

**STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION**

In the Matter of **David W. Holmes** and ) **STIPULATION** and  
**David W. Holmes dba Three Rivers Financial Group**) **FINAL ORDER**  
) Case No. INS 07-08-003

**STIPULATION**

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against David W. Holmes (Holmes) and David W. Holmes dba Three Rivers Financial Group (Three Rivers) (collectively referred to as the parties).

On 8/23/07, the director issued a notice of proposed action. On 9/12/07, the parties requested a hearing. On 2/12/08, a hearing was conducted by the Office of Administrative Hearings at which the parties appeared. On 4/25/08, OAH issued a proposed order. On 5/27/08, the parties filed exceptions to the proposed order. The director did not file any exceptions.

The parties desire to conclude this proceeding by entering into this stipulation pursuant to ORS 183.417(3).

The parties waive all rights relative to judicial review of this proceeding.

The parties stipulate to the following facts, conclusions, action, and to the issuance of a final order incorporating this stipulation.

**Facts and Conclusions**

Licensing Information

Holmes has been licensed in Oregon as a resident individual insurance producer since 2/20/96. Three Rivers has been licensed in Oregon as a resident business entity insurance producer since 4/15/96. Holmes' last recorded residence and business addresses, and Three Rivers' last recorded business address, are located in Grants Pass, Oregon.

Failed to Make Reasonable Inquiry into Person's Circumstances Prior to Making Recommendation in Life Insurance Transaction

Holmes is subject to enforcement action pursuant to OAR 836-080-0090 because of the following circumstances. OAR 836-080-0090 prohibits a person from recommending that another person purchase or replace a life insurance policy or annuity, or any rider, endorsement or amendment to the policy or annuity, without *reasonable grounds* to believe that the transaction is not unsuitable for the other person *based upon a reasonable inquiry* concerning the other person's insurance objectives, financial situation and needs, age and other relevant information known by the person.

On or about 5/4/05, Holmes recommended to Faye E. Wyatt (Wyatt) of Roseburg, Oregon, that she purchase a \$75,000 flexible premium tax deferred annuity to be issued by Allianz Life Insurance Company of North America (Allianz). Holmes did not make a reasonable inquiry into all of Wyatt's relevant circumstances before making the recommendation. Wyatt relied on Holmes' recommendation and purchased the annuity. Subsequently, Wyatt realized that she was in a worse financial situation as a result of purchasing the annuity, and requested Allianz terminate the annuity. However, Wyatt lost about \$4,800 plus interest.

On or about 6/9/05, Holmes recommended to Wyatt that she replace an existing annuity issued by Transamerica with an annuity to be issued by Great American Life Insurance Company (GALIC). Again, Holmes did not make a reasonable inquiry into all of Wyatt's circumstances before making the recommendation. Wyatt relied on Holmes' recommendation and applied for the GALIC annuity. Subsequently, Wyatt realized that she was in a worse financial situation as a result of replacing the Transamerica annuity with the GALIC annuity, and requested Transamerica to not terminate the Transamerica annuity.

Made False Statement on or Relative to an Insurance Application

Holmes is subject to enforcement action pursuant to ORS 746.100 because of the following circumstances. ORS 746.100 prohibits a person from making a false or fraudulent statement or representation on or relative to an application for

insurance. In May 2005, Holmes completed and received from Wyatt an application for the Allianz annuity and sent it to Allianz. Question four on the application asked “Do you have any existing annuity contracts or life insurance policies.” Holmes marked the answer as “no.” This answer was incorrect because Wyatt had two existing annuities issued by Transamerica and Allstate Life Insurance Company. Holmes knew that Wyatt had the two existing annuities. Holmes answered the question “no” because he thought the question asked whether Wyatt was replacing an annuity, not whether Wyatt had any existing annuities. Holmes did not harm Wyatt by answering the question incorrectly.

#### Enforcement Action Against Business Entity for Acts of Individual

Three Rivers is subject to enforcement action pursuant to ORS 744.074(3) because of the following circumstances. ORS 744.074(3) permits the director to take any authorized enforcement action against a business entity that is licensed in Oregon as a insurance producer when the director determines that an individual that is licensed in Oregon as an insurance producer violated a provision of the Insurance Code or related rules, and the partners, officers, or managers of the business entity knew or should have known of the individual’s violation but they did not report the violation to the director or they did not take any corrective action or both. Holmes, as the sole proprietor of Three Rivers, violated the laws specified above, knew or should have known of such violations, and was required to report such violations to the director. Holmes did not report such violations to the director and did not take any corrective action.

#### **Action**

Pursuant to ORS 744.074(1), Holmes’ Oregon resident insurance producer license is suspended from 8/1/09 to 9/30/09. During the period of suspension, Holmes shall not transact insurance including servicing existing clients. Holmes shall refer all inquires from existing clients to the insurer that issued the policy to the client.

Pursuant to ORS 731.988(1), Holmes is assessed a civil penalty of \$2,000. The payment shall be made in the form of a check payable to the "Department of

Consumer and Business Services" for the full amount due. The payment shall be delivered to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE, Salem, Oregon; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. The payment is due and shall be *received* by the Insurance Division by 8/1/09.

As consideration for the director not taking enforcement action against Three Rivers, Three Rivers surrenders its Oregon resident insurance producer license effective on 8/1/09, and agrees to not apply for any license authorized by ORS Chapter 744.

Dated 7/20/09

/s/ David W. Holmes  
David W. Holmes

Dated 7/20/09

/s/ David W. Holmes  
[Signature of Representative]  
David W. Holmes  
[Printed Name of Representative]  
Sole Proprietor  
[Printed Title of Representative]  
David W. Holmes dba  
Three Rivers Financial Group

### **FINAL ORDER**

The director incorporates herein the above stipulation, adopts it as the director's final decision in this proceeding, and orders that the action stated therein be taken.

Dated 8/18/09

/s/ Teresa D. Miller  
Teresa D. Miller  
Acting Administrator  
Insurance Division  
Department of Consumer and Business Services

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