

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

FINAL ORDER

Effective: 9/22/05

In the Matter of)
UNIVERSAL UNDERWRITERS)
INSURANCE COMPANY)

Docket No. 3472-MC

ORDER

Pursuant to the authority conferred to the Commissioner of Insurance in K.S.A. 40-222, Sandy Praeger, the duly elected, qualified Commissioner of Insurance hereby adopts the Kansas Insurance Department's December 31, 2004, Report of Market Conduct Examination of Universal Underwriter Insurance Company (attached herein as Attachment A) by incorporating the same in its entirety with specific findings stated as follows:

Findings of Fact

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department (hereinafter "KID") completed a market conduct examination of the Universal Underwriters Insurance Company (hereinafter "UUIC" or "the Company") in December 2004.
3. On or about June 29, 2005, the examiner-in-charge provided UUIC with a draft of the written Report of Market Conduct Examination with request of the company's response by July 29, 2005, in written comments, additions, or acceptance as to any and all matters contained in the report.
4. UUIC responded with written acceptance of the draft report on July 11, 2005.
(See Attachment B).

5. The Kansas Commissioner of Insurance has since fully reviewed said Kansas report which is attached herein as Attachment A.
6. UUIC failed to maintain a valid and up-to-date internal or external audit program. The company did not take any follow-up action to its 2001 audit report. UUIC also failed to schedule any systematic review of its field operations during all times relevant to the underlying market examination which reveals a large number of rating errors.
7. In six separate incidents, UUIC failed to provide 180 days advance notice of insurance agency contract cancellation before effectuating the termination of its contracting agencies' contracts with the company. ¹
8. Among fifty (50) randomly selected files of UUIC's Unicover V Policies, eight (8) separate accounts reveal unjustifiable application of the ERP. ²

¹

<u>Agency No.:</u>	<u>Agency Name</u>	<u>City</u>
[REDACTED]	[REDACTED]	[REDACTED]

²

<u>Dealer & ASM</u>	<u>Insured Name</u>	<u>Policy No.:</u>	<u>Policy Term</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<u>Specialty Policies</u>	<u>Insured Name</u>	<u>Policy No.:</u>	<u>Policy Term</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

9. UUIIC failed to disclose its usage of unapproved rating factors to the eight (8) policyholders identified in paragraph 9.
10. Seventeen (17) UUIIC's Unicover V policies did not have ERP and IRPM worksheets.³
11. In seven (7) separate incidents, UUIIC utilized the End #505 Driver Exclusion, Coverage Parts 300, 500, 900 & 980, Unicover V (Kansas), Edition 2/96 - a form that was not approved by the Kansas Insurance Department.⁴
12. In five (5) separate incidents during the relevant time to the said market examination, UUIIC's Dealer Division utilized the End #61 Blanket Limits

<u>Policy No.:</u>	<u>Insured Name</u>	<u>Insured's City</u>	<u>Policy Period</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<u>End No.:</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>Insured Name</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Coverage Part 330, Unicover V (Kansas), Edition 7/93 - a form that has been withdrawn since January 1, 2003.⁵

13. In four (4) separate incidents, UUIIC failed to provide sufficient notifications of cancellation.⁶

14. UUIIC canceled a policy without a request from the insured and failed to provide proper cancellation notice for same.⁷

Applicable Law

15. K.S.A. (2004 Supp.) 40-216 states, in pertinent part:

(a) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state. No contract of insurance or indemnity shall be issued or delivered in this state until the form of the same has been filed with the commissioner of insurance, nor if the commissioner of insurance gives written notice within 30 days of such filing, to the company proposing to issue such contract, showing wherein the form of such contract does not comply with the requirements of the laws of this state; but the failure of any insurance company to comply with this section shall not constitute a defense to any action brought on its contracts. An insurer may satisfy its obligation to file its contracts of insurance or indemnity either individually or by authorizing the commissioner to accept on its behalf the filings made by a licensed

5	<u>Account</u>	<u>Account No.:</u>	<u>Current Term</u>	<u>End</u>
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	<u>Insured Name</u>	<u>Policy No.:</u>		
	[REDACTED]	[REDACTED]		
7	[REDACTED]	[REDACTED]		

rating organization or another insurer.

