



ORS 744.013(2)(g) (1999) prohibits a person licensed in Oregon as an insurance agent from, *inter alia*, engaging in conduct which demonstrates that the person is incompetent or untrustworthy to act as an agent, or in conduct which demonstrates that the person is a source of injury or loss to the public or others. On 3/13/99, Cathy K. Steere (Steere) of Grande Ronde, Oregon purchased from Cycle Sports a 1999 Kawasaki motorcycle. Steere also purchased from Cycle Sports a credit life and disability policy, number V188496, issued by American National Insurance Company (ANIC). The premium for the policy was \$637.88. Steere borrowed from "GreenTree Fin Serv Corp" aka "Conseco" (Conseco) enough to pay for the cost for both the motor cycle and the policy. On or about 8/20/99, Steere repaid the entire loan. As a result, Steere was entitled to a refund of the unearned premium of \$551.34. Cycle Sports was authorized by ANIC to issue a refund check to the insured immediately either (1) upon receipt of the necessary proof that the loan was repaid, or (2) after Cycle Sports (a) obtain from the insured the necessary documentation, (b) forwarded it to ANIC and (c) subsequently received from ANIC a monthly statement specifying the amount of the refund as a credit to Cycle Sports' premium and commission account with ANIC. If Cycle Sports chose to not refund the unearned premium immediately to the insured, it was then required to obtain from the insured the necessary documentation and forward it to ANIC. Regardless of which procedure Cycle Sports used to initiate the cancellation and refund process, Cycle Sports was responsible for issuing the refund check. Cycle Sports' normal procedure was to immediately refund the unearned premium to the insured. On several occasions from September to December 1999, Steere called Cycle Sports to find out how to cancel the policy and obtain a refund of the unearned premium. Cycle Sports told Steere that she would need to contact ANIC to cancel the policy and obtain a refund. This was not true. On 1/21/01, not having received any assistance by Cycle Sports, Steere mailed a letter to ANIC requesting the policy be cancelled effective 8/20/99 and requesting a refund. On or about 2/13/01, ANIC mailed a letter to Cycle Sports informing them that ANIC had received the cancellation documentation that was attached and authorizing Cycle Sports to issue

a refund check. On several occasions from February to May 2001, Steere called Cycle Sports about the status of the refund. Cycle Sports told Steere that she would need to contact ANIC about the refund. Again this was not true. On 5/24/01, Kathy Colfax at Cycle Sports faxed to Steere a form to cancel the policy and request a refund. On the same date, Steere completed the form and faxed it back to Kathy Colfax. Although the loan had been repaid, Steere mistakenly completed the form in such a way as to indicate that the loan was not repaid. In late May or early June 2001, Cycle Sports mailed to ANIC the "cancellation copy" of the policy. On 6/13/01, Cycle Sports issued a check, number 1543, made payable to Conseco in the amount of \$245.80. However, the amount of the refund should have been \$551.34 rather than \$245.80. Cycle Sports erroneously calculated the amount of the refund as if the policy had been cancelled on 5/30/01 when the policy should have been cancelled on or about 8/20/99. Cycle Sports mailed the check to Conseco. Cycle Sports made the check payable, and mailed the check, to Conseco because Steere mistakenly completed the cancellation form in such a way as to indicate that the loan had not been repaid. However, Conseco was not entitled to the proceeds of the check because the loan had been repaid. Conseco received the check, endorsed it, and mailed it to Steere. On 7/17/01, Steere received the check. Subsequently, Steere called Conseco to question the amount. Conseco called ANIC and was told that Steele was owed more than \$245.80. Conseco called Steere and told her that she was owed more. In late December 2001, Steere attempted to cash the check but the bank would not honor it because it was issued more than six months before. In early January 2002, Steere called Cycle Sports and left a message for someone to call Steere about the amount of the refund and the stale check. Cycle Sports did not call Steere. On 4/22/02, the Insurance Division received from Steere a complaint. On 4/25/02, the Insurance Division mailed a letter to ANIC about Steere's complaint. On 5/14/02, the Insurance Division received from ANIC a letter dated 5/8/02 saying, *inter alia*, that Cycle Sports would issue a check to Steere refunding the correct amount of the unearned premium. Between 5/8/02 and 7/16/02, Cycle Sports did not issue any check to Steere. On 7/16/02, the Insurance Division

requested ANIC issue a check to Steere refunding the correct amount of the unearned premium. On 7/17/02, ANIC issued a check, number W-00963375-14, made payable to Steere, in the amount of \$551.34.

