

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

In the Matter of)	
Bankers Life and Casualty Company)	Docket No. 3954-SO
NAIC 61263)	

CONSENT ORDER

The Kansas Insurance Department (“KID”) and Bankers Life and Casualty Company (“Bankers Life”) wish to resolve the above-captioned matter before the Commissioner of Insurance without formal adjudication by entering into this Consent Order.

The Commissioner of Insurance (“Commissioner”) hereby makes the following Findings of Fact, Conclusions of Law, and Order, to-wit. This Consent Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made, pursuant to K.S.A. §77-542.

Findings of Fact

The parties stipulate that if a hearing were conducted in this matter, the following evidence could be adduced by the Commissioner, and although neither admitted nor denied by Bankers Life and Casualty Company, it would be recognized as admissible to show the following:

1. Bankers Life and Casualty Company (“Bankers Life”) is located at 600 W Chicago Avenue, Chicago, IL 60654-2800, and has been authorized to transact and has continuously engaged in transacting insurance business in the State of Kansas since November 29, 1948.
2. The Commissioner of Insurance (“the Commissioner”) has jurisdiction over the subject matter of this proceeding, and this proceeding is held in the public interest.

3. On July 2, 2009, KID received a letter from a citizen raising some concerns regarding an advertisement Bankers Life mailed to the citizen.

4. On July 10, 2009, KID Consumer Assistance Division employee, Kelly Welch, wrote to Bankers Life regarding the advertisements being sent to Kansas consumers advising Bankers Life that the advertising forms had not been approved for use in Kansas and inquiring about the number of times the form had been sent to Kansas consumers.

5. On August 4, 2009, Ruth Daudel, a Consumer Relations representative from Bankers Life, advised KID that a total of 36,765 Form 5202-KS-1 had been sent to Kansas consumers over a four month period. Specifically, Bankers Life had sent: 12,224 in April; 6,150 in May; 15,316 in June, and; 3075 in July.

6. On September 22, 2009, pursuant to Nelson v. Miller, 233 Kan. 122, 660 P.2d 1361, 1983, KID notified Bankers Life by letter that the advertising material sent to the Kansas consumers was considered to be a violation of Kansas law and could result in administrative action being taken against them.

7. On September 24, 2009, Jim Valdez, Associate General Counsel for Bankers Life, responded to the KID Nelson v. Miller letter of September 22, 2009.

Applicable Law

8. K.A.R. 40-9-100, Section 6 (A.) states in the relevant part:

(2) An advertisement that fails to state clearly the type of insurance coverage being offered is prohibited.

(32) An advertisement, including invitations to inquire or invitations to contract, shall not employ devices that are designed to create undue fear or anxiety in the minds of those to whom they are directed.

9. K.S.A. 40-2,125(a) provides, in relevant 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 \$1,000 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;

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

Conclusions of Law

Based on the Findings of Fact in Paragraphs #1 through #7 and the Applicable Law above,

IT IS THEREFORE, AGREED UPON BY THE COMMISSIONER OF INSURANCE AND BANKERS LIFE:

1. Bankers Life and Casualty Company neither admits nor denies the allegations set forth in Paragraph #1 through #7 above.

2. Bankers Life and Casualty Company agrees to make a payment to KID in the amount of Eight Thousand Dollars and 00/100 (\$8,000.00) for sending advertising to Kansas residents that failed to state clearly the type of insurance coverage being offered. In exchange for the payment KID will dismiss this action with prejudice.

3. Upon entry of this Consent Order this action shall be dismissed with prejudice. If payment is not made as required, KID may vacate and/or declare this Consent Order void and proceed with a hearing.

4. The Commissioner shall retain jurisdiction over this matter to issue any Order(s) deemed necessary and appropriate.

NOTICE OF RIGHTS

Bankers Life and Casualty Company (“Bankers Life”) is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedure Act. If Bankers Life 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 Bankers Life desires 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 Bankers Life 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 22nd DAY OF DECEMBER, 2009, 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

Submitted and Approved By:

/s/ Mark A. Marion
Mark A. Marion
Staff Attorney
Kansas Insurance Department

Approved By:

/s/ Jim Valdez
Mr. Jim Valdez
Associate General Counsel
Bankers Life and Casualty Company

Certificate of Service

The undersigned hereby certifies that above and foregoing Consent Order was served via the United States Postal Service, first-class postage prepaid, on this __22nd__ day of December, 2009, addressed to the following:

Karl W. Kindig, Secretary
Bankers Life and Casualty Company
600 W Chicago Avenue
Chicago, IL 60654-2800

Mr. Jim Valdez, Assoc. General Counsel
Bankers Life and Casualty Company
600 W Chicago Avenue
Chicago, IL 60654-2800

_ /s/ Mark A. Marion _____
Mark A. Marion
Staff Attorney