

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

In the Matter of)
American National Property) Docket No. 3623-SO
and Casualty Company)

SUMMARY ORDER
(Pursuant to K.S.A. 40-2,125 and K.S.A. 77-537)

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-2,125 and in accordance with K.S.A. 77-537, the Commissioner hereby admonishes and assesses penalty against American National Property and Casualty Company (“American National”) for engaging in unfair claim settlement practices and violating applicable provisions of the Kansas Insurance Code and the Kansas Administrative Code.

Findings of Fact

The Commissioner has been shown the following facts:

1. American National Property and Casualty Company (“American National”) located at 1949 E. Sunshine, Corporate Centre, Springfield, MO 65899, has been authorized to transact and continuously engaged in transacting insurance business in the State of Kansas since December 31, 1975.
2. On August 12, 2005, the Kansas Insurance Department (“KID”) received a complaint from Ms. Kimberly Phillips (“Ms. Phillips”) regarding American National’s handling of her insurance claim regarding Ms. Phillips’ automobile accident with an American National insured, Mr. Richard Bilyeu (“Mr. Bilyeu”).
3. Ms. Phillips and Mr. Bilyeu were involved in an automobile accident on March 26, 2005 in Basehor, Kansas.

4. Mr. Bilyeu received a traffic citation for an Accident Involving Damage to a Vehicle.
5. Investigating Officer Cigich, Basehor Police Department, indicated in the Motor Vehicle Accident Report that an Apparent Contributing Circumstance to the accident was D1 (Mr. Bilyeu) – 24 – Aggressive/Antagonistic Driving.
6. On April 28, 2005, American National denied Ms. Phillips’ claim based on the belief there was sufficient evidence to bar recovery from Mr. Bilyeu.
7. On June 14, 2005 in Basehor Municipal Court, Mr. Bilyeu was found guilty of the charge – Accident involving damage to a vehicle.
8. On October 27, 2005, Mr. James J. Welch (“Mr. Welch”), Director, KID Consumer Assistance Division, requested American National reopen the investigation into Ms. Phillips’ claim.
9. Mr. Welch specifically requested the curriculum vitae of Mr. Daniel Patch an Appraiser retained by American National.
10. American National responded, in a November 14, 2005 letter, by indicating they did not have a copy of Mr. Patches’ [sic] “curriculum vitae and Mr. Welch was free to contact Mr. Patch directly for the information.
11. Mr. Welch specifically requested an explanation as to “Why your photos show the missing air duct from the Mustang? Where was this piece found? Who is holding this piece in the photo?”
12. American National responded, “The reason the photos show the missing air duct is because someone apparently took a photo of the missing air duct. As far as where the piece was found, that is open and will be investigated further.”

13. Mr. Welch also specifically asked “Where is the statement from Kimberly Phillips?”
14. American National responded, “We do not have a statement from her, only her verbal information as documented in the file material.”
15. On Thursday, April 27, 2006, a Journal Entry of Judgment was entered in favor of Ms. Phillips against Mr. Bilyeu in the First Judicial District District Court, Leavenworth County, Kansas in the amount of One Thousand, One Hundred Fourteen and 18/100 Dollars (\$1114.18).
16. On May 3, 2006, the District Court of Leavenworth County, Kansas Small Claims Division, entered a Receipt and Satisfaction of Judgment in the amount of One Thousand, One Hundred Fourteen and 18/100 Dollars (\$1114.18).

Applicable Law

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

- (9) *Unfair claim settlement practices.* It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto are
 - (A) Committed flagrantly and in conscious disregard of such provisions...
 - (d) refusing to pay claims without conducting a reasonable investigation based upon all available information;
 - (f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

K.A.R. 40-1-34 Section 6 states, in pertinent part:

- (B) Every insurer, upon receipt of any inquiry from the insurance department respecting a claim shall, within fifteen working days of receipt of such inquiry, furnish the department with an adequate response to the inquiry.