Failed to Timely Respond to Director

Cycle Sports violated ORS 731.296 in one instance by engaging in the following conduct. ORS 731.296 requires a person licensed in Oregon as an insurance agent to promptly and truthfully respond to an inquiry from the director. As indicated above, on 4/22/02, the Insurance Division received from Steere a complaint that Cycle Sports had not refunded to her the unearned premium described above. After the Insurance Division helped Steere receive the refund from ANIC, the Insurance Division began investigating Cycle Sports. On 1/28/03, the Insurance Division mailed by certified mail a letter to Cycle Sports at its last recorded business address of 5103 Portland Road NE, Salem, OR, 97303-3445. The letter requested Cycle Sports provide certain information about Steere's complaint to the Insurance Division by 2/11/03. On 1/29/03, Pauline Sill (Sill), Cycle Sports' operations manager, signed for letter. On 2/25/03, when the Insurance Division did not receive any response to its initial letter, the Insurance Division mailed by certified mail a follow up letter to Cycle Sports. On 2/26/03, Jen DeGroot, a secretary for Cycle Sports, signed for the letter. Both of the Insurance Division's letters indicated that one of its voice telephone numbers was 503-947-7984 and its only fax number was 503-378-4351. On 2/26/03 at 5:00 PM, Cycle Sports attempted to fax to the Insurance Division a letter dated 2/26/03 responding to the Insurance Division's letter dated 1/28/03. However, Cycle Sports actually faxed the letter to the Insurance Division's voice telephone number of 503-947-7984, rather than to its only fax number of 503-378-4351. Consequently, the Insurance Division did not then receive Cycle Sports' letter dated 1/26/03. If the Insurance Division had then received Cycle Sports' letter, then the Insurance Division would have received the letter 12 days late. On 3/19/03, when the Insurance Division did not receive any response to its initial and follow up letters, the Insurance Division called Cycle Sports and left a message with Kathy Colfax to have Sill contact the Insurance

Division. The Insurance Division did not receive any response to its telephone call. On 11/19/03, the Insurance Division called Cycle Sports and informed it that the Insurance Division was considering taking enforcement action against Cycle Sports. On 11/20/04, Sill called the Insurance Division and said she would mail to the Insurance Division copies of documents regarding the Steere transaction. On 11/25/03, the Insurance Division received the documents, including a copy of Cycle Sport's letter dated 1/26/03. On 3/26/04, the Insurance Division faxed to Cycle Sports a letter dated 3/26/04 requesting certain information by 4/9/04. On 4/19/04, when the Insurance Division did not receive any response to its letter, the Insurance Division faxed to Cycle Sports a letter dated 4/19/04 informing Cycle Sports that the Insurance Division had not received any response to its letter dated 3/26/04, but continued to request a response. On 4/23/04 at 7:56 AM, Kathy Colfax faxed to the Insurance Division a letter dated 4/22/04 responding to the Insurance Division's letter dated 3/26/04.

### **Action**

Pursuant to ORS 731.988, Cycle Sports is assessed a civil penalty of \$6,000. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall be delivered to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE, Room 440 (4<sup>th</sup> Floor), Salem, Oregon; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. The payment is due on, and shall be received by the Insurance Division by, the date of the final order.

Dated June 17, 2004

/s/ David E. Colfax  
[Signature of Representative]

David E. Colfax  
[Printed Name of Representative]

President/Secretary  
[Printed Title of Representative]

Cycle Sports of Salem, Inc.

**FINAL ORDER**

The director incorporates herein the above stipulation, adopts it as the director's final decision in this proceeding, and orders that the action stated therein be taken.

Dated June 28, 2004

/s/ Joel Ario  
Joel Ario  
Administrator  
Insurance Division  
Department of Consumer and Business Services

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