BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	**ALLEGED VIOLATIONS:**
Wilbert F. O'Dell	:	
1162 Shenkel Road	:	Sections 604, 622 and 639 of the
Pottstown, PA 19465	:	Insurance Department Act of 1921, Act of
	:	May 17, 1921, P.L. 789, No. 285, *as*
	:	*amended,* (40 P.S. §§ 234, 252, 278).
O'Dell and Company, Inc.	:	
2098 Pottstown Pike	:	Sections 4, 5(a)(1)(vi), and 5(a)(2) of the
Pottstown, PA 19465	:	Unfair Insurance Practices Act of July 22,
	:	1974, P.L. 589, No. 205 (40 P.S. § 1171.4,
	:	1171.5(a)(1)(vi) and 5(a)(2)).
	:	
Respondents	:	Docket No. **SC04-09-041**

ADJUDICATION AND ORDER

AND NOW, this 2nd day of January, 2007, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), makes the following Adjudication and Order.

PROCEDURAL HISTORY

This case began when the Pennsylvania Insurance Department ("Department") filed an Order to Show Cause ("OTSC") on September 30, 2004 directed to Wilbert F. O'Dell and O'Dell and Company, Inc. (collectively "the respondents"). The OTSC

DATE MAILED: January 2, 2007

alleged that the respondents violated the Insurance Department Act[1] and The Unfair Insurance Practices Act.[2]

The OTSC consisted of eighty (80) numbered factual and legal averments, together with several exhibits, alleging that the respondents violated Insurance Department statutes in 2002 in connection with attempting to obtain a commercial insurance package for Henry Walton.

After the OTSC was filed, a presiding officer was appointed. The respondents failed to file an answer to the OTSC and on November 10, 2004 the Department filed a motion for default judgment. The respondents answered the motion on November 18, 2004 by letter and attachments, and requested a ninety day extension to answer the OTSC. The Department responded that it did not oppose a reasonable extension but did object to ninety days as unreasonable and unnecessary. Prehearing telephone conferences were held on December 7 and 9, 2004 and the presiding officer issued a scheduling order allowing the respondents until December 23, 2004 to file an answer.

On December 23, 2004, the respondents filed an answer to the OTSC which admitted some of the factual averments, specifically denied others, and generally denied other factual averments. The respondents on December 27, 2004 filed a request for production of documents directed to the Department.

On December 28, 2004, the Department filed a renewed motion for default judgment. The Department requested in the alternative that the factual averments be

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[1] Act of May 17, 1921, P.L. 789, No 285, 40 P.S. § 234, 252, 277 and 278 (repealed). The Insurance Department Act was amended by the Act of December 6, 2002, P.L. 1183, No. 147 § 1 (effective in 180 days). The applicability of the repealed sections is discussed relative to the respondents' motions to dismiss, *infra*.

[2] Act of July 22, 1974, P.L. 589, No. 205, *as amended,* (40 P.S. § 1171.5(a)(2)).

deemed admitted or that the respondents be ordered to plead more specifically. On the same date, the Department moved to strike the respondents' request for documents. On December 30, 2004, the presiding officer granted the motion to strike.

On January 12, 2005, the respondents answered the Department's motion for default judgment or alternatives. On January 13, the presiding officer denied the motion for default judgment and partially granted the motion for deemed admissions. This order deemed five documents attached as exhibits to the OTSC to be authentic without otherwise ruling upon admissibility at hearing. The order also deemed certain factual averments to be admitted in full or in part, while deeming others to be denied sufficiently.

On January 21, 2005, the parties filed a joint stipulation of facts and documents consisting of seventeen numbered averments and three exhibits. On January 25, 2005, the Department filed a motion for partial summary adjudication, based upon the respondents' deemed admissions. The respondents answered the motion, asserting factual and legal grounds why partial summary adjudication was inappropriate.

On February 9, 2005, the parties filed prehearing statements pursuant to the December 14, 2004 scheduling order. A prehearing telephone conference was conducted on February 23, 2005, and by order dated February 24, 2005, the hearing originally scheduled for March 1 was rescheduled for March 31, 2005 and a briefing schedule was established for the Department's pending motion for partial summary adjudication.

The hearing was held as rescheduled, attended by Mr. O'Dell together with counsel as well as by counsel and witnesses for the Department. At the outset, the joint stipulation and deemed admissions were made part of the record. Also at the outset, the respondents moved that six of the eight counts be dismissed because the statutory

provisions relied upon by the Department in those counts had been repealed. The presiding officer deferred ruling upon that motion and the hearing proceeded. Testimony was received from Henry H. Walton, Sr. and Joseph M. Figueiredo on behalf of the Department and Mr. O'Dell testified on behalf of the respondents.

During the cross examination of Mr. Figueiredo, an investigator for the Department, counsel for the respondents asked the witness to get his investigatory file, the Department objected and the presiding officer sustained the objection following brief argument by the parties. Following Mr. Figueiredo's testimony, the presiding officer received a bench brief from the respondents on this issue but after review of the brief and other authority during a recess, reaffirmed his prior ruling.

The Department rested its case in chief and the respondents moved to dismiss counts five through eight against O'Dell and Company, Inc. The presiding officer deferred ruling upon this motion to be included in a final adjudication.

Following presentation of the respondents' case, the Department asked to call a rebuttal witness to Mr. O'Dell's testimony. The witness was outside the hearing room and the Department was prepared to present her testimony. The presiding officer sustained the respondents' objection to the witness on the grounds that the use of the witness was reasonably foreseeable yet the witness had not been listed on the Department's prehearing statement.

The briefing schedule for the Department's partially dispositive motion had been established prior to the hearing. Following receipt of the hearing transcript, a briefing schedule was established for the respondents' two motions to dismiss as well as for the

merits. The parties have submitted briefs on all three motions and the merits, and this matter is ready for adjudication.

FINDINGS OF FACT

1. The individual respondent, Wilbert F. O'Dell ("O'Dell") resides at 1162 Shenkel Road, Pottstown, Pennsylvania. [JS1 ¶ 1].

2. O'Dell is licensed by the Pennsylvania Insurance Department ("Department") as a resident insurance producer under license number 355416. [JS1 ¶ 2].

3. O'Dell had been licensed by the Department as a resident agent since January 6, 1966 until the producer's license became effective on May 17, 2004. [JS1 ¶ 3].

