

**REPORT OF
MARKET CONDUCT EXAMINATION
OF**

**BOSTON MUTUAL LIFE INSURANCE
COMPANY**

Canton, Massachusetts

**AS OF
October 18, 2005**

COMMONWEALTH OF PENNSYLVANIA



**INSURANCE DEPARTMENT
MARKET CONDUCT DIVISION**

Issued: December 13, 2005

BOSTON MUTUAL LIFE INSURANCE COMPANY

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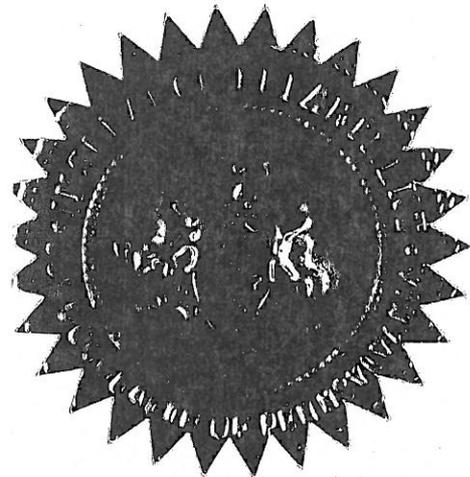
BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 29 day of April, 2002, in accordance with Section 905(c) of the Pennsylvania Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, P.S. § 323.5, I hereby designate Randolph L. Rohrbaugh, Deputy Insurance Commissioner, to consider and review all documents relating to the market conduct examination of any company and person who is the subject of a market conduct examination and to have all powers set forth in said statute including the power to enter an Order based on the review of said documents. This designation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.



M. Diane Koken
Insurance Commissioner



BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:
: :
BOSTON MUTUAL LIFE : Sections 671-A, 671.1-A and 903(a) of
INSURANCE COMPANY : the Insurance Department Act, as
120 Royall Street : amended by Act 147 of 2002 (40 P.S.
Canton, MA 02021 : §§ 310.71 and 323.3)
: :
: Sections 354, 404-A, 408-A(a)(4),
: 408-A(e)(2)(i), 410-D(a)(2) of the
: Insurance Company Law, Act of May
: 17, 1921, P.L. 682, No. 284 (40 P.S.
: §§ 477b, 625-4, 625-8 and 510)
: :
: Title 31, Pennsylvania Code, Sections
: 51.5, 81.5(b), 81.6(a)(1), 83.3, 83.4a,
: 83.4b, 83.55, 83.55a, 83.55b,
: 89b.11(b), 146.5, 146.6 and 146.7
: :
: Title 18, Pennsylvania Consolidated
: Statutes, Section 4117(k)
: :
Respondent. : Docket No. MC05-11-026

CONSENT ORDER

AND NOW, this *13th* day of *DECEMBER*, 2005, this Order is hereby
issued by the Deputy Insurance Commissioner of the Commonwealth of
Pennsylvania pursuant to the statutes cited above and in disposition of the matter
captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order shall have the full force and effect of an order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra. or other applicable law.

3. Without admitting the allegations of fact and conclusions of law contained herein, Respondent neither admits nor denies that it violated any law or regulation of the Commonwealth.

FINDINGS OF FACT

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

(a) Respondent is Boston Mutual Life Insurance Company, and maintains its address at 120 Royall Street, Canton, Massachusetts 02021.

(b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from January 1, 2004, to December 31, 2004.

- (c) On October 17, 2005, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on November 17, 2005.
- (e) After consideration of the November 17, 2005 response, the Insurance Department has modified the Examination Report as attached.
- (f) The Examination Report notes violations of the following:
 - (i) Section 903(a) of the Insurance Department Act, No. 285 (40 P.S. § 323.3), which requires every company or person subject to examination must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the Department may require, in order that its representatives may ascertain whether the company has complied with the laws of the Commonwealth;
 - (ii) Section 671-A of the Insurance Department Act, No. 285 (40 P.S. § 310.71), which prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act;

- (iii) Section 671.1-A of the Insurance Department Act, No. 285, (40 P.S. § 310.71a) which requires (a) an insurer which terminates an appointment shall notify the Department in writing, on a form approved by the Department, or through an electronic process, within 30 days following the effective date of termination; and (d) If the reason for termination was a violation of this act or if the insurer had knowledge that the licensee was found to have engaged in any activity prohibited by this act, the insurer shall inform the Department in the notification;
- (iv) Section 354 of the Insurance Company Law (40 P.S. § 477b), which prohibits issuing, selling, or disposing of any policy, contract or certificate until the forms have been submitted to, and formally approved by, the Insurance Commissioner;
- (v) Section 404-A of the Insurance Company Law, No. 284 (40 P.S. §625-4), which requires when the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the

individual policy or annuity is delivered by a means other than by hand-delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence;

- (vi) Section 408-A(a)(4) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which requires if a life insurance policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this section is required. The life insurance policy forms were identified by the insurer as policies to be marketed with an illustration;

- (vii) Section 408-A(e)(2)(i) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which states the following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen is displayed. The producer shall certify in writing on a form provided by the insurer that no illustration was used in the sale of the life insurance policy. On the same form, the applicant shall acknowledge an understanding that an Illustration conforming to the policy as issued will be provided no later than at the time of policy delivery;

- (viii) Section 410-D(a)(2) of the Insurance Company Law, No. 284 (40 P.S. § 510c), which requires individual fixed dollar life insurance or endowment policies which are offered as replacements for an existing life insurance policy or annuity contract with the same insurer or insurer group shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such policy or attached thereto, a notice stating in substance that the policyholder shall be permitted to return the policy within at least 45 days of its delivery;

- (ix) Title 31, Pennsylvania Code, Section 51.5, which states a company required to file an annual statement which is now or which hereafter becomes subject to this chapter shall file with the Department with its Annual Statement, a Certificate of Compliance executed by an authorized officer of the company wherein it is stated that to the best of his knowledge, the advertisements which were disseminated by the company during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws and regulations of this Commonwealth;

- (x) Title 31, Pennsylvania Code, Section 81.5(b), which states that the insurer shall require as part of a completed application for life insurance or annuity, a statement signed by the applicant as to whether the proposed insurance or annuity will replace an existing life insurance or annuity;

- (xi) Title 31, Pennsylvania Code, Section 81.6(a)(1), which requires an insurer that uses an agent or broker in a life insurance or annuity sale shall require with or as part of a completed application for life insurance or annuity, a statement signed by the agent or broker regarding whether the broker knows replacement is or may be involved in the transaction;

- (xii) Title 31, Pennsylvania Code, Section 83.3, which requires written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such;

- (xiii) Title 31, Pennsylvania Code, Section 83.4a, which states the agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant;

- (xiv) Title 31, Pennsylvania Code, Section 83.4b, which requires the insurer to maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance;

- (xv) Title 31, Pennsylvania Code, Section 83.55, which states the surrender comparison index disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible. A disclosure that is minimally satisfactory to the Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter prior to use is adequate notification to the Department;
- (xvi) Title 31, Pennsylvania Code, Sections 83.55a and 83.55b, which (a) require the agent to submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant; and (b) the insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the files of the insurer shall constitute prima facie evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance;
- (xvii) Title 31, Pennsylvania Code, Section 89b.11(b), which requires each form to contain a form number consisting of numbers, letters or both. The form

number shall be adequate to distinguish the form from all others used by the insurer. The form number may be the same as that of a form to be replaced. However, if the form to be replaced was approved by or filed with the Department, it may not have been issued in this Commonwealth;

- (xviii) Title 31, Pennsylvania Code, Section 146.5, which requires every insurer, upon receiving notification of a claim, shall within 10 working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgement shall be made in the claim file of the insurer and dated;
- (xix) Title 31, Pennsylvania Code, Section 146.6 states that if an investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected;
- (xx) Title 31, Pennsylvania Code, Section 146.7, which requires within 15 working days after receipt by the insurer of properly executed proof of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer; and

- (xxi) Title 18, Pennsylvania Consolidated Statutes, Section 4117(k), which requires all applications for insurance and all claim forms shall contain or have attached thereto the following notice: “Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.”

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner makes the following Conclusions of Law:
- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
 - (b) Respondent’s violations of Sections 671-A and 671.1-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):
 - (i) suspension, revocation or refusal to issue the certificate of qualification or license;

- (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
- (iii) an order to cease and desist; and
- (iv) any other conditions as the Commissioner deems appropriate.

(c) Respondent's violation of Section 354 of The Insurance Company Law is punishable by the following, under Section 354 of The Insurance Company Law (40 P.S. § 477b):

- (i) suspension or revocation of the license(s) of Respondent;
- (ii) refusal, for a period not to exceed one year thereafter, to issue a new license to Respondent;
- (iii) imposition of a fine of not more than one thousand dollars (\$1,000.00) for each act in violation of the Act.

(d) Respondent's violations of Sections 404-A, 408-A and 410-D of the Insurance Company Law, No. 284 (40 P.S. §§625-4, 625-8 and 510) are punishable by the following, under 40 P.S. § 625-10: Upon determination by hearing that this act has been violated, the commissioner may issue a cease and desist order, suspend, revoke or refuse to renew the license, or impose a civil penalty of not more than \$5,000 per violation.

- (e) Respondent's violations of Title 31, Pennsylvania Code, Sections 81.5 and 81.6 are punishable under Title 31, Pennsylvania Code, Section 81.8(b) and (c), which provide failure to comply, after a hearing, may subject a company to penalties provided in 40 P.S. § 475. Failure to comply shall be considered a separate violation and may not be considered in lieu of a proceeding against the company for a violation of 40 P.S. §§472, 473 or 474. In addition, failure to make the disclosure may be considered a violation of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 to 1171.15);

- (f) Respondent's violations of Title 31, Pennsylvania Code, Sections 83.3 are punishable under Title 31, Pennsylvania Code, Section 83.6:
 - (i) For failing to insure adequate disclosure of basic information, after a hearing, a company may be subject to the penalties provided under 40 P.S. § 475, for violations of 40 P.S. §§ 472 through 474. In addition, failure to make the disclosure outlined in this subchapter may be considered a violation of 40 P.S. §§ 1171.1 through 1171.15.

- (g) Respondent's violations of Title 31, Pennsylvania Code, Section 89b.11(b) are punishable under Section 354 of the Insurance Company Law (40 P.S. § 477b) by suspension or revocation of the license(s) of Respondent; refusal, for a period not to exceed one year thereafter, to issue a new license to

Respondent; or imposition of a fine of not more than one \$1,000.00 for each act in violation of the Act.

(h) Respondent's violations of Title 31, Pennsylvania Code, Sections 146.3, 146.5, 146.6 and 146.7 are punishable under Section 9 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.9):

(i) cease and desist from engaging in the prohibited activity;

(ii) suspension or revocation of the license(s) of Respondent.

(i) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:

(i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);

(ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).

ORDER

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

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) Respondent shall file an affidavit stating under oath that it will provide each of its directors, at the next scheduled directors meeting, a copy of the adopted Report and related Orders. Such affidavit shall be submitted within thirty (30) days of the date of this Order.
- (c) Respondent shall comply with all recommendations contained in the attached Report.
- (d) Respondent shall pay Forty Five Thousand Dollars (\$45,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.

(e) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

6. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein may pursue any and all legal remedies available, including but not limited to the following: The Deputy Insurance Commissioner may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Deputy Insurance Commissioner may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

7. Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate

action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

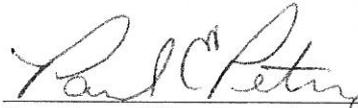
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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

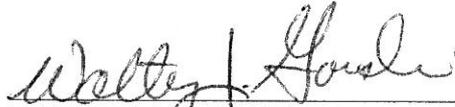
11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent

Order is not effective until executed by the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner.

