OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY
COMMISSIONER

IN THE MATTER OF: CASE NO.: 124288-12

GUARANTEE TRUST LIFE INSURANCE COMPANY,
/

FINAL ORDER

THIS CAUSE came on before the undersigned for consideration and final agency action.

On January 12, 2011, the Florida Office of Insurance Regulation (hereinafter "Office") filed an Administrative Complaint against Guarantee Trust Life Insurance Company (hereinafter "GTL") alleging violations of various provisions of the Florida Insurance Code, directing GTL to cease and desist, and ordering GTL to show cause as to why its certificate of authority should not be suspended or revoked and why penalties should not be imposed.

GTL requested a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes, and the matter was referred to the Division of Administrative Hearings on March 3, 2011. The Office filed an Unopposed Motion to Amend Notice and Order to Show Cause on September 1, 2011, which was granted. On November 15, 2011, GTL filed a Petition to Challenge Unadopted Rule against the Financial Services Commission and the Office of Insurance Regulation alleging that the Amended Notice and Order to Show Cause contained a policy statement of general applicability. GTL's Motion to Consolidate was granted on December 7, 2011. The matter was heard before the Honorable F. Scott Boyd, Administrative Law Judge (hereinafter "ALJ"), on December 12, 2011, in Tallahassee, Florida.

After consideration of the evidence, argument, and testimony presented at the hearing, the ALJ issued his Recommended Order on March 16, 2012. (Attached hereto as Exhibit "A"). The ALJ recommended that the Office enter a Final Order finding that GTL committed 216 knowing and willful violations of Section 626.9521(1), Florida Statutes, for engaging in an unfair method of competition and unfair or deceptive act or practice as defined in Section 626.9541(1)(b), Florida Statutes, and impose a fine of one thousand U.S. Dollars ($1,000) for each such violation, for a total fine not to exceed an aggregate amount of two hundred thousand U.S. Dollars ($200,000).

Both GTL and the Office filed exceptions to the Recommended Order. GTL filed a response to the Office's exceptions. Based upon a complete review of the record, the Recommended Order and all exceptions and responses thereto, and the relevant statutes, rules, and case law, the Office finds as follows:

RULINGS ON EXCEPTIONS TO FINDINGS OF FACT

Section 120.57(1)(l), Florida Statutes, sets forth the standard an agency must use when reviewing the Recommended Order of the ALJ. As it relates to exceptions to findings of fact, it provides in pertinent part:

> The agency may adopt the recommended order as the final order of the agency. ... The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

The ALJ is allowed latitude to make factual findings and draw reasonable inferences that flow therefrom. The law is well established that an agency is bound to honor a hearing officer's [now ALJ's] findings of fact unless they are not supported by competent, substantial evidence. McDonald v. Dep't of Banking & Fin., 346 So. 2d 569, 578 (Fla. 1st DCA 1977). It is the

hearing officer's function to consider all the evidence, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence; the agency is not authorized to perform these functions or otherwise interpret the evidence to fit its desired ultimate conclusion. Heifetz v. Dep't of Bus. Reg., 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Accord Wash & Dry Vending Co. v. Dep't of Bus. Reg., 429 So. 2d 790, 792 (Fla. 3d DCA 1983) (agency may not substitute its judgment for that of the hearing officer by taking a different view of or placing greater weight on the same evidence).

RULINGS ON GTL'S EXCEPTIONS TO FINDINGS OF FACT

1. GTL excepts to the third sentence of Finding of Fact #18, which states that "GTL did not intend to offer a conversion policy to Members whose coverage under the policy was being terminated," as not being supported by competent substantial evidence. Evidence shows that at the time the Termination Letter was disseminated, GTL did not intend to offer a conversion policy to Members whose coverage under the policy was being terminated. (Joint Exhibits 3-5; Tr. 28-29, 44-49, 51, 66-69, 105-107). Furthermore, as discussed above, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

