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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:
RESPONSE WORLDWIDE INSURANCE COMPANY 500 South Broad Street Meriden, CT 06450	:	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)
Respondent.	:	Docket No. MC04-02-027

CONSENT ORDER

AND NOW, this 10th day of June, 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.

3. Without admitting the allegations of fact and conclusions of law contained herein, Respondent specifically denies that it violated any law or regulation of the Commonwealth.

FINDINGS OF FACT

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

Parties and Background

(a) Respondent is Response Worldwide Insurance Company, and maintains its address at 500 South Broad Street, Meriden, Connecticut 06450.

(b) Respondent was formerly known as Worldwide Insurance Company.

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

(d) Respondent is engaged in the business of selling private passenger automobile insurance in the Commonwealth of Pennsylvania.

(e) 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.

(f) Respondent was acquired by Response Insurance Company, a Delaware insurance company, from Great American Insurance Company, an Ohio insurance company, effective April 25, 2003.

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

(h) Respondent represents that it has already ceased and desisted from such activities as ordered herein, and has already revised and re-issued its underwriting guidelines for use in Pennsylvania.

Underwriting Based on Age/Driving Experience Requirements

(i) 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).

(j) Pennsylvania law permits a person to drive an automobile immediately after obtaining a driver's license. *See* 75 Pa. C.S.A. §§1501 *et seq.*

(k) Under Pennsylvania law, requiring a minimum period of driving experience in order to be eligible to obtain automobile insurance constitutes a *per se* unlawful criterion based upon age. *See, e.g.,* Aetna v. Commonwealth, Insurance Department, 606 A.2d 553 (Pa. Cmwlth. 1992), *rev'd on other grounds*, 536 Pa. 105, 638 A.2d 194 (1994); Travelers v. Commonwealth, Insurance Department, 440 A.2d 645 (Pa. Cmwlth. 1981).

(l) Respondent's underwriting guidelines require applicants to have a specified number of years of driving experience in order to be eligible to obtain automobile insurance through Respondent.

(m) Respondent's underwriting guidelines as set forth above impose a *de facto* age requirement.

Underwriting Based On Accident History

(n) 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).

(o) 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.

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

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

CONCLUSIONS OF LAW

5. 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 Accident History

(g) 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).

(h) 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.

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 Five Thousand Dollars ($5,000.00) 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.

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 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.

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 the Administrative Agency Law, *supra*, or other relevant provision of law.

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 by the Insurance Department.

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 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.

13. 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: RESPONSE WORLDWIDE
INSURANCE COMPANY, Respondent

President / Vice President

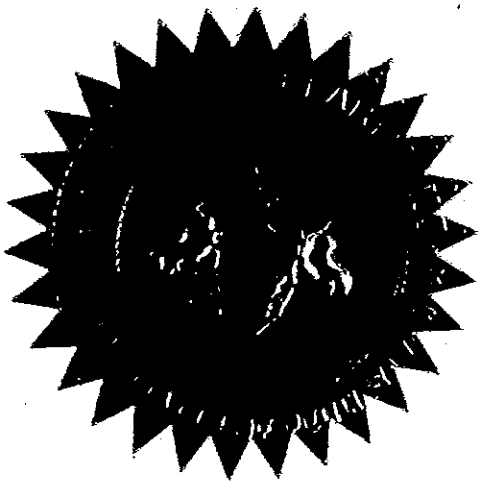
Secretary / Treasurer

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