

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

In the Matter of)
State Farm Mutual Automobile) **Docket No. 3594-CO**
Insurance Company)

CONSENT ORDER

The Kansas Insurance Department (“KID”) and Respondent State Farm Insurance (“State Farm or Respondent”) wish to resolve incidents of violations of the Unfair Claim Practices Act by entering into this Consent Order. Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-2401 *et seq.* and K.S.A. 77-501 *et seq.*, the Commissioner hereby accepts Respondent’s admission to inadvertent violations of the Unfair Claim Practices Act and orders Respondent to cease and desist current practices in violation of the Unfair Claim Practices Act.

Stipulation of Facts

The Commissioner and Respondent stipulate and agree to the following facts:

1. Records maintained by the Kansas Insurance Department (“KID”) indicate State Farm Mutual Automobile Insurance Company (“State Farm”), located at 1 State Farm Plz, Bloomington, Illinois 61710 has been authorized to transact and continuously engaged in transacting insurance business in the state of Kansas since March 11, 1927.
2. On March 17, 2006 KID received a written complaint regarding State Farm.
3. The complaint alleged State Farm took improper actions regarding the intent to pursue a subrogation claim in violation of K.S.A. 40-3113a and contrary to the

precedent established by the Kansas Appellate Court in *Foveaux v. Smith*, 17 Kan. App. 2d 685, 43 P.2d 283 (1992).

4. State Farm acknowledged it took improper action by providing notice of subrogation prior to the 18-month period specified by K.S.A. 40-3113a(c).
5. As a result of the complaint, KID Representative Scott Smith requested State Farm determine how many similar violations had occurred.
6. On August 21, 2006 State Farm responded to Mr. Smith's request via letter stating State Farm had reviewed 1,594 Kansas PIP (Personal Injury Protection) claims and found 715 with inaccurate correspondence in the Subrogation Services office between June 2005 and April 2006.
7. The inaccurate responses occurred for various reasons including:
 - a. PIP payments did not meet the \$2000 threshold required for subrogation.
 - b. The loss occurred in a state outside Kansas where PIP may not be subrogated.
 - c. Subrogation efforts commenced before 18 months after the date of loss.
 - d. State Farm did not acknowledge the interests of the insured's attorney during the 18 month period following the loss.
8. State Farm took remedial action to correct the inaccurate correspondence by sending letters to insured or their attorneys alerting them to the errors.
9. In 18 claim files where State Farm received collections on files inappropriately, the recoveries were refunded appropriately.
10. State Farm instituted the following measures to ensure future compliance with Kansas law:

- a. Designed, implemented, and completed a new training program for all claim handling associates in the State Farm Birmingham Subrogation Services operation in June 2006.
- b. Ceased utilizing the letter referenced in the complaint on May 11, 2006 and developed a new correspondence package.

Applicable Law

K.S.A. 40-103 states, in pertinent part:

“The commissioner of insurance shall have general supervision, control and regulation of corporations, companies, associations...or persons authorized to transact the business of insurance, indemnity or suretyship in this state and shall have the power to make all reasonable rules and regulations necessary to enforce the laws of this state relating thereto.”

K.S.A. 40-3113a states, in pertinent part:

- (a) “When the injury for which personal injury protection benefits are payable under this act is caused under circumstances creating a legal liability against a tortfeasor pursuant to K.S.A. 40-3117 or the law of the appropriate jurisdiction, the injured person, such person’s dependents or personal representatives shall have the right to pursue such person’s remedy by proper action in a court of competent jurisdiction against such tortfeasor.”
- (c) “In the event an injured person, such person’s dependents or personal representative fails to commence an action against such tortfeasor within 18 months after the date of the accident resulting in the injury, such failure shall operate as an assignment to the insurer or self-insurer of any cause of action in tort which the injured person, the dependents of such person or personal representative of such person may have against such tortfeasor for the purpose and to the extent of recovery of damages which are duplicative of person injury protection benefits.”

K.S.A. 40-3117 states, in pertinent part:

“In any action for tort brought against the owner, operator, or occupant of a motor vehicle or against any person legally responsible for the acts or omissions of such owner, operator or occupant, a plaintiff may recover damages in tort for pain, suffering, mental anguish...because of injury only in the event the injury requires medical treatment of a kind described in this act as medical benefits having a reasonable value of \$2,000 or more...Any person who is entitle to receive free

medical and surgical benefits shall be deemed in compliance with the requirements of this section upon a showing that the medical treatment received has an equivalent value of at least \$2,000...”

Conclusions of Law

Based upon the Findings of Fact and Applicable Law enumerated in Paragraphs #1 through #10 above:

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

- a. On March 17, 2006, the Kansas Insurance Department (“KID”) received a written complaint against State Farm Mutual Automobile Insurance Company (“State Farm”) alleging violations of the Kansas Insurance Code.
- b. State Farm admitted violations of the Kansas Insurance Code as a result of the complaint.
- c. KID Representative Scott Smith contacted State Farm and requested State Farm account for the number of similar errors which had occurred.
- d. State Farm responded via letter on May 26, 2006 and August 21, 2006 and reported 715 violations after surveying 1,594 Kansas PIP files processed between June 2005 and April 2006 in its Birmingham, Alabama Subrogation Services operation.
- e. As a result of the errors, State Farm instituted various measures designed to address the problems including sending corrective letters to claimants.
- f. State Farm designed and implemented a new training program for all claim handling associates in the Birmingham Subrogation Services operation in June 2006.

- g. State Farm developed a new correspondence package including new compliant letters. Additionally, State Farm ceased utilizing the letter referenced by the complainant.
- h. State Farm provided KID with a summary of corrective actions taken upon review of Subrogation Services operation.
- i. In light of the extensive measures taken by State Farm to remedy violations committed in the State Farm Birmingham, Alabama Subrogation Services operation, the Commissioner hereby admonishes State Farm and orders State Farm to cease and desist any practices in violation of the Kansas Insurance Code or applicable provisions of the Kansas Administrative Code.
- j. State Farm is hereby ordered to continue its current practice of monitoring and training employees in its Birmingham, Alabama Subrogation Services operation regarding the Kansas Insurance Code and the Kansas Administrative Code.

NOTICE OF RIGHTS

State Farm Mutual Automobile Insurance Company (“State Farm”) is entitled to a hearing pursuant to K.S.A. 77-537, of the Kansas Administrative Procedures Act. If State Farm 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 State Farm 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 the same.

If a hearing is not requested in the time and manner stated above, this Consent 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 State Farm 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

IT IS SO ORDERED THIS 27th DAY OF NOVEMBER, 2006, 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

APPROVED:

/s/ David Hernandez
David Hernandez
Assistant Vice-President
State Farm Mutual Automobile Insurance Co.

/s/ Zachary J.C. Anshuta
Zachary J.C. Anshutz
Staff Attorney, Kansas Insurance Department

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Consent Order on this 27th day of November, 2006, by causing the same to be deposited in the United States Mail, first-class mail postage prepaid, addressed to the following:

David Hernandez
Assistant Vice President
State Farm Mutual Automobile
Insurance Company
One State Farm Plaza
P&C Claims A-4
Bloomington, IL 61710

/s/ Zachary J.C. Anshutz
Zachary J.C. Anshutz
Staff Attorney