4. The corporate respondent, O'Dell and Company, Inc. (O'Dell & Co.), maintains a business address at 2098 Pottstown Pike, Pottstown, Pennsylvania. [JS1 ¶ 4].

5. O'Dell & Co. previously was licensed by the Department as an insurance agency and resident insurance broker and since October 31, 2005 has been licensed as an insurance producer. [JS1 ¶¶ 5-7].

6. Through at least October 6, 2003, O'Dell was the owner and sole qualifying active officer of O'Dell & Co. Susanne R. O'Dell, a licensed insurance and real estate agent, is an active officer of O'Dell & Co. [JS1 ¶ 8].

7. In April 2002, Pottstown Equipment Company was insured with Selective Insurance Company ("Selective"). [N.T. 24].

8. Henry H. Walton, Sr. is the owner and operator of Pottstown Equipment Company, a business which has bought and sold construction equipment for over thirty

years. [N.T. 35].

9. Until April 2002, Walton had a comprehensive business package of insurance for his business from Selective including full coverage automobile insurance for a rollback truck and pick up truck, hazard insurance on the building and its contents, and commercial liability insurance. [N.T. 24-26, 47].

10. Selective had insured Walton's business for the previous four years and Walton was satisfied with the coverage and the service he received from the servicing agency. [N.T. 78, 80].

11. In April 2002, Walton received Selective's renewal policy and because the rate had increased from the previous year, Walton decided to explore switching to a different carrier to obtain a lower rate. [N.T. 24, 79-80].

12. Walton spoke to a Nationwide agent but was informed that he could not obtain business coverage through that agent. [N.T. 81-83].

13. Walton contacted O'Dell and met with him at Walton's office concerning replacement of the Selective policy through the respondents. [JS1 ¶ 10; N.T. 24-26].

14. In a meeting lasting approximately one and a half to two hours, Walton discussed the coverage that he had with Selective item by item with O'Dell utilizing the Selective booklet containing the coverages. [N.T. 27-28].

15. Walton expressed a desire to obtain the same complete business coverage he had with Selective plus an umbrella policy. [N.T. 26-27, 31; Order Deeming Admissions ¶ 3 Nos. 11, 13].

16. About a week after the initial meeting, Walton and O'Dell again met in Walton's office and O'Dell presented Walton with a premium quote from Travelers which was less than Walton was paying to Selective. [N.T. 29; Order Deeming Admissions ¶ 4].

17. Walton told O'Dell that he accepted the quote and offered to call Selective to cancel that policy. [N.T. 29].

18. O'Dell said that he would take care of canceling the Selective policy himself and had Walton fill out a form for that purpose. [N.T. 29-30].

19. On approximately May 3, 2002, Walton telephoned O'Dell and asked why he had not received a policy, an invoice or proof of automobile insurance for the replacement coverage. [N.T. 31].

20. O'Dell told Walton that the items were in the mail and that he should have them soon. [N.T. 31].

21. In that conversation, O'Dell also told Walton that he was having difficulty in placing the umbrella coverage. [*Id.*].

22. At approximately the same time, O'Dell returned Walton's renewal policy to Selective's agent and signified that Walton wished to discontinue that coverage. [N.T. 108-09, 161, 168-69, 201; Order Deeming Admissions ¶ 3 No. 14].

23. In early June, not having received paperwork for the replacement coverage, Walton contacted O'Dell again and inquired about it. [N.T. 31-32; Order Deeming Admissions ¶ 3 No. 15].

24. At that time, O'Dell informed Walton that he had complete coverage except for the umbrella policy which O'Dell still was working on trying to procure. [*Id.*; N.T. 109].

25. In July 2002, Walton was becoming worried because he still had not received any paperwork and he was aware that binders were effective only for a limited time. [N.T. 32].

26. Walton contacted O'Dell on July 18 and received assurances from O'Dell that he was fully covered. [N.T. 33, 109; Order Deeming Admissions ¶ 5].

27. In August 2002, Walton received notices from PennDOT that the registration on his two business vehicles was suspended for failure to maintain financial responsibility. [N.T. 33-35; Exhibits D1, D2; Order Deeming Admissions ¶ 3 No. 17; Exhibit JS1 ¶ 12].

28. On August 22, 2002, after receiving no response from O'Dell from two telephone messages, Walton personally drove to the respondents' offices and delivered the PennDOT notices to O'Dell. [N.T. 35; Exhibit JS1 ¶ 13].

29. O'Dell informed Walton that the notices were a mistake and that O'Dell would get it straightened out. He assured Walton that his vehicles were covered. [N.T. 36; Exhibit JS1 ¶ 13].

30. On approximately September 6, 2002, O'Dell wrote PennDOT a letter designed to reinstate registration for the two vehicles and enclosed a $50.00 reinstatement fee for each vehicle. [N.T. 36; Exhibit JS1 ¶ 14; Exhibit D3].

31. Walton did not request O'Dell to pay the reinstatement fee. [N.T. 36, 192].

32. In the letter, O'Dell represented to PennDOT that: 1) Walton contacted the respondents for coverage as of the expiration of the Selective policy; and 2) the respondents were unable to procure package coverage through several insurers and currently had coverage on the two vehicles through specified companies. [Exhibit D3].

33. Other than the implication in the letter that the respondents procured automobile insurance in lieu of package coverage, the respondents did not provide evidence to PennDOT that the vehicles were insured prior to June 18, 2002 as required by the PennDOT notices. [N.T. 192; Exhibits D1-D3].

34. The respondents did not provide an affidavit to PennDOT that the vehicles were not driven while uninsured as required by the notices. [N.T. 192; Exhibits D1-D2].

35. The respondents relied upon the letter and reinstatement fees in an effort to reinstate the vehicle registrations. [Findings of Fact 29-34].

36. Although O'Dell had knowledge that Walton's business vehicles were uninsured since the expiration of the Selective policy and that Walton was concerned about coverage, O'Dell did not submit an application for automobile insurance until he submitted two applications at the time he submitted the letter to PennDOT on September 6, 2002. [Order Deeming Admissions ¶ 7; Exhibits D4-D5; N.T. 43-46, 172-75].

37. Although Walton authorized O'Dell to procure a business insurance package in accordance with the quote supplied in April 2002, he did not authorize submission of the September 6, 2002 applications for vehicle insurance nor authorize O'Dell to sign Walton's name on any documents. [N.T. 47, 52, 115, 166-68, 187; Order Deeming Admissions ¶ 3 No. 40e].

