State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
	)	**Case No. 09-0702589C**
Clayton L. Hoelscher,	)	
	)	
Applicant.	)	
	)	
Serve At:	)	
37 Picardy Drive	)	
Lake St. Louis, Missouri 63367	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On July 22, 2009, Tamara W. Kopp, Senior Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Clayton L. Hoelscher. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and summary order:

FINDINGS OF FACT

1. Clayton L. Hoelscher ("Hoelscher") is an individual residing in Missouri, whose mailing address of record is 37 Picardy Drive, Lake St. Louis, Missouri 63367.

2. On May 22, 2009, the Department received a Uniform Application for Individual Insurance Producer License from Hoelscher.

3. In the section of the Application headed "Background Questions," Background Question # 1 asks "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

4. Hoelscher answered "Yes" to Background Question # 1.

5. Hoelscher disclosed a 1989 felony conviction in the United States District Court for the Eastern District of Missouri. Hoelscher was found guilty of one count of Distribution and Possession with Intent to Distribute Cocaine for his involvement with a cocaine distribution ring operating in the St. Louis area with supply

connections in California. He was sentenced to 78 months in federal prison and four years supervised probation. The Eighth Circuit Court of Appeals affirmed Hoelscher's conviction. See *United States v. Hoelscher, et al,* 914 F.2d 1527 (8th Cir. 1990).

6. Hoelscher was released from prison on April 28, 1995.

CONCLUSIONS OF LAW

7. Section 375.141.1, RSMo (Supp. 2008), provides:

   The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

   * * *

   (6) Having been convicted of a felony or crime involving moral turpitude;

   * * *

   (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

   * * *

8. A crime involving "moral turpitude" is a crime involving "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

9. The principal purpose of § 375.141, RSMo (Supp. 2008), is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo.App. E.D. 1984).

10. Hoelscher may be refused an insurance producer license pursuant to § 375.141.1(6), RSMo (Supp. 2008), because the offense of Distribution and Possession with Intent to Distribute Cocaine is a felony pursuant to 21 U.S.C 841(a)(1).

11. Hoelscher may be refused an insurance producer license pursuant to § 375.141.1(6), RSMo (Supp. 2008), in that the acts constituting the offense of Distribution and Possession with Intent to Distribute Cocaine are contrary to justice, honesty and good morals, and the offense is therefore a crime of moral turpitude. Federal and state courts have concluded that participation in illicit drug trafficking is a crime involving moral turpitude. *Atlantic Richfield Co. v. Guerami,* 820 F.2d 280 (9th Cir. 1987) (holding that possession with intent to distribute is a crime involving moral turpitude); *Matter of Gorman*, 379 N.E.2d 970, 971-72 (Ind. 1978) (holding that conviction under 21 U.S.C. § 841(a)(1) for possession with intent to distribute, conspiracy, and distribution of cocaine is a crime involving moral turpitude); *Muniz v. State of Texas*, 575 S.W.2d 408 (Tex. Civ. App. 1978) (holding that conviction for willfully, knowingly, and unlawfully conspiring to import a controlled substance is

for a crime involving moral turpitude and is grounds for disbarment). *U.S. ex rel. De Luca v. O'Rourke*, 213 F.2d 759, 762 (C.A.8 1954) (there can be nothing more depraved or morally indefensible than conscious participation in the illicit drug traffic. The evils which result from unlawfully importing or dealing with unlawfully imported narcotic drugs are a matter of common knowledge).

12. Hoelscher may be refused an insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2008), because the offense of Distribution and Possession with Intent to Distribute Cocaine involves fraud. "[A]ll crimes in which fraud is an ingredient are crimes involving moral turpitude. . . [t]he crime of dealing with narcotic drugs known to have been smuggled into the United States is certainly no less reprehensible and probably no less a fraud. . ." *U.S. ex rel. De Luca v. O'Rourke*, 213 F.2d 759, 762 (8th Cir. 1954), *Jordan v. DeGeorge,* 341 U.S. 223, 232.

13. The Director has considered the history of Hoelscher and all the circumstances surrounding Hoelscher's Application. Hoelscher's criminal history indicates a substantial risk to the public should Hoelscher receive an insurance producer license, as licensed producers must be worthy of trust. Hoelscher was convicted of felony that was also a crime of moral turpitude and included an element of fraud. Licensure of Hoelscher would not be in the public interest, and, accordingly, the Director exercises his discretion to refuse to issue Hoelscher an insurance producer license.

14. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Clayton L. Hoelscher is hereby summarily **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 24th DAY OF JULY, 2009.

JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July, 2009, a copy of the foregoing Notice and Order was served upon the Applicant in this matter by certified mail No. 7006 0100 0005 2690 5832

Karen Crutchfield

Karen Crutchfield
Senior Office Support Staff