

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

**In the Matter of
AXIS INSURANCE
COMPANY
NAIC # 37273**

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Docket No.: 72816-CO

CONSENT AGREEMENT AND FINAL ORDER
(Pursuant to K.S.A. 40-222 and K.S.A. 77-537)

The Kansas Insurance Department (“KID”) and AXIS Insurance Company (“AXIS” or “Company”) submit this Consent Agreement and Final Order. AXIS 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.* Pursuant to the authority conferred upon the Commissioner of Insurance in K.S.A. 40-222, Ken Selzer, CPA, the duly elected, qualified and serving Commissioner of Insurance (“Commissioner”), hereby adopts this agreement made with AXIS and finds and Orders as follows:

Allegations

The parties stipulate that if a hearing were conducted in this matter, the following information could be offered by the Commissioner, and although neither admitted nor denied by Respondent, may be recognized as admissible to show the following:

1. AXIS is domiciled in Chicago, Illinois and has been authorized to do business in Kansas since 1981.
2. On March 23, 2017, KID initiated a Market Conduct inquiry of accident and health policies sold to Kansas residents during 2016.
3. The inquiry focused on marketing, as well as company business practices for oversight of third party administrators (“TPAs”) and distribution channels.
4. AXIS utilized Agentra, LLC as a TPA to provide enrollment, billing and policy fulfillment services.
5. Agentra is not registered or licensed as an administrator in Kansas, as required by law.
6. Kansas residents joined an association, Alliance for Consumers USA, Inc., during the purchase of insurance.

7. KID concluded that Alliance for Consumers USA, Inc. is maintained only for insurance purposes, as there is no method for joining the association without first purchasing insurance.
8. Consumer verification calls were made by Health Insurance Innovations (HII), a licensed insurance agency in Kansas.
9. Neither AXIS nor any of its employees made any marketing calls, consumer verification calls or have any communication with Kansas residents regarding the purchase of insurance.
10. A review of those verification calls reveals that HII did not clearly articulate or account for costs associated with association membership. None of the verification calls reviewed indicate actual premium amounts or account for non-insurance benefits added at the time of sale. Representatives only refer to "membership" dues and fees.
11. AXIS has advised that no business has been sold to Kansas residents via membership in Alliance for Consumers USA, Inc., since April, 2017.
12. AXIS issued 631 certificates to Kansas residents during the period examined.
13. A review of sales demonstrates that there were 21 producers not properly appointed at the time of sale.
14. Company was provided a copy of the examiner's findings and responded with comments, which are reflected in this consent agreement.

Applicable Law

1. K.S.A. 40-222 provides, in 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, a financial examination of any insurance company in the process of organization, or applying for admission or doing business in this state. In addition, at the commissioner's discretion the commissioner may make, or direct to be made, a market regulation examination of any insurance company doing business in this state.

...

(c) For the purpose of such examination, the commissioner of insurance or the persons appointed by the commissioner, for the purpose of making such examination shall have free access to the books and papers of any such company that relate to its business and to the books and papers kept by any of its agents and may examine under oath, which the commissioner or the persons appointed by the commissioner are empowered to administer, the directors, officers, agents or employees of any such company in relation to its affairs, transactions and condition. ...

2. K.S.A. 40-2,125 provides, in 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;

(2) suspension or revocation of the person's license or certificate if such person knew or reasonably should have known that such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder; or

(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. ...

3. K.S.A. 40-2209 provides, in part:

(f) Group accident and health insurance may be offered to a group under the following basis: ...

(5) A policy issued to an association which has been organized and is maintained for the purposes other than that of obtaining insurance, insuring at least 25 members, employees, or employees of members of the association for the benefit of persons

other than the association or its officers. The term "employees" shall include retired employees. The premiums for the policies shall be paid by the policyholder, either wholly from association funds, or funds contributed by the members of such association or by employees of such members or any combination thereof. ...

4. K.S.A. 40-2404 **Unfair methods of competition or unfair and deceptive acts or practices; title insurance agents, requirements; disclosure of nonpublic personal information; rules and regulations.** The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance: ...

(11) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual....

5. K.S.A. 40-2407 provides, in 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 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. ...

6. K.S.A. 40-4912 provides, in part:

(a) Any company authorized to transact business in this state, may, upon determining that the insurance agent is of good business reputation and, if an individual has had experience in insurance or will immediately receive a course of instruction in insurance and on the

policies and policy forms of such company, appoint such insurance agent as the insurance agent of the company under the license in effect for the insurance agent. The appointment shall be made on a form prescribed by the commissioner. Such form shall be sent to the commissioner within 30 days of the date the company appoints such insurance agent...The certification fee shall not be returned for any reason, and failure of the company to certify an insurance agent within 30 working days of such insurance agent's appointment shall subject the company to a penalty of not more than \$25 per calendar day from the date the appropriate return was required from the date of appointment to the date proper certification is recorded by the insurance department. ...