2. GTL excepts to the fourth sentence of Finding of Fact #18, which states that "GTL knew that it did not have coverage with Celtic to provide converted policies." GTL maintains that the term "coverage" is inappropriate as Celtic is not a reinsurer with respect to the conversion obligation. While the word "coverage" may not be the most precise word to convey the proposal by Celtic to make its Conversion Program available to GTL and its Florida insureds,

factually the Finding is supported by competent substantial evidence. GTL also maintains that it had ultimately secured an agreement with Celtic to provide conversion policies to Members who requested it. Evidence shows that GTL and Celtic had discussed entering into a subsequent arrangement with Celtic to provide conversion to GTL's Members; however, no evidence shows that GTL ultimately secured an agreement with Celtic. (Joint Exhibit 8; Tr. 116-117). Furthermore, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

3. GTL excepts to the last sentence of Finding of Fact #18, which states that GTL knew the Termination Letter was misleading, as lacking any competent substantial evidence in the record. Though perhaps not directly supported by evidence adduced at the hearing, this assertion is a reasonable factual deduction from the evidence that was submitted. Furthermore, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

4. GTL excepts to the first sentence of Finding of Fact #33, which states that GTL reached an "understanding" with Celtic that Celtic would provide conversion coverage. GTL argues that this agreement was not an "understanding" rather an offer from Celtic that was accepted by GTL. Evidence shows that Celtic and GTL discussed via e-mail that Celtic was interested in making its Conversion Program available to GTL and its Florida insureds in April and May of 2011. (Joint Exhibit 8). However, the email was intended only as a brief outline of a proposed agreement. (Joint Exhibit 8, p. 5). Evidence does not show that this proposed agreement was accepted by GTL or that a contract was ever entered into between GTL and

Celtic at this time. Though the word "understanding" may not be the most precise word to convey the proposed agreement between GTL and Celtic, factually the Finding is supported by competent substantial evidence. Accordingly, this exception is rejected.

5. GTL excepts to Finding of Fact #35 which states:

> GTL chose not to send any notice to terminated Members in an effort to eliminate or minimize the possibility that Members might request conversion policies, and so avoid the costs of contracting with Celtic to provide the conversion coverage. GTL was hoping that the Members were unaware of their conversion rights, and would not become aware of them.

GTL maintains that no testimony or evidence was presented to support this finding of fact and that these findings of fact are based upon pure conjecture. Though perhaps not directly supported by evidence adduced at the hearing, this assertion is a reasonable factual deduction from the evidence that was submitted. Furthermore, as discussed above, the ALJ is allowed latitude to make factual findings and draw reasonable inferences that flow therefrom. Accordingly, this exception is rejected.

6. GTL excepts to Finding of Fact #36, which states that at no time from the inception of the Policy through the time the Termination Letters were sent, did GTL have in effect any written contract with Celtic or any other insurer to issue converted policies to Members upon GTL's termination of the Policy group coverage. GTL maintains that an offer was made by Celtic to provide conversion policies and that this offer was accepted by GTL, thus forming a contract under Florida Law. For the same reasons as articulated above in Paragraphs 1, 2 and 4, this exception is rejected.

7. GTL excepts to a portion of Finding of Fact #39, which states that GTL could not reasonably have interpreted the phrase "without offering converted policies" in Counts I and II in a way that would have hindered its ability to prepare a defense to Counts I and II. GTL maintains

that this portion of the Finding of Fact lacks any competent substantial evidence in the record. Given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

8. GTL excepts to the portion of Finding of Fact #42, which states in pertinent part:

> Although technically true, the statement was nevertheless likely to mislead a reasonable Member, because it made no mention that GTL was legally required to arrange for another provider to offer the conversion policy on GTL's behalf. The statement that GTL would no longer be offering major medical type coverage, omitting any further information, would leave the incorrect impression with a reasonable Member that the right to a conversion policy upon termination, as set forth in the certificate of health insurance, no longer existed. GTL knew that this statement was misleading as to a reasonable Member.

