

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

FINAL ORDER Effective: 9/19/05

In the Matter of)
Government Employees) Docket No.: 3479-SO
Insurance Company)
NAIC # 22063)

SUMMARY ORDER

(Pursuant to K.S.A. 2004 Supp. 40-2,125, K.S.A. 2004 Supp.40-5101 et. seq.,
and K.S.A. 77-537(1997))

Pursuant to the authority conferred to the Commissioner of Insurance in the Kansas Insurance Score Act, K.S.A. (2004 Supp.) 40-5101 through 40-5115, K.S.A. (2004 Supp.) 40-2,125, and by invoking K.S.A. 77-537 (1997), the Commissioner hereby admonishes and assesses fines against Government Employees Insurance Company for violations of the Kansas Insurance Score Act, K.S.A. (2004 Supp.) 40-5101, et., seq..

FINDING OF FACT

1. Government Employees Insurance Company (hereinafter, “Government Employees”), located at 5620 Western Avenue, Chevy Chase, MD 20815 and has been authorized and continuously engaged in the insurance business in the State of Kansas since September 09, 1953.
2. On or about April 27, 2005, after Gail Schoen requested an insurance quote, Government Employees sent a “Fair Credit Reporting Act Notice” (hereinafter, the “notice”) to Ms. Schoen because the rate quoted was not the best possible rate. (Exhibit A).
3. At all times relevant hereto Gail Schoen was a consumer as defined by K.S.A. 2004 Supp. 40-5103(f).

4. The notice did not provide a specific reason for the adverse action.
5. After obtaining a copy of her credit report, which reflects no adverse credit information whatsoever, Gail Schoen filed a complaint with the Kansas Insurance Department regarding the notice.
6. The notice states: “since we may have been able to offer you a lower rate had the report been more favorable. we [sic] treat our decision as an adverse action under the Fair Credit Reporting Act.” (Exhibit A).
7. The notice contains no other reason for the adverse action taken by Government Employees.
8. On or about July 14, 2005, James J. Welch, Director of the Consumer Assistance Division of the Kansas Insurance Department wrote Government Employees and requested that Government Employees, “explain the reason for the adverse action against Gail Schoen in clear and specific language.”
9. On August 1, 2005 Donald L. Larson Jr. responded to the Department inquiry and stated, “In the instant case, Ms Schoen’s “adverse action” notice did not contain any explanatory reasons because her credit file was a “no hit. In other words, GEICO was not able to obtain Ms. Schoen’s consumer credit file based upon information that was provided at the time of her request for an insurance rate quote. Since there was no consumer credit information to populate the explanatory field the “adverse action” notice field remained blank.”

APPLICABLE LAW

10. On July 1, 2003, the Kansas “Insurance Score Act”, K.S.A. 40-5101 et., seq., (Hereinafter “the act”) became law.

11. K.S.A. (2004 Supp) 40-5107, of the act, provides as follows:

"(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."

History: L. 2003, ch. 88, § 8; July 1.

12. K.S.A. 40-5112 2004 Supp. **Powers of commissioner** provides:

Whenever an insurer is found to be in violation of any provision of this act, the commissioner shall proceed under K.S.A. 40-2,125 and amendments thereto.

History: L. 2003, ch. 88, § 13; July 1.

13. K.S.A. 40-2,125 (2000) provides, in relevant part, as follows:

“Violation of insurance laws; failure to file reports; penalties; emergency temporary cease and desist orders; definitions.

(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....”

History: L. 1989, ch. 132, § 1; L. 1997, ch. 24, § 1; July 1.

CONCLUSIONS OF LAW

Government Employees is subject to the regulatory authority conferred to the Insurance Commissioner of the state of Kansas by the Kansas insurance statutes and regulations promulgated thereto. The Commissioner has jurisdiction over the subject matter of this proceeding and this proceeding is held in the public interest.

The Kansas Insurance Score Act’s (hereinafter the KISA), definition of “consumer report” is very broad. It encompasses a credit reporting agency's communication to an insurance company that a consumer does not have enough information on file for an insurance score to be calculated. Specifically, K.S.A. 40-5103(i) explains that “[t]he term ‘Credit report’ means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, [or] credit capacity” (emphasis added).

Reporting that an agency cannot obtain information regarding a consumer or that a consumer has insufficient credit information on file conveys a message regarding the

consumer's creditworthiness, standing, and capacity that makes his obtaining of credit far more difficult. Such a report suggests that the consumer cannot show that the consumer does or does not pay debts in a timely manner. That information may be false: The credit agency may have conveyed the wrong information or insufficient identifiers which may result a credit agency searching the wrong records, missing data that would have shown that the applicant is indeed creditworthy. Providing notice therefore serves the statutory purpose of allowing the consumer to correct errors in credit reports and insurance scores. A communication that a consumer has no information available or an insufficient credit history to permit the calculation of a credit rating qualifies as "a consumer report" within the meaning of the Kansas Insurance Score Act.

I. GOVERNMENT EMPLOYEES VIOLATED K.S.A. 40-5107 2004 Supp. (a) (2) and K.S.A. 2004 Supp. 40-5107 (b) OF THE KANSAS INSURANCE SCORE ACT

The adverse action notice sent by Government Employees to Gail Schoen, a Kansas Consumer, (Exhibit A), violates K.S.A. 40-5107 (a) (2) by failing to explain the reason for the adverse action. The adverse action notice sent by Government Employees to Gail Schoen a Kansas Consumer, (Exhibit A), violates K.S.A. 40-5107 (b) by failing to provide a clear and specific reason for the insurer's decision to take the adverse action.

IT IS THEREFORE ORDERED THAT:

- (a) Government Employees is hereby ordered to pay an administrative fine in the amount of One Hundred Dollars and no/cents (\$100.00) for each violation of 40-5107 and pursuant to K.S.A. 40-2407(a)(1), and the Commissioner hereby orders that Government Employees immediately cease and desist from violating The

Kansas Insurance Score Act K.S.A. 2004 Supp. 40-5101 through 40-5114.

- (b) The fine, in the total amount of Two Hundred Dollars and no/cents (\$200.00), assessed in the above-stated paragraph (a) is due and payable to the Commissioner of Insurance, State of Kansas, from the date of receipt of this Order.
- (c) Government Employees is herein further ordered to comply with all applicable provisions set forth in K.S.A. 2004 Supp. 40-5101 through 5114 and amendments thereto, “The Insurance Score Act”.
- (d) **IT IS SO ORDERED THIS 1st DAY OF SEPTEMBER, 2005, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, AND STATE OF KANSAS.**



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

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Summary Order on this 1st day of September, 2005, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Olza M. Nicely, President
Government Employees Insurance Company
5620 Western Avenue
Chevy Chase, MD 20815

And
Donald L. Hansen Jr.
Counsel for Government Employees Insurance Company
One GEICO Plaza
Washington, DC 20076-0001

_/_s/ Robert E. Hiatt_____

Robert E. Hiatt, Staff Attorney

NOTICE OF RIGHTS

Government Employees Insurance Company (“Government Employees”) is entitled to a hearing pursuant to K.S.A. §77-537, the Kansas Administrative Procedure Act. If Government Employees 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 Government Employees 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 Summary 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 Government Employees 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Notice of Rights on this 1st day of September, 2005, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Olza M. Nicely, President
Government Employees Insurance Company
5620 Western Avenue
Chevy Chase, MD 20815

And

Donald L. Hansen Jr.
Counsel for Government Employees Insurance Company
One GEICO Plaza
Washington, DC 20076-0001

/s/ Robert E. Hiatt
Robert E. Hiatt, Staff Attorney