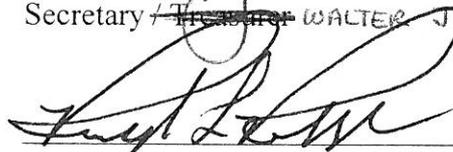
BY: BOSTON MUTUAL LIFE INSURANCE
COMPANY, Respondent



President / ~~Vice President~~ PAUL E. PETRY



Secretary / ~~Treasurer~~ WALTER J. GORSKI



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania

I. INTRODUCTION

The Market Conduct Examination was conducted on Boston Mutual Life Insurance Company, hereafter referred to as "Company," at the Company's offices located in Canton, Massachusetts, June 6, 2005, through July 29, 2005.

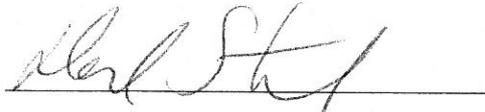
Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

Pennsylvania Market Conduct Examination Reports generally note only those items, to which the Department, after review, takes exception. A violation is any instance of Company activity that does not comply with an insurance statute or regulation. Violations contained in the Report may result in imposition of penalties. Generally, practices, procedures, or files that were reviewed by Department examiners during the course of an examination may not be referred to in the Report if no improprieties were noted. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was identified. This enables Company management to review these areas of concern in order to determine the potential impact upon Company operations or future compliance.

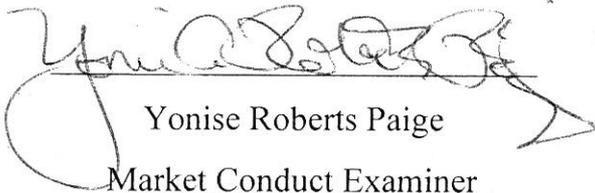
Throughout the course of the examination, Company officials were provided status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company officials to discuss the various types of violations identified during the examination and review written summaries provided on the violations found.

The courtesy and cooperation extended by the Officers and Employees of the Company during the course of the examination is acknowledged.

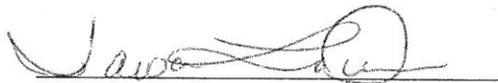
The undersigned participated in the Examination and in the preparation of this Report.



Daniel Stemcosky, AIE, FLMI
Market Conduct Division Chief



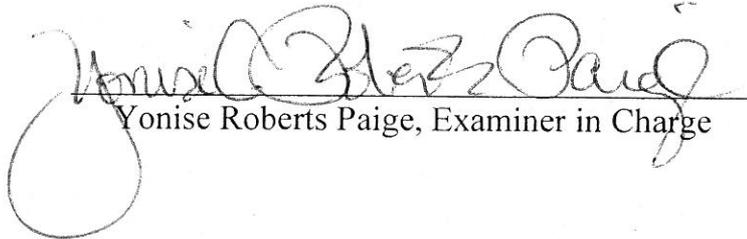
Yonise Roberts Paige
Market Conduct Examiner



Tawana L. Dean
Market Conduct Examiner

Verification

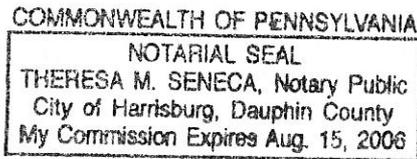
Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).


Yonise Roberts Paige, Examiner in Charge

Sworn to and Subscribed Before me

This 17 Day of October, 2005


Notary Public



II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted pursuant to the authority granted by Sections 903 and 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of January 1, 2004, through December 31, 2004, unless otherwise noted. The purpose of the examination was to determine compliance by the Company with Pennsylvania insurance laws and regulations.

The examination focused on the Company's operation in areas such as: Advertising, Consumer Complaints, Forms, Producer Licensing, Underwriting Practices and Procedures, and Claim Handling Practices and Procedures.

The Company was requested to identify the universe of files for each segment of the review. Based on the universe sizes identified, random sampling was utilized to select the files reviewed for this examination.

During the course of the examination, for control purposes, some of the review segments identified in this Report may have been broken down into various sub-categories by line of insurance or Company administration. These specific sub-categories, if not reflected individually in the Report, would be included and grouped within the respective general categories of the Examination Report.

III. COMPANY HISTORY AND LICENSING

Boston Mutual is a mutual life insurance company which traditionally has offered small face life products to low and middle income individuals sold by individual producers before branching out to the employee benefit marketplace and marketing both group and individual life and disability products at the workplace.

Boston Mutual was founded in February 1891 and was incorporated in the Commonwealth of Massachusetts on August 18, 1891. The Company received its certificate of authority to operate in the Commonwealth of Pennsylvania on May 13, 1968. The Company is authorized to do business in 49 states, the District of Columbia, Puerto Rico and US Defense installations in Europe. The Company offers a variety of insurance products including life, disability, accident and health.

From 1891 to 1956, the Company had one sales division [District Agencies] marketing primarily low face amounts of life insurance [by captive agents] to consumers primarily in the Northeast. In 1956 Boston Mutual entered the Group insurance market after being awarded the group life insurance contract for the employees of the Commonwealth of Massachusetts. The group market flourished initially in the municipal marketplace then later in the corporate marketplace. The group products grew to include short-term disability, long-term disability, group dental, student medical and excess loss insurance. Over time, group marketing extended to states outside of New England reaching almost all of the 50 states.

In the 1960s Boston Mutual opened its General Agencies sales division to market higher face amounts of life insurance to middle income America through independent producers in more and more states, thus extending the market beyond

New England. In 1973, Boston Mutual Life expanded to Europe selling individual life to US servicemen and servicewomen stationed in Germany and Italy. In 1987, the Company expanded into the Puerto Rico marketplace with a general agent.

In 1978, Boston Mutual entered the Worksite Marketing arena selling basic life and disability insurance with guaranteed issue and/or simplified underwriting to employees at their place of work.

In 1990, Boston Mutual chartered a stock company in New York to provide group and individual life insurance solely in the New York state employee/employer marketplace.

As of the December, 2004, annual statement for Pennsylvania, the Company reported direct premium for ordinary and group life insurance in the amount of \$7,707,086.00; and direct premium for accident and health insurance in the amount of \$5,360,378.00.

IV. ADVERTISING

Title 31, Pennsylvania Code, Section 51.2(c) provides that “Any advertisements, whether or not actually filed or required to be filed with the Department under the provisions of this Regulation may be reviewed at any time at the discretion of the Department.” The Department, in exercising its discretionary authority for reviewing advertising, requested the Company to provide copies of all advertising materials used for solicitation and sales during the experience period.

The Company provided a list of 78 pieces of advertising utilized in the Commonwealth during the experience period. The advertising consisted of: Direct Mailers, Brochures, Envelopes, Folders, Cards, Illustrations, Product Guides, Product Manuals and the Company’s web page. All 78 pieces of advertising was requested, received and reviewed. The 78 advertising materials and the Company’s web site were reviewed to ascertain compliance with Act 205, Section 5 (40 P.S. §1171.5), Unfair Methods of Competition and Unfair or Deceptive Acts or Practices and Title 31, Pennsylvania Code, Chapter 51 and Chapter 89. The following violation was noted.

1 Violation - Title 31, Pennsylvania Code, Section 51.5

A company required to file an annual statement which is now or which hereafter becomes subject to this chapter shall file with the Department with its Annual Statement a Certificate of Compliance executed by an authorized officer of the company wherein it is stated that to the best of his knowledge, information and belief the advertisements which were disseminated by the company during the preceding statement year complied or were made to comply in all respects with the

provisions of the insurance laws and regulations of this Commonwealth. The Certificate of Compliance was not filed with the 2003 Annual Statement.

V. FORMS

Throughout the course of the examination, all underwriting files were reviewed to identify the policy contracts, riders, endorsements and applications used in order to determine compliance with requirements of Insurance Company Law, Chapter 2, Section 354 (40 P.S. §477b), as well as provisions for various mandated benefits. Applications and claim forms were also reviewed to determine compliance with Title 18, Pa. C.S., Section 4117(k). The following violations were noted:

201 Violations - Title 18, Pa. C. S., Section 4117(k)

All applications for insurance and all claim forms shall contain or have attached thereto the following notice:

“Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance ace, which is a crime and subjects such person to criminal and civil penalties.” The following applications and claim forms did not contain the required fraud statement or was not written verbatim. The form type, number, the section of the exam where the violation was noted and frequency of use is listed in the table below.

Form Description	Form #	Section	Frequency of Use
Application	GELP-3/98(APP)	Forms	
Disability Insurance Application	230003399	Forms	
Term Life Insurance Application	BM-A-P/s	Forms	
Term Life Insurance Application	BM-LIFE-PA(APP)	Forms	
Brochure with Application	SIPB-6989	Forms	
Brochure with Application	BM-A-P/NS-WA	Forms	
Brochure with Application	BM-AA-X/NS-D	Forms	
Brochure with Application	BM-AA-X/S-D3	Forms	
Brochure with Application	BM-A-P/S-D	Forms	
Brochure with Application	BM-A-P/NS-D	Forms	

Brochure with Application	BM-A-P/NS	Forms	
Dental Form	No Form Number	Group Policies Issued	1
Accident & Health Application	GDNT-12/98 (App) BAI	Group Policies Issued	9
Accident & Health Application	GDP-100-AP	Group Policies Issued	3
Disability Application	230004399	Group Policies Issued	3
Disability Application	No Form Number	Group Policies Issued	1
Disability Application	230004399	Group Certificate Holders Enrolled	10
LIFE/ADD Application	241-058 6/00	Group Certificate Holders Enrolled	1
Group Dental Application	No Form Number	Group Certificate Holders Enrolled	2
LIFE Application	Form G-6-1	Group Certificate Holders Enrolled	19
LIFE/ADD Application	BML-GRTC-ENR 7/00	Group Certificate Holders Enrolled	10
LIFE/ADD Application	BML-EF 4/92	Group Certificate Holders Enrolled	2
LIFE Application	EEAPP-GVLP (05/97) 12/94	Group Certificate Holders Enrolled	2
LIFE Application	GRP-EVID- 06/03	Group Certificate Holders Enrolled	1
LIFE/ADD Application	BML-GRTC-ENR 7/00	Group Policies Declined	2
Disability Application	230004399	Group Policies Declined	34
Excess Loss Application	No Form Number	Group Policies Declined	1
Group Conversion Application	G-180 Ed 1/64 Rev 10-82	Group Life Conversions	3
Life Application	NB/SS NS 06/01	Life Policies Issued	85
Life Application	NB/SS NS 06/01	Life Policies Issued	1

5 Violations - Title 31, Pennsylvania Code, Section 89.11(b)

Each form shall contain a form number consisting of numbers, letters, or both. The form number shall be adequate to distinguish the form from all others used by the insurer. The form number may be the same as that of a form to be replaced.

However, if the form to be replaced was approved by or filed with the Department, it may not have been issued in this Commonwealth and shall be withdrawn from any issuance in this Commonwealth. The applications and frequency of use identified in the table below did not contain distinguishing form numbers.

Form Description	Section	Frequency of Use
Disability Application	Group Policies Issued	1
Group Dental Application	Group Certificate Holders Enrolled	2
Excess Loss Application	Group Policies Declined	1
Individual Life Application	Life Policies Issued	1

100 Violations - Insurance Company Law, Chapter 2, Section 354

(40 P.S. §477b)

It shall be unlawful for any insurance company, doing business in the Commonwealth of Pennsylvania, to issue, sell, or dispose of any policy, contract, or certificate, covering life insurance, or use application, riders, or endorsements, in connection therewith, until the forms have been submitted to, and formally approved by, the Insurance Commissioner. Evidence of Department approval could not be established for the forms noted.

