

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OFFICE OF INSURANCE REGULATION,)
)
 Petitioner,)
)
 vs.) Case No. 09-3637
)
 LIBERTY NATIONAL LIFE INSURANCE)
 COMPANY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held before the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Diane Cleavenger, on June 7 through June 11, 2010, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Amanda Allen, Esquire
Elenita Gomez, Esquire
Office of Insurance Regulation
Larson Building
200 East Gaines Street
Tallahassee, Florida 32399

For Respondent: Daniel C. Brown, Esquire
Carlton Fields, P.A.
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STATEMENT OF THE ISSUE

The issue in this proceeding is whether Respondent's certificate of authority to transact life insurance in the State

of Florida should be revoked, suspended, or otherwise disciplined.

PRELIMINARY STATEMENT

On June 3, 2009, the Office of Insurance Regulation (OIR or Petitioner) issued a 35-count Order, in lieu of an administrative complaint, charging that Liberty National Life Insurance Company's (LNL or Respondent) certificate of authority should be suspended or revoked for alleged violations of portions of the Florida Insurance Unfair Trade Practices Act, Subsections 626.9541(1)(x)1., 626.9541(1)(g)1., and 626.9541(1)(dd)1. and 2, Florida Statutes. Specifically, the Order alleged in Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22 and 23 that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, by refusing life insurance to individuals who had applied for such insurance based solely on the applicant's national origin. The Order also alleged in Counts 17 and 18, and parts of Counts 29 through 35 that LNL violated Subsection 626.9541(1)(g)1., Florida Statutes, by knowingly discriminating between persons of the same actuarially-supportable class and same life expectancy in the issuance of insurance or in the rates, terms and benefits of a life insurance policy. Finally, the Order alleged in Counts 24, 25, 26, 27, 28 and portions of Counts 29-35 that LNL violated Subsection 626.9541(1)(dd)1., Florida Statutes, by refusing life

insurance to individuals who had applied for such insurance based solely on the applicant's past travel experience or future travel plans.

OIR's Order also referenced Section 627.4091, Florida Statutes, in Counts 1, 2, 4, 5, 12, 14, and 22. Respondent filed a motion to strike the portions of Petitioner's Order that referenced Section 627.4091, Florida Statutes. In its response to the motion, OIR acknowledged that it was not charging LNL with violations of Section 627.4091, Florida Statutes. LNL's motion to strike such allegations was granted. Additionally, in several counts, OIR's Order alleged that LNL engaged in a "pattern and practice" of behavior which resulted in violations of law. Again, LNL moved to strike or dismiss the "pattern and practice" allegations as legally insufficient, and moved in limine to preclude evidence of such allegations. OIR acknowledged that it was not charging LNL with violations based on a "pattern and practice" of behavior, thereby withdrawing any such allegations.

LNL denied the factual allegations and legal conclusions in OIR's Order and timely requested a formal administrative hearing on the charges in the Order. Thereafter, the matter was forwarded to the Division of Administrative Hearings.

At the final hearing, OIR presented the testimony of Todd Fatzinger, Terrence Corlett, John Hall, and Charles Simon,

(contract examiners who conducted an on-site market conduct examination of LNL under Sections 624.3161 and 624.319, Florida Statutes), James Bennett (OIR's Director of Market Investigations), Suzanne Saxon (LNL's Chief Underwriter) and Anthony McWhorter (LNL's Chief Executive Officer). OIR offered 24 exhibits into evidence. OIR Exhibits 1, 2, 3, 5-14, 18, 21, and 24 were admitted into evidence. OIR Exhibits 4, 19, and 20 were not admitted into evidence. OIR Exhibit 16 (the draft examination report of the OIR examiners) was admitted into evidence for the limited purpose of establishing its existence, but not for the truth of matters contained in it. OIR Exhibit 17 (the transcript of Thomas Hamby's deposition) was received in evidence, subject to LNL's right to object in writing post-hearing to specific questions and answers. LNL objected to certain questions and answers in a written filing made with the Division on June 17, 2010. Having considered LNL's written objections, those objections are sustained, and the questions and answers at page 29, line 5 through page 30, line 11, and at page 31, line 10, through page 32, line 1, of OIR's Exhibit 17, and the referenced deposition Exhibit 8 in those portions of the deposition transcript, are not admitted into evidence. The remainder of OIR Exhibit 17 is admitted into evidence. Additionally, the record was held open to allow OIR to submit OIR Exhibits 22 and 23 into evidence, and for LNL to interpose

objections it may have, if such exhibits were tendered by OIR. OIR submitted OIR Exhibits 22 and 23 after the close of the hearing. On June 14 and June 22, 2010, LNL submitted written objections to OIR Exhibits 22 and 23. Having considered LNL's objections, those objections are sustained, and OIR Exhibits 22 and 23 are not admitted into evidence.

LNL presented the testimony of Suzanne Saxon, Anthony McWhorter, and the expert opinion testimony of Clark Himmelberger, a life insurance actuary. LNL offered five exhibits into evidence (not sequentially numbered). LNL Exhibits 14, 35 and 46 were received in evidence. LNL Exhibits 32 and 33 were received in evidence, limited to the mortality statistics contained therein.

The parties submitted one Joint Exhibit at final hearing, marked as Joint Exhibit 1. The Joint Exhibit consists of the underwriting files for the life insurance applications that form the basis and are the subject of the 35 counts in OIR's Order.

After the hearing, OIR filed its Proposed Recommended Order on August 18, 2010. Likewise, LNL filed its Proposed Recommended Order on August 18, 2010.

FINDINGS OF FACT

1. Respondent, Liberty National Life Insurance Company, is a foreign insurer licensed to transact life insurance in Florida under a Certificate of Authority issued by the state.

2. The application for life insurance used by LNL is form A-250. This application is used for all regular and batch life insurance applications, except Career Life Plus and Group Term life insurance policies, which are not at issue in this proceeding. Form A-251 is the application used to apply for life insurance riders on an applicant's spouse or children. Both applications are used in multiple states and are intended to elicit information that may or may not be relevant or used in the state relevant to any given applicant. For instance, Question 16 in form A-250 asks, "Is the Proposed Insured a Citizen of the United States? (If "No" complete and attach A-282-2.)" Form A-282-2 is titled "Residency Questionnaire." The form elicits information related to whether an applicant is a legal resident of the United States, whether the applicant intends to remain a resident of the United States and what citizenship the applicant holds. Like the applications, the residency form is used in multiple states and is intended to elicit information that may or may not be relevant or used in the state relevant to any given applicant. For instance, the questionnaire asks whether the proposed insured has traveled outside the United States during the last 12 months. The applicant's response to the travel question was not intended to be used for underwriting purposes in Florida after it enacted a law prohibiting the denial of insurance based solely on an

applicant's past travel or future travel plans. See § 626.9541(1)(dd)1., Fla. Stat. Importantly, Florida does not prohibit any insurer from asking about such travel and such inquiry does not violate Florida law.

3. Each application, along with any required or additional information, is submitted by an agent to LNL's centralized underwriting department and is assigned to an individual underwriter. The underwriter reviews the application for completeness. If the application is not complete or if there are questions about the application, the underwriter either requests the information from the agent or requests a telephone interview be done. Activity on the application is entered into LNL's electronic processing system which maintains the electronic application file. How much detail support information is entered on any given application file varies by underwriter. None of the underwriters who made entries in the application files at issue in here testified in this proceeding.

4. LNL's policy is to process most applications within two weeks, with some few applications taking up to 30 days. Pending applications are maintained on a pending applications list which is reviewed by upper management for compliance with LNL's processing policy.

5. LNL's underwriting guidelines for persons of foreign national origin residing in the United States were instituted in

2003 or 2004 over concerns the company had regarding the reliability of documents from certain countries and the potential for fraud based on such unreliable documents. Towards that end, LNL categorized foreign nations into four groups: "A," "B," "C," and "D." The basis for the categorization was the long-time, actuarially-recognized standard in the life insurance industry and the re-insurance industry that mortality risks are severe in "D" countries, somewhat severe in "C" countries, and moderate in "A" and "B" countries. In part, these mortality risks are derived based on the political stability of a country, crime rates, law enforcement, and access to good quality medical care and treatment in a given country. In general, C and D countries possess one or more of the factors that contribute to severe mortality risks. Additionally, political instability causes the authenticity and availability of birth and death records to be unreliable. These country code classifications are used throughout the life insurance industry. Importantly, these country codes are sustained by mortality statistics generally regarded as reliable by life insurance actuaries, and by the professional opinion of Mr. Himmelberger, the only expert life insurance actuary who testified at final hearing.

6. LNL's underwriting guidelines for foreign nationals or foreign risks were reflected in a memorandum dated July 26,

2004, and sent to all of the company's district managers for dissemination. The memorandum stated as follows:

If the proposed insured is from a country classified as A or B you should follow normal underwriting procedures.

If a proposed insured is from a country classified as C or D, you must submit the following information.

1. If the proposed insured is a U.S. Citizen:

A. A copy of citizenship documents

or

A notarized statement verifying that the proposed insured is a citizen and providing the date citizenship was acquired.

B. An IBU (Interview by Underwriter) is required on all cases.

2. If the proposed insured is **not** a U.S. Citizen:

A. Form A-282-2 . . . is required on all A-250/A-251 or batch applications.

B. Copies of W-2 forms from the last three years are required. The ultimate face amount issued (if any) will be limited to the income for the most recent year.

C. Attach a cover letter indicating the number of consecutive years the proposed insured has been in the United States (subject to rejection if less than 10 years, depending on other information submitted).

D. An IBU . . . is required on all cases.

Minor children of non-citizen parents
will be underwritten as non-citizens.

Applications for \$100,000 and above will be reviewed on a case-by-case basis. The information above is required for all cases regardless of face amount.

These guidelines were also incorporated into the company's instruction manual for its agents.

7. The goal of these underwriting guidelines and the use of the country codes are to try to assess the risk of a person who was born outside of the United States permanently returning to their country of origin where, depending on the country, there may be a higher risk of mortality. An applicant's connection to the United States, as evidenced by steady employment or family, and desire to permanently stay in this country, as evidenced by naturalization or length of legal residency, lowers the actuarial risk underwritten by LNL. The evidence demonstrated that these criteria were actuarially supported. Therefore, applicants who are foreign nationals born in "A" or "B" countries with lower mortality risks, and who legally reside in the United States or are naturalized United States citizens at the time they apply for insurance are underwritten using the same underwriting criteria as applied to United States citizens. The only extra information required is proof of residency or citizenship and a confirming interview by the underwriter (IBU) or by an outside subcontractor through a

rapid interview process. Life insurance applications by foreign nationals from "C" or "D" countries who have become naturalized United States citizens at the time they apply for insurance are underwritten using the same underwriting criteria that LNL applied to United States citizens and require the same information as those from "A" or "B" countries. Applicants who are foreign nationals from "C" or "D" countries and who are not naturalized United States citizens, but reside in the United States at the time of application for insurance, are required to provide proof of legal residency for 1 year and annual income for three years. Both of these factors indicate a stronger connection to the United States and desire not to return to live in a country with a higher mortality risk. These applicants are also required to complete a telephone interview to confirm this information. Additionally, applicants from "C" or "D" countries who are legal residents in the United States at the time of application for insurance may be declined for coverage or have the coverage limited to the amount of the applicant's income. However, whether the application is declined depends on other information (such as employment history and income) that shows a stronger connection to the United States. There is no requirement that the underwriter decline to issue or limit the amount of insurance to such an applicant simply because the

person has not resided in the United States continuously for 10 years.

8. Clearly, LNL's underwriting guidelines do not cause LNL to refuse to issue insurance to applicants from "C" or "D" countries based solely on the applicant's national origin. Rather, these underwriting rules and guidelines incorporate the political, social and economic climate of a country which leads to instability, crime and poor access to health care and relatively higher or lower risks of mortality. Additionally, these guidelines require the length, nature, and quality of the applicant's residency in the United States to be considered to determine the strength, quality, and duration of the applicant's ties to the United States. The additional underwriting information required for such applicants is designed to gather evidence of such matters so that LNL's underwriters may make informed underwriting judgments about the underwriting risks associated with issuing insurance. These underwriting guidelines are consistent with the actuarial risks posed by higher mortality risks in "C" or "D" countries and the risk that applicants will voluntarily or involuntarily return to his or her country of origin to again take up residence there, and thereby be subjected to the high mortality risks associated with residing in a "C" or "D" country. The evidence demonstrated that these guidelines are consistent with generally accepted

actuarial principles of risk classification. The limitation of coverage amount to the applicant's most recent year's income is likewise consistent with generally accepted actuarial principles of risk classification and risk management for life insurers. Indeed, there was no expert actuarial evidence offered by OIR to the contrary.

9. Additionally, there was no substantive evidence that demonstrated LNL had an informal policy or practice of refusing to issue life insurance to applicants who are persons of "C" or "D" countries solely because of their national origin. The evidence clearly showed that LNL had issued policies to such applicants given the number of applications reviewed by OIR in its examination of LNL.

10. On July 1, 2006, Florida's "Freedom to Travel Act," Section 624.9541(1)(dd), Florida Statutes, became effective. Around July 6, 2006, LNL sent a memorandum to its underwriters informing them of the passage of Florida's "Freedom to Travel Act" and instructing them to comply with the act. The memorandum also informed the underwriters that they could no longer use an applicant's past travel or future travel plans to underwrite life insurance on Florida applicants. However, as indicated earlier, the multi-state residency questionnaire asks about an applicant's past travel. Such information is not used for underwriting purposes by LNL on Florida applications. After

notification of Florida's "Freedom to Travel Act," it has been LNL's policy, in respect to applications for life insurance from Florida residents, not to refuse life insurance or limit life insurance coverage based solely on the individual's past lawful foreign travel or future travel plans. Additionally, it should be noted that the term travel had a variety of meanings during the hearing. At times it referred to short-term travel and at other times it referred to an applicant's more permanent return to a country to reside in that country.

11. From June 23, 2008 through November 14, 2008, OIR conducted a "market conduct" examination of LNL pursuant to Section 624.3161, Florida Statutes. A market conduct examination is a review of the business practices and records of an insurer. The examination is designed to monitor marketing, advertising, policyholder services, underwriting, rating, and claims practices.

12. The LNL examination covered the period from January 1, 2004, through March 31, 2008, and was conducted by Examination Resources, LLC, at the offices of LNL in Birmingham, Alabama. The purpose of the examination was to verify compliance by the company with the Florida Unfair Trade Practices Act, Section 626.9541, Florida Statutes.

13. Examination Resources assembled a team of examiners to conduct the survey. Some members were more experienced than

others were in examining records of a company and in performing a market conduct survey. At least two of the team members, Terry Corlett and Todd Fatzinger, were certified financial examiners (CFE), certified insurance examiners (CIE) and fellows of the Life Management Institute (FMLI). One member of the examination team was a certified life underwriter (CLU).

14. During the examination period, LNL's underwriters reviewed approximately 1,500 life insurance applications per week from Florida, in addition to applications from other states. As a consequence, LNL received 101,461 applications for life insurance. Approximately 40,000 applications out of the total applicant pool were batch processed.

15. Batch-processed applications are standard applications (A-250 and A-251) that are processed through an automated computer system with no further underwriting review and are either approved or disapproved based on information in the application for life insurance. The evidence indicated that some applications from applicants born outside of the United States were batch-processed applications. However, the batch process does not capture any information based on an applicant's country of birth or travel in the electronic file system used by LNL. Since the batch process does not capture country of birth or travel information, these applications were not reviewed by the examiners in the market conduct survey of LNL's records.

Because these applications were not reviewed, it is unknown how many of these applicants were born outside of the United States.

16. Out of the approximately remaining 61,000 applications, the team reviewed 7,040 life insurance applications received by LNL during the period of January 1, 2004 through March 31, 2008, that LNL identified as being from an applicant born outside the United States. No one member of the examination team reviewed all of the files. There was some evidence that the criteria or standards of review and interpretation of files by each examiner was not consistent during the exam process. Very few of the examiners conducted any interviews or took testimony from the people who made entries in or handled a particular file that was reviewed. More importantly, the evidence did not demonstrate that the information sought during these rare interviews of unidentified underwriters on an unidentified file had any relevancy to the issues or allegations involved in this case. The only testimony regarding these few and unknown underwriters was that they generally did not recall anything about the file beyond what was in the electronic records of LNL. Such generalizations do not otherwise provide support for the interpretation of data or information in these files by the examiners or the failure to adduce such evidence by going to the human source of the data or information contained in the electronic records of LNL.