Under such rules and regulations as the commissioner of insurance shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing forms of contracts of insurance or indemnity, which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make an examination to ascertain whether any forms affected by such order meet the standards of this code.

...

K.S.A. (2004 Supp.) 40-216(a).

16. K.S.A (2004 Supp.) 40-276a states, in pertinent part:

(a) Any insurance company that denies renewal of an automobile liability insurance policy in this state shall give at least 30 days written notice to the named insured, at his last known address, or cause such notice to be given by a licensed agent of its intention not to renew such policy. No insurance company shall deny the renewal of an automobile liability insurance policy except in one or more of the following circumstances or as permitted in subsection (b):

...

(6) when any of the reasons specified as reasons for cancellation in K.S.A. 40-277 are existent, except that (A) when failure to renew is based upon termination of agency contract, obligation to renew will be satisfied if the insurer has manifested its willingness to renew, and (B) obligation to renew is terminated on the effective date of any other automobile liability insurance procured by the named insured with respect to any automobile designated in both policies.

K.S.A. (2004 Supp.) 40-216a(a).

17. K.S.A. (2004 Supp.) 40-2,107 states:

(a) Insurance companies may contract with independent insurance agents as to binding authority, policy services, adjusting services, commissions and other subjects of interest between agent and company. Such contracts which have been effective for more than one year shall not be terminated or amended by the company except by mutual agreement or unless 180 days' prior notice has been tendered to the agent, except that this shall not apply to terminations for fraud, material misrepresentation or failure to pay such agent's

account less the agent's commission and any disputed items within 10 days after written demand by the company. During such notice period all contractual conditions existing prior to such notice shall continue.

(b) Any independent insurance agent whose contract with an insurance company has been terminated under the provisions of subsection (a) shall have until the policy renewal date, but not more than one year, to place the business written under such terminated contract with another insurance company.

18. K.S.A. 40-953 states:

Rates shall not be excessive, inadequate or unfairly discriminatory, nor shall an insurer charge any rate which if continued will have or tend to have the effect of destroying competition or creating a monopoly. Rates are presumed not to be excessive if a reasonable degree of market competition exists at the consumer level with respect to the class of business to which they apply. Rates in a noncompetitive market are excessive if they are producing or are likely to produce unreasonably high profits for the insurance provided or if expenses are unreasonably high in relation to services rendered. A competitive market in a type of insurance subject to this act is presumed to exist unless the commissioner after notice of hearing determines and orders that a reasonable degree of competition does not exist in the market. Such order shall expire no later than one year after issuance unless the commissioner renews the rule after a hearing and a finding of the continued lack of a reasonable degree of competition. In determining whether a reasonable degree of market competition exists, the commissioner shall consider all relevant tests, including: (1) The number, market share, and concentration of insurers, as measured by the 1992 Horizontal Merger Guidelines published in the Federal Register September 10, 1992 (57 FR 41552), actively engaged in the class of business, (2) the existence of rate differentials in that class of business, (3) ease of entry into the market, and (4) whether long-run profitability for insurers in that class of business is unreasonably high in relation to its riskiness. If such competition does not exist, rates are excessive if they are likely to produce a long run profit that is unreasonably high in relation to the riskiness of the class of business, or if expenses are unreasonably high in relation to the services rendered.

Rates are inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise, mass marketed plan or blanket policy.

19. K.S.A. 40-954 states:

In determining whether rates are not excessive or inadequate or not unfairly discriminatory:

(a) Due consideration shall be given to:

(1) Past and prospective loss and expense experience within and outside the state;

(2) catastrophe hazards and contingencies;

(3) trends within and outside this state;

(4) loadings for leveling premium rates over time;

(5) dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers and the investment income of the insurer; and

(6) all other relevant factors within and outside the state, including the judgment of technical personnel.

(b) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer, or group of insurers, and, so far as it is credible, its own expense experience.

(c) Risks may be classified in any reasonable way for the establishment of rates and minimum premiums, except that no classification may be based on race, color, creed or national origin and classifications in automobile insurance may not be based on physical disability of an insured. Rates thus produced may be modified for individual risks in accordance with rating plans, schedules, except for workers compensation, individual risk premium modification plans and expense reduction plans that establish reasonable standards for measuring probable variations in

experience, hazards, expenses or any combination of those factors.