7. K.S.A. 40-3802 (2015). **Same; agreements between insurer and administrator; contents.** (a) No administrator shall act as such without a written agreement between the administrator and the insurer, and such written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and five (5) years thereafter. Such written agreement shall contain provisions which include the requirements of K.S.A. 40-3803, 40-3805 to 40-3809, inclusive, except insofar as those requirements do not apply to the functions performed by the administrator.

8. K.S.A. 40-3810 (2015). **Same; certification as an administrator; procedure; fees; duties of commissioner of insurance; hearings.** No person shall act as or hold oneself out to be an administrator in this state, unless such person holds a certificate of registration as an administrator issued by the commissioner of insurance. Application for such certificate shall be made to the commissioner on a form prescribed by such commissioner and shall be accompanied by a filing fee of \$100. Such certificate may be continued for successive annual periods by notifying the commissioner of such intent and payment of a \$50 continuation fee. Such certificate shall be issued or continued by the commissioner to an administrator unless the commissioner after due notice and hearing shall have determined that the administrator is not competent, trustworthy, financially responsible or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within five years.

9. K.A.R. 40-4-23 provides, in part:

(b) Each authorized issuer of accident and sickness insurance contracts and each authorized insurance agent who solicits, negotiates or procures such insurance within this state shall meet the following requirements: ...

(3) The agent or insurer shall provide to the prospective purchaser before or with the delivery of a contract, a dated outline of coverage describing the elements of the contract including: ...

(E) the premiums for the accident and sickness insurance policy and a separate listing of the premiums for each optional or supplemental benefit provided by the contract; ...

(c) Unfair or deceptive acts or practices in the selling of the insurance subject to this regulation shall include:

(1) Making any misrepresentation or false, deceptive or misleading statement;

(2) using comparisons or analogies or manipulating amounts and numbers in a way that will mislead the prospective purchaser concerning the cost of the insurance protection to be provided by the insurance contract, or any other significant aspect of the contract. ...

10. K.A.R. 40-9-100 provides, in part:

Section 15. Group or Quasi-Group Implications

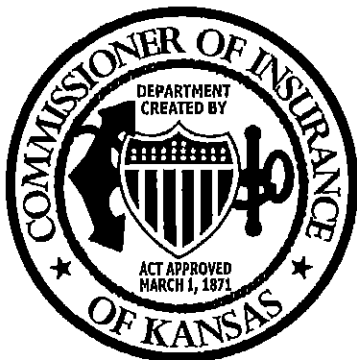
(D) An advertisement to join an association, trust or discretionary group that is also an invitation to contract for insurance coverage shall clearly disclose that the applicant will be purchasing both membership in the association, trust or discretionary group and insurance coverage. The insurer shall solicit insurance coverage on a separate and distinct application that requires a separate signature. The separate and distinct applications required need not be on separate documents or contained in a separate mailing. The insurance program shall be presented so as not to conceal the fact that the prospective members are purchasing insurance as well as applying for membership, if that is the case. Similarly, it is prohibited to use terms such as "enroll" or "join" to imply group or blanket insurance coverage when that is not the fact.

Conclusions of Law and Orders

Based on information enumerated in Paragraphs #1 through #14 and the applicable law cited above, **THE COMMISSIONER OF INSURANCE MAKES THE FOLLOWING ORDERS:**

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222, and shall retain jurisdiction to issue any further orders deemed necessary.
2. AXIS shall pay \$30,000 for the alleged violations of Kansas law, including unpaid agent appointment fees.
3. AXIS neither admits nor denies the violations noted above.

IT IS SO ORDERED THIS 22nd DAY OF AUGUST 2018, IN THE CITY OF TOPEKA, STATE OF KANSAS.



BY:

Diane Minear
Diane Minear
General Counsel

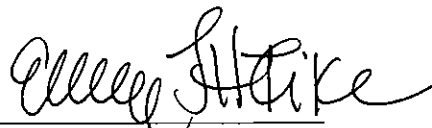
APPROVED BY:

Andrew M. Weissert
AXIS Insurance Company
11680 Great Oaks Way
Alpharetta, GA 30066
Andrew.Weissert@AXISCapital.com

Certificate of Service

The undersigned hereby certifies that she served a true and correct copy of the above and foregoing **Consent Order** on this 22nd day of August, 2018, by email addressed to the following:

Andrew M. Weissert
AXIS Insurance Company
11680 Great Oaks Way
Alpharetta, GA 30066
Andrew.Weissert@AXIScapital.com

A handwritten signature in black ink, appearing to read "Elizabeth J. Hickert Fike", written in a cursive style.

Elizabeth J. Hickert Fike
Attorney