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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:
	:	
LACKAWANNA CASUALTY	:	Sections 1401, 1404, 1406, 1407 and
COMPANY	:	1410 of the Insurance Holding
46 Public Square, Suite 701	:	Companies Law, as amended, 40 P.S.
Wilkes Barre, PA 18701	:	§§991.1401, 991.1404, 991.1406,
	:	991.1407 and 991.1410; and
	:	Chapter 25 of Title 31 of the
	:	Pennsylvania Code, 31 Pa. Code
	:	§§ 25.1 – 25.23
	:	
Respondent.	:	Docket No. CO06-03-040

CONSENT ORDER

AND NOW, this 30<sup>th</sup> day of May, 2006, 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 hearing pursuant to Section 1410 of the Insurance Holding Companies Law. 40 P.S. § 991.1410.

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 Section 1410 of the Insurance Holding Companies Law.

#### FINDINGS OF FACT

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

- (a) Respondent is Lackawanna Casualty Company and maintain its address at 46 Public Square, Suite 701, Wilkes-Barre, Pennsylvania 18701.
- (b) Respondent, at all relevant times herein, has been licensed as a Property and Casualty Insurer.
- (c) Respondent, at all relevant times herein, has been subject to the provision of the Insurance Holding Companies Law, 40 P.S. 991.1401 – 991.1413.
- (d) As an insurer authorized to do business in Pennsylvania, Respondent was required to file an Insurance Holding Company System Annual Registration Statement within 15 days after it became subject to registration and continues

to be required to file the registration statement annually thereafter, no later than the 31<sup>st</sup> day of march for each year thereafter, for the previous year, pursuant to 40 P.S. § 991.1404.

- (e) Regulations which implement the Insurance Holding Companies Law set out the form and the required content for each type of filing required to be submitted under the Insurance Holding Companies Law, pursuant to 31 Pa. Code, §§25.1 – 25.23. The form required to be filed by Section 1404 (40 P.S. § 991.1404) is known as Form B (31 Pa. Code § 25.23) and requires, inter alia, as an attachment, reviewed financial statements from individuals identified as those who own 10% or more of voting securities, also known as Ultimate Controlling Person(s) (Ultimate Controlling Persons are described in 40 P.S. § 991.1401 and in 31 Pa. Code, §§25.1 and 25.23).
- (f) Respondent submitted Form B registration statements for each of the following years: 1999, 2000, 2001, 2002, 2003 and 2004, but failed to file all the reviewed financial statements as required for all the Ultimate Controlling Persons.
- (g) In 2002, Respondent filed waivers for all Ultimate Controlling Persons, with the exception of Louis J. Pagnotti, Jr.

- (h) Respondent, despite unsuccessful attempts to obtain either reviewed financial statements for Louis J. Pagnotti, Jr. or obtain a waiver for that individual, submitted Form B registration statements for years 2003 and 2004, without the reviewed financial statement for Louis J. Pagnotti, Jr.
- (i) Respondent has submitted a waiver request for Louis J. Pagnotti, Jr.

#### CONCLUSIONS OF LAW

5. 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) Section 1404 of the Insurance Holding Company Act requires every insurer which is authorized to do business in this Commonwealth and is a member of an insurance holding company system to register with the Department annually, and by March 31<sup>st</sup> of each year, the registration statement on a form prescribed by the NAIC, containing all current capital, financial condition,

ownership and management, and other information regarding the insurer and any person controlling the insurer. 40 P.S. § 991.1404.

(c) Respondent's failure to make the required filings as described above violate 40 P.S. § 991.1404.

(d) Title 31, Pennsylvania Code, Chapter 25, states in part:

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of an ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles prescribed or permitted under law. If an ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer filed with the chief insurance regulatory official of the insurer's domiciliary jurisdiction and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that jurisdiction. Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles. 31 Pa. Code § 25.23, Form B.

- (e) Respondent's failures to file the reviewed financial statement of the ultimate controlling persons, as described above, violate Chapter 25 of Title 31 of the Pennsylvania Code.
  
- (f) Respondent's violations of 40 P.S. § 991.1404 are punishable by 40 Purdons Statutes, Section 991.1410, which provides that:

Any insurer failing without just cause to file any registration statement shall be required, after notice and hearing to pay a penalty not to exceed \$500 for each day's delay, not to exceed \$25,000.

ORDER

6. 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 a civil penalty of Ten Thousand Dollars (\$10,000.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square,

Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than thirty (30) days after the date of the Consent Order.

7. 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 any relevant provision of law; and/or regulation or, if applicable, the Department may enforce the provisions of this Order in any court of law or equity having jurisdiction.

8. 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 relevant provision of law and/or regulation.

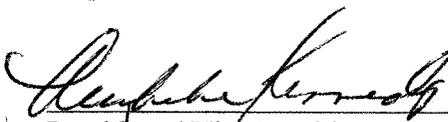
9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

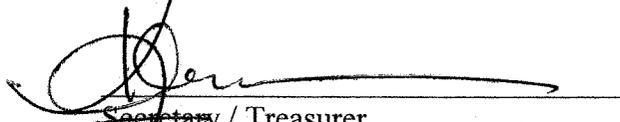
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

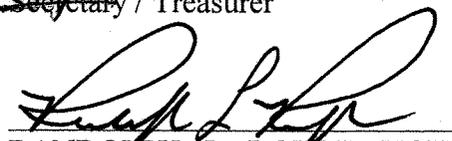
11. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

12. 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: LACKAWANNA CASUALTY COMPANY,  
Respondent

  
\_\_\_\_\_  
President / Vice President

  
\_\_\_\_\_  
Secretary / Treasurer

  
\_\_\_\_\_  
RANDOLPH L. ROHRBAUGH  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania