

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

In the Matter of

**GLOBE LIFE & ACCIDENT INSURANCE COMPANY
NAIC# 91472**

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)Docket No. 4369-MC
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ORDER

Pursuant to the authority conferred upon the Commissioner of Insurance in K.S.A. 40-222, Sandy Praeger, the duly elected, qualified and serving Commissioner of Insurance hereby adopts the Kansas Insurance Department’s Report of Market Conduct Examination of Globe Life and Accident Insurance Company (“Globe”) as of June 30, 2010, (attached herein) by incorporating the same in its entirety with specific findings stated as follows. This Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for a hearing is made, pursuant to K.S.A. 77-542.

Findings of Fact

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department (“KID”) completed a targeted market conduct examination of Globe. The period of examination was January 1, 2008 through June 30, 2010.
3. On or about October 7, 2011 the Examiner-in-Charge provided Globe with a draft of the Market Conduct Examination with request for Globe’s response in the form of written comments, additions, or acceptance.

4. Globe responded with written comments regarding the draft report.
5. The Market Conduct Examination Report created by KID is attached herein.
6. Tests for Marketing and Sales.
 - a. Standard 3 reviews the insurer's rules pertaining to insurer requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.
 - i. Examiners reviewed 76 samples of policies that were issued as replacement policies and found 76 errors. Globe conducts majority of its business through direct mail. An insurer that conducts business through direct mail is required to submit notification to the insured and the replaced insurer within three days of receipt of the application in order to be exempt from the replacement notification requirements of K.A.R. 40-2-12.
 - ii. Globe failed standard 3.
7. Tests for Underwriting.
 - a. Standard 5 reviews all forms, including contracts, riders, endorsement forms and certificates are filed with the insurance department, if applicable.
 - i. Globe failed to file a discretionary group policy which is sold to Kansas residents with the KID which is in violation of K.S.A. 40-433(5) and K.S.A. 40-216(a)(2)(B).
 - ii. Globe failed standard 5.
8. Tests for Claims.
 - a. Standard 3 reviews to ensure that claims are resolved in a timely manner.

- i. Examiners reviewed 41 denied claims and found 8 errors. When an insurer has a delayed claim longer than 15 working days, it is required to send notification to the insured every 45 days in accordance with section 8 of the NAIC Unfair Claim Settlement Practice Model Regulation as adopted by K.A.R. 40-1-34.
- ii. Globe failed standard 3.

Applicable Law

K.S.A. 40-222 states, in pertinent 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.

K.S.A. 40-216 states, in pertinent part:

- (a)(1) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state.
- (2)(A) Except as provided in subparagraph (B), each contract of insurance or indemnity issued or delivered in this state shall be effective on filing, or any subsequent date selected by the insurer, unless the commissioner disapproves such contract of insurance or indemnity within 30 days after filing because the contract of insurance or indemnity does not comply with Kansas law.
- (B) The following contracts of insurance or indemnity shall not be subject to the provisions of subsection (A):
 - (i) Contracts pertaining to large risks as defined in subsection (i) of K.S.A. 40-955, and amendments thereto, which are exempt from the filing requirements of this section;

- (ii) personal lines contracts filed in accordance with paragraph (3) of this section;
- (iii) any form filing for the basic coverage required by K.S.A. 40-3401 et seq., and amendments thereto; and
- (iv) form filing for workers compensation.

No form filing listed in clauses (iii) and (iv) of this subparagraph shall be used in this state by any insurer until such form filing has been approved by the commissioner.

K.S.A. 40-433 states, in pertinent part:

No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:...

- (5) A policy issued to an association which has been organized and is maintained for 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" as used herein shall be deemed to 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. The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the insured person or by the association or by the member.

K.A.R. 40-1-34 states, in pertinent part:

- (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.

K.A.R. 40-2-12 states, in pertinent part:

- (a) Definitions.
 - (7) "Replacement" means each transaction in which new life insurance may be purchased from an agent who knows, or reasonably should know that, as a part of the transaction or in consequence of it, a previously existing life insurance has been or is likely to be:
 - (A) Lapsed or surrendered;
 - (B) converted into paid-up insurance, continued as extended term insurance or another form of non-forfeiture benefit;
 - (C) converted to effect a reduction either in the amount of the existing life insurance, or in the period of time the existing life insurance will continue in force;

