

McGinty

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INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
GREAT AMERICAN INSURANCE	:	Sections 5 and 18 of the Act of
COMPANY	:	December 21, 1998, P.L. 1108, No.
580 Walnut Street	:	150 (40 P.S. §§710-5 and 710-18)
Cincinnati, OH 45202	:	
	:	Sections 4, 5, 9 and 11 of the Unfair
	:	Insurance Practices Act, Act of
	:	July 22, 1974, P.L. 589, No. 205
	:	(40 P.S. §§1171.4, 1171.5, 1171.9
	:	and 1171.11)
	:	
Respondent.	:	Docket No. CO05-05-004

CONSENT ORDER

AND NOW, this *24th* day of *MAY*, 2005, this Order is hereby issued by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law. Respondent neither admits nor denies the Findings of Fact or Conclusions of Law contained herein.

FINDINGS OF FACT

3. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:
- (a) Respondent is Great American Insurance Company, and maintains its address at 580 Walnut Street, Cincinnati, Ohio 45202.
 - (b) At all times relevant hereto Respondent was a foreign insurer duly licensed to conduct business in Pennsylvania.
 - (c) In 2000, Respondent filed for use policy forms and rates with the Pennsylvania Insurance Department for a Dealers Contingent Liability and Physical Damage Policy.

- (d) The rating manual filed with the Department stated that coverage could not be extended to vehicle purchasers under 18 years of age. The rating manual, however, did include rates for persons under 18 years of age.

- (e) Pennsylvania law prohibits the underwriting of insurance on the basis of age.

- (f) The Explanatory Memorandum which accompanied Respondent's forms filed in 2000 represented that coverage under the policy was to be afforded to auto dealerships during the several days following the sale of a car, while the new title is formally being registered. The Explanatory Memorandum stated that the dealership is at risk when a customer knowingly or unknowing misleads the dealer as to having the required personal auto insurance in place at the time of vehicle delivery. The Explanatory Memorandum also stated that the dealership was the named insured on the policy, with the auto purchaser provided coverage on an excess basis as an additional insured.

- (g) In 2004, the Department became aware that auto dealerships were listing Respondent as the insurer providing mandated Motor Vehicle Financial Responsibility Law ("MVFRL") as necessary for registration and transfer of title to the vehicle purchasers under circumstances when auto dealerships knew or should

have known that purchasers, in fact, had no preexisting underlying personal passenger auto coverage.

- (h) Respondent asserts that its 2000 form and rate filings were not inaccurate, misleading or incomplete and that, after a vehicle sale and during the period of coverage under Respondent's commercial policy, dealers contacted consumers to obtain evidence that they subsequently purchased personal auto insurance.
- (i) The company was cooperative during the Department's investigation of this matter.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner concludes and finds the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Respondent's violation of Section 5 of the Act of December 21, 1998, P.L. 1108, No. 150 (40 P.S. §710-5) is punishable by, *inter alia*, the following, under Section 18 of

the Act of December 21, 1998, P.L. 1108, No. 150 (40 P.S. §710-18):

- i. Suspension or revocation of Respondent's license;
- ii. A fine of not more than five thousand dollars (\$5,000) for each violation;
- iii. Fines imposed shall not exceed five hundred thousand dollars (\$500,000) in the aggregate during a single calendar year.

(c) Respondent's violation of Sections 5(a)(7)(iii) of the Unfair Insurance Practices Act, No. 205 (40 P.S. § 1171.5(a)(7)(iii)) is punishable by the following, under Section 9 of the Unfair Insurance Practices Act (40 P.S. § 1171.9):

- i. Cease and desist from engaging in the prohibited activity;
- ii. Suspension or revocation of the license(s) of Respondent.

(d) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.4 and 1171.5), the Commissioner may, under Section 11 of the Unfair Insurance Practices Act (40 P.S. §1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:

- i. For each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00) for each violation but not to

exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) in any six month period;

- ii. For each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00), but not to exceed an aggregate penalty of ten thousand dollars (\$10,000.000) in any six month period.

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consents to the following:

(a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.

(b) Respondent shall pay One Hundred and Fifty Thousand Dollars (\$150,000.00) to the Commonwealth of Pennsylvania. Payment shall be made by check payable to the Commonwealth of Pennsylvania, and directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of the Consent Order.

6. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

7. Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

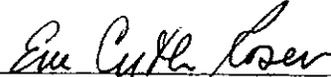
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

BY: GREAT AMERICAN INSURANCE
COMPANY, Respondent



Senior Vice President



Assistant Secretary

RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania