

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

In the Matter of )  
**FIRSTCOMP INSURANCE** ) Docket No. 3946-CO  
**COMPANY** )

**CONSENT ORDER**

The Kansas Insurance Department (“KID”) and FirstComp Insurance Company (“FirstComp”) 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 FirstComp, would be recognized as admissible to show the following:

1. FirstComp, located at Central Park Plaza South, 222 S. 15<sup>th</sup> St. Ste. 200, Omaha, NE 68102, has been authorized to transact and has continuously engaged in transacting insurance business in the State of Kansas since December 31, 1991.
2. Kansas Insurance Department (“KID”) records indicate that in August of 2008 FirstComp terminated its agency agreement with Fouts Insurance (“Fouts”) and Citizens State Agency (“Citizens”) effective February 4, 2009.
3. Following the termination, FirstComp non-renewed policies of Fouts’ customers based upon the termination of the agency agreement. See Exhibit A herein attached.

4. K.S.A. 40-2,107(a) requires all contractual conditions existing prior to the termination notice remain the same during the notice period.
5. On August 12, 2008, FirstComp representatives assured a KID official that FirstComp recognized and would abide by the provisions of K.S.A. 40-2,107.
6. Since August 12, 2008, FirstComp has continued to non-renew policies on the basis of the termination of the agency agreement.
7. Additionally, FirstComp has not changed the effective dates of prior non-renewals as agreed upon by FirstComp and KID.

### **Applicable Law**

K.S.A. 40-2,107 states, in pertinent part:

- (a) Insurance companies may contract with independent insurance agents as to binding authority, policy services, adjusting services, commissions and other subjects of interest between agent and company. Such contracts which have been effective for more than one year shall not be terminated or amended by the company except by mutual agreement or unless 180 days' prior notice has been tendered to the agent, except that this shall not apply to terminations for fraud, material misrepresentation or failure to pay such agent's account less the agent's commission and any disputed items within 10 days after written demand by the company. During such notice period all contractual conditions existing prior to such notice shall continue.

K.S.A. 40-2,108 states, in pertinent part:

The commissioner shall promulgate such rules and regulations as are necessary to carry out the provisions of this act. Violations of this act shall be violations of the unfair trade practices act, K.S.A. 40-2407, and K.S.A. 40-2411...

K.S.A. 40-2407 states, in pertinent part:

- (a) If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of K.S.A. 40-2404 and amendments thereto, 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, but not to exceed an aggregate penalty of \$10,000 unless the person knew or should have known such person was in violation of this act, in which case the penalty shall be not more than \$5,000 for each and every act or violation, but not to exceed an aggregate of \$50,000 in any six-month period.
- (3) redress of the injury by requiring the refund of any premiums paid by, the payment of any moneys withheld from, any consumer and appropriate public notification of the violation. In applying this penalty any requirement for the payment of moneys may include reasonable interest at a rate not to exceed the rate specified in K.S.A. 40-2,126 and amendments thereto, with such interest commencing no earlier than the date the consumer's complaint was received by the commissioner and actual costs incurred by the consumer in effecting the payment associated directly with the injury.

### **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 FirstComp:**

8. FirstComp neither admits nor denies the allegations set forth in Paragraph #1 through #7 above.
9. FirstComp agrees to make a payment of One Thousand Five Hundred Dollars and 00/100 (\$1,500.00) to KID in exchange for the dismissal of this action with prejudice.
10. Upon entry of this Consent Order this action shall be dismissed with prejudice. None of the Findings of Fact, Conclusions of Law or Orders contained in KID's Summary Order filed November 3, 2008, are deemed binding or effective since no hearing was conducted in this matter.
11. If payment is not made as required, KID may vacate and/or declare this Consent Order void or proceed with a hearing.

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

**NOTICE OF RIGHTS**

FirstComp Insurance Company (“FirstComp”) is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas administrative Procedure act. If FirstComp 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. 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 FirstComp 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 FirstComp 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 13th DAY OF MARCH, 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/ Kristine M. Thomas\_\_\_\_\_

Kristine M. Thomas

VP of Regulatory and Legal Affairs

FirstComp Insurance Company

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

Zachary J.C. Anshutz

Assistant General Counsel

Kansas Insurance Department

**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 13th day of March, 2008, addressed to the following:

Kristine M. Thomas  
VP of Regulatory and Legal Affairs  
FirstComp Insurance Company  
Central Park Plaza South  
222 South 15<sup>th</sup> Street, Suite 1200  
Omaha, NE 68102-1680

/s/ Zachary J.C. Anshutz  
Zachary J.C. Anshutz  
Assistant General Counsel