit the premium payments to AJG. Instead, Respondent converted the premium payments to pay various Barkley Insurance expenses.

12. On approximately February 24, 2010, American International Group, Inc. ("AIG") notified the Insurance Division that Respondent had received multiple premium payments totaling eighty-seven thousand six hundred fifty-one dollars (\$87,651) from multiple policyholders that were intended for AIG.

13. Respondent deposited the premium payments into Barkley Insurance's operational account but failed to remit the premium payments to AIG. Instead, Respondent converted the premium payments to pay various Barkley Insurance expenses.

14. Both AJG and AIG absorbed significant losses associated with Respondent's acts by not canceling any affected policies.

### CONCLUSIONS OF LAW

15. TENN. CODE ANN. § 56-6-112(a)(4) (2008) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license and/or may levy a civil penalty for anyone who improperly withholds, misappropriates or converts any moneys or properties received in the course of doing insurance business.

16. TENN. CODE ANN. § 56-6-112(a)(8) (2008) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license and/or may levy a civil penalty for anyone who uses fraudulent, coercive or dishonest practices or demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

17. Based on the Findings of Facts, the Commissioner finds that Respondent improperly withheld, misappropriated or converted moneys received in the course of doing insurance business and demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state.

18. Such facts constitute grounds for an Order revoking Respondent's insurance producer license on violations of TENN. CODE ANN. § 56-6-112(a)(4) and (8) (2008). Respondent admits that the Findings of Facts are accurate and concedes that the Conclusions of Law are fair and reasonable.

Respondent enters into this Consent Order for the purpose of avoiding further administrative action with respect to this cause.

### **ORDER**

**NOW, THEREFORE**, based on the foregoing and the waiver of Respondent of her rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that Respondent has agreed to the entry of this Consent Order and that this Consent Order is appropriate and in the public interest.

**IT IS ORDERED**, pursuant to TENN. CODE ANN. § 56-6-112(a) (2008) that:

The insurance producer license, numbered 733864, issued to Brenda Mulherin Barkley, is hereby **REVOKED**. Additionally, the business entity license, numbered 2179, issued to Barkley Insurance Group, Inc., is also **REVOKED**.

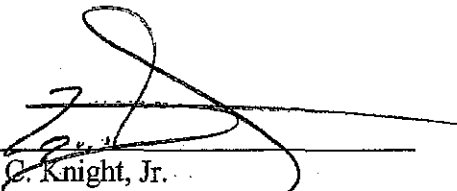
This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By signature affixed below, Brenda Mulherin Barkley, affirmatively states that she has freely agreed to the entry of this Consent Order, that she has been advised that she may consult with legal counsel in this matter, that she waives her right to a hearing on the matters underlying this Consent Order and that no threats or promises of any kind have been made by the Commissioner, the Insurance Division or any agent thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

**SO ORDERED.**

ENTERED this the 19<sup>th</sup> day of October, 2010.

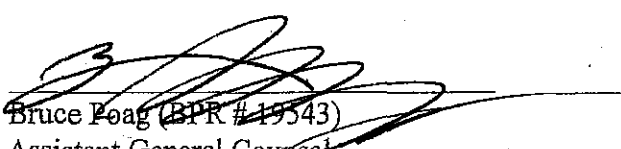
Leslie A. Newman  
Leslie A. Newman, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**



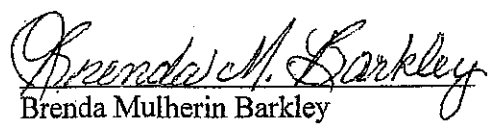
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Larry C. Knight, Jr.  
Assistant Commissioner for Insurance  
Department of Commerce and Insurance



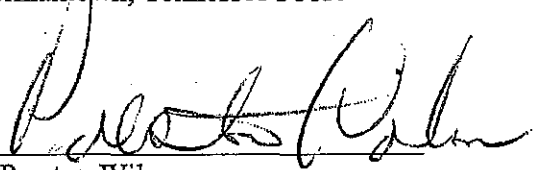
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Bruce Foag (BPR #19543)  
Assistant General Counsel  
Department of Commerce and Insurance  
500 James Robertson Parkway  
2<sup>ND</sup> Floor  
Nashville, Tennessee 37243



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Brenda Mulherin Barkley  
9366 Dogwood Road  
Germantown, Tennessee 38139



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P. Preston Wilson  
Attorney for Respondent  
88 Union Avenue, 14th Floor  
Memphis, Tennessee 38103