38. O'Dell signed Walton's name four times and his initials twenty-six times

on the application to TICO Insurance Company for one of the vehicles. [Exhibit D4].

39. In the TICO application, O'Dell rejected uninsured motorist coverage and underinsured motorist coverage for Walton without Walton's knowledge or consent. [N.T. 47, Exhibit D4].

40. In the TICO application, O'Dell selected the minimum medical coverage and rejected other coverages contrary to Walton's direction and without his knowledge or consent. [N.T. 51-52; Exhibit D4].

41. O'Dell signed Walton's name four times on an application to Interstate Indemnity Company for the other vehicle. [Exhibit D5].

42. In the Interstate Indemnity application, O'Dell rejected uninsured motorist coverage and underinsured motorist coverage for Walton without Walton's knowledge or consent. [N.T. 52, Exhibit D5].

43. Walton did not learn of the reduced and rejected coverages until he received an invoice for the policies on approximately September 19, 2002. [Exhibit JS1 ¶ 16; N.T. 45-54].

44. When Walton immediately telephoned O'Dell about the reduced and rejected coverages, O'Dell assured Walton that it was just a mistake and that he in fact had full coverage. [Order Deeming Admissions ¶ 3 No. 30; N.T. 44].

45. Walton met with O'Dell on approximately September 25, 2002. [Exhibit JS1 ¶ 17].

46. O'Dell at that time again told Walton that he had full business coverage.

[N.T. 54].

47. Between September 25 and October 9, 2002, Walton contacted O'Dell's office almost daily requesting proof of insurance but received no answer. [Order Deeming Admissions ¶ 3 No. 33].

48. Walton spoke to O'Dell on October 9, 2002 and was told again not to worry and that he was covered. [Order Deeming Admissions ¶ 3 No.34; N.T. 56].

49. Walton asked for the insurance binders but the respondents would not give him any. [Order Deeming Admissions ¶ 3 No.36; N.T. 59].

50. The registrations for Walton's two commercial vehicles were suspended for three months, causing a disruption in the business. [N.T. 42].

51. Walton's business had no coverage for approximately six months due to O'Dell's actions. [N.T. 62].

52. Because of O'Dell's actions, Walton was forced to transfer one vehicle into his personal name, was unable to obtain insurance for the other vehicle and was unable to obtain equivalent coverage he had with Selective for the business. [N.T. 61-62].

53. O'Dell lied to Walton about the lack of coverage between May and October 2002 because O'Dell wanted to keep Walton's business. [N.T. 109, 111].

54. O'Dell did not believe he did anything wrong in his dealings with Walton. [N.T. 112-13, 116].

55. O'Dell has not been the subject of an enforcement action by the

Department prior to the Walton matter. [N.T. 148-49].

56. Additional factual findings set forth in the Discussion section are incorporated herein.

57. Should any of the foregoing findings be deemed conclusions of law, the ones so found are incorporated therein.

DISCUSSION

Henry H. Walton, Jr. owns and operates a business which bought and sold construction equipment for over thirty years. To protect himself, his business and third parties, he carried a comprehensive package of commercial insurance with all-inclusive coverages for liability, business vehicles, a building and other property. However, for six months in 2002, Walton and his business were stripped of the protection the insurance provided, and he was unable to regain the same level of protection afterwards. This case determines whether an insurance producer and the producer's agency should be held responsible for placing the business, Walton and third persons at greater risk of loss.

The Order to Show Cause ("OTSC") in this case brought by the Pennsylvania Insurance Department ("Department") seeks remedial action against Wilbert F. O'Dell ("O'Dell") and his corporate insurance agency, O'Dell and Company, Inc. ("O'Dell & Co." or "the agency") (together, "the respondents") for what happened in 2002. The OTSC is divided into eight counts, four directed against O'Dell and four against the corporation. The respondents, in two separate motions, seek to dismiss seven of the eight counts. Before the merits of this case can be examined, it is necessary to consider which, if any, of the counts survive the respondents' motions.

The first count of the OTSC alleges that O'Dell violated the Unfair Insurance Practices Act ("UIPA"),[3] and this count is not the subject of either motion to dismiss. Counts two through four allege that O'Dell violated the Insurance Department Act of 1921.[4] Count five alleges that O'Dell and Co. violated the UIPA, while counts six

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[3] Act of July 22, 1974, P.L. 589, No. 205, *as amended,* (40 P.S. § 1171.5(a)(2)).

[4] Act of May 17, 1921, P.L. 789, No. 285 §§ 604, 622 and 639, 40 P.S. § 234, 252 and 278 (repealed).). The Insurance Department Act was amended by the Act of December 6, 2002, P.L. 1183, No. 147 § 1 (effective in 180 days) and these sections were repealed.

through eight assert Insurance Department Act violations by the agency. One of the respondents' motions, made at the outset of the hearing, seeks dismissal of the six Insurance Department Act counts. The other motion, made at the conclusion of the Department's case during the hearing, seeks to dismiss the four counts against the agency.

The basis for the motion to dismiss the Insurance Department Act counts is that the sections cited and used by the Department had been repealed by the time the OTSC was brought. Indeed, those sections were repealed by the Producer Licensing Modernization Act,[5] effective June 6, 2003, and the OTSC was brought on September 30, 2004. The subject matter of the three repealed sections now resides at 40 P.S. §§ 310.6, 310.47 and 310.48.

The respondents argue that the replacement provisions utilize different language than the repealed sections. They assert that as a matter of law they were unable to prepare an adequate defense because of the differences. Further, they assert that as of June 6, 2003, Pennsylvania did not recognize causes of action based upon the repealed sections.

The Department argues that because the conduct at issue took place prior to the effective date of the Producer Licensing Modernization Act, the prior provisions govern that conduct. The Department notes that prior Commissioner adjudications have applied the provisions in effect at the time of the described conduct, and recognized that the replacement provisions did not change materially the substance of the repealed sections. The Department argues that this interpretation is in accord with principles of statutory construction as well as caselaw. Finally the Department argues that the respondents

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[5] Act of December 6, 2002, P.L. 1183, No. 147 § 1 (effective in 180 days).

waived their right to make the motion by waiting until the hearing, some six months after the OTSC was filed.

It is not necessary to determine whether the respondents waived their opportunity to make such a motion since the motion is devoid of merit. The respondents have cited no authority for the proposition that the provisions in effect at the time of the alleged conduct are inapplicable to the conduct. Nor have they cited authority for the proposition that they should have been charged under statutory sections not yet in existence at the time of the conduct when the statute does not provide for retroactive effect.

