

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

In the Matter of)	
)	
SENECA INSURANCE COMPANY)	Docket No. : 4701-SO
)	
NAIC #10936)	

CONSENT AGREEMENT AND FINAL ORDER**(Pursuant to K.S.A. 2013 Supp. 40-2404, K.S.A. 40-2407, K.A.R. 40-1-34 and
K.S.A. 2013 Supp. 77-537)**

Now on this 26th day of Nov. , 2014 , the Kansas Insurance Department (“KID”) and Seneca Insurance Company, Inc. (“Seneca” or “the Company”) come before the Commissioner for formal disposition of the above captioned matter. The parties submit a proposed Consent Agreement and Final Order for adoption, rejection, or modification pursuant to the provisions of K.S.A. 2013 Supp. 77-537.

KID and Seneca wish to resolve this matter by entering into this Consent Agreement. Seneca hereby waives any and all rights to further administrative adjudication or review of this matter, including any and all rights conferred upon it under K.S.A. 77-501 *et seq.* This Consent Agreement and Final Order constitutes the final order in this matter.

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 2013 Supp. 40-2404, K.S.A. 40-2407, and K.A.R. 40-1-34, and in accordance with K.S.A. 2013 Supp. 77-537, the Commissioner hereby adopts the proposed Consent Order and admonishes and assesses penalty against Seneca for engaging in an unfair claim settlement practice and violating applicable provisions of the Kansas Insurance Code and the Kansas

Administrative Code. This Order shall become effective as a Final Order, without further notice, when signed by the Commissioner or her designee and filed of record with the KID.

Findings of Fact

The Commissioner has been shown the following facts:

1. Seneca is located at 160 Water Street, 16th Fl., New York, NY 10038.
2. Seneca has been authorized to transact and has continuously transacted insurance business in the State of Kansas since September 22, 1978.
3. On April 24, 2014, KID received a complaint against Seneca alleging that Seneca had failed to pay or deny a claim based on a loss that occurred on June 15, 2012 and was reported to the company on June 19, 2012.
4. The Company did not provide the consumer with 45 day notices setting forth the reasons why additional time was required for investigation.
5. The Company did not respond to numerous communications from the consumer.
6. KID sent the complaint to Seneca on April 25, 2014 and requested a response in 15 business days.
7. KID granted the Company three extensions of time to respond. The company failed to file responses by the three extended deadlines.
8. In its first response to KID, the Company failed to provide all of the documentation requested.
9. Not until August 8, 2014, did the company provide an adequate response to KID.
10. The company did not deny the claim or make an offer of settlement to the consumer until May 19, 2014.

11. There were at least eleven documented occasions on which the Independent Adjuster requested directions and or authorization to proceed from the company and did not get a timely response.
12. No activity was noted in the file for the periods September 12, 2012 to October 1, 2012, February 9, 2013 to March 17, 2013, August 20, 2013 to September 20, 2013, October 7, 2013 to November 27, 2013, and November 27, 2013 to March 18, 2014.

Applicable Public Policy

The purpose of this action is to effectuate the policies set forth in K.S.A. 40-2404(9), K.S.A. 40-2,125(b), and K.A.R. 40-1-34.

Applicable Law

13. K.S.A. 40-2404(9) states, in pertinent parts:

Unfair claim settlement practices. It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto is: (A) committed flagrantly and in conscious disregard of such provisions or (B) committed with such frequency as to indicate a general business practice

(b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

14. K.A. R. 40-1-34 provides, in pertinent parts:

Section 6. Failure to Acknowledge Pertinent Communications

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.

C. An appropriate reply shall be made within ten working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

Section 8. Standards for Prompt, Fair and Equitable Settlements
Applicable to All Insurers

A. Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer.

C. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty-five days from the date of the initial notification and every forty-five days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation.

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

(a) If . . . the commissioner shall determine that the person . . . has engaged in an unfair method of competition or an unfair or deceptive act or practice, 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 reasonably 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

16. K.S.A. 40-2,125(b) provides:

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 civil penalty of up to

\$1,000, for each violation or act, along with an additional penalty of up to \$500 for each week thereafter that such report or other information is not provided to the commissioner.

Conclusions of Law

Based on the Findings of Fact enumerated in paragraphs 1 through 12, the applicable public policy, and the applicable law, the Commissioner finds as follows:

17. The Commissioner has jurisdiction over Seneca and the subject matter of this proceeding and such proceeding is held in the public interest.
18. Seneca has violated K.S.A. 40-2404(9) by repeatedly failing to acknowledge and act reasonably promptly upon communications from the consumer, failing to implement reasonable standards for prompt investigation of claims, failing to affirm or deny coverage with a reasonable time, and not attempting in good faith to effectuate prompt settlement of the claim.
19. Seneca's violations of K.S.A. 40-2404(9)(f) were "committed flagrantly and in conscious disregard" of the law and "(B) committed with such frequency as to indicate a general business practice"
20. Seneca has violated K.A.R. 40-1-34, Section 6 B by not providing KID with an adequate response to its inquiry with fifteen days of receipt of the inquiry.
21. Seneca has violated K.A.R. 40-1-34, Section 6 C by not responding within ten working days to communications from the claimant.
22. Seneca has violated K.S.A. 40-1-34, Section 8 C by not providing the claimant with notices setting forth the reasons why additional time was needed for investigation.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE

23. Pursuant to K.S.A. 40-2407(a)(1) and K.S.A. 2013 Supp. 40-2,125(b), Seneca is ordered to pay an administrative penalty in the amount of FIVE THOUSAND DOLLARS AND 00/100 (\$5,000.00) for the above stated violations of K.S.A. 40-2404(9).
24. The Commissioner shall retain jurisdiction over this matter to issue any orders deemed necessary.

IT IS SO ORDERED THIS 26th DAY OF November, 2014 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

BY:

/s/ John Wine
John Wine
General Counsel

By:

/s/ Frank V. Donahue, Jr.
Frank V. Donahue, Jr.
Vice President of Claims
Seneca Insurance Company

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the above and foregoing **CONSENT AGREEMENT AND FINAL ORDER** was served this 26th day of November, 2014, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Brian G. Boos
Wallace Saunders
10111 W. 87th Street
Overland Park, KS 66212

_Susan Ellmaker_____

Susan Ellmaker
Staff Attorney