Type	Form #	Form Description	Section	Frequency
Rider	ADR-1-B	Individual Life Accidental Death	Forms	
Rider	WPR-1-B	Individual Life Waiver of Premium	Forms	
Application	NB1 8/98	Regular App. Individual Dec. Term, Universal Life	Forms	
Application	NB1 SI 4/99	Individual Life Simplified Issue	Forms	
Application	NB/SS/NS 6/01	Individual Life Simplified Issue (Worksite)	Forms	
Application	NB1 SI 7/01	Individual Simplified Issue For Whole Life Policy OL-S-99	Forms	
Application	145 6/04A	Individual Life Reinstatement/Change	Forms	
Application	145 6/04 B	Individual Life Reinstatement/Change	Forms	
Application	NB/SS NS 06/01	Individual Life Application	Life Policies Issued	83
Application	NB/SS NS 06/01-E	Individual Life Application	Life Policies Issued	1
Application	NB1 8/98	Individual Life Application	Life Policies Issued	2
Application	NB/SS 11/97	Individual Life Application	Life Policies Issued	1
Application	No Form Number	Individual Life Application	Life Policies Issued	1
Application	NB/98B1	Individual Term Life Application	Life Policies Issued	3
Application	NB1SI 7/01	Individual Life Application	Life Policies Issued as Replacements	1

VI. PRODUCER LICENSING

The Company was requested to provide a list of all producers active and terminated during the experience period. Section 671-A (40 P.S. §310.71) of the Insurance Department Act prohibits producers from doing business on behalf of or as a representative of any entity without a written appointment from that entity. Section 641.1-A (40 P.S. §310.41a) of the Insurance Department Act prohibits a company from accepting insurance applications or securing any insurance business through anyone acting without a license. Section 671.1-A (40 P.S. §310.71a) of the Insurance Department Act requires the Company to report all producer terminations to the Department.

The Company provided a list of 1,295 active and terminated producers. A random sample of 200 producers was selected for review. Of the 200 producers selected, 163 were listed as active producers and 37 were listed as terminated producers. The 200 producers were compared to departmental records of producers to verify appointments, terminations and licensing. In addition, a comparison was made on the individuals identified as producers on applications reviewed in the policy issued sections of the exam. The following violations were noted:

15 Violations – Insurance Department Act, No. 147, Section 671-A (40 P.S. §310.71)

- (a) Representative of the insurer. – An insurance producer shall not act on behalf of or as a representative of the insurer unless the insurance producer is appointed by the insurer. An insurance producer not acting as a representative of an insurer is not required to be appointed.

- (b) Representative of the consumer. – An insurance producer acting on behalf of or representing an insurance consumer shall execute a written agreement with the insurance consumer prior to representing or acting on their behalf that:
- (1) Delineates the services to be provided; and
 - (2) Provides full and complete disclosure of the fee to be paid to the insurance producer by the insurance consumer.
- (c) Notification to department. – An insurer that appoints an insurance producer shall file with the department a notice of appointment. The notice shall state for which companies within the insurer’s holding company system or group the appointment is made.
- (d) Termination of appointment. – Once appointed, an insurance producer shall remain appointed by an insurer until such time as the insurer terminates the appointment in writing to the insurance producer or until the insurance producer’s license is suspended, revoked or otherwise terminated.
- (e) Appointment fee. – An appointment fee of \$12.50 will be billed annually to the insurer for each producer appointed by the insurer during the preceding calendar year regardless of the length of time the producer held the appointment with the insurer. The appointment fee may be modified by regulation.
- (f) Reporting. – An insurer shall, upon request, certify to the department the names of all licensees appointed by the insurer.

The Company failed to file a notice of appointment and submit appointment fees to the Insurance Department for the following producers or agencies listed by the Company as active or identified as producers on applications.

NAME	CO. APPT DATE	SECTION	Number of Applications
Siracusa, Frank J. & Son	07/18/1991	Producer Licensing	Company List
Anderson & Kime Empl	07/02/2004	Group Policies Issued	1

Meyer & Eckenrode Inc.	06/28/2004	Group Policies Issued	1
Besvinick, Mitchell	Not Appointed	Group Policies Issued	2
Cipriotti, James	05/10/04	Life Policies Issued	1
Plummer, Kenneth	05/10/04	Life Policies Issued	1
Palmer & Cay of SC LLC	Not Appointed	Life Policies Issued	1
Seabury & Smith	Not Appointed	Life Policies Issued	1
Ponton, Skuoe Marcet	03/26/04	Term Life Policies Issued	1
Birnbaum, Ronald	11/22/04	Term Life Policies Issued	1
Ensinger, Robert	03/02/04	Term Life Policies Issued	3
Alpha Delta Insurance	08/03/04	Term Life Policies Issued	1

2 Violations – Insurance Department Act, No. 147, Section 671.1-A

(40 P.S. §310.71a) Termination of Appointments

(a) Termination. - An insurer which terminates an appointment pursuant to section 671-A(d) shall notify the department in writing on a form approved by the department, or through an electronic process approved by the department, within 30 days following the effective date of the termination.

(b) Reason for termination. – If the reason for the termination was a violation of this act or if the insurer had knowledge that the licensee was found to have engaged in any activity prohibited by this act, the insurer shall inform the department in the notification.

The following producer and agency were listed as terminated by the Company but not reported to the Department as terminated.

Last Name	First Name	Appointment Date	Company Termination Date
Dooley III	James	10/15/1999	06/04/2004
Corp Ins Plans	-	03/02/1993	06/04/2004

VII. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period and provide copies of their consumer complaint logs for 2001, 2002, 2003 and 2004. The Company identified 5 written consumer complaints and provided complaints logs for 2001, 2002, 2003 and 2004. All 5 consumer complaint files were requested, received and reviewed.

The Department's list of written consumer complaints that were forwarded to the Company during the experience period was compared to the Company's complaint log. The complaint files and the 4 years of complaint logs were reviewed for compliance with the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171). Section 5 (a)(11) of the Act requires maintenance of a complete record of all complaints received during the preceding four (4) years. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaint and the time it took to process each complaint. Written complaint files involving claims were also reviewed for compliance with Title 31, Pennsylvania Code, Section 146.5(b) and 146.5(c), Unfair Claims Settlement Practices. No violations were noted.

VIII. UNDERWRITING

The Underwriting review was sorted and conducted in 12 general segments.

- A. Underwriting Guidelines
- B. Group Policies Issued
- C. Group Certificate Holders Enrolled
- D. Group Policies Terminated
- E. Group Certificates Declined
- F. Group Life Conversions
- G. Individual Life Policies Issued
- H. Individual Term Life Policies Issued
- I. Individual Life Policies Issued as Replacements
- J. Individual Life Policies Terminated
- K. Individual Life Policies Declined
- L. Individual Life Policies Not-Taken

Each segment was reviewed for compliance with underwriting practices and included forms identification and agent identification. Issues relating to forms or producer licensing appear in those respective sections of the Report and are not duplicated in the Underwriting portion of the Report.

A. Underwriting Guidelines

The Company was requested to provide copies of all established written underwriting guidelines in use during the experience period. Underwriting guidelines were reviewed to ensure guidelines were in place and being followed in a uniform and consistent manner and no underwriting practices or procedures were in place which could possibly be considered discriminatory in nature, or specifically prohibited by statute or regulation. No violations were noted.

The following manuals and guides were provided and reviewed:

1. Group Underwriting Bulletins (6)
2. Group Insurance Manual (6 Sections)
3. E L O Employee Life Option Procedure Manual (Worksite)
4. True Group Dental Insurance
5. Voluntary Dental Insurance
6. The Employee Disability Option (EDO)
7. General Agency (New Business Department Procedures)
8. Life Underwriting Requirements Quick Guide
9. Premier Life Rate Card
10. Simplified Term Rate Card
11. Disability Income Series Rate Card

B. Group Policies Issued

The Company identified a universe of 49 group policies issued during the experience period. A random sample of 25 files was requested, received and reviewed. The policy files were reviewed to determine compliance to issuance statutes and regulations. No violations were noted.

C. Group Certificate Holders Enrolled

The Company was requested to provide a list of all certificate holders enrolled during the experience period. The Company provided a list of 11,636 certificate holders enrolled. A random sample of 100 certificate holders files was requested.

Of the 100 files requested, 88 were received including 3 files determined to be outside the experience period. The 85 files were reviewed to ensure compliance with Pennsylvania Consolidated Statutes, Section 4117(k), Fraud Statement. The following violations were noted:

12 Violations - Insurance Department Act, Section 903 (40 P.S. §323.3)

Every Company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department at its discretion, may require in order that its authorized representatives may ascertain whether the Company or person has complied with the laws of this Commonwealth. The 12 files noted were missing the enrollment form.

D. Group Policies Terminated

The Company was requested to provide a list of all group policies terminated during the experience period. The company identified 106 group policies that were terminated during the experience period. A random sample of 50 files was requested, received and reviewed. Of the 50 files requested, 7 policies were determined to be out-of-state policies. The life policies terminated due to death were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The life policies terminated due to surrender were reviewed to ensure compliance with contract provisions, termination laws and regulations, and proper return of any unearned premium. No violations were noted.

E. Group Certificates Declined

The Company was requested to provide a list of all group policies declined during the experience. The Company identified a universe of 49 group policies declined coverage. All 49 files were requested, received and reviewed. The policy files were reviewed to determine compliance to issuance statutes and regulations and to ensure declinations were not the result of any discriminatory underwriting practice. No violations were noted.

F. Group Life Conversions

The Company identified a universe of 4 group conversion policies issued during the experience period. All 4 files were requested, received and reviewed. The files were reviewed to determine compliance to issuance and underwriting statutes and regulations. No violations were noted.

G. Individual Life Policies Issued

The Company identified a universe of 4,569 life policies issued during the experience period. A random sampling of 100 life issued files was requested, received and reviewed. The life issued files were reviewed to determine compliance with issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

1 Violation - Title 31, Pennsylvania Code, Section 81.5(b)

The insurer shall require as part of a completed application for life insurance or annuity a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity. The applicant's replacement question was not answered in the application noted.

5 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(1)

An insurer that uses an agent or broker in a life insurance or annuity sale shall: Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction. The agent's replacement question was not completed in the 5 applications noted.

99 Violations – Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement

(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. An

acceptable disclosure statement is attached as Appendix A. The 99 files noted did not contain a disclosure form.

99 Violations - Title 31, Pennsylvania Code, Section 83.4a and Section 83.4b

(a) The agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant.

(b) The insurer shall maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance. The 99 files noted did not contain a copy of the required agent's certification of disclosure.

3 Violations – Title 31, Pennsylvania Code, Section 83.55

(a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible.

(b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use. The 3 files noted did not include the Cost Surrender Comparison Index Disclosure.

4 Violations—Title 31, Pennsylvania Code, Sections 83.55a and 83.55b

- a) The agent shall submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant.
- b) The insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance. The agent delivered the policies. The 4 files noted did not contain an agent's certification of the surrender comparison index disclosure delivery.

5 Violations - Insurance Company Law, Section 404-A (40 P.S. §625-4)

When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall

commence. Verification of the date of policy delivery could not be established for the 5 files noted.

84 Violations – Insurance Company Law, Section 408-A(a)(4)(40 P.S. §625-8)

If a life insurance policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this section is required.

And:

Insurance Company Law, Section 408-A(e)(2)(i) (40 P.S. §625-8)

The following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen is displayed. The producer shall certify in writing on a form provided by the insurer that no illustration was used in the sale of the life insurance policy. On the same form the applicant shall acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery.

The life insurance policy forms were identified by the insurer as policies to be marketed with an illustration. The 84 files noted did not contain the signed producer certification that no illustration was used in the sale of the life insurance policy nor the applicants acknowledgement that an illustration conforming to the policy as issued will be provided no later than the time of policy delivery.

H. Individual Term Life Policies Issued

The Company identified a universe of 50 life policies issued during the experience period. All 50 files were requested, received and reviewed. The policies were reviewed to determine compliance with issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

12 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(1)

An insurer that uses an agent or broker in a life insurance or annuity sale shall: Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction. The agent's replacement question was not completed in the 12 applications noted.

47 Violations – Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement

(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. An acceptable disclosure statement is attached as Appendix A. The 47 files noted did not contain a disclosure form.

47 Violations - Title 31, Pennsylvania Code, Section 83.4a and Section 83.4b

(a) The agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant.

(b) The insurer shall maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance. The 47 files noted did not contain a copy of the required agent's certification of disclosure.

49 Violations - Insurance Company Law, Section 404-A (40 P.S. §625-4)

When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence. The 49 files noted either did not contain a policy delivery receipt or the agent's signature on the delivery receipt was missing.