On the other hand, prior adjudications, caselaw, principles of statutory construction, common sense and principles of fairness all dictate that the respondents properly were charged under the statutory provisions in existence at the time of the alleged conduct. The Commissioner uniformly has applied this interpretation and also noted that the replacement provisions are functionally equivalent to the repealed sections.[6] Even if the language differed in the newer provisions in any material respect, it would be fundamentally unfair to the respondents to apply provisions not yet in existence at the time of their actions. The new provisions were not made retroactive, and rules of statutory construction mandate that no statute shall be applied retroactively without clear intent manifested by the General Assembly. *See* 1 Pa.C.S. § 1926.

Whatever substantive rights and liabilities attached to the respondents in 2002, those rights and liabilities were pursuant to the now-repealed sections. *See* 1 Pa.C.S. § 1962 (". . . All rights and liabilities incurred under such earlier statute are preserved and may be enforced.") *Gangewere v. Pennsylvania State Architects Licensure Board*, 512 A.2d 1301 (Pa. Cmwlth 1986). The respondents were put on notice upon the filing of the

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[6] *See In re Newton*, SC04-07-005 (2004); *In re Dwyer*, SC03-07-048 ((2004); *In re Walters*, SC03-12-021 (2004).

OTSC which sections applied, the same sections in effect at the time of their alleged conduct. The Department throughout these proceedings never has asserted that anything other than these sections apply to this case. The respondents were not impeded in their defense of this action. The motion will be denied.

The other motion, made following the close of the Department's case, does not challenge the sufficiency of the OTSC, but rather the proof offered at hearing to support the charges against the corporate agency. According to the respondents, no evidence was produced by the Department to establish that O'Dell's conduct can be attributed to the corporate agency. According to the Department, the stipulated fact that O'Dell was the owner and sole qualifying officer of the agency is sufficient by itself to impute liability to the corporation for O'Dell's activities. Further, the Department argues, the record is replete with evidence demonstrating that the corporation was part of the activity charged in the OTSC. This evidence included such things as the corporate letterhead, corporate premium checks used to obtain the vehicle insurance, and O'Dell's use of the agency offices for the transactions.

Generally, a corporation shall be regarded as an independent entity even if the stock is owned entirely by one person. *Lumax Industries, Inc. v. Aultman*, 669 A.2d 893 (Pa. 1995); *Yellow Cab Co. of Pittsburgh v. Pennsylvania Public Utility Comm'n*, 673 A.2d 1015 (Pa. Cmwlth. 1996); *Kaites v. Commonwealth, Department of Environmental Resources*, 529 A.2d 1148 (1987). In the present case, the parties stipulated that O'Dell is the owner of the corporation but no further evidence was produced as to the nature of that ownership interest. In any event, liability of the corporation must be attributable to its own acts rather than vicariously by the acts of its owner.

The Department, citing Departmental regulations, argues that as sole qualifying active officer of the corporation O'Dell was acting on behalf of the corporation. A qualifying active officer is "one active officer who holds a current certificate or license for the line of authority for which the corporation is applying, and is designated for appointments relative to that line of authority." 31 Pa. Code § 37.1. This definition, however, does not necessarily impute all activities of an officer to the corporation. An active officer acts for the corporation relative to a line of authority. However, the definition does not contemplate that actions of an officer not concerning a line of authority or otherwise without actual or apparent authority will be imputed to the corporation.

As noted by the Department, essentially all dealings with Walton were performed by O'Dell personally. However, the record at the conclusion of the Department's case does contain evidence of corporate involvement. The corporate checks were used to procure vehicle insurance in September 2002. Although most meetings between O'Dell and Walton were in Walton's offices, at least one occurred at the agency offices, and O'Dell used agency property such as the telephone.

The clearest pieces of evidence of corporate involvement are the vehicle insurance applications and the letter to PennDOT. Both applications were made by the corporation although also containing O'Dell's name and signature. The letter to PennDOT not only was on corporate stationery, but the contents of the letter refer to Walton's contact with "this office" and twice refer to O'Dell's actions on behalf of himself and the agency using the collective "we". [Exhibit D3].

The bulk of this evidence of corporate involvement falls under counts five and six, which include actions surrounding the applications, and count eight, which involves the

applications and the letter to PennDOT. While all four counts involve some use of corporate property, count seven contains no other indicia of corporate action. Count five includes conduct by the corporation connected to the applications, but also contains activity by O'Dell prior to the time the applications were submitted. The use of the agency's telephone and office is too tenuous a connection to O'Dell's alleged nonfeasance and misfeasance to attach liability to the corporation for those actions not involving the vehicle insurance. Accordingly, the motion will be granted as to count seven, denied as to six and eight, and granted in part as to count five for activity unconnected to the automobile insurance applications.

The Department filed its own motion prior to the hearing based upon the deemed admissions and joint stipulation. The motion was for partial summary judgment, contemplating that a hearing would still be necessary. Indeed, a hearing was necessary to receive and consider aggravating and mitigating circumstances even if liability was established based upon the undisputed facts prior to hearing. In light of the fact that a hearing was held which supplemented the deemed admissions and stipulation, the motion has been superseded or subsumed by the complete record and ruling upon it would serve no purpose. Accordingly, the motion for partial summary judgment will be denied as moot. Counts one through four, a portion of count five, and all of counts six and eight will be considered on the merits.

Count one alleges O'Dell's violation of the UIPA by causing Walton's business insurance to lapse while misrepresenting on multiple occasions to Walton that coverage was in place, and by forging Walton's name on the automobile insurance applications. Count two asserts numerous violations of the Insurance Department Act by O'Dell's course of conduct during 2002 evidencing his unworthiness to engage in the business of

insurance pursuant to 40 P.S. §§ 234 and 252.[7] Count three alleges violations of 40 P.S. § 278, which prohibits misrepresentations for the purpose of inducing a policyholder to lapse or surrender insurance. Count four asserts that O'Dell misrepresented the terms of a policy to be issued, thus violating 40 P.S. § 277.

The remaining three counts assert corporate liability against the corporate agency for its own acts and knowledge of O'Dell's conduct in counts one, two and four. That portion of count five surviving the dismissal motion alleges that O'Dell acting on behalf of the agency forged Walton's name on the automobile insurance applications, thus violating the UIPA. Count six alleges that O'Dell & Co. demonstrated unworthiness pursuant to 40 P.S. §§ 234 and 252. Count eight asserts corporate liability for misrepresentation of the terms of a policy pursuant under 40 P.S. § 277.

