

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

In the Matter of)
AUTO CLUB OF MISSOURI GROUP,)
AUTOMOBILE CLUB INTER-)
INSURANCE EXCHANGE & AUTO)
CLUB FAMILY INSURANCE)
COMPANY)

Docket No. 3591-MC

ORDER

Pursuant to the authority conferred upon the Commissioner of Insurance in K.S.A. 40-222, Sandy Praeger, the duly elected, qualified and serving Commissioner of Insurance hereby adopts the Kansas Insurance Department’s Report of Market Conduct Examination of Auto Club of Missouri (“Auto Club”), as of August 31, 2005, (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 (“KID”) completed a market conduct examination of the Auto Club of Missouri Group (“Auto Club”). The period of examination was January 1, 2003 through August 31, 2005.
3. On or about April 20, 2006 the Market Conduct Supervisor provided Auto Club with a draft of the Market Conduct Examination with request for Auto Club’s response in the form of written comments, additions, or acceptance by May 23, 2006.
4. Auto Club responded with written comments regarding the draft report on May 12, 2006. (See Attachment B)

5. The Kansas Commissioner of Insurance has since fully reviewed said Kansas report which is attached herein as Attachment A.
6. Auto Club's complaint logs in which all non-insurance department complaints are recorded were not set up in the format required by K.S.A. 40-2404(10).
7. Auto Club did not file a deviation for the Personal Injury Protection (PIP) coverage in the Auto Club Family Insurance Company ("ACFIC") policy for specific types of vehicles. 10 out of 13 ACFIC policies received a lower premium than was filed.
8. Auto Club Inter-Insurance Exchange utilized an application which contained the following statement, "I warrant that the statements hereon are true and correct and I understand these statements will be relied upon by the Automobile Club Inter-Insurance Exchange in issuing the policy."
9. Form #5901KS(4/2004), (the Homeowners application), was approved by KID to be effective 4/14/2004. Auto Club was utilizing an individual's credit history as an underwriting tool in determining the eligibility of an account for their Homeowners program. K.S.A. 40-5106 requires a company to disclose to the applicant an internal appeal process exists as provided by paragraph (b) of K.S.A. 40-5107. The Auto Club took adverse action against individuals based solely or partially on their credit history. However the consumer was not advised of the internal appeals process per K.S.A. 40-5107(b).
10. Six (6) Auto Club policies sampled by the MCE team which were cancelled or non-renewed for underwriting reasons contain the following language in the notice letters:
 - a. "In addition, applicant's credit history represents a high risk for future loss. The major factors influencing our decision may have included bankruptcy, overdue accounts, bad debts and collection items."

The language is vague and unclear and does not identify the specific reason for adverse action.

11. One (1) of the Auto Club policies sampled used credit as the sole reason for cancellation. In the cancellation notice the Auto Club specifically stated a 2002 bankruptcy was the reason for cancellation.
12. Kansas law requires a cancellation notice to contain either a written explanation specifically detailing the reasons for cancellation or the opportunity to request the reason(s) for cancellation from the company. Two (2) of the Auto Club policies were canceled and contained only the following statement:
 - a. “We are unable to continue this automobile insurance policy without the pertinent underwriting data”“Pertinent underwriting data” does not constitute a specific reason for cancellation. Auto Club did instruct insureds to contact their agent rather than Auto Club and did not provide notice of the ten (10) day response time required by the company in violation of K.S.A. 40-2,122 and K.A.R. 40-3-31.
13. One (1) of the Auto Club policies sampled was non-renewed without a substantial change in exposure to non-renew for claim exposure. The insured was involved in one (1) at-fault accident within three (3) years resulting in no change in exposure.
14. One Auto Club policies sampled was non-renewed without a copy of the non-renewal notice in the file.

Applicable Law

K.S.A. 40-2404 states, in pertinent part:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (10) *Failure to maintain complaint handling procedures.* Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which it has received since the date of its last examination under K.S.A. 40-222, and amendments thereto; but no such records shall be required for complaints received prior to the effective date of this act. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, the date each complaint was originally received by the insurer and the date of final disposition of each complaint. For purposes of this subsection, ‘complaint’ means any written communication primarily expressing a grievance related to the acts and practices set out in this section.

K.S.A. 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 thirty (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.

K.S.A. 40-2,112 states, in pertinent part:

- (a) In the event of an adverse underwriting decision in the insurance company, health maintenance organization or agent responsible for the decision shall either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such persons that upon written request they may receive the specific reason or reasons in writing
- (b) Upon receipt of a written request within 60 business days from the date of the mailing of the notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance company, health maintenance organization or agent shall furnish to such person within 21 business days of the receipt of such written request:
- (1) The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (a).

K.S.A. 40-2,122 states, in pertinent part:

Any insurance company doing business in this state shall provide to an insured a written explanation specifically detailing the reasons why such company canceled or denied renewal of an existing policy of insurance. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or

denial of renewal of an existing policy of insurance, for any statement made by any of them in any written notice of cancellation or denial of renewal of an existing policy of insurance, for the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith, if such information was provided in good faith and without malice.

K.S.A. 40-3118 states, in pertinent part:

- (b) Except as otherwise provided in K.S.A. 40-276, 40-276a and 40-277, and amendments thereto, and except for termination of insurance resulting from nonpayment of premium or upon the request for cancellation by the insured, no motor vehicle liability insurance policy, or any renewal thereof, shall be terminated by cancellation or failure to renew by the insurer until at least 30 days after mailing a notice of termination, by certified or registered mail or United States post office certificate of mailing, to the named insured at the latest address filed with the insurer by or on behalf of the insured.

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

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

- (b) Without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (a), refuse to quote, deny, cancel or refuse to renew any policy of personal insurance solely based on the basis of credit information.