GTL maintains that there is no evidence that the true statement that GTL would no longer be offering major medical coverage in Florida was deceiving or that it deceived anyone. Though perhaps not directly supported by evidence adduced at the hearing, this assertion is a reasonable factual deduction from the evidence that was submitted. Furthermore, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

9. GTL excepts to Finding of Fact #43, which states in pertinent part:

> Again, while not technically false, this statement was likely to mislead a reasonable Member, for none of these individuals was in fact eligible for a guaranteed-issue policy. GTL could easily have distinguished between Members and its individual policyholders in the letter, or better yet, sent two different letters, but it failed to do so. GTL instead chose to say only that readers "may be eligible" for a guaranteed issue policy and to include the reference to the Department's website list of other companies, without any mention of the converted policy available to a majority of recipients of the letter. This omission was likely to leave a reasonable Member eligible for a conversion policy with the incorrect impression that this right no longer existed. GTL knew that this statement was misleading.

GTL maintains that there is no evidence that this true statement contained in the termination notice was deceiving or that it deceived anyone. Though perhaps not directly supported by evidence adduced at the hearing, this assertion is a reasonable factual deduction from the evidence that was submitted. Furthermore, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

10. GTL excepts to Finding of Fact #44, which states that GTL posed the question "WILL GTL BE OFFERING A REPLACEMENT PLAN?" in a fashion that was misleading. GTL maintains that there is no evidence that this true statement contained in the termination notice was deceiving or that it deceived anyone. Though perhaps not directly supported by evidence adduced at the hearing, this assertion is a reasonable factual deduction from the evidence that was submitted. Furthermore, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

11. GTL excepts to Finding of Fact #50, which states that "[t]he Office proved by clear and convincing evidence that the statements in the Terminations Letter were made for the purpose of inducing, and tended to induce, the forfeiture of the conversion policy to which the Members were entitled under the policy." GTL maintains that there is no evidence that the true statements contained in the termination notice were deceiving or that it deceived anyone. For the reasons articulated above in paragraphs 8, 9 and 10, this exception is rejected.

12. GTL excepts to Finding of Fact #51, which states that "[t]he Office proved by clear and convincing evidence that the Termination Letter contained an assertion, representation and statement with respect to the business of insurance that was willfully deceptive and misleading. GTL knew, or should have known that this was an unfair or deceptive act or practice under the Florida Insurance Code." GTL maintains that there is no evidence that the true statements contained in the termination notice were deceiving or that it deceived anyone. As articulated above, it is the hearing officer's function to consider all the evidence, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. Heifetz. For the reasons articulated above in paragraphs 8, 9, and 10, this exception is rejected.

RULINGS ON THE OFFICE'S EXCEPTIONS TO FINDINGS OF FACT

13. The Office excepts to Finding of Fact # 49, which states that "[t]he Office failed to prove by clear and convincing evidence that any statement in the Termination Letter was false." The Office maintains that this finding of fact is not based on competent substantial evidence and is contrary to the findings in Paragraph 7, 8, 15, and 16 of the Recommended Order. As articulated above, it is the hearing officer's function to consider all the evidence, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. Heifetz. Given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

RULINGS ON EXCEPTIONS TO CONCLUSIONS OF LAW

14. GTL and the Office except to several of the ALJ's conclusions of law. Section 120.57(1)(l), Florida Statutes, sets forth the standard an agency must use when reviewing the legal conclusions in a Recommended Order:

> The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

GTL'S EXCEPTIONS TO CONCLUSIONS OF LAW

15. GTL excepts to Conclusion of Law #71, which states that GTL never entered into a binding contract with Celtic or any other insurer to provide conversion coverage in the event it exited from the Florida market. For the same reasons as articulated above in paragraphs 2, 4, and 6, this exception is rejected.

16. GTL excepts to Conclusion of Law #75, which states that there was no evidence at the hearing of an existence of an unadopted rule or generally applicable agency policy statement. Section 120.57(1)(e)1., Florida Statutes, states that an administrative law judge shall determine whether an agency statement constitutes an unadopted rule. It is not within the jurisdiction of the Office to modify or reject such a conclusion of law. Given the determinations made by the ALJ, this exception is rejected.

