



Brill, Alexander Rogers, Karen Cragg, Robert Maddy, Donna Pickering, Wally Hancock, Rita Claussen and Brian Shea. The Insurance Division called on the second day of the hearing Georgiann Lawson and Dale White as its witnesses. The Insurance Division offered Exhibits A1 to A133 as its documentary evidence all of which were admitted into the record. The parties appeared and were represented at the hearing by Donald Roach, an attorney. The parties called William Black as its witness. The parties offered Exhibits L1 to L114 as its documentary evidence. All of the parties' exhibits were admitted into the record.<sup>1</sup>

On 6/11/08, OAH issued a proposed order. The proposed order found that the parties committed all of the violations alleged except one, and recommended that the director take the action proposed in the notice of proposed action.<sup>2</sup> The proposed order informed the party that they could file with the director written exceptions to the proposed order within 30 days after the proposed order was sent to the party.

On 7/11/08, the director timely received from the parties written exceptions to the proposed order.

The parties took exception to the proposed order's conclusion that Rethwill misappropriated all of the \$33,714.07 premium from Wally B. Hancock (Hancock) relative to two commercial insurance policies, and from Jonathan G. Brill (Brill) relative to three commercial insurance policies. The parties argued that Rethwill procured alternative insurance from other insurers or agents and used \$20,415.95 of the \$33,714.07 to pay for such insurance. On pages 9 to 11, the proposed order clearly and correctly explained why the parties' evidence purportedly supporting the parties' arguments is not reliable. However, even if the evidence is reliable, other testimony and evidence indicates by a preponderance that Rethwill did not procure

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<sup>1</sup> OAH also admitted an Exhibit L115, and Exhibits P1 to P12.

<sup>2</sup> The director alleged that Rethwill violated ORS 731.296 by failing to timely respond to a request by the director for information relative a complaint by Susan Witt about Rethwill. See notice of proposed action dated 11/21/07, page 12, paragraph number 8. The proposed order concluded that the director did not prove this allegation because the director "did not present any evidence concerning" the allegation. The director intended to present evidence of this allegation, but due to the number of allegations, neglected to do so. However, this single omission does not prevent the director from taking the proposed action.

the alternative insurance with the knowledge and consent of Hancock and Brill and therefore was not authorized to use the money to procure the alternative insurance, and did not refund the money to Hancock and Brill and therefore was not authorized to retain the money. Even if Rethwill was authorized to use or retain the money as she did, the money was only \$20,415.95 of the \$33,714.07.

The parties also took exception to the proposed order's conclusion that the director may assess Rethwill a civil penalty of \$33,714.07 pursuant to ORS 731.988(2). The parties argued that the director may not assess Rethwill any of the \$33,714.07 because the proposed order did not explain how Rethwill profited by misappropriating any money, or, in the alternative, the amount should be reduced by \$20,415.95 to \$13,298.09. On page 17, the proposed order adequately explained that Rethwill profited \$33,714.07 by receiving this amount from Hancock and Brill for the purchase of particular insurance, but failed to forward the money to the authorized insurer or agent or return to Hancock and Brill.

Notwithstanding the parties' arguments, Rethwill misappropriated money from Hancock and Brill and therefore is subject to enforcement action including revocation pursuant to ORS 744.074(1)(d) and assessment of a civil penalty pursuant to ORS 731.988(1) and (2).

The director now makes the following final decision in this proceeding.

#### **Findings of Fact, Conclusions of Law and Opinion**

The director adopts, and incorporates herein by this reference, the findings of fact, conclusions of law, and reasoning of proposed order as the findings of fact, conclusions of law, and reasoning of this final order except as modified or clarified as follows.

On page 14, in the second full paragraph beginning with "Based on a preponderance...", the words "from licensee" is added after the word "refund" to clarify that Rethwill did not refund to Brill any of the \$16,019.04 that Brill paid to Rethwill for insurance.

On page 15, in the sixth full paragraph beginning with “When a producer...”, the word “she” is added after the words “he or” to complete an apparent inadvertent omission.

On page 17, in the fifth full paragraph beginning with “As to the amount [of the penalty under ORS 731.988(2)]...”, the proposed order correctly found that the amount of \$33,714.07 is based on the \$16,019.04 that Rethwill misappropriated from Brill, and the \$17,695.03 that Rethwill misappropriated from Hancock.

On page 18, the proposed order concluded that “revocation in this case – is reasonable under the circumstances” that “Licensee repeatedly took money” and “repeatedly refused to respond to the Division’s request[s] for information” and “Licensee[ committed] multiple violations of at least these three portions of the Insurance Code.” Although the director agrees that Rethwill’s license should be revoked, the director does not believe that such action is warranted only because Rethwill violated multiple laws in multiple instances. The director has in past cases revoked a person’s license for violating a single law in one instance, depending on the law, facts, and other relevant circumstances in the particular case. Accordingly, the director considers revocation of Rethwill’s license appropriate for each violation committed by Rethwill as set forth above.

### **Order**

Rethwill’s Oregon resident individual insurance producer license is revoked on the date of this order pursuant to ORS 744.074(1).

Rethwill is also assessed civil penalties of \$10,000 pursuant to ORS 731.988(1), and \$33,714.07 pursuant to ORS 731.988(2), for total civil penalties of \$43,714.07. 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. Pursuant to ORS 183.745(2), the payment is due on, and shall be received by the Insurance Division by, the 71<sup>st</sup> calendar day after the date of this order, unless the party timely appeals the order.

TPH's Oregon resident business entity insurance producer license is revoked on the date of this order pursuant to ORS 744.074(1).

**Notice of Right to Judicial Review**

A party has the right to judicial review of this order pursuant to ORS 183.480 and ORS 183.482. A party may request judicial review by sending a petition for judicial review to the Oregon Court of Appeals. The court must receive the petition within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the date the party received the order. If the order was mailed to a party, then the date of service is the date the order was mailed to the party, not the date the party received the order. If a party files a petition, the party is requested to also send a copy of the petition to the Insurance Division.

Dated September 18, 2008      /s/ Scott J. Kipper  
Scott J. Kipper  
Administrator  
Insurance Division  
Department of Consumer and Business Services

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**STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION**

In the Matter of **Darlene J. Rethwill** and  
**Trautman Perrin & Hale Insurance, Inc.**

) **CERTIFICATE OF**  
) **SERVICE**  
) Case No. INS 07-11-007

I certify that I sent the final order to the following person(s) on the date and by the means indicated below:

Darlene J. Rethwill  
3377 NW 177<sup>th</sup> Court  
Portland, OR 97229-3379

✓ US Certified Mail Article No. 7005 1160 0000 1326 2114 ✓ US First Class Mail
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Darlene J. Rethwill  
President  
Trautman Perrin & Hale Insurance Inc.  
5319 SW Westgate Drive Suite 250  
Portland, OR 97221-2431

✓ US Certified Mail Article No. 7005 1160 0000 1326 2121 ✓ US First Class Mail
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Donald P. Roach  
Attorney  
3718 SW Condor Suite 110  
Portland, OR 97239-4142

✓ US First Class Mail
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Dated September 18, 2008

/s/ Mitchel D. Curzon  
Mitchel D. Curzon  
Chief Enforcement Officer

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