

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
& HEALTH CARE ADMINISTRATION**

In re: American General
Assurance Company

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DOCKET NO. 06-068-I

ORDER ADOPTING REPORT OF EXAMINATION

NOW COMES John P. Crowley, Commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration, and hereby issues the following Order adopting the Market Conduct Examination Report in the above referenced docket number, subject to the exceptions and qualifications discussed below.

FINDINGS OF FACT

1. Pursuant to the authority granted by Vermont law, including, but not limited to, that contained in 8 V.S.A. §§ 10-13, 18, 3564-3574 and 4726, the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration (“the Department”) is charged with administering and enforcing the insurance laws and regulations of the State of Vermont and is authorized to conduct periodic examinations of insurers and licensees to determine whether they are in compliance with said laws and regulations.

2. American General Assurance Company is a stock insurance company organized under the laws of the State of Illinois, which primarily markets credit life and credit

disability insurance. This Order shall refer to American General Assurance Company as “the Company.”

3. On April 11, 2006 a final market conduct examination report was issued by examiners James Montgomery III, Robbie Kriplean and Jennifer Greenway on behalf of the Vermont Department of Banking, Insurance, Securities and Health Care Administration (hereinafter “the Report”).

4. In accordance with the requirements of 8 V.S.A. § 3574(b), the Report was transmitted to the Company and the Company was afforded a reasonable period of time to submit a formal written response to the findings of the Report. The Company submitted a formal response (“the Response”), and additional information requested by the Department concerning the issues raised in the Report.

5. Pursuant to 8 V.S.A. § 3574(c), the undersigned Commissioner has considered the Report, the Company’s Response and the additional information fully.

CONCLUSIONS OF LAW

6. Unless specified otherwise, the Department adopts the Report as it has been written.

7. In the section of the report entitled “**SALES AND MARKETING**” (page 9), the examiners find that the Company failed to send the required Notice of Transfer letters to policyholders of All American Life Insurance Company after acquiring those policies through an assumption reinsurance transaction effective January 1, 2002, in violation of 8 V.S.A. § 8204 and § 8205. The Company responds that all master policyholders were issued new policies in the Company’s name in late 2001/early 2002, and that notices were mailed to borrowers who still held certificates or individual policies in 2004, during

the exam. The Company includes a certification by a senior vice president attesting to compliance.

The Department adopts this section of the Report, and finds that the Company's response adequately addresses the examiners' concerns. The violations of 8 V.S.A. § 8204 and § 8205 warrant an administrative penalty of \$500.

The examiners also find that the Company has violated Regulation 84-1 § 12(1), by offering creditors the opportunity to have the specific business they write for the Company reinsured by reinsurers with whom the creditor is affiliated. The regulation prohibits an insurer from offering any special advantage or service not set out in either the group insurance contract or the agency contract, other than the payment of commissions. The Company's offer to purchase reinsurance from affiliates of creditors is a special advantage or service, which must be disclosed in either the group insurance contract or agency contract.

In response, the Company states that the reinsurance is purchased from valid, authorized companies with reserve requirements. The Company argues that the creditors' reinsurers assume risk in return for the benefit conveyed, but the fact remains that the reinsurance purchase is not an arm's length transaction on the open market. This is the fact that requires disclosure.

The Company further argues that Vermont is the domicile of several captive insurers that operate in similar fashion to the reinsurers with whom the Company places its business, suggesting that the State thereby endorses the arrangement. This argument has two flaws. First, the reinsurers, like the captives referenced by the Company, are not subject to Regulation 84-1; only credit life and credit accident and health insurers, like

the Company, are subject to the regulation. Secondly, the reinsurance transaction itself does not violate the regulation, but rather the failure to disclose the practice violates the regulation. The aim of the regulation is transparency, and to that end the regulation prohibits offering “any special advantage or service *not set out in either the group insurance contract or in the agency contract* other than the payment of commissions” (emphasis supplied). The Company’s failure to disclose the offer to purchase reinsurance from a related entity violates this provision.

Upon consideration, the Department adopts this section of the Report. The Company shall either discontinue the practice of offering to purchase reinsurance from related entities forthwith, or shall submit a revised group insurance contract or agency contract setting forth the offer, for the Department’s approval, within 30 days from the effective date of this order. The violation of Regulation 84-1 § 12(1) warrants an administrative fine of \$2,500.

8. In the “**CLAIMS PROCEDURES AND PROCESSING**” section (Report page 11), the examiners find that the Company did not pay the statutorily required 6% interest on death claims, in 42 of 56 files reviewed, in violation of 8 V.S.A. § 3665(c)(2). The examiners recommend that the Company revise its procedures, and audit claims for the past 5 years to correct any underpayments.