Moreover, conspicuously absent from the examination process was an expert in statistical analysis and sampling of data from a universal pool of applicants. Given this lack of expertise, there is no evidence which demonstrated that the group of 7,040 applications reviewed by the examiners was a valid sample of all the applications processed during the examination period.

17. Examination Resources submitted their draft report of examination to OIR around mid-November 2008. The report contained a number of statistics and conclusions drawn from those statistics. However, because of the absence of any reliable or valid statistical analysis of the information gathered by the examiners, none of the statistics or conclusions drawn from such statistics that were contained in the draft report is probative of any of the alleged violations contained in the Petitioner's Order in this matter. In short, other than to list the electronic records of LNL that were examined, the market conduct study and report provide no credible or substantive evidence that demonstrates LNL violated any provision of Florida law. The report may have formulated a basis that warranted OIR to investigate LNL further, but it is insufficient on its own to establish by any evidentiary standard that any violations occurred.

18. The evidence did not demonstrate that a draft report from the examiners was finalized by Examination Resources or

OIR. However, no further examination of the files of LNL was done after the draft report was completed. Likewise, no further analysis of the data was completed after the submission of the draft report to OIR. Both of these facts indicate that the draft report was the final report. In any event, as a consequence of OIR's perception of the report as a draft, OIR did not furnish a copy of the draft examination to LNL and did not afford LNL the opportunity for an informal conference concerning the draft examination report's allegations or an opportunity to correct any of the alleged violations referred to in the order. Such a conference would have been required by Section 624.319, Florida Statutes, and Florida Administrative Code Rule 69N-121.066 if the report had been finalized with the Office. Instead, OIR used the report to issue its Order to suspend or revoke LNL's certificate of authority and required LNL to cease and desist from engaging in unfair trade practices as defined in Section 626.9541(1)(g)1., (x)1. and (dd), Florida Statutes, based on 35 counts involving 35 separate applications.

19. Counts 17 (insurance issued to a 34-year-old Haitian-born female), 18 (insurance issued to an 18-year-old Haitian-born male), and 29 through 35 charged that LNL knowingly discriminated "between individuals of the same actuarially supportable class and equal expectation of life," in violation of Subsection 626.9541(1)(g)1., Florida Statutes. These

"actuarially supportable class" charges are addressed as a group. The remainder of the charges involving violations of Subsections 626.9541(1)(x)1. and 626.9541(1)(dd), Florida Statutes, are addressed below per each count.

20. As to the actuarially-supportable class charges, OIR offered no competent substantial evidence defining or establishing what the actuarially supportable class consisted of or who the members of that class were. The only references to the alleged class were unsupported statements by OIR representatives and unqualified witnesses that the actuarial class was the whole world. Moreover, there was no evidence in the record that demonstrated that these members had the same life expectancy. Indeed, the only evidence in the record about the actuarial class was the testimony of Mr. Himmelberger who stated that the alphabetical classifications of countries established actuarial classes for persons born in those countries and that persons born in "C" or "D" countries residing in the United States are not in the same actuarially-supportable class as persons who are United States citizens (including United States citizens born in "C" or "D" countries), or as persons born in "A" or "B" countries residing in the United States. OIR presented no evidence to contradict Mr. Himmelberger's testimony. Even assuming arguendo that Mr. Himmelberger's testimony is not accepted, the fact remains

that no other qualified actuarial expert provided this statutorily crucial evidence. Given these facts, OIR has not established that LNL violated Subsection 626.9541(1)(g)1., Florida Statutes, in Counts 17, 18, and portions of Counts 29 through 35 that pertain to Subsection 626.9541(1)(g)1., Florida Statutes, and those counts should be dismissed.

COUNT 1

21. Count 1 of the OIR Order alleged that, in June 2004, LNL refused to issue a \$100,000 life insurance policy to a 23-year-old female born in Haiti and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. At the time of the application, the applicant had resided in the United States for less than 10 years.

22. The unrefuted evidence demonstrated that this applicant was declined insurance because she had no income. LNL's underwriting rules limited the amount of insurance that could be issued to the prior year's income. Since she had no income, the application was denied. However, in April 2006, when the applicant filed another application for life insurance and demonstrated that she had income, LNL issued a life insurance policy to her.

23. OIR offered no competent evidence that LNL refused to insure this applicant solely on the basis of her national origin

since it had an independent basis for its action based on its underwriting guidelines. As discussed above, these guidelines have several actuarially-sound underlying factors that are not related to the particular national origin of an applicant. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 2

24. Count 2 of the OIR Order alleged that, in June 2004, that LNL refused on two separate occasions to issue life insurance policies to a 65-year-old male born in Haiti and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. The applicant had originally applied for an \$82,000 policy (A005491299) with his wife in April 2004. Later, in June 2004, the applicant applied for a \$15,000 policy (A0050974020). At the time of the applications, the applicant had resided in the United States for less than 10 years. The first application required medical tests to be performed prior to approval. These tests included a paramedical examination, EKG, blood profile and urine sample. None of the medical tests were completed and no medical information was supplied prior to the time the underwriting decision to decline the application

was made. Similarly, the medical underwriting information was not submitted with the second application.

25. The evidence showed that LNL had a standard underwriting procedure that a second application cannot be processed unless all missing underwriting information required for a previous application is submitted with the second application. If such information is not submitted with the second application, the application is not processed and is closed or cancelled. As indicated, the second application was not submitted with the medical underwriting information required for the first application. Clearly, LNL did not refuse to issue insurance to this applicant solely because of his national origin. Its decision to decline to issue insurance on the first application was based on the lack of required medical information. The second application was not processed because the required medical information was not submitted with the second application. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 3

26. Count 3 alleged that, in June 2004, LNL refused to issue a \$15,000 life insurance policy to a 23-year-old female born in Haiti and residing in the United States solely because of the applicant's national origin in violation of Subsection

626.9541(1)(x)1., Florida Statutes. At the time of the application, the applicant had resided in the United States for less than 10 years. No proof of income was submitted with the application. Vague underwriting notes in the file indicate the underwriter referred to this application as a "Haiti case." However, the underwriter did not testify as to what was meant by this reference. Ms. Saxon, the Chief Underwriter for LNL, testified that she interpreted the reference to be the underwriter's shorthand method of noting that the underwriting guidelines for "C" and "D" countries applied to this application. OIR argues, without evidence, that the quoted phrase means that the underwriter based the decision to decline this application on the applicant's national origin. Given the vagueness of this phrase, its presence in the file does not support a conclusion that LNL refused to issue insurance to this applicant based solely on national origin. The better evidence demonstrated that this applicant was declined insurance on her application because she had not resided in the United States for 10 consecutive years, and had provided no proof of income at the time the underwriting decision was made. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 4

27. Count 4 charged that, in May 2004, LNL refused to issue a \$21,000 life insurance policy to a 32-year-old Haitian-born female who was residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. At the time of the application, the applicant had resided in the United States for less than 10 years and was a homemaker. The application file reflected the application was declined because the applicant failed to meet LNL underwriting rules after review by LNL's legal department. No further explanation is contained in the file regarding the reason the application was declined. However, the evidence demonstrated that this applicant had also applied for a "critical illness policy" at the same time she applied for the \$21,000 life insurance policy. The application was batch processed and the "critical illness policy" was issued to the applicant, indicating national origin was not a consideration for LNL. On the other hand, OIR, who has the burden of proof on this issue, offered no competent or convincing evidence that LNL refused to insure this applicant solely because of national origin. To conclude that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, from the lack of information in the file is pure conjecture and inappropriate especially given that this file was underwritten

in 2004. Given these facts and the lack of convincing evidence, OIR failed to establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 5

28. Count 5 in the OIR Order alleged that, in May 2004, LNL refused to issue a \$50,000 life insurance policy to a 27-year-old female born in Haiti and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. At the time of the application, the applicant had resided in the United States for over 10 years, but had recently started her own business. The uncontradicted evidence demonstrated that this application was declined because proof of recent income was not supplied at the time of the underwriting decision. The applicant had supplied an affidavit from her former employer showing her income for 2002 and 2003. However, there was no information regarding her income since she had started her own business, leaving her ability to pay the premium in doubt. Again, OIR offered no competent evidence that LNL refused to insure this applicant solely because of national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 6

29. Count 6 charged that, in May 2004, LNL refused to issue a \$20,000 life insurance policy to a 63-year-old Haitian-born male who resided in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. At the time of the application, the applicant had resided in the United States for more than 10 years and was retired.

