

STATE OF ARIZONA

AUG 2 1995

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By [Signature]

In the Matter of)	Docket No. 95-175
EMPIRE FIRE AND MARINE INSURANCE COMPANY)	CONSENT ORDER
Respondent.)	

A Market Conduct Examination of Respondent, Empire Fire and Marine Insurance Company ("EFMIC"), was conducted by Market Conduct Examiners ("Examiners") for the Arizona Department of Insurance ("ADOI"). Based on the Report of Market Conduct Examination prepared by the Examiners, it is alleged that Respondent has violated provisions of the Arizona Revised Statutes, Title 20, including Sections 20-229, 20-385, 20-400.01, 20-461, 20-1632, 20-1673 and Arizona Administrative Code "A.A.C." R4-14-801. EFMIC wishes to resolve this matter without formal adjudicative proceedings and hereby agrees to a Consent Order.

The Director of Insurance of the State of Arizona ("the Director") enters the following Findings of Fact and Conclusions of Law, which are neither admitted nor denied by Respondent, and the following Order.

FINDINGS OF FACT

1. EFMIC is authorized to transact property and casualty insurance pursuant to a Certificate of Authority issued by the Director.

2. The Examiners were authorized by the ADOI to conduct a market conduct examination of EFMIC. The on-site examination was concluded as of April 1, 1993 and a Report of Examination

1 ("Report") was written. The Examiners reviewed open and closed
2 claim files, underwriting, rating, cancellations and complaints
3 from January 1, 1990 through December 31, 1992.

4 3. CenCal Insurance Services Inc. ("CenCal"), on EFMIC's
5 behalf, issued 30,126 policies which were countersigned using a
6 facsimile signature during the period November 1, 1990 through
7 September 20, 1992.

8 4. EFMIC used rates to develop the premiums of four (4)
9 personal automobile ("PA") policies which were inconsistent with
10 EFMIC's rates on file with the ADOI. As a result, two (2)
11 insureds paid a total of \$2.00 more and two (2) insureds paid a
12 total of \$163.00 less than they should have paid had EFMIC
13 adhered to its filings.

14 5. The Examiners reviewed the files of seventy-five (75)
15 PA notices of cancellation which were sent for reasons other
16 than non-payment of premium and found that CenCal, on EFMIC's
17 behalf, failed to include in all seventy-five (75) notices the
18 specific facts which constituted the reasons for cancellation,
19 notice of the named insureds' right to complain to the Director
20 and notice of the insureds' possible eligibility for insurance
21 through the automobile assigned risk plan. The Examiners found
22 that CenCal failed to include said specific facts, the notice of
23 the right to complain to the Director and the notice of possible
24 eligibility for the assigned risk plan in all 9,461 cancellation
25 notices issued on behalf of EFMIC during the period covered by
26 the Examination.

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1 6. CenCal, on EFMIC's behalf, failed to return the
2 unearned premium to 700 PA policyholders with the notices of
3 cancellations for reasons other than nonpayment of premium.

4 7. EFMIC cancelled commercial policy, #BS003722, after
5 the Policy had been in effect for sixty (60) days for a reason
6 other than those permitted by statute. The Policy was reinstated
7 after a complaint was filed with the ADOI.

8 8. EMFIC issued seven (7) commercial policies using rates
9 other than its filed rates. As a result, these insureds paid a
10 total of \$119.00 more than they should have paid had EFMIC
11 adhered to its filings.

12 9. EFMIC failed to pay the full amount of sales taxes,
13 license fees and/or actual cash value ("ACV") due on
14 seventy-eight (78) first-party automobile total loss claims. A
15 total of \$1,357.94 was due these claimants, and has been paid.

16 10. In 31 first party total loss claims, EFMIC failed to
17 support the ACV of the vehicles with documentation giving
18 particulars of the automobile's condition in electing a cash
19 settlement of the claim. The settlement amounts were determined
20 by means other than the value of a comparable automobile in the
21 local market area or by utilizing two (2) dealer quotes.

22 11. EMFIC failed to answer the inquiries of the ADOI
23 concerning ten (10) complaints regarding claims within fifteen
24 (15) working days.

25 CONCLUSIONS OF LAW

26 1. As a result of EFMIC's agent, CenCal, issuing 30,126
27 policies which were countersigned using a facsimile signature
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1 during the period November 1, 1990 through September 20, 1992,
2 EFMIC violated A.R.S. § 229(A).