Such standards shall permit recognition of expected differences in loss or expense characteristics, and shall be designed so that such plans are reasonable and equitable in their application, and are not unfairly discriminatory, violative of public policy or otherwise contrary to the best interests of the people of this state. This section shall not prevent the development of new or innovative rating methods which otherwise comply with this act.

(d) Rates may be modified for individual risks, upon written application of the insured, stating the insured's reasons therefore, filed with and not disapproved by the commissioner within 10 days after filings.

(e) The rates may contain provisions for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of the profit, consideration shall be given to the investment income attributable to the line of insurance.

(f) The commissioner may by rule exempt any person or class of persons, line of insurance, or any market segment from any or all of the provisions of this chapter, if and to the extent that the commissioner finds their application unnecessary to achieve the purposes of this act.

(g) Once it has been filed, use of any rating plan shall be mandatory and such plan shall be applied uniformly for eligible risks in a manner that is not unfairly discriminatory.

20. K.S.A. 40-955 states, in pertinent part:

(a) Every insurer shall file with the commissioner . . . , every manual of classifications, rules and rates, every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings. A filing and any supporting information shall be open to public inspection after it is filed with the commissioner. An insurer may satisfy its obligations to make such filings by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer. Nothing contained in this act shall be construed to require any insurer to become a member or subscriber of any rating organization.

K.S.A. 40-955(a).

21. K.A.R. 40-3-12 states, in pertinent part:

...

(3) Experience modification, excluding retrospective rating plans, means a variation in the premium for an individual risk that corresponds to that risk's variation in past loss experience from the provision for losses applicable to that entire class of risk.

(b) Individual risk rating plans permitted by K.S.A. 40-927 and 40-1112 shall comply with the following requirements:

...

(2) The maximum credit or debit resulting from risk modification shall not exceed 25 percent.

K.A.R. 40-3-12

22. K.A.R. 40-3-25 states:

Each company issuing a fire and casualty insurance policy in this state with a premium rate that results from the insured's inability to obtain coverage in the normal market, shall include a statement on the application or policy form, signed by the applicant or named insured, that contains the following statement or one with similar wording:

(a) I am unable to obtain

(state kind)

insurance at normal rates and hereby request the issuance of this policy at rates in excess of normal rates.

(b) I have been unable to procure similar insurance at normal rates although my risk has been submitted to at least three other insurance companies authorized to transact insurance business in Kansas.

(c) (in the case of automobile liability insurance) I understand that liability limits sufficient to meet the financial responsibility requirements of the state may be available through the Kansas automobile insurance plan. (The foregoing statement is not applicable when the policy is issued through the Kansas automobile insurance plan.)

(d) (in the case of workmen's compensation and employers' liability insurance) I understand that I may obtain normal limits of liability insurance through a workmen's compensation and employers' liability assigned risk plan. (The foregoing statement is not applicable when the

policy is issued through a workmen's compensation and employers' liability assigned risk plan.)

(e) (in the case of fire and extended coverage insurance) I understand that I may be able to obtain adequate fire and extended coverage insurance through the Kansas all industry placement facility. (The foregoing statement is not applicable when the policy is issued through the Kansas all industry placement facility.)

23. K.A.R. 40-3-26 states:

Rates modified for individual risks pursuant to K.S.A. 40-954(d) and amendments thereto shall be retained in the insurer's underwriting file for five years after the rate is no longer applicable to the insured. These rates shall be made available upon the request of the commissioner. These rate filings shall otherwise comply with the applicable provisions set forth in K.S.A. 40-954 and 40-955 and amendments thereto, and K.A.R. 40-3-25.