The facts more fully are set forth in the numbered factual findings. Those facts include that O'Dell caused Walton's existing business insurance to terminate and falsely told Walton on a number of occasions that his business was covered. The facts also include that O'Dell together with the agency applied for vehicle insurance without Walton's knowledge and with forged signatures. O'Dell and the agency applied for the insurance only after being confronted with PennDOT's registration suspension. The coverage was less than Walton enjoyed previously, and contrary to Walton's instructions and O'Dell's assurances. To determine liability under each count given these facts, it is necessary to look at the applicable law.

The Insurance Department Act authorizes the issuance of a certificate of qualification for an insurance agent when the Insurance Department "is satisfied that the applicant is worthy" of such certification. Furthermore, "[o]nce a certificate is issued, the

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[7] All references and citations are made to the act as it existed prior to the passage of the 2002 amendments.

certificate holder is presumed worthy to secure additional specific lines of authority under the certificate unless the department files an action to suspend or revoke or refuse to renew the certificate pursuant to section 639." 40 P.S. § 234.

Section 639 (40 P.S. § 279) provides for the imposition of various penalties "upon satisfactory evidence of such conduct that would disqualify the agent or broker from initial issuance of a certificate of qualification under section 604 . . .." 40 P.S. § 279(a). In other words, the penalties may be imposed if the agent or broker is determined to be untrustworthy or professionally unfit. The possible penalties include suspension or revocation of the certificate of qualification or license of the offending party and imposition of a civil penalty for each violation. 40 P.S. § 279(a)(1), (2).

These statutory provisions are implemented and clarified by Department regulations. The Department may revoke or suspend a certificate or license upon finding that an agent or a broker has engaged in conduct which would disqualify him from initial issuance of a certificate or a license, including the conduct recited in 31 Pa. Code § 37.46. 31 Pa. Code § 37.47. Section 37.46 provides that:

> [t]he Department may deny an application for a certificate or license upon finding after a hearing or upon failure of the applicant to appear at the hearing that:
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> . . .
>
> (7) The applicant does not possess the professional competence and general fitness required to engage in the business of insurance. Determination will be made after thorough examination of the pertinent information and documents available to the Department which pertain to the honesty, reliability, efficiency, educational training and business experience and reputation of the applicant. . . .

31 Pa. Code § 37.46. Conduct evidencing unworthiness to hold an insurance license allows the Commissioner to impose sanctions pursuant to 40 P.S. § 279, including revocation of an existing license. *In re Friedman*, 457 A.2d 983 (Pa. Cmwlth. 1983). In

the present case, the Department seeks sanctions for O'Dell's conduct (in count two) and the agency's conduct (in count six) relative to the Walton matter as demonstrating their unworthiness to hold insurance licenses.

In addition to seeking sanctions for conduct evidencing unworthiness, the Department also seeks sanctions for three other aspects of O'Dell's conduct. The Department has alleged that his actions constituted misrepresentation inducing a policy lapse, misrepresentation about the terms of a policy and unfair insurance practices. Each of these three activities is proscribed by statute. Count one is the unfair insurance practices charge against O'Dell. Count three is the lapse-inducing misrepresentation charge against O'Dell. Counts four and eight are the policy term misrepresentation charges against O'Dell and the corporation respectively.

The Insurance Department Act proscribes oral, written or other misrepresentations or incomplete policy comparisons to any insured person for the purpose of inducing or tending to induce the policyholder to lapse, forfeit or surrender the policy to take out a policy with another insurer. 40 P.S. § 278. Violation of this provision is subject to the same sanctions as for conduct evidencing unworthiness. 40 P.S. § 279(a). The Department asserts that O'Dell made misrepresentations which induced Walton to surrender or lapse his business insurance to take out replacement coverage through O'Dell.

The Insurance Department Act also proscribes oral or written misrepresentations about the terms of any policy 40 P.S. § 277. Like misrepresentations inducing a lapse, violation of this provision is subject to the same sanctions as for conduct evidencing unworthiness. 40 P.S. § 279(a). The Department asserts that O'Dell and the agency misrepresented the terms of the policy which was to be issued to replace the Selective

policy.

Finally, certain activities by agents or agencies constitute unfair insurance practices, and one such activity is making untrue or deceptive statements with respect to the agent's business. An agent commits an unfair insurance practice by making a "statement containing any representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading." 40 P.S. § 1171.5(a)(2). An agent also commits an unfair practice by making a misrepresentation for the purpose of inducing or tending to induce the lapse or surrender of an insurance policy. 40 P.S. § 1171.5(a)(1)(vi).[8] The Commissioner may order that such practice cease and desist, and in addition may suspend or revoke the agent's license for such conduct. 40 P.S. § 1171.9. The Department asserts that O'Dell and the agency committed numerous unfair insurance practices throughout the dealings with Walton.

In short, the Department alleges that O'Dell and the agency: 1) demonstrated unworthiness to hold an insurance license; 2) made misrepresentations inducing a policy lapse,; 3) made misrepresentations about the terms of a policy; and 4) committed unfair insurance practices. The only activities at issue are those actions surrounding the dealings with Walton.

In addition to contesting the charges in each count, the respondents argue that they were denied due process because: 1) they were not provided a copy of the May 3, 2002 letter alleged to have been sent by O'Dell to Selective to surrender Walton's business

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[8] In its brief, the Department also argues that O'Dell and the corporation violated 40 P.S. § 1171.5(a)(12). An agent commits an unfair practice by making false or fraudulent statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a benefit. 40 P.S. § 1171.5(a)(12). However, violation of this subsection was not alleged in the OTSC nor at issue in the hearing, and will not be considered in this adjudication.

insurance and thus were not able to cross examine Walton or the Department investigator effectively; 2) they were not supplied with a copy of the investigator's report; 3) they were deemed to have admitted sending the letter and statements from the report without having seen either one; and 4) the Department failed to meet its burden of establishing each element of each charge against the respondents. The respondents term the letter sent to Selective as the "cornerstone" of the Department's case. Brief of Respondents at 39.