17. GTL excepts to Conclusion of Law #93, which states that deception, as it appears in Section 626.9541(1)(b), Florida Statutes, does not require that a false statement be made. GTL asserts that the Office is required to demonstrate that the termination notice contained false

statements that were made with the requisite scienter. Sun Like Assurance Company of Canada v. Land Concepts, Inc. 435 So. 2d 862, 863 (Fla. 5th DCA 2001), and Nagel v. Cronebaugh, 782 So. 2d 436, 439 (Fla. 5th DCA 2001). Section 626.9541(1)(b), Florida Statutes, defines false information and advertising as:

> Knowingly making, publishing, disseminating, circulating, or placing before the public, ~~or causing, directly or indirectly, to be made, published, disseminated, circulated,~~ or placed before the public ... an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, which is **untrue, deceptive, or misleading**. [Emphasis added].

Section 626.9541(1)(b), Florida Statutes, clearly states that in order for a publication to be considered false information or advertisement it must be untrue, deceptive, or misleading. Therefore, the ALJ is correct in his assessment that deception under Section 626.9541(1)(b), Florida Statutes, does not require that a false statement be made. Given the factual determinations made by the ALJ in this case, this exception is rejected.

18. GTL excepts to Conclusion of Law #94 for the same reasons articulated above in paragraph 17. Conclusion of Law #94 states in pertinent part that the Termination Letter contained assertions, representations and statements with respect to the business of insurance that were deceptive and misleading because they left the impression that a right to a conversion policy no longer existed, which, for eligible Members, was incorrect. For the reasons articulated above in paragraphs 8 through 12, this exception is rejected.

19. GTL excepts to Conclusion of Law #95, which states that while Section 6237.6675, Florida Statutes, contains no requirement that an insurer must remind group members of their conversion right upon termination, an insurer does remain bound by the requirements of Section 626.9541(1)(b), Florida Statutes. GTL maintains that, for the same reasons articulated above in paragraph 17, the Office is required to demonstrate that the termination notice

contained false statements that were made. For the reasons explained above, this exception is rejected.

20. GTL excepts to Conclusion of Law #97, which states the Office proved by clear and convincing evidence that GTL knowingly made, published, disseminated, and circulated the Termination Letter to 216 Members, which contained an assertion, representation and statement with respect to the business of insurance that was willfully deceptive and misleading. GTL knew, or should have known, that this was an unfair or deceptive act or practice under the Florida Insurance Code. GTL maintains that, for the reasons stated in Paragraph 17 above, this conclusion of law is clearly erroneous and should be rejected. For the reasons articulated above in Paragraphs 18 and 19, this exception is rejected.

21. GTL excepts to Conclusion of Law #106. GTL asserts that Section 624.310(5), Florida Statutes, bars any fine in any action initiated pursuant to Chapter 120 without "advance notice." GTL asserts that this advance notice requirement is not limited to fines imposed pursuant to Section 624.310(5), Florida Statutes. However, Section 624.310(7), Florida Statutes, states that the provisions of Section 624.310, Florida Statutes, are in addition to other provisions of the Florida Insurance Code and shall not be construed to curtail, impede, replace, or delete any other similar provision or the power of the Office. Thus, similar penalty provisions found in other sections of the Florida Insurance Code are not implicated by the "advance notice" provisions of Section 624.310(5), Florida Statutes. Accordingly, this exception is rejected.

22. GTL excepts to Conclusion of Law #107. GTL asserts that this conclusion of law is actually a restatement of factual findings that lack competent substantial evidence. The factual findings that GTL refers to are relied upon in recommending a penalty in this conclusion of law.

For reasons articulated above in paragraphs 1 and 2, the factual findings, do not lack competent substantial evidence. Accordingly, this exception is rejected.

23. GTL excepts to Conclusion of Law #108. GTL asserts that this conclusion of law is actually a restatement of factual findings that lack competent substantial evidence. For the same reasons articulated above in paragraph 3, the factual findings discussed in this conclusion of law do not lack competent substantial evidence. Accordingly, this exception is rejected.

24. GTL excepts to Conclusion of Law #111. GTL asserts that this conclusion of law is actually a restatement of factual findings that lack competent substantial evidence. For the same reasons articulated above in paragraph 5, the factual findings discussed in this conclusion of law do not lack competent substantial evidence. Accordingly, this exception is rejected.

