

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

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| FINAL ORDER Effective: 4/18/05 |
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In the Matter of Property and Casualty)
Insurance Company of Hartford)

Docket No. 3429-SO

SUMMARY ORDER

Pursuant to the authority conferred on the Commissioner of Insurance by K.S.A. (2003 Supp.) 40-5101 *et seq.*, K.S.A. 40-2406, 40-2,125, and by invoking K.S.A. 77-537, the Commissioner hereby admonishes and assesses penalty against the Property and Casualty Insurance Company of Hartford for engaging in an unfair method of competition in violation of the Kansas Insurance Score Act and other applicable Kansas insurance code.

Findings of Fact

1. Property and Casualty Insurance Company of Hartford (hereinafter “PCICH” or “the company”), located at 4040 Vincennes Circle, Suite 100, Indianapolis, IN 46268, has been authorized to transact and continuously engaged in transacting insurance business in the state of Kansas since February 14, 1997.
2. In July 2004, the Kansas Insurance Department (hereinafter, “KID”) received a written complaint from Karole Glaser, co-holder of PCICH policy #55HPF660012, regarding the company’s Notice of Consumer Report Use in PLA-68-2 form informing her that she was “not eligible for [the company’s] most preferred plan or rates” based wholly or partially on a consumer credit report. (*See* Attachment A, “Notice of Consumer Report Use).

3. On or about October 25, 2004, KID requested the Hartford Insurance Company to supply detailed reasons in relation to the aforesaid notice and the increase in premium in Glaser's policy. (*See* Attachment B, James Welch's letter, dated October 25, 2004, to DeFrancesco).
4. PCICH's full response was received by KID on November 15, 2004. (*See* Attachment C, Suzanne Tench's letter, dated November 11, 2004, to James Welch).
5. PCICH states that its aforementioned Notice to Karole Glaser was "inaccurate" because "Mrs. Glaser's policy . . . is actually being rated with the best possible rating tier." *Id.*
6. PCICH also acknowledges that "as 80% of [PCICH's] customer are not eligible for [the company's] most preferred rates, [the company's] Marketing Department felt it would be more cost efficient to send this notice to all policyholders rather than to conduct the research necessary to determine who was eligible for our preferred rates and who was not." *Id.*
7. PCICH further acknowledges that the company's "record confirmed that [PCICH] were able to obtain an insurance score for Mrs. Glaser" from Trans Union during the renewal process of Glaser's policy. *Id.*
8. PCICH also confirms that Glaser's "July 21, 2004/2005 policy [was] renewed with an annual premium of \$485.45, which was an increase of \$161.09 over the 2003/2004 policy term." *Id.*
9. PCICH explained the reasons for the said premium and provided a list of codes involved in its rating process regarding Glaser's PCICH policy.

- Specifically, PCICH denies that the said premium increase was attributed to any adverse application of Glaser's credit report. *Id.*
10. On or about December 27, 2004, PCICH wrote to KID again stating that its November 11, 2004 letter contained "inaccurate information regarding Mrs. Glaser's policy." *See*, Attachment D, Suzanne Tench's letter, dated December 27, 2004, to James J. Welch.
 11. In its November 11, 2004 letter, PCICH stated that "we were unable to obtain an insurance score for Mrs. Glaser . . . [due to] the result of Mrs. Glaser's change of address." *Id.*
 12. PCICH urged KID to take notice that:

"Mrs. Glaser's vehicle was rated in the third from the best rating tier for the 2003/2004 policy term, based on her insurance score. On the 2004/2005 renewal, we attempted to reorder her insurance score. We were unable to obtain an insurance score, which changed Mrs. Glaser's vehicle tier to the "no score" category, which defaults to our best rating tier." *Id.*
 13. PCICH states that "the Notice of Consumer Report Use (form PLA-68-2) Mrs. Glaser received was appropriate. This particular notice is sent to our insureds when we were unable to obtain the insurance score." PCICH further retracts its prior statement that "this notice was sent to all policyholders" in its November 11, 2004 letter to KID. *Id.*
 14. PCICH further informs KID that "[its] form number PLA-68-2 is no longer being mailed to our customers, and has been replaced with a new form (PLA-68-3)." *Id.*