In response, the Company states that it paid the 42 claimants discovered by the examiners during the exam, and completed an audit of the past 5 years’ claims. The Company states that the audit revealed an additional 41 claims that were due refunds including interest totaling \$1,884.16, all of which were paid by May 16, 2006. The Company also states that the claims procedures were revised in 2004 and that annual

training for claims personnel was instituted in November 2005, including the calculation of interest and the revised procedures.

The Department accepts the Company's response as addressing the examiners' concerns. The Company shall provide the Department with a copy of the audit, and proof of payment, on Excel spreadsheet, within 30 days of the effective date of this order. The multiple violations of 8 V.S.A. § 3665(c)(2) warrant an administrative penalty of \$1,000.

The examiners find (at page 12) that the Company failed to refund unearned disability premiums in 18 cases, in violation of Regulation 84-1 § 3(9)(a). The examiners recommend the Company immediately refund the unearned disability premiums directly to the beneficiaries upon the death of an insured, and audit the past 5 years for compliance.

The Company informs the Department that refunds were made during the exam to the files reviewed by the examiners, and that the unearned disability premiums were included in the audit of the past 5 years' claims. As a result of the audit, the Company states that an additional 9 insureds were refunded, with interest, an aggregate of \$1,546.29, which refunds were completed by May 24, 2006. The Company further states that a new billing system installed in 2003 provides the ability to track refunds, and will prevent this problem from recurring.

The Department accepts the Company's response as addressing the examiners' concerns. The audit results, and proof of payment, shall be included in the filing detailed above. The multiple violations of Regulation 84-1 § 3(9)(a) warrant an administrative penalty of \$1,000.

The examiners criticize (at page 13) the Company's compliance with regulation 79-2. Specifically, the examiners cite two claims on which the Company failed to notify the claimant in writing every 30 days the reasons additional time was needed for the claim investigation, in violation of § 6.C, and one claim on which the Company failed to respond to the Department's complaint notification within 15 days, in violation of § 5.C. In response, the Company details revisions to their automated processes, quality control audits, and training in both claims and complaint handling that has been implemented. The Department finds that the Company's improved processes adequately address the concerns raised by the examiners, and that the three instances of noncompliance do not warrant an administrative penalty.

The examiners also find that the Company failed to pay a claimant the penalty interest rate of 12%, on a claim which was not paid within 30 days, as required by 8 V.S.A. § 3665(d). The Company admits paying the claim at 6% interest as specified in 8 V.S.A. § 3665(c)(2), rather than the judgment rate in § 3665(d); the judgment rate is set at 12%, by 12 V.S.A. § 2903(b). The Department finds that no further administrative penalty is warranted beyond that assessed above for the previously discussed violations of § 3665.

Upon consideration, the Department adopts this section of the Report. The Company shall pay the additional 6% interest owed on the claim, and shall audit the past 5 years' claims to identify other claims paid more than 30 days after submission, and shall remit the additional interest to those claimants necessary to bring their interest payments up to the required 12%, within 60 days from the effective date of this order.

9. In the "**PRODUCTION OF RECORDS**" (page 15) section of the Report, the examiners find that the Company failed to comply with Regulation 99-1 § 6, by failing to

maintain records and make them available readily to the examiners. The examiners recommend that the Company make substantial changes in record keeping procedures to comply fully with Regulation 99-1.

In its Response, the Company states that it already has begun those changes, and outlines the steps already taken, including the scanning and indexing of certificates. In addition, the Company states that it will develop a formal records retention-focused training program for its home office employees.

Upon consideration, the Department adopts this portion of the Report and the examiners' recommendations. The Company shall provide the Department with a formal record retention plan, which will account for the claims files and other documents covered by the regulation beyond the certificates, within 60 days of the expiration of the appeal deadline of this Order, for the Department's approval. The failure to comply with Regulation 99-1 warrants an administrative penalty of \$5,000.

10. In the "SUPERVISION OF CREDIT INSURANCE OPERATIONS" section of the Report (page 17), the examiners find that the Company failed to keep written records of the required review of the Company's creditors, in violation of Regulation 84-1 § 11, and that had the reviews taken place it is likely that the record keeping violations in the previous section of the Report would have been detected. The Company informed the examiners of an "audit form" and process which was developed during the course of the exam. The examiners recommend that the Company immediately implement the audit process, paying particular attention to the problems raised in the Report.

In response, the Company states that its general agent did perform routine audits, and states that it will implement the new audit process to ensure annual rotating audits, with each creditor reviewed at least once every three years.

Upon consideration, the Department adopts this portion of the Report and the examiners' recommendations. The Department finds that the reviews by the general agent failed to comply with Regulation 84-1; there are no written records of such reviews, as required, nor are there any indications that the general agent detected any of the violations detailed throughout the Report. The Company's implementation of the audit process satisfies the examiners' concerns, and the violations of Regulation 84-1 warrant an administrative penalty of \$5,000.