30. The unrefuted evidence showed that the application was cancelled and not processed by LNL because there was no documentation by the immigration authorities of the applicant's legal residency status in the United States. Similarly, no proof of income was provided by the applicant. There was a notation in the file which read, "non[-]receipt of W2." However, this phrase does not demonstrate that the applicant did not receive a W-2 or some other employer proof of retirement income or that LNL had any knowledge that the applicant was unable to provide such a document. In fact, in July 2004, the applicant submitted a second application for which a policy of life insurance was issued. Clearly, LNL did not refuse to insure this applicant solely because of national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 7

31. Count 7 alleged that, in April 2004, LNL refused to issue a \$25,000 life insurance policy to an 18-year-old Haitian-born female who resided in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. The applicant had been in the United States for at least 12 months and was a student. A notation in the file indicated that the agent was requested to ask the applicant to provide information on how long she had been in the United States. However, for unknown reasons, the requested information was not provided. As a consequence, the file was not processed and was cancelled for incompleteness. Such cancellation does not demonstrate that LNL refused to issue insurance but that the processing of the application was stopped due to incomplete information. Handwritten notes in the file indicated that the application would be declined if the applicant had not been in the United States for more than 10 years. However, the note writer did not testify at the hearing. This handwritten note does not support the conclusion that LNL based its decision solely on the basis of the applicant's national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 8

32. Count 8 of the OIR Order alleged that, in May 2004, LNL refused to issue a \$50,000 life insurance policy to a 39-year-old Haitian-born female who resided in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. The evidence demonstrated that this application was the applicant's second application (A005491240). At the top of the computer information screen that summarizes actions taken on this file, there was a handwritten note, "Haiti." At the bottom of this screen, by the initialing dates on the screen, there was a handwritten note "cancel." There was no evidence that the two notes are associated with each other or were entered at the same time. Whoever wrote the notes did not testify at the hearing regarding these, otherwise vague, notes.

33. The uncontradicted evidence demonstrated that the first application (A005458685), dated February 14, 2004, was not processed because the applicant did not provide proof of income and other underwriting information. The application was cancelled on March 15, 2004. Likewise, the second application, dated April 18, 2004, was not processed and was canceled for failing to submit an acceptable proof of income that was required on the first application.

34. In this case, the applicant provided with the second application an affidavit from her employer that she had been employed since December 2003 and was paid \$7.00 an hour. However, the employer's affidavit was considered insufficient as proof of income because it did not show how many hours she worked. Such information was critical in calculating income for this applicant and the application was cancelled. Such cancellations do not constitute a refusal to insure by LNL, but only reflect that the application cannot be processed without the required or requested information.

35. Later, in August 2005, the applicant applied for life insurance a third time (A006467227) and was issued a policy of insurance. Clearly, LNL did not refuse to issue insurance to this applicant solely because of national origin since the applicant's national origin had not changed and they later issued such insurance. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 9

36. Count 9 of the OIR Order alleged that, in May 2004, LNL refused to issue a life insurance policy to a 52-year-old Haitian-born female who resided in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. The evidence

demonstrated that processing of this application was canceled because a telephonic interview to explore unclear and questionable written information submitted by the applicant was not completed and because proof of income was not submitted. Indeed, the file reflected that the telephone number for the applicant was disconnected when the telephone interview was attempted. The file also reflected that the person paying the premium did not have the same last name as the applicant which raised legitimate questions regarding the payor's interest in the policy and the relationship between the payor and the applicant. It was appropriate for LNL to seek to clarify these discrepancies.

37. The applicant's file, also, contained an "Underwriter Support Summary" computer screen. The screen contained handwritten notes stating, "Haiti, Cancel-unemployed, non-US citizen." Again, the writer of these vague notes did not testify at the hearing and the notes do not support a conclusion that LNL refused to issue insurance to this applicant based solely on her national origin.

38. As indicated, necessary underwriting information was not submitted by the applicant and processing of the application was stopped, and the application was cancelled. OIR offered no competent evidence that LNL either refused to insure this applicant or that such alleged refusal was solely because of

national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 10

39. Count 10 of the OIR Order alleged that, in March 2004, LNL refused to issue a \$50,000 life insurance policy to a 34-year-old Haitian-born male who resided in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. The evidence demonstrated that the applicant had lived in this country for more than 10 years, was a permanent resident and was a self-employed taxi driver. The application file reflected that processing of this application was cancelled because additional information that the agent was requested to obtain was not returned. Additionally, no proof of income was submitted by the applicant.

40. The file was not clear whether the additional information being sought was related to proof of income or medical issues. Later, blood work information was received that indicated this applicant had some medical risks that were outside of LNL's underwriting guidelines. OIR offered no competent evidence that LNL either refused to insure this applicant or that such alleged refusal was solely because of national origin. Given these facts and the general lack of

evidence in this applicant's file, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 11

41. Count 11 of the OIR Order charged that, in May 2004, LNL refused to issue a \$20,000 life insurance policy to a 61-year-old Haitian-born female who resided in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. The applicant had resided in the United States for more than 10 years and had high blood pressure. She had applied for United States citizenship, but was unemployed. Her sister was listed as the person paying the premiums on the policy. The file also reflected that the applicant was single and that she was supported by her husband. This inconsistent information legitimately needed to be clarified in order for the underwriting process to continue. The underwriter requested an IBU.

42. The request for the IBU was sent to a company that performs such interviews for LNL. The application file does not reflect whether the company attempted to perform the interview. However, information from that request was never submitted to LNL and processing of the applicant's file was stopped, resulting in the cancellation of the application. As with other

cancellations, terminating the processing of a file and cancellation of the application for lack of legitimate underwriting information was not a refusal by LNL to insure the applicant. The process simply could not move forward without the requested information. OIR offered no competent evidence that LNL either refused to insure this applicant or that such alleged refusal was solely because of national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 12

43. Count 12 alleged that, in February 2004, LNL refused to issue a \$50,000 life insurance policy to a 47-year-old male born in Haiti and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. However, the evidence demonstrated that this application was declined due to the applicant's announced foreign travel plans.

44. At the time of this application, Florida's "Freedom to Travel Act," Subsection 626.9541(1)(dd), Florida Statutes, had not been passed and would not be enacted until July 1, 2006, some two years later. The Act has no retroactive effect. Therefore, declining to insure a Florida applicant for such plans before the effective date of the "Freedom to Travel Act"

was not prohibited at the time of the underwriting action on this application. OIR argues that the absence of a specific notation in the file that it was declined based on foreign travel plans demonstrated that LNL refused to issue insurance based solely on national origin. However, this argument ignores OIR's burden of proof in this case. The lack of such notation demonstrates nothing and does not provide either a clear or convincing basis to draw any inferences from the absence of such notations. Additionally, such an inference ignores the unrefuted testimony in this case that the application was declined based on the applicant's foreign travel plans. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 13

45. Count 13 alleged that, in January 2004, LNL refused to issue a \$100,000 life insurance policy to a 45-year-old female born in Haiti and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. Information in the file reflected that the applicant was a United States citizen.

46. The evidence demonstrated that this application was declined because the applicant did not furnish proof of her

United States citizenship. Additionally, the required telephonic interview was not completed.

47. Again, OIR argues that the absence of specific notations in the file that the application was cancelled based on the missing information demonstrates that LNL refused to issue insurance based solely on national origin. As noted above, this argument ignores OIR's burden of proof in this case. The lack of such notations does not provide a clear or convincing basis to draw any inferences to support OIR's position. Additionally, OIR's argument ignores the unrefuted testimony in this case that the application was cancelled based on the fact that required information was not supplied.