K.S.A. 40-2,125 states, in pertinent part:

- (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 \$1000 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;

Conclusions of Law:

Based upon the Findings of Fact enumerated in Paragraphs #1 through #16 and the Applicable Law above,

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

- a. American National's response letter to Mr. Welch's October 27, 2005 inquiry regarding the curriculum vitae of Mr. Dan Patch, Appraiser, in which American National failed to provide the requested information and suggested Mr. Welch "could contact him [Mr. Patch] directly for that" constitutes a violation of K.A.R. 40-1-34 Section 6B for failure to provide an adequate response to the inquiry.
- b. American National's response to Mr. Welch's October 27, 2005 request for an explanation as to "Why your photos show the missing air duct from the Mustang? Where was this piece found? Who is holding this piece in the photo?", to which American National responded, "The reason the photos show the missing air duct is because someone apparently took a photo of the missing air duct," constitutes a violation of K.A.R. 40-1-34 Section 6B for failure to provide an adequate response to the inquiry.

- c. The following factors establish a claim in which liability has become reasonably clear:
 - a. Mr. Bilyeu's traffic citation for an Accident Involving Damage to a Vehicle
 - b. The Motor Vehicle Accident Report's indication that an Apparent Contributing Circumstance to the accident was Mr. Bilyeu's Aggressive/Antagonistic Driving.
 - c. Mr. Bilyeu was found guilty of the charge – Accident involving damage to a vehicle in Basehor Municipal Court on June 14, 2005.
 - d. A Journal Entry of Judgment in favor of Ms. Phillips against Mr. Bilyeu in the First Judicial District District Court, Leavenworth County, Kansas was entered in the amount of One Thousand, One Hundred Fourteen and 18/100 Dollars on Thursday, April 27, 2006.
 - e. On May 2, 2006, the District Court of Leavenworth County, Kansas Small Claims Division, entered a receipt and Satisfaction of Judgment in the amount of One Thousand, One Hundred Fourteen and 18/100 Dollars (\$1114.18).
- d. American National's failure to attempt in good faith to effectuate a fair and equitable settlement when liability in this matter had become reasonably clear constitutes a violation of K.S.A. 40-2404(9)(A)(f).
- e. The following factors indicate American National refused to pay Ms. Phillips' claim without conducting a reasonable investigation based on all available information:

- a. American National did not obtain a statement from Ms. Phillips' following the accident and relied upon only her verbal information as documented in the file.
- b. American National was unable to specify the source of the photograph of the air duct on Ms. Phillips' vehicle.
- f. American National's refusal to pay Ms. Phillips' claim without conducting a reasonable investigation based on all of the available information constitutes a violation of K.S.A. 40-2404(9)(A)(d).
- g. Pursuant to K.S.A. 40-2,125 American National shall pay a monetary penalty, due and payable to the Kansas Insurance Commissioner on or before the 14th day from the date of this Order, in the amount of FOUR THOUSAND DOLLARS AND 00/100 (\$4000.00) for its above-stated violations of K.S.A. 40-2404(9)(A)(d), 40-2404(9)(A)(f) and K.A.R. 40-1-34 Section 6B.

NOTICE OF RIGHTS

American National Property and Casualty Company ("American National") is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedures Act. If American National 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 American National requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and the information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of the same.

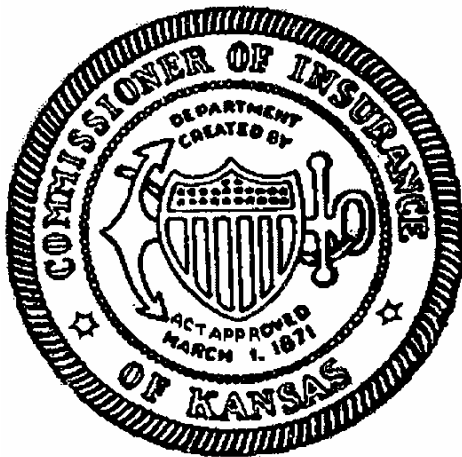
If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. 77-613. In the event American National files a petition for judicial review, pursuant to

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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 __1st__ DAY OF MARCH, 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Summary Order and Notice of Rights on this __1st__ day of __March__, 2007, by causing the same to be deposited in the United States Mail, first-class mail postage prepaid, addressed to the following:

Greg Ostergren
President
American National Property and Casualty Company
1949 E. Sunshine
Corporate Centre
Springfield, MO 65899

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