The Department counters that the two paragraphs in the OTSC (14 and 40) properly were deemed to be admitted. Paragraph 14 alleged that: "On or around May 3, 2002, O'Dell sent a letter to Selective canceling Walton's existing coverage (Policy # S1382376)." [OTSC ¶ 14]. The respondents' answer to this averment did not deny that the letter was sent but rather stated that the "correspondence is a writing that speaks for itself" and challenged the "characterization of the letter" without specifying how the characterization was improper. [Answer to OTSC ¶ 14]. Paragraph 40 of the OTSC stated that: "On or about October 16, 2003, O'Dell admitted to Insurance Department Joseph M. Figueiredo that: . . ." OTSC ¶ 40]. The averment then listed five specific statements allegedly made by O'Dell to the investigator. The respondents generally denied the averment without specifying how it was inaccurate and stated that no response was required because the averment was a legal conclusion. [Answer to OTSC ¶ 40].

The allegations properly were deemed to be admitted. The applicable Rule of Administrative Practice and Procedure provides that the answer must specifically admit or deny the allegations or charges in the OTSC. 1 Pa. Code 35.37. The rule further provides that general denials unsupported by specific facts are noncompliant and may be deemed a basis for a final order without hearing as raising no issues requiring a hearing. [*Id.*]. The rule also provides that a respondent failing to file a timely answer shall be deemed in default and relevant facts in the OTSC may be deemed admitted. [*Id.*].

The OTSC alleged that O'Dell sent a letter canceling Walton's insurance and alleged specific admissions to the investigator. These are alleged facts. O'Dell had personal knowledge whether they were true, false or a mixture regardless of whether he had a copy of the letter or the investigator's report. However, the respondents failed to admit or deny those facts and failed to file an amended answer or request leave to do so when the Department filed its motion.

Further, the challenged averments independently were established by the investigator's testimony at the hearing. Although the averments properly were deemed to be admitted, the Department independently established the averments without reference to the deemed admissions. The respondents thus were not prejudiced by their deemed admissions.

Also, as noted by the presiding officer when twice denying the respondents' request at hearing that the letter and report be produced, the respondents never requested leave to conduct discovery or requested a subpoena. The respondents chose instead to file and serve a request for production of documents which properly was stricken as outside applicable rules. *See Weinberg v. Commonwealth, Ins. Dept.*, 398 A.2d 1120 (Pa. Cmwlth. 1979). The respondents thereafter did not request leave to conduct discovery or request a subpoena and cannot now complain that they were denied access to the documents.

The investigator testified that his notes were destroyed following his interview with O'Dell. Even if such notes or a report existed and the respondents appropriately requested its production, the investigatory file may have been immune from disclosure. *See Pastore v. Insurance Department*, 558 A.2d 909 (Pa. Cmwlth. 1989).

Finally, the letter was not necessary to establish O'Dell's role in the Selective policy termination even absent the deemed admissions and investigator's testimony. O'Dell himself acknowledged that sending a renewal policy back to the company or agent signifies a desire to lapse the policy, and O'Dell returned the Selective policy to Walton's former agent.

In short, even though the deemed admissions and denied document production were proper, the respondents were not prejudiced in the slightest. They were afforded ample due process throughout the proceedings, and a full and fair opportunity to present a defense. The respondents' final contention, that the Department did not establish each element of each charge will be taken up in the context of the seven remaining counts.

COUNTS ONE AND FIVE—Unfair Insurance Practices Act (40 P.S. §§ 1171.5(a)(1)(vi) and 1171.5(a)(2)

An agent commits an unfair insurance practice by making a "statement containing any representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading." 40 P.S. § 1171.5(a)(2). An agent also commits an unfair practice by making a misrepresentation for the purpose of inducing or tending to induce the lapse or surrender of an insurance policy. 40 P.S. § 1171.5(a)(1)(vi). The Department asserts that the following actions by respondents represent unfair insurance practices:

- Canceling the Selective insurance while assuring Walton that the business would remain with equivalent coverage for a lesser premium in violation of section 5(a)(1)(vi);
- Five (5) spoken misrepresentations to Walton in violation of section 5(a)(2);

- Thirty (30) forgeries in violation of section 5(a)(2).

The respondents concede that O'Dell supplied Walton with an estimate for the replacement coverage, but argue that he did not make a misrepresentation nor intend to induce surrender of the Selective policy. The respondents assert that O'Dell "honestly and reasonably believed, when he provided the estimate to Walton, that he would be able to procure the insurance requested by Walton for the premium estimated." Brief of Respondents at 41. The respondents also assert that O'Dell never made a representation which was untrue, deceptive or misleading, but rather that O'Dell continually informed Walton that he was having difficulty placing the commercial coverage at the premium requested by Walton.

However, the respondents' version of events does not comport with the facts. O'Dell testified that at some point he told Walton of the difficulties in placing the coverage at the desired premium. [N.T. 172]. This testimony is incredible except insofar as Walton knew that O'Dell was having trouble obtaining the umbrella coverage, something which was not part of the Selective package. O'Dell admitted to the Department investigator that O'Dell told Walton that the business was covered. Walton credibly testified that O'Dell told him that the business was covered, and this was corroborated by Walton's actions. In business for over thirty years, and having carried commercial insurance during that time, it simply is inconceivable that Walton would allow his business to be completely bare of insurance coverage for months. If Walton had known the truth he would have taken the necessary steps to protect himself as he did after he found out the truth in October 2002.

To the extent that O'Dell testified, implied or argues that he only followed the directions of an informed client, these assertions are flatly rejected. This includes his

testimony and the respondents' argument that he had the authority to sign Walton's name on the vehicle insurance applications in October 2002. He had no such authority, express or implied. He did not have Walton sign and initial the forms because O'Dell and the agency were covering for months of misrepresentations to Walton that his business was covered. Only when confronted with PennDOT's notices did O'Dell partially accomplish in October what he promised Walton he would do in April and in the interim had assured Walton he in fact had accomplished.

Perhaps O'Dell honestly believed that he would be able to place the coverage at the estimated premium. Perhaps he did explore avenues to place the coverage but experienced difficulty in doing so. This does not negate the fact that he misrepresented what he could do and what he had done on numerous occasions beginning in April 2002. It does not negate the fact that he misrepresented an applicant's signature and initials as being genuine or authorized. It does not negate the facts that he induced Walton to surrender the Selective policy and took an active role in accomplishing this end.