48. Finally, the evidence demonstrated that this application was cancelled, not declined. As with other cancelled applications, such cancellations do not constitute a refusal to insure and OIR offered no other competent evidence that LNL refused to insure this applicant solely because of national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 14

49. Count 14 alleged that, in January 2004, LNL refused to issue a \$50,000 life insurance policy to a 31-year-old female born in Haiti and residing in the United States solely because

of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. At the time of the application, the applicant had not resided in the United States for more than 10 years. The applicant had also recently had a baby and was unemployed. As a consequence, the applicant's mother was the person who would be paying the premium on the policy.

50. The evidence demonstrated that LNL declined to issue insurance on this application because the applicant was not employed and had no income. As discussed earlier, LNL's underwriting rules limit the amount of coverage that may be issued to an amount equal to the applicant's annual income for the preceding year. Since the applicant reported no income, LNL's underwriting rules did not permit the issuance of coverage. However, on April 10, 2006, the applicant submitted a second application (A007241169) that met OIR's underwriting rules and LNL issued insurance to the applicant. Clearly, LNL did not refuse to issue insurance solely based on national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 15

51. Count 15 alleged that, in February 2004, LNL refused to issue a \$25,000 life insurance policy to a 41-year-old male

born in Haiti and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. The evidence showed that a telephonic interview was required to be completed under LNL's underwriting rules.

52. Handwritten notes in the file state, "IBU ordered due to client being Haitian. Canceled-IBU not received." Again, the writer of these handwritten notes did not testify at the hearing and they do not support a conclusion that LNL refused to issue insurance based on national origin.

53. The evidence did demonstrate that because the telephonic interview was not completed as required, the application could not be processed further and the application was cancelled. Such a cancellation is not a refusal to insure. OIR offered no competent evidence that LNL refused to insure this applicant solely because of national origin. There was no evidence that the IBU request was a ruse by LNL to cover up its alleged desire to refuse insurance based on national origin. Even in some of the Counts contained in this case, the evidence showed that LNL issued insurance to Haitian applicants when they met its underwriting rules. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 16

54. Count 16 alleged that, in February 2004, LNL refused to issue a \$25,000 life insurance policy to a 63-year-old male born in Haiti and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. The evidence demonstrated that processing of this application was canceled because the applicant had not completed a required telephonic underwriting interview. A handwritten notation on the file stated, "Find a way to cancel/decline." The note was from the person who reviewed pending files that had not been handled within the timeframe established by LNL for life insurance applications. This application had exceeded those timeframes since it had been pending for six weeks. The note was intended to finalize the processing of the file and remove it from the pending files list. There was no evidence that the note demonstrated an intention to refuse to issue insurance based solely on the applicant's national origin. Moreover, the evidence demonstrated that LNL reinstated a life insurance policy previously issued to this applicant after that policy had lapsed. Clearly, LNL did not refuse to insure this applicant solely because of national origin. Given these facts, the evidence did not establish that LNL violated Subsection

626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 19

55. Count 19 alleged that, in June 2004, LNL refused to issue a \$100,000 life insurance policy to a 26-year-old male born in Colombia and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. Colombia was listed as a "D" country under the country code classifications used by LNL for underwriting purposes.

56. A residency questionnaire was also submitted with the application. The questionnaire revealed that the applicant was employed and had an annual income of \$40,000. The application also indicated that the applicant was a permanent resident of the United States, but had lived in the United States for less than 10 years. The residency questionnaire reflected that the applicant was unsure of his VISA number and that it had either expired or was about to expire. The applicant hoped to have it reinstated next year. Additionally, the official Immigration and Naturalization Service residency status documentation that was provided with the application showed that the applicant's residency status had expired. The applicant, therefore, had not submitted the required documentation that he was a current legal resident of the United States.

57. However, because the application was for a \$100,000 policy, LNL's underwriting rules required that the application be submitted to a re-insurance company to insure the risk. Direct insurance companies often utilize re-insurance companies to shift the risk of an insurance application to the re-insurance company. Such companies follow their own underwriting rules to determine whether they will issue insurance on an application. This application was forwarded to one of the re-insurance companies that LNL utilizes for re-insurance. The re-insurance company declined to issue insurance on the application and returned the application to LNL. Thereafter, LNL declined to issue insurance on this application because the documentation submitted with the application showed that the applicant's legal residency status in the United States had expired and the re-insurance provider utilized by LNL declined to re-insure the applicant. OIR offered no competent evidence that LNL refused to insure this applicant solely because of national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 20

58. Count 20 of the OIR Order alleged that, in May 2004, LNL refused to issue a \$25,000 life insurance policy to a 20-year-old female born in South Africa and residing in the United

States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. At the time of the application, South Africa was listed as a "D" country under the country code classifications used by LNL for underwriting purposes.

59. The applicant in this case was the daughter of an LNL insurance agent. At the time of the application, she was a full-time student, unemployed and had no income. The evidence showed that LNL's underwriting rules limited the amount of coverage to an amount equal to the applicant's annual income for the preceding year. Since the applicant had no income, LNL's underwriting rules did not permit the issuance of coverage and the policy was declined. OIR offered no competent evidence that LNL refused to insure this applicant solely because of national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

Count 21

60. Count 21 of the OIR Order alleged that, in April 2004, LNL refused to issue a \$100,000 life insurance policy to a 42-year-old male born in Colombia and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. The evidence demonstrated that the applicant had lived in the United States

for less than 10 years, but was a resident because he had received political asylum in the United States. Political asylum is a non-permanent status that could result in the resident being returned to his or her country of origin. Political asylum status was considered by LNL's underwriters to constitute too tenuous a residency status in the United States to warrant undertaking the risk of issuing insurance to an individual who may at any time be returned to residency in his country of origin, with its attendant severe mortality risks.

61. However, because the application was for a \$100,000 policy, LNL sent the application to one of the re-insurance companies that it uses for re-insurance. The re-insurance company declined to issue insurance on the application based on the temporary nature of the applicant's residency status and returned the application to LNL. Thereafter, LNL declined to issue insurance to this applicant because he had resided in the United States for less than 10 years and his residency in the United States was based on political asylum status. OIR offered no evidence to refute LNL's position on political asylum and offered no competent evidence that LNL refused to insure this applicant solely because of national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

Count 22

62. Count 22 of the OIR Order alleged that, in April 2004, LNL refused to issue a \$25,000 life insurance policy to a 17-year-old male born in Ghana and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. Ghana is listed as a "D" country under the country code classifications used by LNL for underwriting purposes.

63. The evidence showed that the applicant had indicated on his application that he had a work visa which permitted him to remain a resident of the United States. However, the applicant, also, indicated he was a full-time high school student. The file also indicated that his sister, who is a contingent beneficiary, paid the initial application amount. On the other hand, the application indicated that the applicant's fiancée would be the person responsible for payment of the insurance premium. Because of these inconsistencies, a telephonic interview was requested, but, for unknown reasons, was not completed. Because the interview was not completed, LNL declined to issue insurance on this application because the information that would have been supplied in a telephone interview was not provided before the underwriting decision was made.

64. Again, OIR argues that the absence of specific notations in the file that it was cancelled based on missing documentation demonstrates that LNL refused to issue insurance based solely on national origin. This argument ignores OIR's burden of proof in this case. The lack of such notations does not provide either a clear or convincing basis to draw any inferences regarding the reason for not issuing a policy. Additionally, OIR's argument ignores the unrefuted testimony in this case that the application was declined based on the lack of information that would have been supplied if the required telephone interview had been completed. Other than its argument, OIR offered no competent evidence that LNL refused to insure this applicant solely because of national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 23

65. Count 23 of the OIR Order alleged that, in August 2004, LNL refused to issue a \$100,000 life insurance policy to a 27-year-old male born in Colombia and residing in the United States solely because of the applicant's national origin in violation of Subsection 626.9541(1)(x)1., Florida Statutes. The evidence showed that the applicant was a temporary resident based on a grant of political asylum he received in 2000.

66. As with Count 21, LNL sent the application to one of the re-insurance companies that it uses for re-insurance. The re-insurance company declined to issue insurance on the application based on the temporary nature of the applicant's residency status and returned the application to LNL. Thereafter, LNL declined to issue insurance to this applicant because he had resided in the United States for less than 10 years and his residency in the United States was based on political asylum status. Again, political asylum status is considered by LNL's underwriters to constitute too tenuous a residency status in the United States to warrant undertaking the risk of issuing insurance to an individual who may at any time be returned to residency in his country of origin, with its attendant severe mortality risks. OIR offered no competent evidence that LNL refused to insure this applicant solely because of national origin. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(x)1., Florida Statutes, and the Count should be dismissed.