Applicable Law

15. K.S.A. 40-2,125 states:

(a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than \$2,000 for each and every act or violation;

(2) suspension or revocation of the person's license or certificate if such person knew or reasonably should have known that such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder; or

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

(b) If any person fails to file any report or other information with the commissioner as required by statute or fails to respond to any proper inquiry of the commissioner, the commissioner, after notice and opportunity for hearing, may impose a penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the commissioner.

(c) If the commissioner makes written findings of fact that there is a situation involving an immediate danger to the public health, safety or welfare or the public interest will be irreparably harmed by delay in issuing an order under subsection (a)(3), the commissioner may issue an emergency temporary cease and desist order. Such order, even when not an order within the meaning of K.S.A. 77-502 and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536 and amendments thereto. Upon the entry of such an order, the commissioner shall promptly notify the person subject to the order

that: (1) It has been entered, (2) the reasons therefor and (3) that upon written request within 15 days after service of the order the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to the person subject to the order, shall by written findings of fact and conclusions of law vacate, modify or make permanent the order.

(d) For purposes of this section:

(1) "Person" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society and any other legal entity engaged in the business of insurance, or any person purchasing an interest in a life insurance policy which is licensed pursuant to K.S.A. 40-2,141 and amendments thereto, rating organization, third party administrator, nonprofit dental service corporation, nonprofit medical and hospital service corporation, automobile club, premium financing company, health maintenance organization, insurance holding company, mortgage guaranty insurance company, risk retention or purchasing group, prepaid legal and dental service plan, captive insurance company, automobile self-insurer or reinsurance intermediary. The term "person" shall not include insurance agents licensed pursuant to K.S.A. 40-241 or 40-246, and amendments thereto, insurance brokers licensed pursuant to K.S.A. 40-3701 *et seq.*, and amendments thereto, or employees of licensed agents or brokers.

(2) "Commissioner" means the commissioner of insurance of this state.

16. K.S.A. 40-5104 states, in pertinent part:

No insurer authorized to do business in the state of Kansas which use credit information to underwrite or rate risks, shall:

...

(e) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer does one of the following:

- (1) Treat the consumer as if the applicant or insured had neutral credit information, as defined by the insurer; or
- (2) Exclude the use of credit information as a factor and use only other underwriting criteria.

17. K.S.A. 40-5107 states,

- (a) If an insurer takes an adverse action based upon credit information, the insurer shall provide written notification to the consumer a notice that:
 - (1) An adverse action has been taken, in accordance with the requirements of the federal fair credit reporting act as set forth in, 15 USC 1681m(a); and
 - (2) explains the reason for such adverse action.
- (b) Each reason must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take such adverse action. An insurer shall provide a procedure whereby a consumer may review an adverse action based on credit information. Such procedure shall be consistent with the provisions of K.S.A. 40-2,112 and amendments thereto. The insurer and the insurer's agent shall be immune from any action arising from information provided to the insured through such process. The insurer shall not be found in violation of rate filings by adjusting an insured's rate in such a manner.
- (c) The use of generalized terms such as 'poor credit history,' 'poor credit rating,' or 'poor insurance score' shall be deemed not to comply with requirements of this section.

18. K.S.A. 40-2406 states:

- (a) Whenever the commissioner has reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice, whether or not defined in K.S.A. 40-2404 and amendments thereto, and that a proceeding by the commissioner in respect thereto would be in the interest of the public, the commissioner shall issue and serve upon such person a statement of the charges in that respect and conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.