RULINGS ON THE OFFICE'S EXCEPTIONS TO CONCLUSIONS OF LAW

25. The Office excepts to Conclusion of Law #64 and #65. Conclusion of Law #64 states that it is not clear from the language of Section 627.6675, Florida Statutes, at what point the duty arises for a group insurer to contract with another insurer to provide a conversion benefit in the case of withdrawal from the Florida market. Conclusion of Law #65 provides three possible interpretations of when the duty arises to contract with another insurer to provide the conversion benefit in the case of withdrawal from the Florida market, pursuant to Section 627.6675, Florida Statutes. The Office excepts to the third interpretation suggested by the ALJ – that the insurer must only enter into a contract "in time for it to be in force at the time the conversion policy actually needs to be issued." The Office is entitled to great deference in its interpretation of the statutes it administers. BellSouth Telecommunications, Inc. v. Johnson, 708 So.2d 696 (Fla. 1998). The agency is also entitled to define such terms as are found within these statutes. Pershing Indus., Inc. v. Dep't of Banking and Fin., 591 So. 2d 991, 993 (Fla. 1st DCA

1991). "It is axiomatic that an agency's construction of its governing statutes and rules will be upheld unless clearly erroneous....If an agency's interpretation is one of several permissible interpretations, it must be upheld despite the existence of reasonable alternatives." Id. Furthermore, "[t]he agency's interpretation need not be the sole possible interpretation or even the most desirable one; it need only be within the range of possible interpretations." Orange Park Kennel Club, Inc. v. Dep't of Bus. And Prof. Regulation, 644 So.2d 574, 576 (Fla. 1st DCA 1994) *citing* Pan Am. World Airways, Inc. v. Florida Pub. Serv. Comm'n, 427 So.2d 716 (Fla. 1983). Section 627.6675(1), Florida Statutes, gives an insured 63 days from the date of the termination of coverage under the group policy to make an application for, and pay the first premium toward the converted policy. Section 627.6675(4), Florida Statutes, says the effective date of the converted policy shall be the day following the termination of the insurance under the group policy. Given that the effective date of the converted policy is the day following the termination of coverage under the group policy, and that the application for the converted policy may be made at any time up to 63 days following the termination of coverage under the group policy, it would not be logical for the law to allow the insurer not to have the conversion policy available prior to the termination of the group policy. Additionally, Section 627.6675(17), Florida Statutes, gives an insurer 14 days to provide an outline of coverage to an individual interested in applying for a conversion policy. It would logically follow that such an insurer must have coverage available to comply with this provision. Otherwise, it would have no coverage to outline. Furthermore, pursuant to Section 627.6675(14), Florida Statutes, conversion is not only required when a company withdraws from a market, but also when a group member dies, in which case a conversion must be available to their spouse and children. This could be one day after the group policy (out-of-state group, in this case) becomes effective. This could also be one

day before the out-of-state group policy is terminated. As such, a conversion policy must be in place as a conversion obligation may unexpectedly materialize at any time during the existence of the out-of-state group policy. Moreover, Section 627.6515(2), Florida Statutes, requires that the policy provide conversion benefits as specified in Section 627.6675, Florida Statutes, If an insurer were not required to have such benefits available, then the law would have no meaning, as the inclusion of such benefit would be an empty and meaningless provision in a contract. For purposes of these conclusions of law, while it may not be clear as to the point in time at which the duty arises to contract with another insurer to provide conversion benefit, it is clear that a contract to provide conversion benefit must in place prior to the termination date of the policy in order to comply with the requirements of Section 627.6675, Florida Statutes. Accordingly, the exception is accepted and the conclusion is modified to reflect the above.