COUNT 24

67. Count 24 of the OIR Order alleged that LNL refused to issue life insurance or limited the amount, extent, or kind of life insurance coverage to a 59-year-old male applicant who was born in Guyana and resided in the United States based solely on past lawful foreign travel experience or future lawful travel

plans, in violation of Subsection 626.9541(1)(dd)2., Florida Statutes. Guyana was listed as a "D" country under the country code classifications used by LNL for underwriting purposes.

68. The unrefuted evidence demonstrated that underwriting review of this application (A007302898) was postponed because the applicant was going to be out of the country on a mission trip to Liberia and could not complete a required paramedical examination requested by the paramedical examination company until his return to the United States. For unknown reasons, the applicant's agent submitted a new application (A007313656) when the applicant returned from his trip.

69. Medical tests were completed which revealed the applicant had prostate cancer and abnormal blood lab results. The original application was cancelled and the second application was denied based on the medical risk posed by the applicant. Clearly, neither cancellation of the first application nor denial of the second application was based on the applicant's travel. OIR offered no competent evidence that LNL refused to insure this applicant, or limited the amount, extent, or kind of life insurance coverage available to them, based solely on past lawful foreign travel or future lawful travel plans. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(dd)1. or 2., Florida Statutes, and the Count should be dismissed.

COUNT 25

70. Count 25 of the OIR Order alleged that in January 2007, LNL refused to issue life insurance or limited the amount, extent, or kind of life insurance coverage to a 23-year-old male applicant who was born in Palestine and resided in the United States based solely on past lawful foreign travel experience or future lawful travel plans, in violation of Subsections 626.9541(1)(dd)1. and 2., Florida Statutes. Palestine was listed as a "D" country under the country code classifications used by LNL for underwriting purposes.

71. The evidence demonstrated that the applicant applied for a \$100,000 insurance policy. The applicant indicated that he traveled to Palestine every few years. The insurance policy was issued but contained a policy endorsement excluding coverage for foreign travel. The policy was also issued with a rate above what would be normally charged for the type of insurance issued. Clearly, LNL did not refuse to issue insurance based on this applicant's past travel or future travel plans. However, LNL did limit the insurance issued because of the applicant's future travel plans when it issued the policy with a foreign travel endorsement. This underwriting decision was made after the effective date of Florida's "Freedom to Travel Act."

72. In this case, the application was submitted to one of the re-insurance companies used by LNL. The re-insurance

company only agreed to re-insure the application if the policy included a foreign travel exclusion endorsement. LNL's underwriting department was under the mistaken belief that LNL's re-insurers were underwriting their risks according to the same Florida "Freedom to Travel Act" restrictions imposed by Florida on direct insurers such as LNL. Since the re-insurer to whom this application was submitted required a foreign travel exclusion endorsement, LNL assumed the exclusion was consistent with Florida travel underwriting requirements, and issued the policy with the foreign travel exclusion endorsement. The mistake was admitted by LNL and seems to be an underwriting error due to the inexperience of LNL's underwriter's in regard to the relatively new "Freedom to Travel Act." There was no evidence that LNL's decision was willful. However, LNL's decision was a violation of the Act.

COUNT 26

73. Count 26 of the OIR Order alleges that in February 2007, LNL refused to issue life insurance or limited the amount, extent, or kind of life insurance coverage to a 44-year-old male applicant who was born in Haiti and was a citizen of the United States based solely on past lawful foreign travel experience or future lawful travel plans, in violation of Subsections 626.9541(1)(dd)1. and 2., Florida Statutes. The applicant had

applied for a \$150,000 policy and indicated in his telephone interview that he traveled to Haiti one or two times a year.

74. The evidence demonstrated that Ms. Saxon's underwriting unit processes approximately 1,500 applications from Florida a week, in addition to applications from other states. Ms. Saxon admitted that, when she processed this application, she missed the fact that this application was from Florida and subject to the "Florida Freedom to Travel Act." She issued an ALX policy for \$15,000. An ALX policy limits benefits to a return of premiums should an insurable event occur during the first three years of the policy. There was no evidence that Ms. Saxon willfully violated Florida's "Freedom to Travel Act," but made a mistake in processing this application. However, LNL did limit the kind or extent of insurance based solely on this applicant's travel plans, contrary to the Florida "Freedom to Travel Act."

COUNTS 27 AND 28

75. Count 27 and 28 of the OIR Order alleges around July or August 2006, LNL refused life insurance to or limited the amount, extent, or kind of life insurance coverage on two insureds who were married, filed applications at the same time and were born in Haiti based solely on their past lawful foreign travel experience or future lawful travel plans, in violation of Subsections 626.9541(1)(dd)1. and 2., Florida Statutes. The

applications were submitted to LNL on June 12, 2006, prior to the effective date of the "Freedom to Travel Act." The decisions to issue the policies were made on July 6, 2006, five days after the Act's effective date on July 1, 2006. However, the policies were made effective retroactively to July 1, 2006, the same day the Act came into effect.

76. The insurance policies were issued at a reduced face amount of \$33,000 due to the underwriting rule that limited the amount of a policy to an applicant's annual income. Additionally, and more importantly for these Travel Act charges, the policies were issued with a foreign travel endorsement required.

77. Once the underwriting decisions were made, the applicants' files were sent to the issuance department of LNL for finalization of the paperwork on the policies. This process is the standard process used by LNL for the insurance policies it writes. No one from the issuance department testified at the hearing and the evidence was not clear whether part of the policy had been finalized or placed with the insured. However, on July 20, 2006, the foreign travel policy endorsements for the policies were sent to the branch office. Again, the evidence was not clear what the branch office was to do with these endorsements, but it appears that the expectation was to have the endorsements signed by the applicants and returned to the

issuance department. The travel endorsements were not accepted or returned by the applicants and the policies were eventually cancelled by LNL. Again, the evidence was not clear why the endorsements were not returned. Based on these facts, the evidence was clear that LNL limited the kind or extent of insurance based solely on these applicants' travel plans contrary to the Florida "Freedom to Travel Act." However, the evidence did not demonstrate that these violations were willful given the timeframes involved in the files.

COUNT 29

78. Count 29 of the OIR Order alleges that in June 2006, LNL refused to issue life insurance or limited the amount, extent, or kind of life insurance coverage to a 54-year-old female applicant who was born in Honduras and was residing in the United States based solely on past lawful foreign travel experience or future lawful travel plans, in violation of Subsections 626.9541(1)(dd)1. and 2., Florida Statutes. Honduras was listed as a "D" country on the country code classifications used by LNL for underwriting purposes.

79. In this Count, the applicant applied for a \$50,000 policy. Her telephone interview reflected that her most recent annual income was \$6,000. She, also, indicated that she might travel to Honduras in the future for Christmas.

80. The unrefuted evidence demonstrated that the policy was issued at a reduced amount of \$6,000 based on the income of the applicant. As discussed earlier, this reduction was in compliance with LNL's underwriting rules for the risks posed by non-citizen applicants who were born in a "C" or "D" country. There was no competent evidence that this reduction was related to the applicant's future travel plans. Based on these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(dd)1 or 2., Florida Statutes, and the Count should be dismissed.

COUNT 30

81. Count 30 of the OIR Order alleges that in August 2006, LNL refused to issue life insurance or limited the amount, extent, or kind of life insurance coverage to a 47-year-old male applicant who was born in Haiti and was residing in the United States based solely on past lawful foreign travel experience or future lawful travel plans, in violation of Subsections 626.9541(1)(dd)1. and 2., Florida Statutes. As found earlier, Haiti is listed as a "D" country on the country code classifications used by LNL for underwriting purposes.

82. The applicant had applied for a \$50,000 policy. His most recent (2005) tax return reflected an annual income close to \$11,000. His telephone interview reflected a current income of 36,000. However, this income was not in line with either of

the applicant's 2003 or 2004 tax returns which reflected income closer to the 2005 tax return. Indeed, the evidence indicates that the \$36,000 income reported in the telephone interview reflected business income prior to subtracting any business expenses. The applicant also indicated that he had returned to Haiti for a three-month period approximately four years prior to the date of his application to visit his family, but had no travel plans to visit Haiti in the future.

