

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

In the Matter of:)
Pennsylvania Manufacturers') Docket No. 4404-CO
Association Insurance Company)
NAIC # 12262)

CONSENT ORDER

The Kansas Insurance Department (“KID”) and Pennsylvania Manufacturers’ Association Insurance Company (“PMAIC”) wish to resolve the above-captioned matter before the Commissioner of Insurance without formal adjudication by entering into this Consent Order. 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. The Commissioner of Insurance (“Commissioner”) hereby makes the following Findings of Fact, Conclusions of Law, and Order, to-wit:

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 Pennsylvania Manufacturers’ Association Insurance Company, it would be recognized as admissible to show the following:

1. Pennsylvania Manufacturers’ Association Insurance Company is located at 380 Sentry Parkway, Blue Bell, PA 19422, and has been authorized to transact and has continuously engaged in transacting insurance business in the State of Kansas since December 21, 1999.

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 August 3, 2010, KID Consumer Assistance Division received a letter from the Law Office of Mark E. Kolich regarding the actions of PMAIC in the case of Jacques Beeks v. Pegasus Cleaning Corp. and Pennsylvania Manufacturers’ Association Insurance Company; Docket no. 1044,772.
4. On July 10, 2010, KID Consumer Assistance Division employee, Scott Smith, wrote to PMAIC regarding the complaint sent to KID inquiring about relevant facts of the case and requesting certain pertinent documents.
5. On November 22, 2010 pursuant to Nelson v. Miller, 233 Kan. 122, 660 P.2d 1361, 1983, KID notified PMAIC by letter that the actions taken by the third party administrator for PMAIC, Gallagher Bassett Services, were considered to be a violation of Kansas law and could result in administrative action being taken against them.
6. On January 13, 2011, Donald F. Borrell, PMAIC Assistant General Counsel responded to the KID Nelson v. Miller letter of November 22, 2010, acknowledging the allegations and providing additional information.
7. The letter of January 13, 2011 from Mr. Borell acknowledged that temporary total disability payments to a claimant were terminated by the third party administrator based on an unverified assertion from the employer that the claimant would be offered accommodated work duties. Further, Mr. Burrell provided information regarding the corrective actions instituted to correct this matter and diminish the potential for similar situations in the future.

Applicable Law

1. K.S.A. 44-5,120, which states in the relevant parts:
 - (d) Fraudulent or abusive acts or practices for purposes of the workers compensation act include, willfully, knowingly or intentionally:
 - (18) refusing to pay compensation as and when the compensation is due;
 - (g) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person or persons charged have engaged in a fraudulent or abusive act or practice the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue an order or summary order requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following:
 - (1) Payment of a monetary penalty of not more than \$2,000 for each and every act constituting the fraudulent or abusive act or practice, but not exceeding an aggregate penalty of \$20,000 in a one-year period;

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
THE PENNSYLVANIA MANUFACTURERS' ASSOCIATION INSURANCE COMPANY:
Pennsylvania Manufacturers' Association Insurance Company neither admits nor denies the
allegations set forth in Paragraph #1 through #7 above.

1. Pennsylvania Manufacturers' Association Insurance Company agrees to make a payment to KID of Five Hundred Dollars and 00/100 (\$500.00) for: Failing to pay compensation as and when due, contrary to K.S.A. 44-5,120(d)(18).
2. Further, Pennsylvania Manufacturers' Association Insurance Company agrees to ensure its agents or third party administrators institute a verification of accommodated work duties prior to terminating temporary disability benefits.
3. In exchange for the payment KID will dismiss this action with prejudice.

4. Upon entry of this Consent Order this action shall be dismissed with prejudice. If payment is not made within 30 days, KID may vacate and/or declare this Consent Order void and proceed with a hearing.

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

NOTICE OF RIGHTS

Pennsylvania Manufacturers' Association Insurance Company ("PMAIC") is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedure Act. If PMAIC desires a hearing, the company must file a written request for a hearing with:

Zachary J.C. Anshutz, 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 PMAIC desires a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and provide 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 PMAIC 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:

Zachary Anshutz, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

IT IS SO ORDERED THIS 27th DAY OF March, 2012, IN THE CITY OF
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

BY:



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

Submitted and Approved By:

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

Approved By:

/s/ Staphen Kibblehouse
Stephen Kibblehouse,
Executive Vice President and General Counsel
Pennsylvania Manufacturers' Association Insurance 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 27th day of March, 2012, addressed to the following:

Donald Borrell,
Assistant General Counsel
380 Sentry Parkway
P.O. Box 3031
Blue Bell, PA 19422-0754

_s/ Mark A. Marion _____
Mark A. Marion
Staff Attorney