

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

In the Matter of )  
**Guardian Insurance &** )  
**Annuity Company, Inc.** )

Docket No. 3706-SO

**SUMMARY ORDER**

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 Guardian Insurance & Annuity Company (“Guardian Ins.”) for violation of the applicable provisions of the Kansas insurance statutes.

**Findings of Fact**

The Commissioner has been shown the following facts:

1. Guardian Ins., located at 1209 Orange Street, Wilmington, Delaware, 19801 a Delaware domiciled insurance company, which has been authorized to transact and has continuously engaged in transacting insurance business in the State of Kansas since July 14, 1986.
2. On or about the week of December 11, 2006, the National Association of Insurance Commissioners (“NAIC”) Market Conduct Annual Statement Working Group (“Group”) sent a call letter to Guardian Ins. requesting Guardian Ins. provide data, in conjunction with the Market Conduct Annual Statement project (“Annual Statement”), for each state in which Guardian Ins. reported at least \$50,000 in life insurance premium or \$50,000 in annuity considerations or both for the state.
3. The NAIC call letter required the requested data be provided to the Kansas Insurance Department by June 30, 2007.
4. On June 28, 2007, Mr. Haydn Padmore, (“Mr. Padmore”) Manager, Financial Reporting & Analysis for Guardian Ins. sent an e-mail request requesting a data filing extension until July 31, 2007.

5. On June 29, 2007, Robert Stroup Management Analyst Supervisor 2 for the Ohio Department of Insurance sent an e-mail granting an extension until July 20, 2007 for fourteen states, including Kansas.
6. Stroup's e-mail stated, "this program has been in place for several years and is designed to provide companies with sufficient lead time for timely filing. The company should put in place the resources and priorities necessary to ensure timely filing in the future."
7. Guardian Ins. did not submit the requested data to KID until July 31, 2007.

**Applicable Law**

K.S.A. 40-222 provides, in pertinent part:

- (a) Whenever the commissioner of insurance deems it necessary but at least once every five years, the commissioner may make or direct to be made an examination of the affairs and financial condition of any insurance company...doing business in this state.
- (d) The commissioner may also examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company, but such examination or investigation shall not infringe upon or extend to any communications or information accorded privileged or confidential status under any other laws of this state.
- (g) The refusal of any company, by its officers, directors, or employees or agents to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in any insurance or other business subject to the commissioner's jurisdiction.

K.S.A. 40-225 provides, in pertinent part:

Every insurance company or fraternal benefit society doing business in this state shall, if the statement of condition required below is compatible, participate in the insurance regulatory information system administered by the national association of insurance commissioners and shall annually, on January 1 or within 60 days thereafter, file with the commissioner of insurance a statement of its condition as of the preceding December 31...Such statement shall be made upon the form and procedures prescribed and adopted from time to time by the national association of insurance commissioners with such additions or amendments thereto as shall seem to the commissioner of insurance best adapted to elicit from such companies as a true exhibit of their condition.

...The commissioner may also at any time address any proper inquiries to any such insurance company or fraternal benefit society or its officers in relation to its condition or any other matter connected with its transactions. Each company, society or officer addressed shall promptly and truthfully reply in writing to all such inquiries, and such replies shall be verified if the commissioner of insurance requires.

K.S.A. 40-2,125 provides, 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:
- (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 \$100 for each week thereafter that such report or other information is not provided to the commissioner.

K.S.A. 40-2405 provides, in pertinent part:

The commissioner shall have the power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive or practice prohibited by K.S.A. 40-2403.

#### **Conclusions of Law**

The Commissioner has jurisdiction over Guardian Ins. and the subject matter of this proceeding and based on Paragraphs #1 through #7 and the Applicable Law enumerated above:

#### **IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE:**

1. Guardian Ins.'s failure to provide the data pursuant to the NAIC call letter by the July 20, 2007 deadline extension constitutes a violation of K.S.A. 40-2,125(b).
2. Pursuant to K.S.A. 40-2,125(b), Guardian Ins. is hereby ordered to pay a monetary penalty, due and payable to the Kansas Insurance Department, in the amount of FIVE HUNDRED DOLLARS AND 00/100 (\$500.00) for its above-stated violation of K.S.A. 40-2,125.

#### **NOTICE OF RIGHTS** (Pursuant to K.S.A. 77-542)

Guardian Insurance & Annuity Company, Inc. ("Guardian Ins.") is entitled to a hearing pursuant to K.S.A. 77-537 and K.S.A. 77-542, the Kansas Administrative Procedure Act. If Guardian Ins. desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel  
Kansas Insurance Department

In the Matter of  
Guardian Insurance  
And Annuity Co., Inc.  
Docket No. 3706-SO

420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If Guardian Ins. 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 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 Guardian Ins. 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. 9<sup>th</sup> Street  
Topeka, Kansas 66612

**IT IS SO ORDERED THIS 29th DAY OF AUGUST, 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

Prepared and Submitted By:

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

**Certificate of Service**

The undersigned hereby certifies that he served the above and foregoing Summary Order and Notice of Rights on this \_\_29th\_\_ day of \_\_August\_\_, 2007, by causing the same to be deposited in the United States Mail, first-class postage prepaid, addressed to the following:

Haydn Padmore  
Financial Reporting Manager  
Guardian Life Insurance Company  
7 Hanover Square  
New York, New York 10004

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