83. The better evidence demonstrated that this policy was issued at a reduced amount of \$17,000 based on the best estimate of the most recent annual income of the applicant. As discussed earlier, this reduction was in compliance with LNL's underwriting rules for the risks posed by a non-citizen applicant who was born in a "C" or "D" country. There was no competent evidence that this reduction was related to the applicant's past or future travel plans. Based on these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(dd)1 or 2., Florida Statutes, and the Count should be dismissed.

COUNT 31

84. Count 31 of the OIR Order alleges that in August 2006, LNL refused life insurance to or limited the amount, extent, or kind of life insurance coverage to a 30-year-old female applicant who was born in Haiti and residing in the United

States based solely on past lawful foreign travel experience or future lawful travel plans, in violation of Subsections 626.9541(1)(dd)1. and 2., Florida Statutes.

85. The applicant had applied for a \$100,000 policy. Her W-2 statements reflected an annual income of \$42,000. She also indicated that she had traveled to Haiti approximately two years prior to the application, but had no future plans to travel.

86. The unrefuted evidence demonstrated that the policy was issued at a reduced amount of \$42,000 based on the income of the applicant. As discussed earlier, this reduction was in compliance with LNL's underwriting rules for the risk posed by non-citizen applicants who were born in a "C" or "D" country. There was no competent evidence that this reduction was related to the applicant's future travel plans. Based on these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(dd)1 or 2., Florida Statutes, and the Count should be dismissed.

COUNT 32

87. Count 32 of the OIR Order alleges that in September 2006, LNL refused life insurance to or limited the amount, extent, or kind of life insurance coverage to a 60-year-old female applicant who was born in Colombia and was a resident of the United States based solely on past lawful foreign travel experience or future lawful travel plans, in violation of

Subsections 626.9541(1)(dd)1. and 2., Florida Statutes.

Colombia was listed as a "D" country on the country code classifications used by LNL for underwriting purposes.

88. The applicant had applied for a \$35,000 policy. The applicant indicated she had an annual income of \$25,000. Her most recent W-2 showed income slightly under \$24,000. The applicant also indicated that she traveled to Colombia within the 12 months preceding her application and that she traveled there about every 5 years.

89. The unrefuted evidence demonstrated that the policy was issued at a reduced amount of \$25,000 based on the income of the applicant. As discussed earlier, this reduction was in compliance with LNL's underwriting rules for the risk posed by non-citizen applicants who were born in a "C" or "D" country. There was no competent evidence that this reduction was related to the applicant's past travel or future travel plans. In fact, the file contains a specific handwritten note from LNL's legal department on a copy of the OIR's official notification regarding the effective date of the Travel Act that indicated the underwriter could not take adverse actions on the application based on the applicant's travel plans. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(dd)1 or 2., Florida Statutes, and the Count should be dismissed.

COUNT 33

90. Count 33 of the OIR Order alleges that in September 2006, LNL refused life insurance to or limited the amount, extent, or kind of life insurance coverage to a 36-year-old female applicant who was born in Thailand and was a resident of the United States based solely on past lawful foreign travel experience or future lawful travel plans, in violation of Subsections 626.9541(1)(dd)1. and 2., Florida Statutes. Thailand was listed as a "D" country on the country code classifications used by LNL for underwriting purposes.

91. The applicant applied for a \$75,000 policy. Her most recent income tax return reflects income of \$40,000. She also indicated that she regularly travels to Thailand for one week about every five years and intends to continue to travel there.

92. The unrefuted evidence demonstrated that the policy was issued at a reduced amount of \$40,000 based on the income of the applicant. As discussed earlier, this reduction was in compliance with LNL's underwriting rules for the risk posed by non-citizen applicants who were born in a "C" or "D" country. There was no competent evidence that this reduction was related to the applicant's past travel or future travel plans. As with Count 32, the file contains a specific handwritten note from LNL's legal department on a copy of the OIR's official notification regarding the effective date of the Travel Act.

The note indicated that the underwriter could not take adverse actions on the application based on the applicant's travel plans. Given these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(dd)1 or 2., Florida Statutes, and the Count should be dismissed.

COUNT 34

93. Count 34 of the OIR Order alleges that in November 2007, LNL refused life insurance to or limited the amount, extent, or kind of life insurance coverage to a 41-year-old male applicant who was born in India and was a resident of the United States based solely on past lawful foreign travel experience or future lawful travel plans, in violation of Subsections 626.9541(1)(dd)1. and 2., Florida Statutes. India was listed as a "D" country on the country code classifications used by LNL for underwriting purposes.

94. The applicant had applied for a \$100,000 policy. His most recent W-2 showed income of slightly more than \$12,000. The applicant, also, indicated that he traveled to India every few years and had plans to travel there in the future.

95. The evidence demonstrated that this application was submitted to one of the re-insurance companies used by LNL because the application was for a \$100,000 policy. The re-insurance company declined to re-insure the risk based on the travel plans of the applicant and returned the application to

LNL. However, LNL recognized that it could not decline the application for the reason the re-insurance company declined the re-insurance. LNL reviewed the policy based on its underwriting guidelines for applicants from "C" or "D" countries. The policy was issued at a reduced amount of \$15,000 based on the income of the applicant and rated for a person with diabetes. This reduction was in compliance with LNL's underwriting rules for the risk posed by non-citizen applicants who were born in a "C" or "D" country. Additionally, the rating for diabetes was in line with LNL's underwriting guidelines for medical conditions. There was no competent evidence that either the reduction or rating were related to the applicant's past travel or future travel plans. Based on these facts, the evidence did not establish that LNL violated Subsection 626.9541(1)(dd)1. or 2., Florida Statutes, and the Count should be dismissed.

COUNT 35

96. Count 35 of the OIR Order alleges that in March 2007, LNL refused life insurance to or limited the amount, extent, or kind of life insurance coverage to a 34-year-old male applicant who was born in Nepal and was a resident of the United States based solely on past lawful foreign travel experience or future lawful travel plans, in violation of Subsections 626.9541(1)(dd)1. and 2., Florida Statutes. Nepal was listed as

a "D" country on the country code classifications used by LNL for underwriting purposes.

97. The applicant had applied for a \$200,000 policy. His most recent W-2 showed income around \$10,000. The telephone interview reflected annual income of about \$30,000 since he was self-employed. The applicant, also, indicated that he traveled to Nepal about every two years and had plans to travel there in the future.

98. The evidence demonstrated that this application was submitted to one of the re-insurance companies used by LNL because the application was for over \$100,000 policy. The re-insurance company declined to re-insure the risk based on the travel plans of the applicant and returned the application to LNL. Again, LNL recognized that it could not decline the application for the reason the re-insurance company declined the re-insurance. The policy was issued at a reduced amount of \$30,000 based on the income of the applicant. This reduction was in compliance with LNL's underwriting rules for the risk posed by a non-citizen applicant who was born in a "C" or "D" country. There was no competent evidence that this reduction was related to the applicant's past travel or future travel plans. Based on these facts, the evidence did not establish that LNL violated Subsection 626.9541 (1)(dd)1. or 2., Florida Statutes, and the Count should be dismissed.

CONCLUSIONS OF LAW

99. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. § 120.57(1), Fla. Stat. (2009).

100. In license discipline cases, the agency has the burden to establish by clear and convincing evidence that the Respondent has violated the statutes or rules which govern the license. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

101. Section 626.9541, Florida Statutes, governs unfair insurance trade practices in Florida and defines a variety of unfair practices. Counts 1-16 and 19-23 of the Order charged LNL with violating Subsection 626.9541(1)(x)1., Florida Statutes. The subsection provides that it is an unfair insurance trade practice to refuse to insure an applicant based on the applicant's national origin. The subsection states, in pertinent part:

Refusal to insure. . . . the refusal to insure, any individual solely because of: . . . national origin. (Emphasis added.)