1 Violation – Insurance Company Law, Section 410D(a)(2) (40 P.S. §510c)

Individual fixed dollar life insurance or endowment policies which are offered as replacements for an existing life insurance policy or annuity contract with the same insurer or insurer group shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such

policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least forty-five (45) days of its delivery. The policy file noted did not contain the required 45 day "free look" statement.

I. Individual Life Policies Issued As Replacements

The Company identified a universe of 1 life policy issued as replacements during the experience period. The Life Policy was requested, received and reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The Department determined this policy was not a replacement. The following violations were noted.

1 Violation – Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement

(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. An acceptable disclosure statement is attached as Appendix A. The file noted did not contain a disclosure form.

1 Violation - Title 31, Pennsylvania Code, Section 83.4a and Section 83.4b

(a) The agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant.

(b) The insurer shall maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's

certification from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance. The file noted did not contain a copy of the required agent's certification of disclosure.

J. Individual Life Policies Terminated

The Company was requested to provide a list of all policies terminated during the experience period. The Company identified a universe of 2,481 life policies terminated. A random sample of 50 files was requested, received and reviewed. The files were reviewed to ensure compliance with contract provisions, termination laws and regulations, and proper return of any unearned premium. No violations were noted.

K. Individual Life Policies Declined

The Company was requested to provide a list of all individual life policies declined during the experience period. The Company identified a universe of 171 policies. A random sample of 50 policies were requested, received and reviewed. The 50 files were reviewed to ensure declinations were not the result of any discriminatory underwriting practice and the proper return of any unearned premium. No violations were noted.

L. Individual Life Policies Not-Taken

The Company was requested to provide a list of all policies not-taken during the experience period. The Company identified 301 individual life policies not-taken. A random sample of 50 files was requested, received and reviewed. A not-taken policy by definition is a contract that is issued and the insured decides to decline the contract. The files were reviewed to ensure compliance with contract provisions, proper return of any unearned premium and to ensure compliance with the free look provisions of the contract. No violations were noted.

IX. INTERNAL AUDIT AND COMPLIANCE PROCEDURES

The Company was requested to provide copies of their internal audit and compliance procedures. The audits and procedures were reviewed to ensure compliance with Insurance Company Law, Section 405-A (40 P.S. §625-5). Section 405-A provides for the establishment and maintenance of internal audit and compliance procedures, which provides for the evaluation of compliance with all statutes and regulations dealing with sales methods, advertising, and filing and approval requirements for life insurance and annuities. The procedures shall also provide for the following:

- (1) Periodic reviews of consumer complaints in order to determine patterns of improper practices.
- (2) Regular reporting to senior officers and the board of directors or an appropriate committee thereof with respect to any significant findings.
- (3) The establishment of lines of communication, control and responsibility over the dissemination of advertising and promotional materials, including illustrations and illustration explanations, with the requirement that such materials shall not be used without the approval by company employees whose compensation, other than generally applicable company bonus or incentive plans, is not directly linked to marketing or sales.

No violations were noted.

X. CLAIMS

The Company was requested to provide copies of all procedural guidelines including all manuals, memorandums, directives and any correspondence or instructions used for processing claims during the experience period. The Company provided the following documents: The Company provided Microsoft Word Documents dated April 15, 2005, entitled, Group Life Claim Procedures, STD (Short Term Disability) Procedures, and Individual Life Claim Procedures. The documents were reviewed for any inconsistencies, which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature. No violations were noted.

The Claim file review consisted of 2 areas:

- A. Group Disability Claims
- B. Individual Life Claims

All claim files sampled were reviewed for compliance with requirements of the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171). The insured submitted claims were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices and the provider submitted claims were reviewed for compliance with Act 68, Section 2166 (40 P.S. §991.2166), Prompt Payment of Provider Claims. The life claims were additionally reviewed for compliance with Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b).

A. Group Disability Claims

The Company was requested to provide a list of claims received during the experience period. The Company identified 1,628 disability claims received. The 1,628 claims included a number of ongoing disability claims on the same individual. Of the 1,628 claims listed, 208 claims were identified as the initial disability claim for each individual. A random sample of 50 initial disability claims was requested, received and reviewed. Of the 50 disability claim files received, 13 were determined to be outside the experience period. The remaining 37 claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. No violations were noted.

B. Life Claims

The Company was requested to provide a list of claims received during the experience period. The Company identified 233 life claims. A random sample of 100 claim files was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b). The following violations were noted:

2 Violations - Title 31, Pennsylvania Code, Section 146.5

Every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of

the insurer and dated. The Company failed to acknowledge the 2 claims noted within 10 working days.

13 Violations - Title 31, Pennsylvania Code, Section 146.6

Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The Company failed to provide timely status letters for the 13 claims noted.

2 Violations - Title 31, Pennsylvania Code, Section 146.7

Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer. The Company failed to provide notice of acceptance or denial within 15 working days for the 2 claims noted.

XI. RECOMMENDATIONS

The recommendations made below identify corrective measures the Department finds necessary as a result of the number of some violations, or the nature and severity of other violations, noted in the Report.

1. The Company must implement procedures to ensure compliance with the fraud statement notice requirements of Title 18, Pennsylvania Consolidated Statutes Section 4117(k).
2. The Company must review internal control procedures to ensure compliance with the form requirements of Title 31, Pennsylvania Code, Section 89.11, General Contents of Forms.
3. The Company must review and revise internal control procedures to ensure compliance with requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.
4. The Company must review and revise Licensing procedures to ensure compliance with Section 671-A and 671.1-A of the Insurance Department Act of 1921 (40 P.S. §§310.71, 310.71a).
5. The Company must review and revise procedures to ensure all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the Company are maintained in such manner and for such period of time to ensure compliance with Section 903(a) of the Insurance Department Act of 1921 (40 P.S. §323.3).
6. The Company must review and revise internal control procedures to ensure compliance with the replacement requirements of Title 31, Pennsylvania Code, Chapter 81.
7. The Company must review internal control procedures to ensure compliance with disclosure requirements of Title 31, Pennsylvania Code, Chapter 83.

8. The Company must review internal control procedures to ensure compliance with forms filing and approval requirements of Section 354 of the Insurance Company Law of 1921 (40 P.S. §477b).
9. The Company must implement procedures to ensure compliance with the policy delivery receipt requirements of Section 404-A of the Insurance Company Law of 1921 (40 P.S. §625-4).
10. The Company must review internal control procedures to ensure compliance with illustration certification and delivery requirements of Section 408-A of the Insurance Company Law of 1921 (40 P.S. §625-8).
11. The Company must review internal control procedures to ensure compliance with Section 410D of the Insurance Company Law of 1921 (40 P.S. §510c) pertaining to the “Free Look” provision requirements for life insurance and endowment insurance.

XII. COMPANY RESPONSE



WALTER J. GORSKI
VICE PRESIDENT, GENERAL COUNSEL
AND SECRETARY

FAXED (717) 705-0428

November 17, 2005

Mr. Daniel A. Stemcosky, AIE, FLMI
Market Conduct Division Chief
Pennsylvania Insurance Department
Bureau of Enforcement
1321 Strawberry Square
Harrisburg, PA 17120

Re: Examination Warrant Number: 04-M25-039
Report of Examination Dated October 18, 2005

Dear Mr. Stemcosky :

As previously stated, Boston Mutual disagrees with several of the legal conclusions expressed in the Insurance Department's Exit Responses to Boston Mutual's prior comments. The specific areas of disagreement are the Department's position that: (1) Boston Mutual must provide Certificate of Mailings stamped by the U. S. Postal service as proof of mailing: policies, surrender comparison index disclosures, and illustrations; (2) Boston Mutual must provide a disclosure statement for its worksite policies at time of application; (3) the Enrollment forms must contain a Fraud Warning; and (4) the company did not provide timely responses to claims.

A detailed analysis of our positions is contained in the binder which we submitted with our letter of November 15, 2005. A summary of our reasons are as follows:

1. The law which requires a "certificate of mailing" is only applicable to mailings done by the producer. It does not apply to company mailing. The law also does not limit the type of certificate of mailing to one which is issued by the U.S. Postal Service.

Enclosed is our Free look policy. For policies which are mailed to the policyholder by the home office, we honor requests to cancel coverage if made within 60 days of mailing the policy. Pennsylvania law only requires a 10 day free look period. Beyond 60 days, such requests are reviewed on an individual basis.

Under Pennsylvania law there is a legal presumption that if an item is delivered to the U.S Post office, that the item has been delivered and received by the individual. This is referred to as the "mailbox rule". The Superior Court of Pennsylvania in *Samaras v. Hartwick* 698 A.2d 71(1997) stated "It has long been the law of our

Commonwealth that proof of a mailing raises a rebuttable presumption that the mailed item was received and it is well established that the presumption under the mailbox rule is not nullified solely by testimony denying receipt of the item mailed.” The mailbox rule would also be used to show that a policy was delivered when a U. S. Postal Certificate of Mailing is used.

Worksite policyholders also receives periodic notifications that they have a life insurance policy. Boston Mutual mails an annual statement to the policyholder which shows the values under the policy and an annual privacy notice. The policyholder also receives weekly or bi-weekly pay stubs from their employer which shows that a payroll deduction is being taken out of their pay check.

Non-worksite policyholders also receive annual statements when their policies have values. All policyholders receive an annual privacy notice. For policies on premium paying status we send billing notices.

If a policy is returned as undeliverable, we take steps to determine the current address and re-mail the policy. These items show that the policyholder is aware of their coverage and the presumption is, that if they have not received a copy of the policy that they would request one.

Practically speaking, in mail delivery situations, we interpret the facts in the client’s favor for free look purposes.

2. Our worksite product (policy form END-95(ESO)(9/00) is defined as “nonterm group life” under the illustration law. Section 401-A defines Nonterm Group Life as:

A group policy or individual policies of life insurance issued to members of an employer group or other permitted group where: (emphasis added)

- (1) Every plan of coverage was selected by the employer or other group representation (**The worksite policy plan is selected by the employer**).
- (2) Some portion of the premium is paid by the group or through payroll deduction. (**The worksite premiums are paid through payroll deduction**).
- (3) Group underwriting or simplified underwriting is used. (**Worksite uses Simplified underwriting**).

Thus, the law does define “nonterm group life” to include “individual” policies sold to an employer group. Our worksite policy is only offered to employer groups where premiums are paid through payroll deductions and there is simplified underwriting.

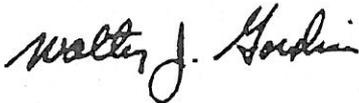
The requirement for delivery of an illustration for “nonterm group life” differs from other individual life insurance forms in that the law states that the illustration shall be provided at time of delivery of the policy. Because of this unique aspect we believe that the delivery of a disclosure statement at time of application is not required.

3. We do agree with the Department's position that some of the application forms did contain some typos and that the fraud statement were not "verbatim". The fraud language on these forms has been corrected. We do disagree with the position that the law applies to "enrollment" forms. As noted in our detailed responses, the law specifically states that it applies to "application" and "claim" forms. The law does not include enrollment forms.
4. It is our position that the department's position as to what constitutes "Notice of Claim" is more restrictive than that stated in the law. The law states that Notification of a Claim requires notification "by a claimant or insured which reasonably appraises the insurer of the facts pertinent to a claim." Notice by a funeral home is not "notice" as they are neither a "claimant" nor an "insured". Also the law refers to "the facts pertinent to a claim," which indicates that the law contemplates that information in addition to just notice of death is required. Upon notification of death we do send a claim form to the beneficiary. Until we receive the claim form we are unable to process the claim. When a claim form is received, we acknowledge the form and inform the beneficiary if any additional information will be needed.

Also enclosed are revised binder documents: cover page; and Exhibit A.

We respectfully request that the Department reconsider its position. If you have any question or would like to discuss these issues further, please call me. I would be more than willing to meet with you in your office.