These false representations make O'Dell liable under the UIPA. *In re Crimboli*, SC99-04-015 (1999); *In re Jennings*, SC99-10-001 (2001); *In re Dwyer*, SC03-07-048 (2004). O'Dell's choice to practice deceit for six months is particularly troubling, because it evidences a dishonesty that strikes at the very heart of his obligations to both insurers and his client. Both policyholders and insurers must be able to trust the insurance producer. O'Dell violated that trust throughout his dealings with Walton. His agency did so in connection with the vehicle insurance applications. The respondents are liable for the penalties contained in the UIPA.

COUNTS TWO AND SIX—Agent Worthiness (40 P.S. §§ 234, 279 and 31 Pa. Code §§ 37.46, 37.47)

In order to be worthy of licensure, agents are required to act with diligence and care toward the public they serve. The Insurance Department Act allows for denial, suspension or revocation of a license, as well as other sanctions, for unworthiness. *Jones v. Foster*, 611 A.2d 332 (Pa. Cmwlth. 1992); *Termini v. Department of Insurance*, 612 A.2d 1094 (Pa. Cmwlth 1992). In some cases, unworthiness is demonstrated by a disregard of insurance statutes. *Jones, supra* (violation of statutes proscribing solicitation for unlicensed insurance company). In other cases, unworthiness may be established by conduct showing a lack of honesty or other characteristic necessary to properly serve the insurance buying public. *Termini, supra* (dual exclusive employment activity showing a lack of honesty).

In all events, the overriding consideration is protection of the insurance consumer, industry and profession. "The Commissioner has the duty to protect the public from unworthy agents and also to maintain the appearance of worthiness among agents." *Romano v. Pennsylvania Insurance Commissioner*, 404 A.2d 758, 760 (Pa. Cmwlth. 1979).

In this case, O'Dell seemed to possess all the qualities of a good agent until 2002. Not surprisingly, the respondents focus their arguments on O'Dell's long tenure in the profession and good record during that time. The Department does not argue that O'Dell was anything but a worthy agent prior to 2002. The respondents also argue that O'Dell acted with general fitness, competence and reliability during 2002 relative to Walton. On that point, they are mistaken.

The misrepresentations alone demonstrate a lack of general fitness and reliability. Insurance consumers trust the producer not only for technical expertise, but to keep them informed, be honest with them and to do the things the producers say they are doing. O'Dell breached the trust Walton placed in him, in addition to violating specific statutes governing his conduct.

In addition to the misrepresentations, other aspects of the respondents' conduct are troubling. O'Dell's expressed motive for lying to Walton was to keep his business. When financial considerations are placed above the vital interests of the consumer, the producer has demonstrated a complete lack of reliability. Further, in September the respondents: 1) attempted to mislead PennDOT into not suspending the vehicle registrations; 2) secretly paid the restoration fee to PennDOT; 3) simultaneously forged Walton's name and initials to obtain inferior vehicle coverage quickly and secretly; and 4) continued to mislead Walton as to the true state of affairs. This represents a calculated scheme to cover up previous misfeasance, a more clear demonstration of unworthiness than technical incompetence would be.

All of the respondents' conduct relative to Walton evidences a lack of honesty and integrity necessary in the business of insurance. Pennsylvania law holds agents to a high degree of professionalism and they must exercise good judgment. *See Pennsylvania Insurance Department v. Ciervo*, 353 A.2d 900 (Pa. Cmwlth. 1976). As an agent with 40 years of experience, O'Dell knew or should have known of the need for honesty and integrity during his dealings with Walton and Selective. Instead he exercised deception and showed a lack of integrity. The deception and fraud exercised by the respondents in 2002 were unworthy of licensed insurance professionals.

COUNT THREE— Misrepresentation Inducing Loss of Coverage (40 P.S. §§ 278)

The respondents argue that the Department failed to establish that O'Dell made a misrepresentation which induced Walton to drop his coverage with Selective. It is true that Walton was shopping for replacement coverage. The respondents assert that Walton, not O'Dell, wished for the Selective coverage to terminate. However, this misses the point that he would not have done so absent O'Dell's misrepresentations. O'Dell misrepresented the cost and the availability of other commercial insurance. This, together with O'Dell's continued false assurances, induced Walton to allow O'Dell to surrender the Selective policy and not seek to have it reinstated. O'Dell is liable under this specific statutory provision.

COUNTS FOUR AND EIGHT—Misrepresentation of Policy Terms (40 P.S. § 277)

Pursuant to this section, the Department was obligated to establish that the respondents made a written or oral statement misrepresenting the terms of a policy issued or to be issued. The respondents argue simply that O'Dell did not make such a representation. However, O'Dell and the agency not only misrepresented the terms of a future or existing policy, but did so on numerous occasions.

O'Dell knew exactly the coverages sought by Walton, as he was supplied Selective's coverage booklet and reviewed it in detail. His premium estimate was based upon those coverages. At the initial meeting and for months afterward, O'Dell misrepresented the existence of coverage. In October he misrepresented the existence and later the extent of coverage, brazenly telling Walton first that PennDOT was mistaken as to the lack of coverage and later telling Walton that there was a mistake on the invoice showing lesser coverage on the vehicles than was in place previously.

Both respondents are liable under this section and subject to the penalties contained in 40 P.S. § 279. With the respondents liable under the seven remaining counts, it remains to determine the appropriate remedial action.

PENALTIES

The respondents are liable for sanctions under both the Insurance Department Act and the UIPA. Under the Insurance Department Act, the Commissioner has the authority to revoke an individual's license and to impose a fine of up to $5,000 for each violation. 40 P.S. § 279. Under the UIPA, the Commissioner may order that the individual cease and desist from the misconduct, and in addition may suspend or revoke the agent's license. 40 P.S. § 1171.9.

The Commissioner has the discretion under 40 P.S. § 279 to consider mitigating factors even if a *prima facie* case of unfitness has been established. The Commonwealth Court has held that 40 P.S. § 279 "expressly provides for the consideration of mitigating circumstances" even if a *prima facie* case of unfitness has been established. *In re Friedman*, 457 A.2d 983, 989 (Pa. Cmwlth. 1983); *See also Romano v. Pennsylvania Insurance Commissioner*, 404 A.2d 758, 759-60 (Pa. Cmwlth. 1979) ("[40 P.S. § 279] does permit the Commissioner discretion" to consider her responsibilities as well as the agent's circumstances.). The Commissioner similarly has discretion in imposing sanctions under the UIPA. *See Termini v. Department of Insurance*, 612 A.2d 1094 (Pa. Cmwlth. 1992); *Judson v. Insurance Department*, 665 A.2d 523 (Pa. Cmwlth. 1995).

