

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:  
: :  
MONUMENTAL LIFE INSURANCE : Sections 408-A(c)(4)(i), 408-A(c)(4)(ii),  
COMPANY : 408-A(e)(1)(ii), 408-A(e)(2)(ii),  
4333 Edgewood Road, N.E. : 408-A(e)(2)(iii) and 408-A(e)(3)(ii)  
Cedar Rapids, IA 52499 : Insurance Company Law, Act of  
: May 17, 1921, P.L. 682, No. 284 (40  
: P.S. §§ 625-8)  
: :  
: Title 31, Pennsylvania Code, Sections  
: 81.6(a)(1), 83.3, 83.3(a)(1)(2)(3)(4)  
: (5)(6)(7), 83.4a, 83.4b, 83.3(a)(4)(i),  
: 83.55(a), 83.55(b), 83.55(c), 88.181,  
: 146.5, 146.6 and 146.7  
: :  
Respondent. : Docket No. MC13-03-010

CONSENT ORDER

AND NOW, this 1<sup>st</sup> day of April, 2013, this Order is hereby  
issued by the Insurance Department 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.

### FINDINGS OF FACT

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

(a) Respondent is Monumental Life Insurance Company, and maintains its address at 4333 Edgewood Road, NE, Cedar Rapids, IA 52499.

(b) From September 2009 through December 2009, a market conduct examination of Respondent was conducted by the Insurance Department covering an experience period from July 1, 2008 through June 30, 2009.

(c) The market conduct examination was resolved through an Examination Report and Consent Order dated December 17, 2010.

(d) The Examination Report included nine (9) separate Recommendations which identified corrective measures the Department found necessary as a result of the number of some violations, or the nature and severity of others noted in the Report.

(e) The Consent Order required Respondent to perform a self-audit of all issues addressed in the nine (9) Recommendations found in the Examination Report, within one calendar year from the date of the Order and report the results to the Department.

(f) Subsequently, in April 2010, Respondent conducted a self-audit on seven (7) of the nine (9) Recommendations from the 2010 Examination Report. Respondent and the Department mutually agreed to forego reviewing Recommendation #2 relative to producer licensing and Recommendation #3 relative to missing documents during the self-audit process.

(g) On June 15, 2012, Respondent submitted to the Department a self-audit report for the period June 1, 2011 to December 31, 2011. The Respondent's self-audit report noted non-compliance, with the following Recommendations from the 2010 Examination Report:

- (i) Recommendation 1. The Company must review and revise internal control procedures to ensure compliance with the replacement requirements of Title 31, Pennsylvania Code, Chapter 81;
- (ii) Recommendation 4. The Company must review internal control procedures to ensure compliance with application and

outline of coverage requirements of Title 31, Pennsylvania Code, Chapter 88;

. . .

(iii) Recommendation 5. The Company must review internal control procedures to ensure compliance with disclosure requirements of Title 31, Pennsylvania, Chapter 83;

(iv) Recommendation 6. 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);

. . .

(v) Recommendation 9. 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.

(h) For the five (5) Recommendations listed in paragraph (g) of this Order, the self-audit revealed compliance rates below the NAIC standard of 90% (excludes claims) and 93% (claims only) tolerance thresholds. Failure to comply with the corrective measures listed in the five (5) Recommendations, results in the following violations:

(i) Section 408-A(c)(4)(ii) of the Insurance Company Law, No. 284 (40 P.S. § 625-8) requires a statement to be signed and dated by the producer reading as follows: “I certify that this illustration has been presented to the applicant or the policy owner and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration.”;

(ii) Section 408-A(e)(1)(ii) of the Insurance Company Law (40 P.S. § 625-8) states if the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled “Revised Illustration.” The statement shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered;

(iii) Section 408-A(e)(2)(ii) of the Insurance Company Law (40 P.S. §625-8) applies if a computer screen illustration is displayed by a producer. Where a computer screen illustration is used, the producer shall certify in writing on a form provided by the insurer that a computer screen illustration was displayed. Such form shall require the

producer to provide, as applicable, the generic name of the policy and any riders illustrated, the guaranteed and non-guaranteed interest rates illustrated, the number of policy years illustrated, the initial death benefit, the premium amount illustrated and the assumed number of years of premiums. On the same form, the applicant shall further acknowledge that an illustration matching that which was displayed on the computer screen will be provided no later than the time the application is provided to the insurer. A copy of this signed form shall be provided to the applicant at the time it is signed;

(iv) Section 408-A(e)(2)(iii) of the Insurance Company Law (40 P.S. §625-8) applies if a computer screen illustration is displayed by a producer. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner at the time the policy is delivered and to the insurer;