3 2. EFMIC violated A.R.S. § 20-385(A) by failing to file
4 all rating for PA risks and deviations therefrom with the ADOI.

5 3. EFMIC violated A.R.S. § 20-385(A) by failing to file
6 all rating for commercial risks and deviations therefrom with
7 the ADOI. By issuing commercial policies using rates not
8 consistent with their filings EFMIC violated A.R.S.
9 § 20-400.01(A).

10 4. EFMIC violated A.R.S. § 20-1632(A)(1) and (2) by
11 sending to insureds notices of cancellation for reasons other
12 than nonpayment of premium, which did not contain the specific
13 facts which constituted the reasons for cancellation, notice of
14 the named insureds' right to complain to the Director and notice
15 of the insureds' possible eligibility for insurance through the
16 automobile assigned risk plan.

17 5. By failing to refund unearned premium for policies
18 cancelled for reasons other than nonpayment of premium with the
19 notices of cancellation, EFMIC violated A.R.S. § 20-1632(A)(3).

20 6. By cancelling a commercial policy, which had been in
21 effect for over sixty (60) days, for a reason not allowed by
22 statute, EFMIC violated A.R.S. § 20-1673(A)(1).

23 7. By failing to pay the full amount of sales taxes and
24 license fees required for the purchase of comparable automobiles
25 to first party claimants in their settlement of first
26 party automobile total loss claims, EFMIC violated A.C.C. Rule
27 4-14-801(H)(1)(b) and A.R.S. § 20-461(A)(6).

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1 8. By failing to use the cost of a comparable automobile
2 or dealer quotations to establish the basis for a cash
3 settlement of an automobile total loss claim and failing to
4 document deviations therefrom, EFMIC violated A.A.C.
5 R4-14-801(H)(1)(b) and A.R.S. § 20-461(A)(6).

6 9. By failing to answer inquiries from the ADOI
7 respecting claims within fifteen (15) working days of receipt of
8 the inquiry, Respondent violated A.A.C. R4-14-801(E)(2) and
9 A.R.S. § 20-461(A)(2).

10 10. Grounds exist for the entry of all other provisions of
11 the following Order.

12 ORDER

13 Respondent having admitted the jurisdiction of the
14 Director to enter the Order set forth herein, having waived the
15 Notice of Hearing, and having consented to the entry of the
16 Order set forth hereinafter, and there being no just reason for
17 delay:

18 **IT IS HEREBY ORDERED THAT:**

19 1. Respondent shall cease and desist from using unfiled
20 rates; from using PA cancellation notices which do not contain
21 the specific facts which constituted the reasons for
22 cancellation, notice of the insureds' right to complain to the
23 Director and notice of the insureds' possible eligibility for
24 insurance through the automobile assigned risk plan; from not
25 refunding unearned premiums with PA cancellation notices; from
26 cancelling commercial policies for reasons not allowed under
27 Arizona statutes; from failing to pay the total amount of sales
28 taxes, license fees and ACV due to claimants in settlements of

1 automobile total loss claims; from failing to use the cost of a
2 comparable automobile or a dealer quotation including
3 documentation to support any deviation therefrom to establish
4 the basis for a cash settlement of automobile total loss claims
5 and from failing to answer inquiries from the ADOI concerning
6 claims within fifteen (15) working days.

7 2. Respondent shall develop and submit to ADOI, within
8 sixty (60) days of the filed date of this Report, written action
9 plans to ensure that:

10 a. In all policy cancellations, other than those
11 resulting from non-payment of premiums, EFMIC states the
12 specific reason for such cancellation, notice of the right to
13 complain to the Director, notice of the insured's possible
14 eligibility for insurance through the automobile assigned risk
15 plan; and refunds any unearned premium with the notice of
16 cancellation.

17 b. EFMIC adheres to A.A.C. R4-14-801(H) by paying
18 all proper taxes and license fees and using the ACV, determined
19 by the cost of a comparable automobile in the local market area,
20 or two or more quotations obtained from qualified dealers
21 located in the local market area, or a deviation therefrom which
22 is documented, in calculating all first-party total losses.

23 c. EFMIC establish and maintain a complaint log.
24 This log shall state whether each complaint is justified or not
25 justified, the reason for each complaint, and the acknowledgment
26 date and the final disposition of each complaint. EFMIC shall
27 provide a copy of the complaint log to be used and the
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1 procedures for its use to the ADOI within sixty (60) days of the
2 filed date of this Order.