26. The Office excepts to Conclusion of Law #82, which states that the Termination Letter issued by GTL had no effect on either the requirement that the Policy and certificates contain a provision on conversion, or the requirement that GTL contract with another insurer to provide such coverage, because under the interpretation of Section 627.6675, Florida Statutes, most favorable to GTL, that requirement had not yet arisen. As stated by the ALJ in Paragraph 81 of the Recommended Order, the contractual and statutory obligation to offer conversion coverage cannot be erased or revoked, even by an ambiguous unilateral communication from GTL advising that the conversion coverage was no longer being offered. Section 627.6675, Florida Statutes, requires that certain language providing conversion coverage must be a part of a policy, and this language appears on the certificates issued to Members. While certain statements made in the Termination Letter issued by GTL may have been misleading, the ALJ is correct in his assessment as discussed above. Accordingly, this exception is rejected. However, the

exception should be modified in part to reflect, as discussed in paragraphs 25 above, that the language "because – under the interpretation of Section 627.6675 most favorable to GTL – that requirement had not yet arisen." be stricken from the record.

27. The Office also excepts to Conclusion of Law #83 which states that the Office failed to provide by clear and convincing evidence that GTL violated the Florida Insurance Code by issuing the Termination Letter without offering converted policies in violation of Section 627.6675, Florida Statutes. As articulated above, it is the hearing officer's function to consider all the evidence, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. Heifetz. Further, the Office may not substitute its judgment for that of the hearing officer by taking a different view of or placing greater weight on the same evidence. Accord. Accordingly, this exception is rejected.

28. The Office excepts to the third sentence of Conclusion of Law #87. The Office excepts to the Black's Law Dictionary definition of "misrepresentation" cited by the ALJ. The Office maintains that Black's Law Dictionary (9th ed. 2009) defines "misrepresentation" as "the act of making a false or misleading assertion about something, usually with the intent to deceive." Furthermore, Black's Law Dictionary (9th ed. 2009) cites to Restatement (Second) of Contracts §159 cmt. A (1979) which states:

> A misrepresentation, being a false assertion of face, commonly takes the form of spoken or written words. Whether a statement is false depends on the meaning of the words in all the circumstances, including what may fairly be inferred from them. An assertion may also be inferred from conduct other than words. Concealment or even non-disclosure may have the effect of a misrepresentation... [A]n assertion need not be fraudulent to be a misrepresentation. Thus a statement intended to be truthful may be a misrepresentation because of ignorance or carelessness, as when the word 'not' is inadvertently omitted or when inaccurate language is used. But a misrepresentation that is not fraudulent has no consequences ... unless it is material.

The definition of "misrepresentation" maintained by the Office is found in the most recent addition of Black's Law Dictionary (9th ed. 2009). The definition of "misrepresentation" cited by the ALJ in Conclusion of Law #87 is found in an older version of Black's Law Dictionary. It seems logical that the most recent definition of "misrepresentation" should be used in the assessment of the issue at hand. Accordingly, this exception is accepted and the third sentence of Conclusion of Law #87 is amended to read as cited above in Paragraph 35.

29. The Office excepts to the three cases cited in Conclusion of Law #87 which lend support to the conclusion that no misrepresentation occurred in the present case. The first, Butler v. Yusem, 44 So. 3d 102 (Fla. 2010), deals with "fraudulent misrepresentation." "Fraudulent misrepresentation" is defined independently of "misrepresentation" in Black's Law Dictionary. Similarly, Jallali v. Nova Southeastern Univ., Inc., 55 Do. 3d 665 (Fla. 4th DCA 2011) deals with "negligent misrepresentation", which is also a separate term independently defined in Black's Law Dictionary. The Office also maintains that the ALJ incorrectly asserts that Collignon v. Larson, 145 So. 2d 246 (Fla. 1st DCA 1962), holds that a statement by an insurance agent must be false to be a misrepresentation. "Negligent misrepresentation" and "fraudulent misrepresentation" are independently defined in Black's Law Dictionary. However, while the cases cited by the ALJ in Conclusion of Law #87 do not specifically address "misrepresentation" and may address "misrepresentation" as it is being assessed in this case, it is not within the Office's jurisdiction to strike the ALJ's assessment of these three cases. Accordingly, the exception is rejected.

30. The Office excepts to Conclusion of Law #88. The Office maintains its exception to the factual conclusion that there was no clear and convincing evidence of a false statement by GTL in the Termination Letter. However, as articulated above in Paragraph 14, given the

discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding of factual conclusion. Accordingly, this exception is rejected.