(v) Section 408-A(e)(3)(ii) of the Insurance Company Law (40 P.S. §625-8) applies if an illustration is used by a producer in the sale of a life insurance policy but the policy applied for is other than as illustrated. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy

owner no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insured as soon as practical after the policy is delivered;

(vi) Title 31, Pennsylvania Code, Section 81.6(a)(1) states that 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;

(vii) Title 31, Pennsylvania Code, Section 83.3 requires written disclosure. A life insurance agent, broker or insurer soliciting life insurance shall provide a prospective purchaser with a written disclosure statement clearly labeled as such;

(viii) Title 31, Pennsylvania Code, Sections 83.3(a) (1), (2), (3), (4), (5), (6) and (7) requires a disclosure statement to be a document which shall describe the purpose and importance of the disclosure and describe the significant elements of the policy and riders being offered;

(ix) Title 31, Pennsylvania Code, Section 83.4a 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;

(x) Title 31, Pennsylvania Code, Section 83.4b requires the insurer to maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three (3) 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;

(xi) Title 31, Pennsylvania Code, Sections 83.55a and 83.55b, require (a) 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 three (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;

(xii) Title 31, Pennsylvania Code, Section 88.181 states no policy may be delivered or issued for delivery in this Commonwealth unless an appropriate outline of coverage, as prescribed by this chapter, either accompanies the policy or contract or is delivered at the time application is made;

(xiii) Title 31, Pennsylvania Code, Section 146.5, which requires every insurer, upon receiving notification of a claim, shall within ten (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;

(xiv) Title 31, Pennsylvania Code, Section 146.6 states that if an investigation cannot be completed within thirty (30) days, and every forty-five (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;

(xv) Title 31, Pennsylvania Code, Section 146.7, which requires within fifteen (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.

(i) On July 16, 2012 through November 8, 2012, the Department performed a validation review to determine the accuracy of the Respondent's self-audit report and noted the same violations reported by Respondent and referenced in items (h)(i) through (h)(xv) above.

(j) During its validation review, the Department also noted the following additional violations:

(i) Section 408-A(c)(4)(i) of the Insurance Company Law (40 P.S. §625-8) requires a statement to be signed and dated by the applicant or the policy owner in the case of an illustration provided at time of delivery, reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The producer has told me they are non-guaranteed.";

(ii) Title 31, Pennsylvania Code, Section 83.55c requires that if it is the practice of the insurer to mail the policy directly to the applicant, the appropriate officer of the insurer shall certify, in conjunction with the annual statement of the insurer, that in accordance with this subchapter

surrender comparison index disclosures have been included with policies at delivery or provided earlier upon request. Failure to certify shall constitute *prima facie* evidence that surrender comparison index disclosures have not been provided to prospective purchasers of life insurance.

#### CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department makes the following Conclusions of Law:

(a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

(b) Respondent's violations of Sections 408-A of the Insurance Company Law (40 P.S. §§625-8) 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.

(c) Respondent's violations of Title 31, Pennsylvania Code, Chapter 81, 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).

(d) Respondent's violations of Title 31, Pennsylvania Code, Chapter 83 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.

(e) Title 31, Pennsylvania Code, Section 88.181 states no policy may be delivered or issued for delivery in this Commonwealth unless an appropriate outline of coverage, as prescribed by this chapter, either accompanies the policy or contract or is delivered at the time application is made.

(f) Respondent's violations of Title 31, Pennsylvania Code, Sections 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.

(g) 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 Insurance Department 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 pay One Hundred Thousand Dollars (\$100,000.00) to the Pennsylvania Insurance Department in settlement of all violations from the self-audit. Payment should be directed to Cherie Leese, Bureau of Market Actions, 1311 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

(c) Within six (6) months from the date of this Order, Respondent will have implemented all nine (9) Recommendations listed in the 2010 Examination Report.

(d) After a period of twenty-four (24) months from the date of this Order, Respondent shall be re-examined by the Insurance Department to verify the nine (9) recommendations listed in the 2010 Examination Report have been implemented. The experience period will not include any portion of the six (6) months referenced in 5(c) above.

(e) Respondent will be subject to a penalty of \$50,000 per each recommendation found to be in non-compliance during the re-examination referenced in 5(d) of this consent order. Compliance rates for the re-examination will be based on the NAIC standards of 90% (excludes claims) and 93% (claims only) tolerance thresholds.

6. In the event the Insurance Department 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 Insurance Department 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 Department 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 Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department 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 Insurance Department. Only the Insurance Commissioner or a duly authorized delegee 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 delegee.

BY: MONUMENTAL LIFE INSURANCE  
COMPANY, Respondent



~~President~~ / Vice President



~~Assist~~ Secretary / Treasurer



COMMONWEALTH OF PENNSYLVANIA

By: Ronald A. Gallagher, Jr.  
Deputy Insurance Commissioner