3 d. EFMIC respond to all complaints, including but
4 not limited to those received from the ADOI within fifteen (15)
5 working days.

6 e. EFMIC responds to all complaints involving claims
7 within ten (10) working days, as required by A.A.C.
8 R4-14-801(E)(1) "Failure to acknowledge pertinent
9 communications".

10 3. EFMIC shall within forty-five (45) days of the filed
11 date of this Order perform a self audit of its authorized agents
12 to ascertain that all are licensed as "agents" by the ADOI.
13 EFMIC shall report the results of said self audit to the ADOI
14 within sixty (60) days of the filed date of this Order.

15 4. EFMIC has paid to the seventy-eight (78) claimants
16 identified in the Report and pay a total of \$1,357.94 in taxes,
17 license fees and ACV, plus interest at the rate of ten (10%)
18 percent per annum, from the date each claim was received by the
19 insurer until the date of claim payment.

20 5. A list of the payments made pursuant to Paragraph 4,
21 giving the name and address of each party to whom payments were
22 made, the base amount of the payment, the amount of interest
23 paid and the date of payment shall be provided to the ADOI
24 within sixty (60) days of the filed date of this Order.

25 6. The ADOI shall be permitted, through authorized
26 representatives, to verify Respondent has fully complied with
27 all requirements of this Order, and the Director may separately
28 order Respondent to comply.

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7. EFMIC shall pay a civil penalty of Fifteen Thousand Dollars (\$15,000.00) to the Director for remission to the State Treasurer for deposit in the State General Fund in accordance with A.R.S. §20-220(B). Said amount shall be provided to the Market Conduct Examinations Division of the ADOI on or before July 21, 1995.

8. The April 1, 1993 Report of Examination, to include any objections to the Report by Respondents, shall be filed with the ADOI.

DATED at Phoenix, Arizona this 2nd day of August, 1995.



Chris Herstam
Director of Insurance

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2 CONSENT TO ORDER

3 1. Respondent, Empire Fire and Marine Insurance Company
4 has reviewed the foregoing Consent Order.

5 2. Respondent is aware of its right to a hearing at which
6 hearing Respondent may be represented by counsel, present
7 evidence and cross-examine witnesses. Respondent has irrevocably
8 waived its right to such public hearing and to any court appeals
relating thereto.

9 3. Respondent admits the jurisdiction of the Director of
10 Insurance, State of Arizona, and consents to the entry of this
11 Consent Order.

12 4. Respondent states that no promise of any kind or
13 nature whatsoever was made to it to induce it to enter into this
14 Consent Order and that it has entered into this Consent Order
15 voluntarily.

16 5. Respondent acknowledges that the acceptance of this
17 Order by the Director of Insurance, State of Arizona, is
18 solely for the purpose of settling this matter against it and
19 does not preclude any other agency or officer of this state or
20 subdivision thereof from instituting other civil or criminal
proceedings as may be appropriate now or in the future.

21 6. AMY S. BONES represents that as
22 Vice President she is an officer of Respondent and that, as
23 such, she is authorized by it to enter into this Consent Order
24 on its behalf.

25 **EMPIRE FIRE AND MARINE INSURANCE COMPANY**

26
27 July 21, 1995
28 (Date)

By Amy S Bones

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COPY of the foregoing mailed/delivered
this 2nd day of August , 1995, to:

- Charles R. Cohen
Deputy Director
- Gregory Y. Harris
Executive Assistant Director
- Lewis D. Kowal
Chief Administrative Law Judge
- Erin Klüg
Executive Assistant to the Director
- Jimmy Potts
Market Conduct Examination Coordinator
Examinations Division
- Saul Saulson
Supervisor
Examinations Section
- Dean Ehler
Supervisor
Property and Casualty Section
- Deloris E. Williamson
Assistant Director
Rates & Regulations Division
- Gary Torticill
Assistant Director and Chief Financial Examiner
Corporate & Financial Affairs Division
- Cathy O,Neil
Assistant Director
Consumer Services and Investigations

DEPARTMENT OF INSURANCE
2910 North 44th Street, Suite 210
Phoenix, AZ 85018

Amy Bones
Vice President & General Counsel
Empire Fire & Marine Insurance Company
1624 Douglas Street
Omaha, Nebraska, 68102-1449