(b) If, after such hearing, the commissioner determines that the person charged has engaged in any unfair method of competition or any unfair or deceptive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section shall be assessed against such person or the company or companies represented by such person as an agent, broker or adjuster who is a participating party to the matters giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

19. K.S.A. 40-2407 states:

(a) If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of K.S.A. 40-2404 and amendments thereto, the commissioner may in the exercise of discretion order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, but not to exceed an aggregate penalty of \$10,000, unless the person knew or reasonably should have known such person was in violation of this act, in which case the penalty shall be not more than \$5,000 for each and every act or violation, but not to exceed an aggregate of \$50,000 in any six-month period;

(2) suspension or revocation of the person's license if such person knew or reasonably should have known such person was in violation of this act; or

(3) redress of the injury by requiring the refund of any premiums paid by, the payment of any moneys withheld from, any consumer and appropriate public notification of the violation. In applying this penalty any requirement for the payment of moneys may include reasonable interest at a rate not to exceed the rate specified in K.S.A. 40-2,126 and amendments thereto, with such interest commencing no earlier than the date the consumer's complaint was received by the commissioner and actual costs incurred by the consumer in effecting the payment associated directly with the injury.

(b) After the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, reopen and alter, modify or set aside, in whole or in part, any order issued under this section, whenever in the commissioner's opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

Conclusion

Based upon the Findings of Fact and Applicable Law enumerated in paragraphs #1 through #19 above,

IT IS, THEREFORE, ORDERED BY THE COMMISSIONER OF INSURANCE:

- a. PCICH admits that its notice form PLA-68-2 was mailed to the policyholders, including Karole E. Glaser, who had no scores in their credit information for one reason or another.
- b. PCICH also admits that the company's inability to obtain an insurance score regarding Glaser resulting in a change of her vehicle tier to the "no score" category, which defaults to the company's best rating tier.
- c. PCICH's PLA-68-2 notice states: "[t]his notice is issued to those persons not eligible for our most preferred plan or rates based wholly or partly on a consumer report, and/or our inability to obtain your insurance score, which is produced for information found in a credit report."
- d. By issuing a PLA-68-2 notice to Glaser informing her that she was not eligible for PCICH's best rate based wholly or partly on a consumer report or the company's inability to obtain an insurance score on her account, PCICH misrepresents and misinforms the facts and rates as to

the company's practice regarding "no score" accounts at the time relevant to this case, thus, in violation to K.S.A. 40-2404(1)(a) and K.S.A. 40-2406.

- e. PCICH's consideration of an absence of credit information or its inability to calculate an insurance score in "no score" accounts as basis for defaulting such accounts to the company's best rating tier is a business practice prohibited under K.S.A. 40-5104(e).
- f. Pursuant to K.S.A. 40- 2407(a), PCICH shall cease and desist from serving its policyholders with any notice of consumer report use without regard to the applicability and factual accuracy of such a notice.
- g. Pursuant to K.S.A. 40-2,125, PCICH shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of One Hundred Dollars (\$100) for its violations of K.S.A. 40-2404(1)(a), 40-2406 and K.S.A. 40-5104(e).

IT IS SO ORDERED THIS 29th DAY OF MARCH, 2005, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance
BY:

/s/ John W. Campell
John W. Campbell
General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Order on this 29th day of March, 2005, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Chris Williams, Counsel
The Hartford
Law Dept. - 1st Floor
2018 Powers Ferry Road
Atlanta, GA 30339

/s/ Hsingkan Chiang
Hsingkan Chiang, Staff Attorney

NOTICE OF RIGHTS

Property and Casualty Insurance Company of Hartford (“PCICH”) is entitled to a hearing pursuant to K.S.A. §77-537, the Kansas Administrative Procedure Act. If PCICH desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If PCICH requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. §77-613. In the event that PCICH files a petition for judicial review, pursuant to K.S.A. §77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

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Chris Williams, Counsel
The Hartford
Law Dept. - 1st Floor
2018 Powers Ferry Road
Atlanta, GA 30339

/s/ Hsingkan Chiang
Hsingkan Chiang, Staff Attorney