K.S.A. 40-5106 states, in pertinent part:

If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agents shall disclose that it may obtain credit information in connection with such application. The insurer shall further notify such consumer that an internal appeal process exists as provided by paragraph (b) of K.S.A. 2005 Supp. 40-5107 and amendments thereto. The disclosure shall be made either on the insurance application or at the time the insurance application is taken. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement.

K.S.A. 40-5107 states, in pertinent part:

(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.

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...
- (f) No insurer shall make or issue a contract or policy except in accordance with filings which have been filed or approved for such insurer as provided in this act.

K.A.R. 40-3-16 states, in pertinent part:

- (b) Companies writing fire or casualty insurance, or both, shall not require their Kansas insureds or applicants to make a "warranty," either expressed or implied, of any fact or allegation, either in the application for an insurance policy or in the policy provisions.

K.A.R. 40-3-31 states, in pertinent part:

- (b) The notice of cancellation or nonrenewal, or accompanying forms, shall include words similar to the following statements:
 - (1) Within 10 days after receiving a written request, this company will furnish, the reason for cancellation or nonrenewal in writing. This statement is required only when reasons for cancellation or nonrenewal are not sent with the cancellation or nonrenewal notice.

Conclusions of Law

Based upon the Findings of Fact enumerated in Paragraphs #1 through #14 and the Applicable Law cited above,

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

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department's ("KID") Report of Market Conduct Examination of the Auto Club of Missouri Group ("Auto Club"), as of August 31, 2005, is herein adopted in its entirety.
3. Auto Club's complaint logs in which all non-insurance department complaints are recorded were not set up in the format required by K.S.A. 40-2404(10). This constitutes a violation of K.S.A. 40-2404(10). Pursuant to K.S.A. 40-2,125(a)(1), Auto Club shall pay a monetary penalty of Five Hundred Dollars and No Cents (\$500.00), due and payable to the Kansas Insurance Commissioner on or before the 14th day from the date of this Order for the above-stated violation of K.S.A. 40-2404(10).
4. Auto Club did not file with KID a deviation for the Personal Injury Protection (PIP) coverage in the Automobile Club Family Insurance Company ("ACFIC") for certain types of vehicles. 10 out of 13 ACFIC policies received a lower premium than was filed. This constitutes a violation of K.S.A. 40-955(a)(f). Pursuant to K.S.A. 40-2,125(a)(1), Auto Club shall pay a monetary penalty of One Thousand Dollars and No Cents (\$1,000.00), due and payable to the Kansas Insurance Commissioner on or before the 14th day from the date of this Order for the above-stated violation of K.S.A. 40-955(a)(f).

5. Auto Club Inter-Insurance Exchange (“ACIIE”) utilized an application which contained the following statement, “I warrant that the statements hereon are true and correct and I understand these statements will be relied upon by the ACIIE in issuing the policy.” This constitutes a violation of K.A.R. 40-3-16(b).
6. Form #5901KS(4/2004), (the Homeowners Application), was approved by KID to be effective 4/14/2004. Auto Club was utilizing an individual’s credit history as an underwriting tool in determining the eligibility of an account for their Homeowners program. K.S.A. 40-5106 requires disclosure to the applicant that an internal appeal process exists. Adverse action resulting from Auto Club’s use of credit history either partially or solely as reason for cancellation or non-renewal constitutes a violation of K.S.A. 40-5106. The consumer was not advised of the internal appeals process per K.S.A. 40-5107(b).
7. Pursuant to K.S.A. 40-2,125(a)(1), Auto Club shall pay a monetary penalty of One Thousand Dollars and No Cents (\$1,000.00), due and payable to the Kansas Insurance Commissioner on or before the 14th day from the date of this Order for the above-stated violations of K.A.R. 40-3-16(b) and K.S.A. 40-5106.
8. Six Auto Club policies sampled by the MCE team which were cancelled or non-renewed for underwriting reasons contained language which was vague and unclear and did not identify the specific reason for the adverse action. This constitutes a violation of K.S.A. 40-5107(2)(b) and (c) and K.S.A. 40-2,112.
9. One Auto Club policy was cancelled solely for credit reasons. Auto Club’s cancellation notice to the policyholder identified a 2002 bankruptcy as the reason for cancellation. This constitutes a violation of K.S.A. 40-5104(b).

10. Two Auto Club policy cancellation notices failed to provide a written explanation specifically detailing the reasons for cancellation or the opportunity to request the reasons for cancellation from the company. This constitutes a violation of K.S.A. 40-2,122 and K.A.R. 40-3-31(b)(1).
11. One Auto Club policy reviewed was non-renewed without a substantial change in exposure to justify the adverse action. This constitutes a violation of K.S.A. 40-276a.
12. Pursuant to K.S.A. 40-2,125(a)(1), Auto Club shall pay a monetary penalty of Seven Thousand Dollars and No Cents (\$7,000.00), due and payable to the Kansas Insurance Commissioner on or before the 14th day from the date of this Order for the above-stated violations of K.S.A. 40-5107(2)(b) and (c); K.S.A. 40-2,112; K.S.A. 40-5104(b); K.S.A. 40-2,122; K.A.R. 40-3-31(b)(1); K.S.A. 40-276a; and K.S.A. 40-3118.

IT IS SO ORDERED THIS 4th DAY OF JANUARY, 2007, 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

NOTICE OF RIGHTS

The Auto Club of Missouri Group (“Auto Club”) is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedure Act. If Auto Club 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 Auto Club 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 the commencement of the 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 Auto Club 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 Order and Notice of Rights on this 4th day of January, 2007, 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. Robert Schreiber,
Vice President, Insurance
AAA Insurance
12901 North Forty Drive.
St Louis, MO 63141

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