The plain language of this statute does not make it unlawful to issue less coverage than the applicant requested, or to cancel processing of an application because the applicant failed to provide information required by LNL's underwriting rules and guidelines. Likewise, the subsection does not prohibit an insurer from cancelling an application because the applicant did

not complete an interview that was required by those rules and guidelines. Compare § 626.9541(1)(x)1., Fla. Stat., with § 626.9541(1)(dd), Fla. Stat.; and L. K. v. Department of Juvenile Justice, 917 So. 2d 919, 921 (Fla. 1st DCA 2005). Such limitations or actions do not amount to a "refusal to insure."

102. In this case, the evidence demonstrated as to Counts 2, 3, 5-11, 13, 15, 16, and 22 that LNL's underwriting action on these charges was either to cancel processing of the application because of unfulfilled underwriting information requirements or to issue coverage equal to the amount of the applicant's annual income in the most recent year. None of these actions constituted a refusal to insure under Subsection 626.9541(1)(x)1., Florida Statutes.

103. Moreover, as to each of these counts, OIR presented no clear or convincing evidence that LNL refused to insure these applicants solely because of national origin. Therefore, these counts should be dismissed.

104. The Order also alleged violations of Subsection 626.9541(1)(x)1., Florida Statutes, in Counts 1, 4, 12, 14, 19-21, and 23 of the Order. These applications were declined for a variety of reasons related to LNL's underwriting guidelines for non-citizen residents of the United States from countries categorized by mortality risk. The evidence demonstrated that those guidelines had an actuarial basis and were not related to

national origin of the applicant, but to other mortality risk factors for those countries. OIR offered no clear or convincing evidence that LNL refused to insure these applicants solely because of national origin. Therefore, these counts should be dismissed.

105. Counts 17, 18, and 29-35 of the Order charged violations of Subsection 626.9541(1)(g)1., Florida Statutes. That subsection prohibits:

"[k]nowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life, in the rates charged for any life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract."

106. In this case, OIR bears the burden to identify the "actuarially supportable class" in these counts and that these applicants were members of that class with an "equal expectation of life." United Wisconsin Ins. Co. v. Office of Ins. Reg., 849 So. 2d 417, 420-421 (Fla. 1st DCA 2003); Ferris v. Turlington, supra. OIR offered no expert testimony establishing the actuarial class for these applicants or that these applicants had an "equal expectation of life." Indeed, the only evidence offered regarding the actuarial class was from LNL's actuarial expert that established an actuarial basis for the country code classifications used by LNL for underwriting

purposes. Given this evidence, these Counts should be dismissed.

107. Counts 24, and 29-35 of the Order charged that LNL violated Florida's "Freedom to Travel Act," found in Subsection 626.9541(1)(dd), Florida Statutes. That subsection states that an insurer:

1. . . . may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's future lawful foreign travel experiences.
2. . . . may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's past lawful foreign travel experiences . . .

The subsection also provides that an insurer can consider travel plans in issuing insurance only if the insurer can demonstrate, and OIR determines, that the travel risk is based on sound actuarial principles and is related to the risk of travel to a particular place. The evidence did not demonstrate that OIR had made such a determination. However, the evidence did not establish that LNL refused to insure the applicants involved in these counts or limited the amount, extent, or kind of life insurance coverage available to these applicants based solely on past lawful foreign travel or future lawful travel plans. Indeed, the evidence established that the insurance the

applicants in these counts received was based on underwriting criteria unrelated to the applicant's travel. Given this evidence, OIR did not prove violations of Subsection 626.9541(1)(dd), Florida Statutes, and these counts should be dismissed.

108. Finally, in counts 25, 26, 27 and 28 of the Order the evidence did establish that LNL limited the amount, extent, or kind of life insurance coverage available to the applicants solely because of travel or travel plans in violation of Subsection 626.9541(1)(dd), Florida Statutes. Indeed, LNL admitted these allegations.

109. The evidence demonstrated that these violations were due to mistakes in processing these applications and were not willful violations of the statutes by LNL. Additionally, given the number of files reviewed during the examination, the evidence established that these mistakes were uncommon occurrences in LNL's underwriting process. However, given these minimal violations, it is appropriate that LNL's certificate of authority be disciplined for these four violations.

110. In regard to discipline of a licensee under the Florida Insurance Code, Section 624.310, Florida Statutes, provides a range of penalties, including cease and desist orders that may be imposed for violations of the Insurance Code. Section 624.310(5), Florida Statutes, provides:

(a) The . . . office may, in a proceeding initiated pursuant to chapter 120, impose an administrative fine against any person found in the proceeding to have violated any provision of this code, a cease and desist order of the . . . office, or any written agreement with . . . the office. No proceeding shall be initiated and no fine shall accrue until after the person has been notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so.

* * *

(c) The . . . office may, in addition to the imposition of an administrative fine under this subsection, also suspend or revoke the license or certificate of authority of the licensee fined under this subsection.

* * *

(e) In imposing any administrative penalty or remedy provided for under this section, the . . . office shall take into account the appropriateness of the penalty with respect to the size of the financial resources and the good faith of the person charged, the gravity of the violation, the history of previous violations, and other matters as justice may require.

111. The Unfair Trade Practices Act in the Florida Insurance Code contains specific penalties for violation of the provisions of that Act. Section 626.9581 provides that OIR shall enter a cease and desist order and may suspend or revoke an insurer's certificate of authority for violation of Section 626.9541, Florida Statutes, the statute at issue in this

proceeding. However, suspension or revocation of a certificate of authority is restricted to violations where the licensee knew or should have known about the violation. Section 626.9521, Florida Statutes, provides that OIR may impose a fine not greater than \$5,000 for each non-willful violation up to an aggregate amount of \$20,000 for all such violations.

112. In this case, the evidence shows that none of the four proven violations was anything other than an honest mistake. The violations were not willful. LNL's examiners processed approximately 1,500 life insurance applications from Florida a week during the time period covered by OIR's market conduct examination. OIR's contract examiners reviewed 7,040 underwriting files for Florida life insurance applications processed by LNL's underwriting department. OIR alleged only a dozen "Freedom to Travel Act" violations from among those 7,040 files, and was able to prove only four such violations. All of the violations occurred within six months of the effective date of the "Freedom to Travel Act." The violations were not knowing violations of the Unfair Trade Practices Act. See Fla. Admin. Code R. 690-142.011 (2)(g). The mistakes in processing were minor violations of the Travel Act and can be remedied by LNL.

113. There is no basis in this record or under the statutes for suspending or revoking LNL's certificate of authority for these minor violations. However, there is a basis

for imposing the statutory fine provided for non-willful violations of Section 626.9541, Florida Statutes. § 626.9521, Fla. Stat.

114. In determining whether a fine should be imposed on LNL for these four non-willful violations, consideration must be given to the fact that there was no evidence that demonstrated LNL has a history of violating the Unfair Trade Practices Act or has been subject to serious discipline for any violations of the Insurance Code. Additionally, LNL forthrightly admitted these violations once it discovered its processing mistakes after investigating the facts surrounding these files. Moreover, LNL was denied an opportunity to voluntarily remedy these violations when OIR elected not to follow the informal review and discussion opportunity provided in the statutes during the market-conduct examination process. Considering the totality of the circumstances, it is reasonable to fine LNL \$1,000 for each of these violations and order that the applications be underwritten to issue the insurance policies to these four applicants with effective dates running from the date the policies were declined. See Fla. Admin. Code R. 690-142.011 (2) (g).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is:

RECOMMENDED that Counts 1 through 24 and 29 through 35 of OIR's June 3, 2009, Order be dismissed. As to Counts 25, 26, 27, and 28 of OIR's June 3, 2009, Order it is further RECOMMENDED that OIR enter a Final Order finding four violations of Section 626.9541(1) (dd), Florida Statutes, imposing an administrative fine of \$1,000 per violation and ordering Respondent to underwrite the applications of the four affected individuals, and to offer to issue coverage to them from the date the policies were declined in such amount as is consistent with LNL's underwriting guidelines, in compliance with the underwriting restrictions in Section 626.9541(1) (dd), Florida Statutes. It is further RECOMMENDED that OIR issue a cease and desist order to LNL regarding violations of Section 626.9541, Florida Statutes.

DONE AND ENTERED this 9th day of November, 2010, in Tallahassee, Leon County, Florida.



DIANE CLEAVINGER
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Filed with the Clerk of the
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.