The Department in its Order to Show Cause requested imposition of a cease and desist order and revocation of the respondents' certificates of qualification under each count. In addition, the Department requested a civil penalty for each of the Insurance Department Act counts in the amount of $5,000 for each violation.[9]

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[9] The Department also requested that a $50,000 civil penalty be imposed for each of the UIPA counts. However, under the UIPA a civil penalty may be imposed by the Commonwealth Court but not by the Insurance Commissioner. 40 P.S. §§ 1171.9, 1171.11.

The respondents' conduct was serious. O'Dell wished to obtain Walton's business through his agency, and attempted to achieve this goal by improper means. Although there is no evidence that any type of claim or loss arose during the six months Walton's business was bare, this does not excuse the risk of unreimbursed loss to Walton, his business and innocent third persons. Walton was lulled into a false sense of security that his business had coverage. The fact that no one experienced any actual harm does not mitigate the seriousness of the respondents' conduct.

However, some evidence in this case mitigates the seriousness of the respondents' conduct. The Walton dealings appear to be an aberration for O'Dell and his agency after many unblemished years in the profession. Although O'Dell's motive was to profit by Walton's business, he did not retain a premium inappropriately or otherwise mishandle client funds.

Aggravating circumstances also are present. The conduct directly involved the business of insurance. The conduct took place over a period of months which offered O'Dell many opportunities to come clean. The attempted cover-up of his misfeasance is particularly disturbing because it shows calculation as opposed to just neglect or some other lesser culpability. Even though there were no insurable losses while the business was uninsured, Walton's business was disrupted.

Perhaps the most curious aggravating circumstance is the respondents' complete lack of remorse or acceptance of responsibility. Although O'Dell admitted to the Department investigator his conduct, he indicated then that he did not believe he had done anything wrong. That lack of remorse continued through the hearing, as O'Dell blamed his victim rather than recognize his own misfeasance. Whether an individual accepts responsibility for actions is relevant to determining the harshness of the penalty

imposed. *See In re Gottfried*, SC98-06-009 (1999); *In re Moraski*, SC98-06-032 (2000); *In re Dwyer*, SC03-07-048 (2004).

Considering the nature of the respondents' conduct and all mitigating and aggravating circumstances, the Commissioner enters the order which follows.

BEFORE THE INSURANCE COMMISSIONEROF THE COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	**ALLEGED VIOLATIONS:**
Wilbert F. O'Dell	:	
1162 Shenkel Road	:	Sections 604, 622 and 639 of the
Pottstown, PA 19465	:	Insurance Department Act of 1921, Act of
	:	May 17, 1921, P.L. 789, No. 285, *as*
	:	*amended,* (40 P.S. §§ 234, 252, 278).
O'Dell and Company, Inc.	:	
2098 Pottstown Pike	:	Sections 4, 5(a)(1)(vi), and 5(a)(2) of the
Pottstown, PA 19465	:	Unfair Insurance Practices Act of July 22,
	:	1974, P.L. 589, No. 205 (40 P.S. § 1171.4,
	:	1171.5(a)(1)(vi) and 5(a)(2)).
	:	
Respondents	:	Docket No. **SC04-09-041**

ORDER

AND NOW, based upon the foregoing findings of fact, discussion and conclusions of law, it is **ORDERED** as follows:

1. The Pennsylvania Insurance Department's motion for partial summary judgment is denied as moot.

2. The respondents' motion to dismiss counts two, three, four, six, seven and eight as based upon repealed statutory sections is DENIED.

3. The respondents' motion to dismiss counts four through eight is GRANTED IN PART AND DENIED IN PART as set forth in the Discussion section of this adjudication.

4. Wilbert F. O'Dell and O'Dell and Company, Inc. shall **CEASE AND**

DESIST from the prohibited conduct described in the adjudication.

5. All of the insurance licenses or certificates of qualification of Wilbert F. O'Dell **ARE REVOKED** for a minimum period of five (5) years pursuant to 40 P.S. § 279 (repealed) for each of Counts two, three and four, with these revocations to run **concurrently** with each other. All of the insurance licenses or certificates of qualification of Wilbert F. O'Dell **ARE REVOKED** for a minimum period of five (5) years pursuant to 40 P.S. § 1171.9 for Count one with this minimum period to run **consecutively** to the other three minimum periods for a total minimum period of revocation of **ten years** beginning on the **thirtieth day after issuance of this order.** Additionally, Wilbert F. O'Dell is prohibited from applying for an insurance license or renewal license in this Commonwealth for a minimum of ten (10) years.

6. All of the insurance licenses or certificates of qualification of O'Dell and Company, Inc. **ARE REVOKED** for a minimum period of four (4) years pursuant to 40 P.S. § 279 (repealed) for each of Counts six and eight, with these revocations to run **concurrently** with each other. All of the insurance licenses or certificates of qualification of O'Dell and Company, Inc. **ARE REVOKED** for a minimum period of four (4) years pursuant to 40 P.S. § 1171.9 for Count five with this minimum period to run **consecutively** to the other three minimum periods for a total minimum period of revocation of **eight years** beginning on the **thirtieth day after issuance of this order.** Additionally, O'Dell and Company, Inc. is prohibited from applying for an insurance license or renewal license in this Commonwealth for a minimum of eight (8) years.

7. Wilbert F. O'Dell shall pay a civil penalty to the Commonwealth of Pennsylvania within **thirty (30) days** of this Order as follows:

a. Count two: $5,000.00

b. Count three: $5,000.00

c. Count four: $22,000.00

for a total of thirty-two thousand Dollars ($32,000.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Sharon Fraser, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. No certificate of qualification or other insurance license may be issued or renewed until the said civil penalty is paid in full.

8. Wilbert F. O'Dell & Co. Inc. shall pay a civil penalty to the Commonwealth of Pennsylvania within **thirty (30) days** of this Order as follows:

a. Count six: $5,000.00

b. Count eight: $11,000.00

for a total of sixteen thousand Dollars ($16,000.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Sharon Fraser, Administrative Assistant, Bureau of Enforcement, 1321 Strawberry Square, Harrisburg, Pennsylvania 17120. No certificate of qualification or other insurance license may be issued or renewed until the said civil penalty is paid in full.

9. This order is effective immediately.

M. Diane Koken
Insurance Commissioner