Very Truly Yours,



Walter J. Gorski

Enclosures:

BOSTON MUTUAL LIFE INSURANCE COMPANY

PENNSYLVANIA

MARKET CONDUCT EXAM

**RESPONSES TO DEPARTMENT'S
EXIT RESPONSES**

November 2005

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ITEM

DESCRIPTION

1. Analysis & Comments
2. Exhibit A (Evidence of Mailing)
3. Exhibit B (Sample Certificates of Mailing)
4. Exhibit C (Claim Details)

BOSTON MUTUAL LIFE INSURANCE COMPANY**FREE LOOK POLICY**

The Boston Mutual free look period as stated in the policy gives the policyholder [10, 20, or 30] days to examine their policy. The time period is dependent upon the policy series. The standard policy language is as follows:

[Ten, Twenty, or Thirty] Day Right to Examine

We want you to be pleased with the policy you have bought. If for any reason, you are not pleased, you may return it to us or to the agent from whom you bought it. You must return the policy within [10, 20, or 30] days after you have received it. We will cancel it and return any premium you have paid.

The procedures for delivery of our Worksite (payroll deduction) policies and our General Agency (sold to individuals) policies differs.

Worksite – All policies are mailed direct to the policyholder by the home office. In worksite situations no money is taken with the application. The coverage is effective upon signing the application and the payroll deduction authorization and remains in effect provided the employer sends us the premium within 90 days of the date of the application.

Policies are generally mailed out within 30 days of receipt which is generally prior to the issue date. In determining the free look period we use the later of the issue date or the date of mailing plus 5 business days in determining the 30 day period. We honor free look requests made within 60 days of the mailing. Any requests after 60 days will be reviewed on an individual case basis.

General Agencies – Most policies are delivered by the agent. In such cases we require that the agent get a signed delivery receipt and forward the receipt to the company. In some cases, we are asked to mail the policy to the policyholder direct from the home office.

If we do not have a delivery receipt in the file or other evidence of when the policyholder actually received the policy, we honor free look requests made within 60 days of the mailing. Any requests after 60 days will be reviewed on an individual case basis.

**PENNSYLVANIA
RESPONSES TO DEPARTMENT'S EXIT RESPONSES**

Boston Mutual disagrees with several of the legal conclusions expressed in the Insurance Departments Exit Responses. The specific areas of disagreement are the Department's position that: (1) Boston Mutual must provide Certificate of Mailings stamped by the U. S. Postal service as proof of mailing: policies, surrender comparison index disclosures, and illustrations; (2) Boston Mutual did not provide a disclosure statement for its worksite policies at time of application; (3) the Enrollment forms must contain a Fraud Warning; and (4) the company did not provide timely responses to claims.

**WORKSITE ISSUES
(Section 6A)**

I. Delivery Requirement – Certificate of Mailing

Boston Mutual Delivery Practice for Worksite Policies - All policies are mailed by the home office direct to the policyholder's address. There is no agent involvement in the delivery of worksite policies. Included with the policy is an Illustration and a Statement which contains the Surrender Comparison Indexes. Boston Mutual did provide documentation that these items were mailed.

Department Exit Responses – For: Surrender Comparison Index Disclosure Sections 83.5, 83.55a, & 83.55b, & 40 P.S § 625-4); (Proof of policy Delivery Sections 404-A (40 P.S. §625-4); & (Illustration Certification or Acknowledgment Sections 408-A(a)(4)(40 P.S. §625-8)

The Department reviewed the Certificates of Mailing. This can not be considered because of the following reasons:

- 1. The Certificate of Mailing is a log in which the Company has entered the person's name, address, city, state and zip code and the contents of the mailing. A postal employee date stamps the log which serves as independent evidence of the mailing.*
- 2. The Certificate presented by the Company is dated September 2005 which is outside of the experience period. The Certificates should have been recorded at the time of mailing.*

BOSTON MUTUAL POSITION: *We provided the department with a current dated certificate and the background information from our files which showed in fact when the policy (including the Illustration and the Surrender Comparison Index) was mailed (See Sample – TAB 2 Exhibit A). The background information was prepared when the policies were mailed. There are no insurance laws, regulations or bulletins in Pennsylvania which define what is required for a certificate of mailing.*

The only reference to certificate of mailing in the Pennsylvania Insurance Code is found in 40 P.S. §625-4 . This section states in part: "When the individual policy or annuity is delivered to the policyholder by a means other than by hand delivery by the producer, the

insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and establishing the date from which any applicable policy or examination period shall commence. A certificate of mailing is adequate proof of delivery.” (emphasis added).

By using the phrase “adequate proof of delivery” the legislature did not mean that a certificate of mailing is the exclusive method of delivery.

The policies are mailed directly by Boston Mutual to the policyowner and we did provide appropriate documentation to the Department as to when the policies were mailed from the home office. Section 625-4 is NOT applicable to a mailing sent by the insurance company to the policyowner. Section 625-4 is only applicable to a mailing by the producer. It does not address mailings by the insurance company direct to the policyholder. The Pennsylvania Statutory Construction Act states: “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”(1 Pa.C.S. §1921(b)). The law in this case is clear – it only applies to mailings by the producer.

Certificate of Mailing – NOTE: Section 625-4 by its terms does not apply to insurance company mailings. However, even if one were to assume that this section did apply to mailing by the insurance company, the insurance law also does not state that a certificate of mailing is the only way to demonstrate proof of mailing. That is, the certificate of mailing is not the exclusive method of proof of mailing. If the legislature had intended that a certificate of mailing is one certified by the U.S Postal service they could have, as evidenced by other Pennsylvania statutes such as:

- 35 P.S. § 1680.403c, the House Finance Agency Law states: “All parties requiring notice pursuant to this articles shall be deemed to receive notice on the third business day following the date of mailing of the notice as documented by a certificate of mailing obtained from the United States Postal Service.”
- 68 Pa. C.S.A. § 3221 On Real Property which states: “Written notice to the secured lender shall be given by certified, registered or first class mail, as evidenced by United States Postal certificate of mailing...”

Thus if the legislature had wanted to limit the type of document which is a certificate of mailing they could have, but did not. They also did not state that a certificate of mailing is the only way to prove mailing, they only stated that “a certificate of mailing is adequate proof of mailing.” “If a statute provides an internal definition of a term, then the statute must be construed according to that definition”. Dynamic Sports Fitness Corp. of America, Inc. v. Community YMCA of Eastern Delaware County, 768 A.2d 375, Cmwlt. 2001, appeal denied 796 A.2d 986, 568 Pa. 707. Where the law does not define the term, the courts have stated: “Under Pennsylvania law of statutory construction, any word or phrase, not otherwise defined, must be construed according to rules of grammar and according to common and approved usage.” Orson, Inc. v. Miramax Film Corp., C.A.3(PA) 1996 79 F.3d 1358, on remand 983 F. Supp 624. statutory construction.

Attached (TAB 3 Exhibit B) are example of items which are considered to be “certificates of mailing”. These exhibits clearly show that the term “certificate of mailing” is not limited to the U.S. Postal service documentation.

Under evidentiary rules, established business practices can be used to prove that an item has been mailed.

Courts in Pennsylvania have held that "when a letter has been written and signed in the usual course of business and placed in the regular place of mailing, evidence of the custom of the establishment as to the mailing of such letter is receivable as evidence that it was dully mailed." Christie v. Open Pantry Food Marts, 237 Pa. Super 243 (1975)

II. Disclosure Statement - Worksite

We disagree with the department's legal position that a Disclosure Statement must be provided to the applicant when the illustration is provided in accordance with the nonterm group life requirements.

Department Objection – Company did not provide evidence that a written disclosure was provided & files did not contain a copy of required agent's certification of disclosure.

Department Exit Response Sections 83.3; 83.4a & Section 83.4b):

The Company presented the Department documentation in response to the Exit Summary. The Company has misinterpreted Disclosure requirements. If no illustration is presented at the time of application, the Company is required to obtain the Disclosure Statement (Appendix A). The Illustration may be used in lieu of a Disclosure Statement if it is presented at the time of application. If no illustration is presented at the time of application, the Disclosure Form must be completed. The supporting documentation and references provided by the Company is applicable to Group rather than Individual Policies. This section is Individual therefore non-applicable.

BOSTON MUTUAL POSITION: *The worksite policies are defined as "Nonterm Group Life" under Section 408-A(a)(5) (40 P.S. § 625-1). Pennsylvania law specifies special requirements for when an illustration is required to be provided to enrollees of nonterm group life. "A basic illustration shall be provided at delivery of the life insurance policy or certificate to enrollees for nonterm group life who enroll for more than the minimum premium necessary to provide pure death benefit protection.(emphasis added)" (Section 401-A (40 P.S. § 625-8)).*

Section 401-A Definitions " 'Nonterm Group Life.' A group policy or individual policies of life insurance issued to members of an employer group or other permitted groups where:

- (1) Every plan of coverage was selected by the employer or other group representation (The worksite policy plan is selected by the employer).*
- (2) Some portion of the premium is paid by the group or through payroll deduction. (The worksite premiums are paid through payroll deduction).*
- (3) Group underwriting or simplified underwriting is used. (Worksite uses Simplified underwriting). "*

The Pennsylvania Insurance Department letter of May 28, 1997 to the American Council of Insurance stated: "A life insurance illustration which is a presentation or depiction that includes guaranteed and non-guaranteed elements of a life insurance policy over a period of years, and which meets the requirements of Section 401-A, 407-A and 408-A of Article IV-A as added to The Insurance Law by Act of 154 of 1996, may be used in lieu of the following:

A disclosure statement as required by Section 83.3(a) of Title 31 Pennsylvania Code. If a life insurance illustration is being used in lieu of a disclosure statement, the life insurance illustration, or an attachment to the life insurance illustration, must disclose that a surrender comparison index will be provided upon delivery of the policy or earlier, if requested. See Section 83.39a)(9)(i). The use of a life insurance illustration in lieu of the disclosure statement does not require the filing of the illustration prior to use."

In its Exit Response, the Department has stated "The supporting documentation and references provided by the Company is applicable to Group rather than Individual policies." We believe that the Department is incorrect. As stated above, the Definition of Nonterm group life insurance states "A group policy or individual policies issued to members of an employer group".(emphasis added.) In worksite we sell individual policies to members of an employer group. Thus the sections on nonterm group insurance are applicable to individual policies.

**Term Life Policies Issued
Section 6B
(General Agency)**

COMPANY EXIT SUMMARY RESPONSE:

As regards items #'s 18, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 attached are certificate of mailings for these policies (See 6B Certificate of Mailing.Pdf.)

Department Exit Response (§ 404-A & 40 P.S. § 625-4):

The Department reviewed the Certificates of Mailing. This can not be considered because of the following reasons:

- 1. The Certificate of Mailing is a log in which the Company has entered the person's name, address, city, state and zip code and the contents of the mailing. A postal employee date stamps the log which serves as independent evidence of the mailing.*
- 2. The Certificate presented by the Company is dated September 2005 which is outside of the experience period. The Certificates should have been recorded at the time of mailing.*

BOSTON MUTUAL POSITION: *The comment shown above for worksite are applicable to our General Agency policies.*

III. Fraud Notice – Enrollment forms

Boston Mutual disagrees with the Departments legal conclusion that fraud warning are required for enrollment forms.

Group Certificate Holders Enrolled Section 2

Group Policies Declined Section 4

Fraud Notices – Enrollment Forms:

The Department cited Boston Mutual for not having Fraud Warnings on our Group Enrollment Forms. The original Company response agreed to the violation. In the Exist Summary Response we made an objection to the violation which was as follows:

COMPANY EXIT SUMMARY RESPONSE:

We did not include the Fraud warning on the enrollment forms as the statute only refers to applications and claims form. We are not aware of any Pennsylvania Bulletin or rule which states that "application" also refers to an "enrollment" form. We are aware of several instances where the Pennsylvania legislature specifically refers to both application and enrollment forms when they want the law to apply to both items. Specific examples are:

31 PA Code § 127 on LTC Shoppers Guide. The law states "In the case of a direct response solicitations, the shopper's guide shall be presented in conjunction with an application or enrollment form."

31 PA Code § 89.9(a) Student Accident Insurance. States "An application, enrollment fo40 P.S. § 3108(a) Medicare Supplement. States: "Application, enrollment forms, policy, certificate or brochure..."

Thus, the legislature has treated enrollment and application forms as distinct types of forms. While we do not believe that Section 4117(k) is applicable to enrollment forms, we agree to add the Fraud notice to the form.

