

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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PA INSURANCE DEPARTMENT
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IN RE:

JAMES O'NEILL; PREMIER : The Public Adjuster Act, Act of
CLAIMS MANAGEMENT, INC. : December 20, 1983, P.L. 260, No.
329 So. Governor Printz Boulevard : 72, as amended (63 P.S. §§ 1601 -
Lester, Pennsylvania 19029 : 1608)
: :
: Docket No. CO04-07-012

CONSENT ORDER

AND NOW, this ^{5th} ~~September~~ ^{October} day of 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. Respondents hereby admit and acknowledge that they have received
proper notice of their rights to a formal administrative hearing pursuant to the
Administrative Agency Law, 2 Pa.C.S. §§ 101 et seq., or other applicable law.

2. Respondents hereby waive all rights to a formal administrative hearing in
this matter, and agree 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.

3. Respondents neither admit nor deny the information contained in the Findings of Fact in paragraph 6 of this Consent Order or the violations cited in the Conclusions of Law in paragraph 7 of this Consent Order.

4. The Insurance Commissioner hereby states the Department's jurisdiction to regulate and/or enforce the Public Adjuster's Act and Motor Vehicle Physical Damage Appraiser's Act is limited to policies of insurance issued in the State of Pennsylvania. The terms and conditions as provided for in this Order shall therefore only apply to or control conduct, contact and/or communications based on policies of insurance issued in the State of Pennsylvania.

5. Execution of this Order by all parties shall serve to address any alleged or potential violations of the Public Adjusters Law that have already occurred as of the date of the execution of this order or any alleged or potential violations of other statutes, rules or regulations governed by and within the enforcement jurisdiction of the Insurance Commissioner based upon the same or similar conduct as addressed in this Order that have already occurred as of the date of the execution of this order.

FINDINGS OF FACT

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

- (a) Respondents are Premier Claims Management, Inc., and James O'Neill, having a business address at 329 South Governor Printz Boulevard, Lester, Pennsylvania 19029.
- (b) Respondents O'Neill and Premier are not licensed by the Pennsylvania Insurance Department in any capacity.
- (c) On May 3, 2003, an individual operating a vehicle rented from Budget Car Rental ("Budget") was involved in an automobile accident.
- (d) That automobile accident caused damage to the Budget vehicle, which damage is subject to coverage by an insurance policy issued by Nationwide Insurance Company ("Nationwide") to the driver of the vehicle that collided with the Budget vehicle.
- (e) On May 12, 2003, Respondent O'Neill sent a letter to Nationwide advising that Respondents "represent[ed]" Budget in their claim against the Nationwide-insured driver for damages occurring to the Budget vehicle from the automobile accident.
- (f) As represented in May 15, 2003 correspondence between Premier XXI and Budget, Respondents

paid Budget a sum of money in exchange for an assignment of the right to recover damages from the automobile accident.

CONCLUSIONS OF LAW

7. 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) Respondents are subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) The Public Adjuster Law requires that any person acting as a public adjuster be licensed by the Pennsylvania Insurance Department. 63 P.S. § 1602(a)
- (c) The Public Adjuster Law defines "public adjuster" as any person "soliciting business or holding himself out to the public as an adjuster of claims for losses arising out of policies of insurance" and "receiving any compensation or reward for the giving of advice or assistance to the insured in the adjustment of claims for such losses or who for compensation or reward, whether by way of salary or commission or otherwise, directly or

indirectly, solicit business investigate or adjust losses or advise the insured with reference to claims for losses on behalf of any other person [...] engaged in the business of adjusting losses.” 63 P.S. § 1601.

(d) With regard to the claim against the negligent driver of the Nationwide vehicle described in the Findings of Fact, and for the period of time between first contacting Nationwide via correspondence dated May 12, 2003 and Respondent’s being assigned the right to recover the damages to that vehicle as a result of the Nationwide driver’s negligence, the Department alleges that Respondents acted as a public adjuster without first having obtained the requisite licensure.

(e) The Public Adjuster Law provides that “[n]o public adjuster shall, directly or indirectly, act within this Commonwealth as a public adjuster without having first entered into a contract, in writing, on a form approved by the Insurance Commissioner and executed in duplicate by the public adjuster and the insured or a duly authorized representative.” 63 P.S. § 1605(a).

(f) During the time the Department alleges that Respondents acted as a “public adjuster,” as defined in 63 P.S. § 1601, Respondent’s did not enter into a written contract with Budget.

(g) The Public Adjuster Law

provides that no public adjuster may "act in any manner in relation to claims for personal injury or automobile property damage." 63 P.S. § 1605(c).

- (h) The Department alleges that Respondents violated this provision by acting with regard to a claim for automobile damages prior to the time Budget assigned their rights to Respondents.

ORDER

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

- (a) Respondents shall cease and desist from the activities described in this Consent Order. Specifically, Respondents shall refrain from negotiating on behalf of any entity for any automobile insurance claims unless and until Respondents have taken ownership of the vehicle that is subject to the claim and/or Respondents have been specifically assigned the right to recovery for damages and loss to said vehicle, recoverable damages as provided for in the underlying contract, and/or damages and loss resulting from the accident. In addition, Respondents shall not represent to any insurance company or other entity that they represent any other individuals for the purpose of any automobile insurance claims, and shall make clear in any relevant

correspondence with any insurance company or other entity that they have taken ownership of the vehicle that is subject to the claim, and/or that they have been specifically assigned the right to recover for damages and loss to said vehicle, recoverable damages as provided for in the underlying contract, and/or damages and loss resulting from the accident.

- (b) Respondents shall pay \$1,000.00. Payment shall be made no later than 30 calendar days from the date of final execution of this Consent Order in the form of a certified check or money order made payable to the Commonwealth of Pennsylvania. Payment shall be directed to Sharon Harbert, Bureau of Enforcement, Pennsylvania Insurance Department, Strawberry Square, Harrisburg, Pennsylvania 17120.
- (c) With regard to any potential licenses issued to Respondents by the Department, Respondents agree that such licenses may be immediately suspended by the Department following its investigation and determination that: (i) any terms of this Consent Order have not been complied with, and/or (ii) any complaint within the jurisdiction of the Insurance Commissioner against Respondent is found to be accurate and a statute or regulation has been violated. The Department's right to act under this paragraph is limited to a period of three years from the date of initial licensure.

(d) Respondents specifically waive their right to prior notice of said suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondents by certified mail, return receipt requested, notification of said suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of Respondents' written request.

(e) At the hearing referred to in paragraph 5(d) of this Order, Respondents shall have the burden of demonstrating that they are worthy of an insurance license.

(f) In the event Respondents' licenses are suspended pursuant to paragraph 5(c), and Respondents either fail to request a hearing within thirty (30) days or at the hearing fail to demonstrate that they are worthy of a license, Respondent's suspended licenses shall be revoked.

9. 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, he may, in his discretion, pursue any and all legal remedies available to him, 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.

10. 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 provisions of law.

11. In any such enforcement proceeding, Respondents 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.

12. Respondents hereby expressly waive any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

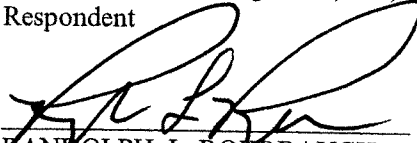
13. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all parties hereto.

14. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or her 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 her duly authorized Deputy Insurance Commissioner. The penalties, if any, imposed by this Order are not effective until execution by the Insurance Commissioner or her duly authorized Deputy Insurance Commissioner.

BY:



JAMES O'NEILL, President
Premier Claims Management, Inc.,
Respondent



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania