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PA INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
GREAT AMERICAN SECURITY INSURANCE COMPANY Great American Insurance Group 580 Walnut Street Cincinnati, OH 45202	:	Sections 2003 and 2013 of the Act of June 17, 1998, P.L. 464, No. 68 (40 P.S. §§991.2003, 991.2013) Sections 5, 9 and 11 of the Act of July 22, 1974, P.L. 589, No. 205 (Unfair Insurance Practices Act) (40 P.S. §§1171.5, 1171.9, 1171.11) Sections 1704(b) and 1711(b) of the Act of February 7, 1990, P.L. 11, No. 6 (75 Pa. C.S.A. §§1704(b), 1711(b))
Respondent.	:	Docket No. MC04-02-032

CONSENT ORDER

AND NOW, this 11th day of March, 2004, 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 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.

FINDINGS OF FACT

3. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

Parties and Background

(a) Respondent is Great American Security Insurance Company, and maintains its address at 580 Walnut Street, Cincinnati, Ohio 45202.

(b) Respondent holds a valid certificate of authority to act as a property/casualty insurer in the Commonwealth of Pennsylvania.

(c) Respondent is currently not engaged in the business of issuing new private passenger automobile insurance in the Commonwealth of Pennsylvania.

(d) On August 16, 2002, the Pennsylvania Insurance Department (the "Department") requested copies of Respondent's auto underwriting guidelines used in Pennsylvania, covering the period January 1, 2002 through June 30, 2002.

(e) Respondent responded to the Department's request, enclosing its Pennsylvania auto underwriting guidelines.

Underwriting Based on Specific Age Requirements

(f) Pennsylvania law prohibits the underwriting of automobile insurance on the basis of age. *See* 40 P.S. §991.2003(a)(1); 40 P.S. §1171.5(a)(7)(iii).

(g) Pennsylvania law permits a person to drive an automobile upon attaining the age of 16. *See* 75 Pa. C.S.A. §§1501 *et seq.*

(h) Respondent's underwriting guidelines require applicants to have attained a specified age in order to be eligible to obtain automobile insurance through Respondent.

(i) Pennsylvania law does not limit the age at which a person may drive an automobile.

(j) Respondent's underwriting guidelines prohibit applicants who have reached a specified age from being eligible to obtain automobile insurance through Respondent.

(k) Respondent's underwriting guidelines as set forth above impose an explicitly prohibited age requirement.

Underwriting Based On Occupation

(l) Pennsylvania law prohibits the underwriting of automobile insurance on the basis of occupation. *See* 40 P.S. §991.2003(a)(10); 40 P.S. §1171.5(a)(7)(iii).

(m) Respondent's underwriting guidelines exclude applicants with the following lawful occupation from being eligible to obtain automobile insurance

through Respondent: media personalities or broadcasters, professional athletes or entertainers, local, state and national public officeholders, labor leaders, private investigators, day care operators, and others with high recognition.

(n) Respondent's underwriting guidelines as set forth above impose an explicitly prohibited occupation requirement.

Underwriting Based On Accident History

(o) Pennsylvania law prohibits the underwriting of automobile insurance on the grounds of the incidence of certain enumerated types of accidents or comprehensive claims. *See* 40 P.S. §991.2003(a)(13), (14).

(p) Respondent's underwriting guidelines exclude applicants who have certain enumerated types of accidents (that is, accidents enumerated in §991.2003(a)(13)) on their records from being eligible to obtain automobile insurance through Respondent.

(q) Respondent's underwriting guidelines exclude applicants who have comprehensive claims on their records from being eligible to obtain automobile insurance through Respondent.

(r) Respondent's underwriting guidelines as set forth above impose an explicitly prohibited accident history requirement.

Failure to Offer Minimum Coverages

(s) Pennsylvania law requires insurers issuing or delivering policies of automobile insurance to make available for purchase a policy which contains only the minimum requirements of financial responsibility and medical benefits as provided for in the MVFRL ("Motor Vehicle Financial Responsibility Law"). *See* 75 Pa. C.S. §1711(b).

(t) Respondent's underwriting guidelines fail to offer the minimum coverages required by law to applicants seeking automobile insurance through Respondent.

CONCLUSIONS OF LAW

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

(a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

Underwriting Based on Age

(b) Section 2003(a)(1) of the Act of June 17, 1998, P.L. 464, No. 68 (40 P.S. §§991.2001 *et seq.*) ("Act 68") prohibits an insurer from refusing to write a policy of automobile insurance on the grounds of the applicant's age. 40 P.S. §991.2003(a)(1).

(c) Section 5(a)(7)(iii) of the Act of July 22, 1974, P.L. 589, No. 205 (40 P.S. §§1171.1 *et seq.*) ("Act 205" or "Unfair Insurance Practices Act" or "UIPA") prohibits an insurer from "making or permitting any unfair discrimination between individuals of the same class and essentially the same hazard with regard to underwriting standards and practices or eligibility requirements by reason of ... age ...." 40 P.S. §1171.5(a)(7)(iii).

(d) Respondent's violations of Section 2003(a)(1) of Act 68 are punishable under Section 2013 of Act 68 by the administrative imposition of a fine not to exceed five thousand dollars ($5,000.00). 40 P.S. §991.2013.

(e) Respondent's violations of Section 5(a)(7)(iii) of the UIPA are punishable under Section 9 of the UIPA by the administrative imposition of a cease and desist order.

(f) In addition to any penalties imposed by the Commissioner for Respondent's violation of the UIPA, under Section 11 of the UIPA, the Commissioner may file an action in Commonwealth Court seeking a court imposition of monetary penalties as follows:

1. for each method of competition, act or practice which Respondent 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;
2. for each method of competition, act or practice which Respondent 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) for each violation but not to exceed an aggregate penalty of ten thousand dollars ($10,000.00) in any six month period. 40 P.S. §1171.11.

Underwriting Based On Occupation

(g) Section 2003(a)(10) of the Act of June 17, 1998, P.L. 464, No. 68 (40 P.S. §§991.2001 *et seq.*) ("Act 68") prohibits an insurer from refusing to write a policy of automobile insurance on the grounds of the applicant's lawful occupation, including military service. 40 P.S. §991.2003(a)(10).

(h) Section 5(a)(7)(iii) of the Act of July 22, 1974, P.L. 589, No. 205 (40 P.S. §§1171.1 *et seq.*) ("Act 205" or "Unfair Insurance Practices Act" or "UIPA") prohibits an insurer from "making or permitting any unfair discrimination between individuals of the same class and essentially the same hazard with regard to underwriting standards and practices or eligibility requirements by reason of ... occupation ...." 40 P.S. §1171.5(a)(7)(iii).

(i) Respondent's violations of Section 2003(a)(10) of Act 68 are punishable under Section 2013 of Act 68 by the administrative imposition of a fine not to exceed five thousand dollars ($5,000.00). 40 P.S. §991.2013.

(j) Respondent's violations of Section 5(a)(7)(iii) of the UIPA are punishable under Section 9 of the UIPA by the administrative imposition of a cease and desist order.

(k) In addition to any penalties imposed by the Commissioner for Respondent's violation of the UIPA, under Section 11 of the UIPA, the Commissioner may file an action in Commonwealth Court seeking a court imposition of monetary penalties as follows:

1. for each method of competition, act or practice which Respondent 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;
2. for each method of competition, act or practice which Respondent 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) for each violation but not to exceed an aggregate penalty of ten thousand dollars ($10,000.00) in any six month period. 40 P.S. §1171.11.

Underwriting Based On Accident History

(l) Section 2003(a)(13), (14) of the Act of June 17, 1998, P.L. 464, No. 68 (40 P.S. §§991.2001 *et seq.*) ("Act 68") prohibits an insurer from refusing to write a policy of automobile insurance on the grounds of the incidence of certain enumerated types of accidents or comprehensive claims. 40 P.S. §991.2003(a)(13), (14).

(m) Respondent's violations of Sections 2003(a)(13) and (14) of Act 68 are punishable under Section 2013 of Act 68 by the administrative imposition

of a fine not to exceed five thousand dollars ($5,000.00) per violation. 40 P.S. §991.2013.

Failure to Offer Minimum Coverages

(n) Section 1711(b) of the Act of February 7, 1990, P.L. 11 No. 6 ("Act 6" or "Motor Vehicle Financial Responsibility Law" or "MVFRL") requires an insurer issuing or delivering policies of automobile insurance to make available for purchase a policy which contains only the minimum requirements of financial responsibility and medical benefits as provided for in the MVFRL. (75 Pa. C.S. §1711(b)).

(o) Section 1704(b) of the Act of February 7, 1990, P.L. 11 No. 6 ("Act 6" or "Motor Vehicle Financial Responsibility Law" or "MVFRL") mandates that the Insurance Department shall administer and enforce the insurance provisions of the MVFRL. (75 Pa. C.S. §1704(b)).

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) If Respondent resumes issuing new private passenger automobile insurance in the future, Respondent shall revise and reissue its

underwriting guidelines for use in Pennsylvania to ensure that the guidelines do not exclude applicants from being eligible to obtain insurance by reason of the prohibited conduct described above in the Findings of Fact and Conclusions of Law and are compliant with Pennsylvania law, including, but not limited to, the following:

- deleting all specified age requirements;
- deleting all requirements that applicants not be employed in certain lawful occupations;
- deleting all limitations to eligibility based on accidents as enumerated in 40 P.S. §991.2003(a)(13) or comprehensive claims (or by specifying that any limitations based on accident or claim history may not include the types of claims or accidents enumerated in 40 P.S. §991.2003(a)(13), (14));
- ensuring that the minimum coverages required by the MVFRL are available and offered to all applicants.

(c) Respondent shall pay a civil penalty of Thirty Five Thousand Dollars ($35,000.00) 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, 1311 Strawberry Square,

Harrisburg, PA 17120. Payment must be made no later than thirty (30) days from the date of this 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 may pursue any and all legal remedies available, including but not limited to the following: The Deputy Insurance Commissioner may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Deputy Insurance Commissioner may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, *supra*, or other relevant provision of law.

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 by the Insurance Department.

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 a duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner.

12. The signatory hereto on behalf of Respondent is duly authorized to execute this Consent Order and, by so doing, to bind Respondent to the terms hereof.

BY: GREAT AMERICAN SECURITY
INSURANCE COMPANY, Respondent

Eve Cutler Roser

Vice President

Assistant Secretary

RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The Administrative Code of 1929

AND NOW, this 29 day of April, 2002, Randolph L. Rohrbaugh, Deputy Insurance Commissioner, is hereby designated as the Commissioner's duly authorized representative for purposes of entering in and executing Consent Orders. This delegation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.

M. Diane Koken
Insurance Commissioner