- (D) reissued with a reduction in amount so that substantial cash values are released; or
 - (E) assigned as collateral for a loan or subjected to substantial borrowing of loan values in single or multiple transactions.
- (b) This regulation shall not apply when:
- (1) The application for the new life insurance is made to the same insurer that issued the existing life insurance, and a contractual policy change or conversion privilege is being exercised;
 - (2) the new life insurance is provided under:
 - (A) A group life insurance policy; or
 - (B) policies covering employees of an employer, debtors of a creditor, or members of an association, which are distributed on a mass merchandising basis and administered by group-type methods;
 - (3) the existing life insurance is a non-convertible term policy with five years or less to expire and which cannot be renewed;
 - (4) the solicitation is made by direct mail and:
 - (A) All sales material is standard and printed;
 - (B) the insurance company notifies the existing insurance company within three business days that the proposed insured has answered "yes" to the replacement question in the application; and
 - (C) concurrent with the notice to the existing company, the insurance company mails to the applicant a copy of the "notice to applicant regarding replacement of life insurance" described in subsection (h); or
 - (5) the policy is issued in connection with a pension, profit sharing, an individual retirement account or other benefit plan qualifying for an income tax deduction of premiums.
- (c) Each life insurance agent shall:
- (1) Obtain a statement signed by the applicant as a part of each life insurance application as to whether the new insurance will replace existing life insurance; and
 - (2) submit to the insurer in connection with each life insurance application a statement as to whether, to the best of the agent's knowledge, a life insurance replacement is involved in the transaction.
- (d) When a replacement is involved, each life insurance agent shall:
- (1) Include as part of each application a list of all existing life insurance policies to be replaced and the name of each insurer which issued the insurance being replaced;
 - (2) present to the applicant, when the application is submitted, a copy of each sales proposal used, and a "notice to applicants regarding replacement of life insurance" described in section (h) in a form acceptable to the commissioner. The agent shall leave the forms with the applicant after explaining their content;
 - (3) submit with the application a copy of each sales proposal used; and
 - (4) have the applicant acknowledge receipt of the "notice to applicant regarding replacement of life insurance."

- (e) Each insurer shall:
 - (1) Inform its field representatives of the requirements of this regulation;
 - (2) require with each application a statement signed by the applicant as to whether the insurance will replace existing life insurance; and
 - (3) require in connection with each application for life insurance a statement signed by the agent as to whether, to the best of the agent's knowledge, a life insurance replacement is involved in the transaction.
- (f) When a replacement is involved, the replacing insurer shall:
 - (1) Require with each application a list prepared by the agent of all existing life insurance policies to be replaced;
 - (2) obtain a copy of any sales proposal used, proof of the receipt by the applicant of the "notice to applicant regarding replacement of life insurance," and the name of each insurer whose insurance is being replaced;
 - (3) within three working days, notify each insurer whose insurance is being replaced by another insurer;
 - (4) delay, if it is not the existing insurer, policy issuance for 20 days after sending the notification required by subparagraph (3). The replacing insurer may issue its policy immediately when:
 - (A) The policy or a separate written notice states that, except as provided in K.A.R. 40-2-15 with respect to adjustments necessary to reflect investment risk on variable annuity contracts and variable life insurance policies, the applicant has a right to an unconditional refund of all premiums paid, within 20 days after delivery of the policy; and
 - (B) notice to the existing insurer is sent within three working days of the date its policy is issued;
 - (5) maintain copies of each sales proposal used, proof of receipt by the applicant of the "notice to applicant regarding replacement," and the applicant's signed statement with respect to replacement, in its home office for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later. Each insurer receiving notice that its existing insurance may be replaced shall maintain a copy of the notice, indexed by insurer, for three years after receipt or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later; and....
- (k) Any violation of this rule shall be presumed to constitute a misleading representation for the purpose of inducing or tending to induce an insured to lapse, forfeit or surrender the insured's existing insurance.

Conclusions of Law

Based upon the Findings of Fact enumerated in Paragraphs #1 through #8 and the Applicable Law cited above,

IT IS, THEREFORE, ORDERED BY THE COMMISSIONER OF INSURANCE:

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department's ("KID") Report of Market Conduct Examination of Globe as of June 30, 2010 is herein adopted in its entirety.
3. Globe's failure to properly comply with the notification and disclosure requirements on replacement policies constitutes a violation of K.A.R. 40-2-12.
4. Pursuant to K.S.A. 40-2,125(a)(1), Globe shall pay a monetary penalty of Fifteen Thousand Dollars and No Cents (\$15,000.00) for the above-stated violation of K.A.R. 40-2-12.
5. Globe's failure to file the proper policy forms prior to issuing discretionary group policies to individuals constitutes a violation of K.S.A. 40-216
6. Pursuant to K.S.A. 40-2,125(a)(1), Globe shall pay a monetary penalty of Five Thousand Dollars and No Cents (\$5,000.00) for the above-stated violation of K.S.A. 40-216.
7. Globe's failure to send the proper notification to a claimant when a claim has been delayed constitutes a violation of section 8 of the NAIC Unfair Claim Settlement Practice Model Regulation as adopted by K.A.R. 40-1-34.
8. Pursuant to K.S.A. 40-2,125(a)(1), Globe shall pay a monetary penalty of Four Hundred Dollars and No Cents (\$400.00) for the above-stated violation of section 8 of the NAIC Unfair Claim Settlement Practice Model Regulation as adopted by K.A.R. 40-1-34.
9. Pursuant to KSA 77-415(b)(2)(A), this order is designated by KID as precedent.

**IT IS SO ORDERED THIS 4th DAY OF JANUARY 2012, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.**



 /s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

BY:

 /s/ Zachary Anshutz
Zachary Anshutz
General Counsel

NOTICE OF RIGHTS

Globe is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedure Act. If Globe desires a hearing, the company must file a written request for a hearing with:

Zachary 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 Globe 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 the commencement of the same.

If a hearing is not requested in the time and manner stated above, this 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 that Globe 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Order and Notice of Rights on this 4th day of January 2012, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Charles Hudson
President
Globe Life & Accident Insurance Company
10306 Regency Parkway Dr.
Omaha, NE 68114

_ /s/ Jennifer R. Sourk _____
Jennifer R. Sourk
Staff Attorney