Conclusion

Based upon the Findings of Fact and Applicable Law enumerated in paragraphs #1 through #23 above,

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

- a. The Kansas Insurance Department's December 31, 2004, Report of Market Conduct Examination of Universal Underwriters Insurance Company is herein adopted in its entirety.
- b. UUIC's failure to maintain an up-to-date, valid internal or external audit program as identified in paragraph 6 results in a large number of rating errors in violation of K.S.A. 40-955. Pursuant to K.S.A. 40-2,215, UUIC shall pay a monetary penalty subject to terms set forth in subparagraph h, due and payable to Kansas Insurance Commissioner on or before the 14th

day from the date of this order, in the amount of Five Thousand 00/100 Dollars (\$5,000.00) for the above-stated violations of K.S.A. 40-955.

- c. UUIIC's failure to provide the agencies identified in paragraph 7 with 180 days advance notice of termination is a violation of K.S.A. 40-2,107. Pursuant to K.S.A. 40-2,215, UUIIC shall pay a monetary penalty subject to terms set forth in subparagraph h, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of Three Thousand and 00/100 Dollars (\$3,000.00) for the above-stated violations of K.S.A. 40-2,107.
- d. UUIIC's failure to utilize justifiable ERP and to provide accurate and timely disclosure to policyholders concerning rates and coverage in accounts identified in paragraphs 8 and 9 constitutes violations of K.A.R. 40-3-12, 40-3-25 and 40-3-26. Pursuant to K.S.A. 40-2,215, UUIIC shall pay a monetary penalty subject to terms set forth in subparagraph h, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of Two Thousand Four Hundred and 00/100 Dollars (\$2,400.00) for the above-stated violations of K.A.R. 40-3-12, 40-3-25 and 40-3-26.
- e. UUIIC's failures to schedule rating or individual risk premium modification plans on objective criteria with appropriate supporting documentation as identified in paragraph 10 are violations of K.S.A. 40-953, 40-954, 40-955 and K.A.R. 40-3-12. Pursuant to K.S.A. 40-2,215, UUIIC shall pay a monetary penalty subject to terms set forth in

subparagraph h, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of Five Thousand One Hundred and 00/100 Dollars (\$5,100.00) for the above-stated violations of K.S.A. 40-953, 40-954, 40-955 and K.A.R. 40-3-12.

- f. UUIIC's failures to list and file with KID all contract forms and endorsements in the accounts identified in paragraphs 11 and 12 violate K.S.A. 40-216 and 40-955. Pursuant to K.S.A. 40-2,215, UUIIC shall pay a monetary penalty subject to terms set forth in subparagraph h, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) for the above-stated violations of K.S.A. 40-216 and 40-955.
- g. UUIIC's failures to provide proper notice regarding cancellation of policies identified in paragraphs 13 and 14 constitute as violations of K.S.A. 40-216. Pursuant to K.S.A. 40-2,215, UUIIC shall pay a monetary penalty subject to terms set forth in subparagraph h, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of Two Thousand and 00/100 Dollars (\$2,000.00) for the above-stated violations of K.S.A. 40-216.
- h. Kansas Insurance Department shall conduct a reexamination on all subject matters identified in the underlying market examination report approximately 18 month from the finalization of this Order. Further, except 10 percent of the total monetary penalties in the amount of One

Thousand Eight Hundred Seventy and 00/100 Dollar, all remainder of the fine assessments in paragraphs b, c, d, e, f and g are herein suspended pending the result of aforementioned reexamination and further notice.

- i. UIIC 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 Thousand Eight Hundred Seventy and 00/100 Dollars (\$1,870.00) for all statutory and regulatory violations identified herein.

IT IS SO ORDERED THIS 17th DAY OF AUGUST 2005, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, 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 Order on this 17th day of August, 2005, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Mr. Benson Jeffress
Dir. of Government Affairs
Universal Underwriters Insurance Company
7045 College Blvd.
Overland Park, KS 66211

/s/ Hsingkan Chiang _____
Hsingkan Chiang, Staff Attorney

NOTICE OF RIGHTS

Universal Underwriter Insurance Company. (“UUIC”) is entitled to a hearing pursuant to K.S.A. §77-537, the Kansas Administrative Procedure Act. If UUIC 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 UUIC 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 UUIC 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 _17th_ day of _____, 2005, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Mr. Benson Jeffress
Dir. of Government Affairs
Universal Underwriters Insurance Company
7045 College Blvd.
Overland Park, KS 66211

_s/ Hsingkan Chiang _____
Hsingkan Chiang, Staff Attorney