Department Exit Response (Title 18, PA. C.S., Section 4117(k):

The Company's Response to the Initial Summary was removed from the Exit Summary Response. The Department has re-inserted the original response above the Exit Summary Response. The Company originally agreed to the violation. The violation remains

Boston Mutual Position: Upon our further review, we concluded that we inadvertently agreed to the original violation. The individual who made the original determination was not aware of the legal basis for our position. Please see our Exit Summary Response shown above.

IV. Notice of Claim

Boston Mutual disagrees with the Department's legal interpretation regarding what constitutes Notice of Claim under Pennsylvania Code Title 31 § 146.2(b). The Department's position is that mere notice of death whether from the claimant or the funeral home constitutes "Notice" under the law. The date of notification is used to determine the time frame for acknowledging the claim and for providing status updates.

Boston Mutual's position is that mere notice of death is not sufficient under the law and that the actual notice must be given by the claimant or insured. The Funeral home is not a claimant.

Section 146.2(b) states:

Notification of a claim - A notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant or insured, which reasonably appraises the insurer of the facts pertinent to a claim. (Emphasis added).

Boston Mutual Position: *In interpreting a statute, all term must be used.*

In Bamber v. Lumbermens Mutual Insurance Company, 451 Pa. Superior. 548 (1996) the court stated:

When construing a statute, our objective is to ascertain and effectuate the legislative intent. 1 Pa.C.A § 1921(a). See also Berger v. Rinaldi, 438 Pa. Super. 78, 86-88, 651 A.2d 553(1994), appeal denied 544 Pa. 641(1995), In so doing, we must begin with a presumption that our legislature did not intent and statutory language to exist as mere surplusage, Id/ Accordingly, whenever possible courts must construe a statute so as to give effect to every word contained therein. Id.

In Klein v. Republic Steel Corporation, 425 F.2d 762 , the United States Court of Appeals, Third Circuit (1970) stated:

The general doctrine also prevails in Pennsylvania that all the words and provisions of statutes are intended to have meaning and are to be given effect and that the words of a statute are not to be considered surplusage.

The Department is does not appear to be giving effect to all the words in the statute. The Department's position appears to be one that just giving notice of death is all that is required. If this was the legislative intent the legislature could have clearly said so. Also the legislature used the phrase "facts pertinent to the claim". As used "facts" are plural which shows that the legislature intended more than just notice of death. The law also specifically states that the notice must be by "a claimant or insured". A funeral home is neither.

Note: Information regarding the specific claims is in (TAB 4 Exhibit C)

**Life Claims
Section 13**

Failure to provide notice of acceptance or denial within 15 days of claim

COMPANY EXIT SUMMARY RESPONSE:

92 & 99 - Wincek, on 7/6/04 a bill for copying the medical records was received from Dr. Paul Witt. This was a prepayment. The actual medical records were not received until 8/4/04. This is the date stamped on Dr. Witt's cover letter and this is the date the medical records were recorded by Boston Mutual. The stamped date which shows 7/6/04 was for the prepayment only.

Department Exit Response (Title31 Section 146.7)

The Department has reviewed the file again. There were two (2) copies of a letter on Boston Mutual letterhead dated 6/11/04 addressed to Dr. Paul Witt. The letter requested that Dr. Witt provide the Company with all medical records from 04/02/02 – 10/02/03 and from 10/09/01 to 04/09/03. One copy is date stamped 7/6/04 by the claims department, had stapled to it the left corner of the envelope which had Dr. Witt's return mailing address and had directly behind it the copies of the medical records. Therefore, the violation remains.

Boston Mutual Position: The bill from the doctors' office was for printing the medical records. This does not involve a claim for benefits. Thus, the time frame for responding to a claim for benefits is not applicable.

EXHIBIT A

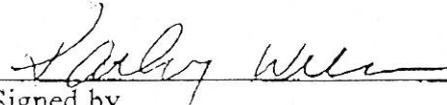
BOSTON MUTUAL LIFE INSURANCE
120 ROYALL STREET, CANTON, MA 02021

CERTIFICATE OF MAILING

I Certify that the mailing of the policies listed in the attached ESO ISSUE & INCOMPLETE INFO REPORT were mailed to the policyowners on

7-7-04

The ESO ISSUE & INCOMPLETE INFO REPORT is contained in the policyholder's employer group case file.


Signed by

9-6-05
Date



ESO ISSUE & INCOMPLETE INFO REPORT

AGENCY: Philip Morgan (56061)

FROM: [REDACTED] Ext 542

DATE: July 7, 2004

CASE: [REDACTED]

POLICY DATE: 07/15/2004

RESPOND TO: [REDACTED]

BY:

1ST Request 2nd Request Final Request

07/21/2004		
------------	--	--

REASON CODES

- (A) PRESENTLY IN UNDERWRITING
- (B) CORRESPONDENCE
- (C) APPROVED TO BE ISSUED
- (D) CANCELLED
- (E) DECLINED

EMPLOYEE	INSURED	QUESTIONS NEEDED	FORWARD INFO.	A	B	C	D	E
[REDACTED]	[REDACTED]	--	Spouse signature card		X	X		
[REDACTED]	[REDACTED]	--	Child's signature		X	X		

PLEASE SEE ATTACHED FOR MORE INFORMATION

PLAN TYPE	LIFE	DISABILITY	PENDING	PENDING	PENDING
DATE MAILED	07/07/2004		07-20-04		
TOTAL MAILED	47		2		
TOTAL DECLINED	0		0		
TOTAL CANCELED	0		0		
TOTAL A-C	2		0		
TOTAL SUBMITTED	49		49		

CASE NAME/ADDRESS
 ATTN: [REDACTED]
 PHILADELPHIA STREET PA 19123

CASE#	DEBIT	LBILL	B	SSN	EMPLOYEE/DEP NAME	POLICY	ISS-DATE	FACE AMOUNT	STATUS	DED/PREM AMT
43008	56061	03077		[REDACTED]	A [REDACTED]	A97843	07/15/04	34,204	GUARANTEED	17.33
				[REDACTED]	A [REDACTED]	A97844-A05	07/15/04	21,765	SIMPLIFIED	4.33
				[REDACTED]	B [REDACTED]	A97845	07/15/04	8,459	GUARANTEED	6.71
				[REDACTED]	B [REDACTED]	A97846	07/15/04	33,891	GUARANTEED	10.83
				[REDACTED]	S [REDACTED]	A97847	07/15/04	24,820	SIMPLIFIED	4.33
				[REDACTED]	C [REDACTED]	A97848	07/15/04	12,072	GUARANTEED	17.33
				[REDACTED]	C [REDACTED]	A97849-A08	07/15/04	23,349	SIMPLIFIED	4.33
				[REDACTED]	C [REDACTED]	A97850	07/15/04	5,065	GUARANTEED	6.71
				[REDACTED]	C [REDACTED]	A97851-A05	07/15/04	4,566	NOT-APPROVED	4.33
				[REDACTED]	F [REDACTED]	A97852-A05	07/15/04	19,613	GUARANTEED	6.50
				[REDACTED]	H [REDACTED]	A97853-A08	07/15/04	38,342	SIMPLIFIED	6.50
				[REDACTED]	F [REDACTED]	A97854-A05	07/15/04	13,728	GUARANTEED	11.05
				[REDACTED]	F [REDACTED]	A97855	07/15/04	12,072	GUARANTEED	17.89
				[REDACTED]	G [REDACTED]	A97857	07/15/04	11,503	GUARANTEED	6.71
				[REDACTED]	G [REDACTED]	A97858	07/15/04	13,006	GUARANTEED	4.33
				[REDACTED]	G [REDACTED]	A97859	07/15/04	22,796	SIMPLIFIED	4.33
				[REDACTED]	K [REDACTED]	A97861	07/15/04	23,349	SIMPLIFIED	4.33
				[REDACTED]	K [REDACTED]	A97862	07/15/04	24,749	SIMPLIFIED	4.33
				[REDACTED]	J [REDACTED]	A97863	07/15/04	25,128	GUARANTEED	13.21
				[REDACTED]	M [REDACTED]	A97864	07/15/04	21,940	NOT-APPROVED	10.83
				[REDACTED]	J [REDACTED]	A97865	07/15/04	17,064	NOT-APPROVED	21.66
				[REDACTED]	J [REDACTED]	A97866	07/15/04	7,138	GUARANTEED	17.33
				[REDACTED]	J [REDACTED]	A97867	07/15/04	4,828	GUARANTEED	4.33
				[REDACTED]	H [REDACTED]	A97868-A05	07/15/04	19,335	SIMPLIFIED	4.33
				[REDACTED]	H [REDACTED]	A97869-A05	07/15/04	19,335	SIMPLIFIED	4.33
				[REDACTED]	W [REDACTED]	A97870-A08	07/15/04	53,181	NOT-APPROVED	8.66
				[REDACTED]	J [REDACTED]	A97871	07/15/04	11,719	GUARANTEED	10.83

ESOLRPT 6

BOSTON MUTUAL LIFE INSURANCE COMPANY 120 ROYALL ST, CANTON, MA 02021
ESO LASER ISS YSTEM REPORT

CURT DATE 06/17/04

CASE NAME/ADDRESS
ATTN: [REDACTED] STREET
PHILADELPHIA PA 19123

CASE#	DEBIT	LBILL	B	SSN	EMPLOYEE/DEP NAME	POLICY	ISS-DATE	FACE AMOUNT	STATUS	DED/PREM AMT
43008	56061	03077		[REDACTED]	J [REDACTED]	A97872	07/15/04	38,182	NOT-APPROVED	12.19
				[REDACTED]	L [REDACTED]	A97873	07/15/04	66,769	SIMPLIFIED	23.94
				[REDACTED]	L [REDACTED]	A97874	07/15/04	8,080	GUARANTEED	6.71
				[REDACTED]	M [REDACTED]	A97875	07/15/04	12,697	NOT-APPROVED	6.50
				[REDACTED]	M [REDACTED]	A97876	07/15/04	12,481	GUARANTEED	4.33
				[REDACTED]	W [REDACTED]	A97877	07/15/04	24,820	SIMPLIFIED	4.33
				[REDACTED]	M [REDACTED]	A97878-A05	07/15/04	12,669	GUARANTEED	13.00
				[REDACTED]	N [REDACTED]	A97879	07/15/04	27,868	GUARANTEED	8.66
				[REDACTED]	H [REDACTED]	A97880-A05	07/15/04	24,648	NOT-APPROVED	8.66
				[REDACTED]	H [REDACTED]	A97881	07/15/04	24,749	SIMPLIFIED	4.33
				[REDACTED]	F [REDACTED]	A97882	07/15/04	26,279	NOT-APPROVED	10.83
				[REDACTED]	F [REDACTED]	A97883	07/15/04	39,226	SIMPLIFIED	6.50
				[REDACTED]	R [REDACTED]	A97884	07/15/04	23,838	NOT-APPROVED	7.38
				[REDACTED]	R [REDACTED]	A97885	07/15/04	17,396	GUARANTEED	11.48
				[REDACTED]	T [REDACTED]	A97886-A05	07/15/04	15,170	NOT-APPROVED	4.87
				[REDACTED]	S [REDACTED]	A97887	07/15/04	8,314	GUARANTEED	10.83
				[REDACTED]	T [REDACTED]	A97888	07/15/04	9,784	GUARANTEED	8.66
				[REDACTED]	T [REDACTED]	A97889	07/15/04	14,062	GUARANTEED	4.33
				[REDACTED]	H [REDACTED]	A97890-A05	07/15/04	10,429	GUARANTEED	2.16
				[REDACTED]	V [REDACTED]	A97891	07/15/04	11,057	GUARANTEED	6.50
				[REDACTED]	Z [REDACTED]	A97892	07/15/04	18,160	SIMPLIFIED	4.33

EXHIBIT B

LOCAL RULES OF THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

LOCAL BANKRUPTCY FORM NO. 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Debtor(s))
)
) Bankruptcy No. _____
)
)

CERTIFICATE OF MAILING OF NOTICE
OR OTHER DOCUMENT TO PARTIES IN INTEREST

I, _____, certify under penalty of perjury that I mailed a copy of the attached _____ to the parties at the addresses on the attached matrix, on _____.