EXCEPTION TO THE RECOMMENDATION

31. Section 120.57(1), Florida Statutes, allows the Office to increase a recommended penalty upon review of the entire record so long as reasons are stated with particularity and there are citations to the record in support of the increase. The Office excepts to the Recommendation based upon paragraphs 99-111 of the Recommended Order. The Recommended Order recommends that the Office find 216 knowing and willful violations of the insurance code and fine GTL one thousand U.S. Dollars ($1,000) per violation not to exceed an aggregate of two hundred thousand U.S. Dollars ($200,000). In light of the severity of the 216 knowing and willful violations of the Florida Insurance Code, and the potential financial benefit realized by GTL as a result of these violations, a two hundred thousand U.S. Dollar ($200,000) fine is insufficient. As noted in Paragraph 110 of the Recommended Order, the financial benefit realized by GTL as a result of these 216 violations is difficult to estimate. However, it is clear that GTL would have had to pay at least a one hundred thousand U.S. Dollars ($100,000) down payment to Celtic if it had chosen to have a conversion program in place to offer. (Joint Exhibit 8, p.4) Therefore, GTL's financial benefit was at least one hundred thousand U.S. Dollars ($100,000). Moreover, as noted in Paragraph 110 of the Recommended Order, GTL would have also been required to pay thirty thousand U.S. Dollars ($30,000) per conversion policy written by Celtic. (Joint Exhibit 8, p.4) Thus GTL's financial benefit, as a result of its violations of the Florida Insurance Code, may have been as great as six million five hundred eighty thousand U.S. Dollars ($6,580,000) [(216 x $30,000) + $100,000]. A two hundred thousand U.S. Dollars

($200,000) fine under such circumstances would not only be inconsistent with the severity of the 216 offenses, but would also impose a cost that is potentially far less than that which could have been incurred had the company not committed the offenses. Section 624.4211, Florida Statutes, allows for an administrative fine in lieu of suspension or revocation of a certificate of authority. However, there is nothing in the statute that requires a fine in lieu of such other penalty.

Furthermore, pursuant to Section 624.418(2)(a), Florida Statutes, it is within the Office's discretion to suspend or revoke an insurer's certificate of authority. Based on the insufficiency of the recommended fine as discussed above, the Recommendation is rejected and the Office's exception to suspend GTL's certificate of authority, pursuant to Section 624.418(2), Florida Statutes, for a period of (2) years, is accepted.

IT IS THEREFORE ORDERED:

1. The Findings of Fact of the ALJ, except as modified herein, are adopted in full as the Office's Findings of Fact.

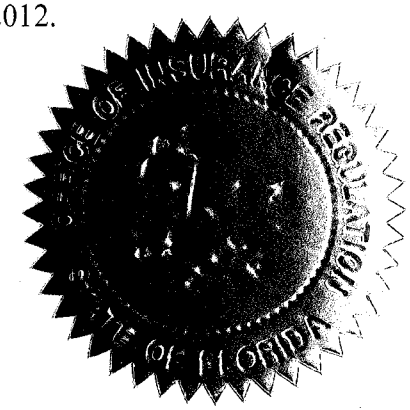
2. The Conclusions of Law of the ALJ, except as modified herein, are adopted in full as the Office's Conclusions of Law.

3. The Recommendation of the ALJ is accepted as modified in accord with this Order.

ACCORDINGLY, the Office finds two hundred sixteen (216) violations of Section 626.9541(1)(b), Florida Statutes, and that the certificate of authority of Guarantee Trust Life Insurance Company is suspended, pursuant to Section 624.418(2), Florida Statutes, for a period of two (2) years.

DONE and ORDERED this 25th day of June, 2012.

KEVIN M. McCARTY, Commissioner
Office of Insurance Regulation



NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a Notice of Appeal with the General Counsel, acting as Agency Clerk, 200 East Gaines Street, 612 Larson Building, Tallahassee, FL 32399-0333 and a copy of the same and filing fee, with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

Copies furnished to:

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