



4. KID records further reflect that Liftman filed an excess lines premium tax reporting statement, dated November 19, 2003, reporting a sale to Financial Advisory Service, Inc., Leawood, Kansas, of Policy Number 348-84-00, with an inception date of August 29, 2003, issued by American International Specialty Lines Insurance Company, a nonadmitted insurer.

5. Respondent and KID acknowledge that the agency transacts business in multiple states, committed to place coverage on a Kansas risk with a nonadmitted insurer in reliance upon the cooperation of another agency, which then rejected the business, and voluntarily reported the transaction to KID.

6. Respondent and KID further acknowledge that Liftman promptly contacted KID for advice and acted in good faith on direction given by KID personnel in applying for his individual excess lines license and paying the appropriate excess lines premium tax.

7. Respondent and KID acknowledge that an agency practice, rather than an individual agent, was responsible for the sale.

8. Respondent and KID agree that a fine of \$100 is appropriate in light of the admitted violation and agreed mitigating circumstances.

### **Applicable Law**

9. K.S.A. 2003 Supp. 40-4909(a) provides, in relevant part:

“The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has: . . . (2) Violated: (A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder . . .” K.S.A. 2003 Supp. 40-4909(a).

10. “The commissioner may, in the manner prescribed by law, revoke or suspend the license of any agent issued pursuant to sections 40-241 and 40-246 [superceded by 40-4901 *et seq.*] of the Kansas Statutes Annotated when such agent shall engage in any transaction permitted only to licensees under the

provisions of K.S.A. 40-246b, without first obtaining the license as required by K.S.A. 40-246b.” K.S.A. 40-246d.

11. K.S.A. 40-246b defines requirements for obtaining a license to place risks with nonadmitted insurers and reporting obligations for excess lines agents.

12. The commissioner may censure the licensee or impose an administrative penalty of \$500 per violation up to a maximum of \$2500 for the same violation occurring within six calendar months from the date of the original violation, or \$1000 for a knowing violation up to \$5000 for the same violation within six calendar months, in lieu of taking any action under subsection (a). K.S.A. 2003 Supp. 40-4909(h).

### **Conclusions of Law**

13. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

14. The Commissioner finds, based on the November 13, 2003, issue date of Mark Liftman’s excess lines license and Liftman’s reported sale of excess lines coverage with an inception date of August 29, 2003, that Respondent violated the provisions of K.S.A. 40-246b.

15. The Commissioner finds that Respondent’s agency license may be revoked or suspended pursuant to K.S.A. 2003 Supp. 40-4909(a)(2)(A) as a result of a violation of a provision of chapter 40 of the Kansas Statutes Annotated.

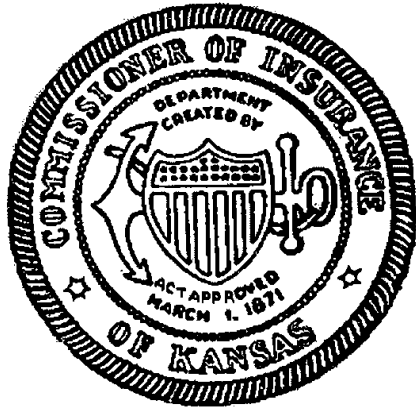
16. The Commissioner, however, finds that Respondent’s violation was inadvertent and technical in nature and that Respondent self-reported the violation.

17. Therefore, the Commissioner concludes that the interests of insurers and protection of the insurable interests of the public are adequately served by a lesser sanction.

Based on the facts and circumstances set forth herein, **the COMMISSIONER HEREBY ORDERS** that the agreement between KID and Respondent as stated in paragraphs 5 through 8

above should be and is hereby adopted as the Commissioner's Order. An administrative penalty of \$100 based on the agreed facts is immediately due and payable to the Kansas Insurance Department and any other allegations against the agency or its agents arising out of the same transaction are hereby dismissed and/or waived.

**IT IS SO ORDERED THIS 8<sup>th</sup> DAY OF JULY 2004, IN THE CITY OF TOPEKA,  
COUNTY OF SHAWNEE, STATE OF KANSAS.**



\_\_\_\_\_  
/s/ Sandy Praeger  
Sandy Praeger  
Commissioner of Insurance

BY:

\_\_\_\_\_  
/s/ Robert M. Tomlinson  
Robert M. Tomlinson  
Assistant Commissioner of Insurance

Theodore Liftman Insurance, Inc., hereby stipulates and agrees to the Commissioner's findings of fact, conclusions of law, and order. Further, Theodore Liftman Insurance, Inc., hereby waives judicial review of the order.

\_\_\_\_\_  
/s/ Mark S. Liftman  
Mark S. Liftman  
7-8-04  
Date

SUBMITTED AND APPROVED BY:

\_\_\_\_\_  
/s/ Brenda J. Clary  
Brenda J. Clary  
Staff Attorney  
Kansas Insurance Department

**NOTICE:** In the event the Petitioner files a petition for judicial review, the agency officer designated pursuant to K.S.A. 77-613(e) to receive service of a petition for judicial review on behalf of the KID is John W. Campbell, General Counsel, Kansas Insurance Department, 420 S.W. 9<sup>th</sup> St., Topeka, KS 66612-1678.

**Certificate of Service**

The undersigned hereby certifies that she served a true and correct copy of the above and foregoing **Consent Order** on this \_8th\_ day of July 2004, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Mark S. Liftman  
Theodore Liftman Insurance, Inc.  
101 Federal St.  
Boston, MA 02110

\_/s/ Brenda J. Clary\_\_\_\_\_

Brenda J. Clary