The total number of copies sent was _____.

EXECUTED ON: _____

Signature: _____

Name: _____

Address: _____

CERTIFICATE OF MAILING AND SERVICE

I, Richard A. Weiss, certify that on April 27, 2005, I caused to be mailed first class, postage prepaid, original copies of the Arkansas Petition for Membership in the Streamlined Sales and Use Tax Agreement and the Arkansas Certificate of Compliance to:

Scott Peterson, Interim Executive Director
SST Conforming States Committee
c/o Federation of Tax Administrators
444 North Capital Street, N.W., Suite 348
Washington, DC 20001

I, Richard A. Weiss, further certify that on April 27, 2005, I caused to be delivered electronically true and correct copies of the Arkansas Petition for Membership in the Streamlined Sales and Use Tax Implementing States to, Senator Angela Monson, Oklahoma State Senate at her e-mail addresses Monson@lsb.state.ok.us and Commissioner Bruce Johnson, Utah Tax Commission at his e-mail address RBJOHNSON@utah.gov.

I, Richard A. Weiss, further certify that on April 27, 2005, I caused to be delivered electronically true and correct copies of the Arkansas Petition for Membership in the Streamlined Sales and Use Tax Agreement and the Arkansas Certificate of Compliance to the Petition for Membership Distribution List, attached hereto and incorporated herein, at the e-mail addresses listed therein.



RICHARD A. WEISS, DIRECTOR
DEPARTMENT OF FINANCE AND ADMINISTRATION
STATE OF ARKANSAS

CERTIFICATE OF MAILING AND SERVICE

I, Harold E. Fox, certify that on June 3, 2005, I caused to be mailed first class, postage prepaid, an original copy of the New Jersey Response to the Public Comment of the Business Advisory Group to New Jersey's Petition for Membership in the Streamlined Sales and Use Tax Agreement to:

Stephen P. B. Kranz, Tax Counsel
Council on State Taxation
122 C Street NW, Suite 330
Washington, DC 20001

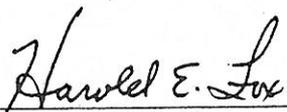
with duplicate copies to:

Senator Angela Z. Monson
2300 North Lincoln Blvd. – Room 428
Oklahoma City, OK 73105

Commissioner R. Bruce Johnson
Utah Tax Commission
210 North 1950 West
Salt Lake City, UT 84134

I, Harold E. Fox, further certify that on June 3, 2005, I caused to be delivered electronically a true and correct copy of the New Jersey Response to the Public Comment of the Business Advisory Group to the Conforming States Interim Director, Scott Peterson at his e-mail address, Scott.Peterson@state.sd.us and to the Co-Chairs of the Conforming States Committee, Commissioner Loren L. Chumley at her e-mail address, loren.chumley@state.tn.us and to Senator Dwight Cook at his e-mail address, kmund@state.nd.us.

I, Harold E. Fox, further certify that on June 3, 2005, I caused to be delivered electronically, a true and correct copy of the New Jersey Response to the Public Comment of the Business Advisory Group to each delegate listed in the Petition for Membership Distribution List, at the e-mail addresses listed therein.



Harold E. Fox

IN THE DISTRICT COURT OF SHAWNEE COUNTY, COUNTY
DIVISION FOURTEEN

BLUE CROSS AND BLUE SHIELD OF KANSAS INC.,)
Plaintiff,)
)
vs.)
)
CARLA STOVALL KANSAS ATTORNEY GENERAL,)
Defendant.)
_____)

See Page 3 & 4
415

Case No. 97CV 608

MEMORANDUM DECISION AND ORDER

Plaintiff Blue Cross Blue Shield of Kansas (BCBSK) filed a motion for partial summary judgment on October 15, 1999. The defendant, Carla Stovall, Kansas Attorney General (AG) filed her response on November 8, 1999 and BCBSK filed its reply on November 18, 1999. The court deems the motion as ready for ruling since there has been no request for oral argument on the motion. The court, after thoroughly reviewing the motion and memoranda and the court file in this matter and being fully informed regarding the premises, grants BCBSK's motion for partial summary judgment for the reasons set forth below.

BCBSK's motion for partial summary judgment alleges that there is no genuine issue as to any material fact and that it is entitled to summary judgment as to Count Six of the Attorney General's Amended Counterclaim.

This court concurs with BCBSK that there is no genuine issue as to any material fact necessary to the resolution of this motion. While the AG does controvert a number of the Statements of Uncontroverted Facts, none of the controverted facts were material to the court's decision on this issue. The controverted facts were in the nature of background information and other nonmaterial facts.

For the purpose of this motion, BCBSK stated that it would assume that BCBSK is a charitable trust. This court, for the purpose of this motion only, will look at the facts in the light most favorable to the nonmoving party and assume that BCBSK is a charitable trust. If the court, on the other hand, assumes that BCBSK is not a charitable trust, charitable corporation, or impressed with a charitable obligation, then BCBSK would have no fiduciary duty to any beneficiaries and therefore Count 6 would fail as well since there would have been no breach.

I. Did BCBSK breach any fiduciary duty by seeking judicial clarification regarding its alleged status as a charitable trust?

BCBSK argues that it did not breach any fiduciary duty by seeking judicial clarification regarding its alleged status as a charitable trust.

The AG on the other hand argues that BCBSK, as Trustee, has certain responsibilities that it has breached. The AG concedes there is no written agreement or indenture setting out BCBSK's duties, however the AG cites the Restatement of Trusts (Second) §164 which provides that duties are determined "b) in the absence of any provision in the terms of the trust by the rules stated in §§ 169-196." The AG specifically sets out three duties that she believes applies in this case: the duty to administer the trust (§169); a duty of loyalty (§170); and a duty to exercise reasonable care and skill (§174).

The AG argues that those duties are breached when BCBSK denies that it has the duties. However, that argument seems to boil down to an allegation that BCBSK breached the duty of loyalty.

BCBSK cites case law that supports its contention that a trustee should seek guidance from the court when the trustee has doubt as to the scope of its duties or the proper course of action. *Moore v. Adkins*, 2 Kan. App. 2d 139, 150-51, 576 P.2d 245, 254-55 (Kan. Ct. App. 1978). In addition, a trustee is entitled to expend trust assets to pay litigation expenses. *Jennings v. Murdock*, 220 Kan. 182, 214, 553 P.2d 846 (1976); Restatement (Second) of Trusts, §178.

Given the history of BCBSK including the statutory mandate for BCBSK to become a mutual insurance company coupled with the AG's failure to raise the issue regarding BCBSK's status either prior to the legislature's enactment of the mutualization legislation or during the conversion by BCBSK, this judicial clarification is essential to the future of BCBSK and ultimately the alleged beneficiaries. It is clear that the Attorney General has the duty to enforce a charitable trust [Restatement (Second) of Trusts §391]. Indeed, if this issue of charitable trust had been raised prior to the mutualization legislation, this lawsuit might not have been necessary.

If BCBSK had not sought a judicial clarification once the issue was raised by the AG and had instead capitulated that the AG was correct and that BCBSK was a charitable trust, etc., it may have subjected itself to suit by subscribers who contest the AG's interpretation of BCBSK's history and its impact on the legislative mandate to mutualize. If the subscribers would have brought suit, the trust would have incurred litigation expenses on this same issue.

This court does not find that BCBSK breached any fiduciary duty of loyalty or any other duty by seeking judicial clarification given the uncertainty regarding its status. Furthermore, even if there was a breach, it was one of timing (the AG argues that BCBSK should have initiated a *cy pres* proceeding subsequent to the legislative enactment requiring mutualization) and there would be no damages since the attorneys' fees for the litigation arguably would have been incurred anyway.

II. Did BCBSK abandon any alleged charitable purpose?

The AG first contends that BCBSK breached its fiduciary duty by abandoning relevant portions of its articles of incorporation which indicate the charitable nature of the corporation and its predecessors and failing to consult with subscribers prior to seeking mutualization legislation.

BCBSK argues that the changes in corporate form (both those mandated by the legislature and those instituted by BCBSK) cannot have caused any damages.

BCBSK amended its Articles of Incorporation in 1992 by deleting the provision that BCBSK was to be operated "exclusively for the promotion of social welfare within the meaning of the Internal Revenue Codes of 1954, as amended" and by deleting the dissolution clause which provided for the disposition of its assets to another social welfare organization or in the alternative that the disposition was to be made by the Shawnee County District Court upon dissolution of the corporation. However, if BCBSK is a charitable corporation of trust, etc., the amendments deleting the language would have no effect because BCBSK would continue to have a charitable purpose (with or without the language) and its assets would have to be dedicated to a charitable purpose even if the corporation dissolved. Hence there may have been a breach of loyalty to beneficiaries but there have been no damages to any beneficiaries since there has been no dissolution and no distribution of assets or dividends due to the change in the Articles of Incorporation. BCBSK contends that it is doing business as it always has done and one can infer that if it was fulfilling a charitable purpose prior to mutualization it continues to do so. Apparently, the Insurance

Commissioner takes exactly that position.

If BCBSK still is a charitable trust or charitable corporation, there has been no conversion of charitable assets to private ownership. It is uncontroverted that no dividends or assets have been distributed to subscribers (Plaintiff's statement of uncontroverted facts #22). The AG concedes that "the mere mutualization of BCBSK does not stop or prevent it from carrying out its charitable purposes." (AG's Response to Plaintiff's Motion for Partial Summary Judgment p.13.)

The only allegation of damages that the court finds can be inferred from the AG's counterclaim would be that BCBSK's assets are now owned by the subscribers rather than being held for the benefit of the beneficiaries. However, the AG states that K.S.A. 40-19c12 does not specify ownership of the company or its assets and that the mere mutualization does not change or prevent the carrying out of charitable purposes. Therefore, there are no current damages due to any alleged breach for abandonment of charitable purposes.

III. Did BCBSK's merger discussions breach BCBSK's fiduciary duties?

The AG alleges that BCBSK breached its fiduciary duty by participating in discussions with BCBS/KC regarding a possible merger and that in lieu of either mutualization or merger discussions with BCBS/KC, BCBSK failed to consider a merger with or acquisition of another Blue Cross Blue Shield plan that acknowledges its charitable status or some other nonprofit charitable institution.

The allegation boils down to one in which BCBSK breached its fiduciary duty by discussing merger with one entity and/or failing to discuss (consider) merger with other entities. The AG has not identified how any of the discussions or lack of discussions breached any specific duty or if they did, how the discussions or lack thereof caused any damages to any beneficiaries.

Discussions without action or lack of discussions hardly rise to a level in which there would be a breach let alone any discernible damages.

IV. If the court finds that a breach of fiduciary duty occurred, has the AG failed to name a defendant capable of providing the relief?

This question is really moot due to the court's finding that there has been no breach.

For the reasons set out above, the court grants BCBSK's motion for partial summary judgment on Count 6.

IT IS SO ORDERED.

Dated this 7th day of January, 2000.

Nancy Parrish
Judge, Third Judicial District
Division Fourteen

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing **MEMORANDUM DECISION AND ORDER** was mailed this day of **January**, 2000, to the following:

Mark A. Buck
Fairchild, Haney & Buck P.A.
5851 SW 29th St., Suite 1
Topeka, Kansas 66614

William Pitsenberger
Blue Cross and Blue Shield of Kansas, Inc.
1133 SW Topeka Blvd.
Topeka, Kansas 66629

C. Steven Tomashefsky
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611

Robert T. Stephan
14243 W. 84th Terrace
Lenexa, Kansas 66215

Robert F. Rowe, Jr.
Nancy S. Anstaett
8675 W. 96th St., Suite 210
P.O. Box 12728
Overland Park, Kansas 66282-2728

Eliehue Brunson
Assistant Attorney General
Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597

Margaret Gatewood
Kansas Insurance Department
420 SW 9th Street
Topeka, Kansas 66612-1678

Patrick H. Cantilo
Cantilo, Maisel & Hubbard, L.L.P.
111 Congress Ave., Suite 1700

Austin, Texas 78701

Norma Dunnaway, Administrative Assistant

SAMPLE

CERTIFICATE OF MAILING

I do hereby certify that I mailed a true and correct copy of the foregoing REQUEST FOR PRELITIGATION SCREENING PANEL to the following by first class mail:

Richard Roe, M.D.
000 Medical Plaza
Anytown, U.S.A. 84100

Prelitigation
Division of Occupational and Professional Licensing
Box 146741
160 East 300 South, 4th Floor
Salt Lake City, UT 84114-6741

DATED this _____ day of _____, 2004.

Signature

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

In the Matter of the Marriage of:)
)
_____,) Case No. _____
) Petitioner,)
and)
) RESPONDENT'S CERTIFICATE
_____,) OF MAILING
)
) Respondent.)

I certify that on _____, 20____, I placed a true copy of the Response in the above case in the United States mail addressed to Petitioner at _____ (petitioner's address) _____, in a sealed envelope with postage paid.

Certificate of Document Preparation. You are required to truthfully complete this certificate regarding the document you are filing with the court. Check all boxes and complete all blanks that apply:

- I selected this document for myself and I completed it without paid assistance.
- I paid or will pay money to _____ for assistance in preparing this form.

DATED this ____ day of _____, 20____.

Signature of Respondent

Print name

Address or Contact Address

City, State, Zip Code

Telephone or Contact Telephone

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO.: 75,257

FOURTH DISTRICT OF APPEAL

CASE NO. 88-02140

PRUDENTIAL PROPERTY AND CASUALTY
INSURANCE COMPANY, a foreign corporation,

Defendant/Appellant/
Petitioner,

vs.

BENJAMIN A. KALESA, JR., and
KATHLEEN KALESA, his wife,

Plaintiffs/Appellees/
Respondents.

FILED

SID J. WHITE

MAY 17 1990

CLERK, SUPREME COURT

By

Deputy Clerk

REPLY BRIEF ON THE MERITS

SHELLEY H. LEINICKE, ESQ.
WICKER, SMITH, BLOMOVIST, TUTAN,
O'HARA, MCCOY, GRAHAM & LANE
Attorneys for Prudential
Property and Casualty Insurance
Company
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Fort Lauderdale, Florida 33302
(305) 467-6405

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CERTIFICATE OF MAILING

WE HEREBY CERTIFY that a true copy of the foregoing was
mailed this 14th day of May, 1990, to: MARK W. CLARK, ESQ.,
Lytal & Reiter, P.O. Box 024466, West Palm Beach, Florida 33402.

WICKER, SMITH, BLOMQUIST, TUTAN,
O'HARA, McCOY, GRAHAM & LANE
Attorneys for Prudential
Property and Casualty Insurance
Company
P. O. Drawer 14460
Fort Lauderdale, Florida 33302
(305) 467-6405

BY _____


SHELLEY H. LEINICKE
Florida Bar No. 230170

§ 23:54 Affidavit of mailing

STATE OF _____ }
COUNTY OF _____ } s.s.:

The undersigned, being duly sworn, deposes and says:

I am over the age of eighteen years, and, on [date], I mailed the [paper mailed, e.g., notice of default], copy of which is attached [omitted], to the addressee listed below, by depositing a copy enclosed in a postpaid wrapper, in an official depository under the exclusive care and custody of the U.S. Post Office Department, in [borough, city, county, state] addressed as follows:

[Name and address of addressee]

[Signature]
Affiant

Sworn to before me this [dated]

[Signature]
Notary Public

§ 23:55 Affidavit of forged signature

STATE OF _____ }
COUNTY OF _____ } s.s.:

The undersigned, being duly sworn, deposes and says:

I am over the age of eighteen years and, on [date], was and still am a depositor in [bank] at its [address] office.

That on [date], only I was authorized to draw checks on or indorse checks to [bank] on my account number [number].

I have examined the signature "[name]" of check number [number] dated [date] purported to be drawn by me on [bank] and hereby state: that I did not write or authorize to be written this signature.

The signature is a forgery and was made by someone unknown to Affiant.

The purpose of this Affidavit is to induce [bank] to credit my account number [number] in the amount of this check.

[Signature]
Affiant

Sworn to before me this [dated]

[Signature]
Notary Public

James R. Michaud
District Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, delivered via courthouse mail, or faxed, this _____ day of September 2000, to:

Brent C. Featherston
Featherston Law Firm
113 South Second Avenue
Sandpoint, ID 83864

Roger Hanlon, Bonner County Deputy Prosecuting Attorney
Courthouse Mail
Sandpoint, ID 83864

District Court Secretary/Deputy Clerk

Acknowledgment of Claim - There are two violation where the department said we did not acknowledge the claim within 10 working days.

COMPANY EXIT SUMMARY RESPONSE:

#22 - Carrion Agapito, notification of an assignment of benefits from Mortuary Financial was received on 5/7/04. Boston Mutual did not receive a claim form from the beneficiary and a certified death certificate until 6/7/04. On 6/16/04, the claim form was returned to the policyholder for missing information. The completed claim form was received on 6/23/04 and claim was processed on 6/24/04 and check sent on 6/25/04.

#44 - Crosby, notification of an assignment of benefits from Pegasus was received on 11/30/04. This was just confirming a phone call to our office of 11/29/04 as to the named beneficiary and amount of policy. Boston Mutual did not receive a claim form from the beneficiary and a certified death certificate until 12/9/04. The claim was processed on 12/16/04 and check sent on 12/20/04.

Notification by the Funeral Home does not constitute "notification of claim" under Section 146.5 (a). This section states: "Every insurer, upon receiving notification of a claim, shall, within 10 working days, acknowledge the receipt of the notice..." The definition of Notification of a Claim under Section 146.2 (b) states: A notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant or insured, which reasonably appraises the insurer of the facts pertinent to a claim" (Emphasis added).

Under #22 we only received notification of an assignment and under #44 we received notification of an assignment and a request for confirmation of the name of the beneficiary and the face amount of the policy. In neither case were we appraised of the facts relevant to the case. Thus the information/requests by the funeral homes do not constitute proper "notification of claim" as required by Section 146.5. Also, I would note that the notification must be by the claimant.

Department Response (Title 31 Code Section 146.5):

#22 - Carrion Agapito, Claim was reported 5/7/04 as date stamped assignment form from Mortuary Financial. Full claim notification (supporting documentation for proof of claim) is not required under the statute. The Company was appraised of the Death of the Insured as well as the fact that the proceeds were assigned to the Funeral Home. The Company is required to acknowledge receiving the claim. Therefore, the violation remains.

#44 - Crosby, Claim reported 11/29/04 as noted in facsimile transmission received by Boston Mutual 11/30/04 from Pegasus Funding. The Company is required to acknowledge the claim. Therefore, the violation remains.

NOTE: As stated above, we were not appraised of the facts pertinent to the claim and the notification was not by the claimant. At this point in time we were not even appraised of the address of the claimant(beneficiary).

Timely Notice of Claims Status –

COMPANY EXIT SUMMARY RESPONSE:

#45 - Guntrum - Telephone call received on 3/15/04 requesting claim form. Claim form sent to beneficiary on 3/15/04. Claim form, policy and certified death certificate received 5/12/04. Claim processed 5/17/04 and benefit payment sent on 5/19/04. The actual "Notification of Claim" was not until May 12, 2004 when we received the claim form and death certificate. It was only at this point in time that we were reasonably apprised of the facts pertinent to the claim. See definition of "Notification of Claim" under section 146.2. Benefits were paid within 7 days (5 working days) of Notification.

#47 - Yanushefski - Claim form and certified copy of death certificate received 6/1/04. Letter sent to beneficiary on 6/9/04 acknowledging claim and advising we are investigating the claim. Information concerning the accident was received on 6/25/04, claim processed on 7/13/04 and benefit payment went out on 7/14/04. Status letter was sent on June 9, 2004 and the claim was paid within 19 days (13 working days) of receiving the additional claim information.

#48 - Berchem - Telephone call received on 2/2/04 requesting claim form. Claim form sent to beneficiary on 2/2/04. Claim form and certified death certificate received on 3/3/04. Claim processed on 3/9/04 and benefit payment went out 3/11/04. The actual "Notification of Claim" was not until March 3, 2004 when we received the claim form and death certificate. It was only at this point in time that we were reasonably apprised of the facts pertinent to the claim. See definition of "Notification of Claim" under section 146.2. Benefits were paid 8 days (6 working days) after receiving Notification of Claim.

#69 - O'Brien - Telephone call received on 10/5/04 requesting claim forms. Claim forms sent on 10/5/04. Claim forms and certified death certificate received on 11/12/04. Letters sent on November 13, 2004 to all claimants acknowledging claim and advising we need death certificate of named primary beneficiary and documentation of name changes for two contingent beneficiaries. This information was received on 12/3/04. Claim processed on 12/8/04 and benefit payment sent on 12/10/04. The actual "Notification of Claim" was not until November 12, 2004 when we received the claim form and death certificate. It was only at this point in time that we were reasonably apprised of the facts pertinent to the claim. See definition of "Notification of Claim" under section 146.2. The final requested information was not received until December 3, 2004. The claim was paid within 7 days (5 working days) of the receipt of the final requested information.

#70 - Draper - Telephone call received on 5/26/04 requesting claim forms. Claim forms sent on 5/26/04. Claim forms and certified death certificate received on 6/21/04. Claim processed on 6/24/04 and benefit payment sent on 6/29/04. The actual "Notification of Claim" was not until June 21, 2004 when we received the claim form and death certificate. It was only at this point in time that we were reasonably apprised of the facts pertinent to the claim. See definition of "Notification of Claim" under section 146.2. Benefits were paid 8 days (6 working days) after receiving Notification of Claim.

#92 - Wincek - Claim form and certified death certificate received on 5/7/04. Sent letter to beneficiary on May 13, 2004 acknowledging claim and requesting additional information (specifically a HIPAA compliant authorization form. This information was received from the beneficiary on 5/21/04 and letter sent to beneficiary on 6/11/04 advising we are requesting medical records. Bill for copying medical records was received on 7/6/04 and paid. The medical records were received on 8/4/04. Claim was denied on 9/8/04. The claim was denied 34 days after we received the final information which was within the 45 day period specified in 146.6.

#97 - Mainer - Telephone call received on 2/18/04 requesting claim form to be mailed. Claim form sent on 2/19/04. Claim form and certified death certificate was not received until 9/30/04. The claim form was received on October 4, 2004 and an acknowledgment was sent on that date. A request for additional information was sent on October 7, 2004. The claimant did not respond to the request for information and follow-up letters were sent on December 12, 2004, February 3, 2005, and April 11, 2005. The information was received on April 28, 2005 and an acknowledgment was sent on May 4, 2005. The claim was paid within 15 days (11 working days) on May 13, 2005.

#100 - Giordano - Claim form and certified death certificate received 3/11/04. Acknowledgement letter sent to beneficiary on 3/15/04. Several attempts were made to contact the beneficiary by phone 3/18, 3/19 and 3/22/04. Finally a certified letter was sent to beneficiary on 3/25/04 advising we needed to speak with him. Finally a documented telephone interview was made with the beneficiary on 4/6/04. Medical records were requested on April 6, 2004 and were received April 28, 2004 and claim was denied on 5/13/04. The denial was within 15 days (11 working days) of the receipt of the medical information.

Department Exit Response (Title 31 Section 146.6):
Receipt of all claim documents is not considered date of notification.

NOTE: The law (§ 146.2(b)) defines "Notification of a claim" as "A notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant or insured, which reasonably appraises the insurer of the facts pertinent to a claim" (Emphasis added). It does not define it as merely requesting a claim form. It has been our position that Notification is when we receive the claim form. In several of the cases, the claim form was received more than 30 days after the form was provided to the claimant. See claims:

- #42 We received request for claim form on 3/15/04 (mailed form same day). Completed claim form not received until 5/17/04.
- #69 We received request for claim form on 10/5/04 (mailed form same day). Completed claim form not received until 11/12/04.
- #97 We received request for claim form on 2/18/05 (mailed form next day). Completed claim form not received until 10/4/05.

Based on the Department's interpretation, we would have had to send a letter saying there is a delay in approving the claim, because you have not filed a claim.