11. In the "**RATES AND RELATED ISSUES**" section of the Report (page 18), the examiners criticize the Company's rate filings for 2001, which were filed late and inaccurately. The examiners recommend that the Company make rate reductions for policies issued on or after September 1, 2001 (on which date the rates should have become effective) and refund those policies that were overcharged. The Company agrees with the examiners' position, and emphasizes that the delays were due to an error in judgment rather than intentional delays. The Company already has determined the error resulted in 275 certificates being overcharged a total of \$4,138 for the period ending August 31, 2002, and 518 certificates being overcharged a total of \$8,813 for the period ending August 31, 2003. The Company states that it is devising a plan to locate and refund the affected policyholders, including interest.

Upon consideration, the Department adopts this section of the Report and the examiners' recommendations. The Company shall provide the department with a plan

for refunding the affected policyholders within 60 days of the effective date of this order. The violations of Regulation 84-1 warrant an administrative penalty of \$3,000.

The Company objects to the Executive Summary, which characterizes this rates issue as displaying a serious disregard for the laws and regulations. The Department agrees that the body of the Report does not draw such a strong conclusion, and accepts the Company's response that the delays were due to an error in judgment rather than an intentional disregard of the laws. The Department does not adopt this conclusion from the Executive Summary, and adopts the Report as set forth more fully above.

The examiners also find that the Company overcharged one certificate holder, on both credit disability and credit life premiums, and recommend that the Company refund the overages. In response, the Company states that the certificate holder identified by the examiners was refunded the overages in 2004, and that the Company is reviewing the past 5 years' premiums to determine if the certificate holders were overcharged.

Upon consideration, the Department adopts this section of the Report and the examiners' recommendations. The Company shall provide the Department with the completed review within 90 days of the effective date of this order. The Department finds that no further administrative penalty is warranted.

The examiners also criticize the Company's credit card program ("CAP"), for which the Company charged a premium based on 20 month payback rates, when in practice (pursuant to the certificate) the number of payback months could be as many as 50. The examiners note that only 6 claims were incurred out of 1,309 certificates written for the years reviewed, 2000 and 2001. The examiners recommend the Company immediately revise their rates to reflect the actual payback periods, and recalculate the monthly

outstanding disability premiums charged during the exam period so that the Company can rebate any overcharges, together with interest.

In response, the Company states that it has discontinued the CAP program, thereby resolving the examiners' recommendation about revising the current rates. The Company states that the proper benefit was paid in accordance with the premium charged in all cases (5% payback for 20 months), although that premium and benefit did not always match the certificate. The Company states that recalculating the monthly balances and refunding the potential overcharges will be extremely difficult due to the cessation of this program, and the account-level information and business relationships necessary to recalculate those figures are no longer available to the Company.

Upon consideration, the Department adopts this section of the Report, but not the recommendations. The recommendation to revise current rates is moot, given the cessation of this program. The Department finds that the burden on the Company to recalculate the monthly outstanding disability premiums outweighs the benefits to be achieved, given the facts that only 6 accounts out of 1309 were affected, 5 to 6 years ago, and the benefits were paid according to the premium charged. However, the fact that premiums were charged in contravention of the benefits scheduled in the certificate violates 8 V.S.A. § 4109(a), which warrants an administrative penalty of \$2,000.

The examiners also commend the Company for disclosing voluntarily a rating error, for a program that ran from March 1, 1999 through October 25, 2001, and recommend that appropriate refunds be made to the affected debtors together with interest. The Company does not object to this recommendation, which the Department adopts. The

Company shall provide the Department proof of the refunds within 90 days of the effective date of this order.

12. In the “**PRODUCER LICENSING**” section of the Report (page 24), the examiners find that the personnel at the various financial institutions through which the Company’s policies are sold are not licensed, in violation of 8 V.S.A. § 4813b. The examiners recommend that the all persons engaged in the solicitation of insurance through the Company become licensed and appointed, as required by 8 V.S.A. §§ 4813b and 4813l.

In response, the Company cites to the “group enroller exemption” in 8 V.S.A. § 4813d(b)(2) (former codified at 8 V.S.A. § 4799), and requests guidance on that topic. The guidance always has been available to the Company, in the statutes. All persons engaged in sales, solicitation or negotiation of insurance must be licensed, 8 V.S.A. § 4813b. Sales, solicitation and negotiation are defined, at 8 V.S.A. § 4813a. The “exemption” is for persons who merely secure and furnish information about group policies, or enroll applicants in such policies, so long as the person does not receive a commission, 8 V.S.A. §4813d(b)(2). Whether an employee’s conduct falls within this exception, or constitutes selling, solicitation or negotiation, is a fact-specific enquiry. The Company notes that the employees are not paid a commission, and states that the financial institutions are paid a “service fee” for providing and servicing certificates. Unless the service fee is commensurate with the services provided, rather than based upon sales volume, the fee is a commission. Additionally, the Company does not refute the examiners’ findings that the financial institutions’ personnel were engaged in solicitation, without licensure. The Department rejects the Company’s implied argument that no one solicited the Company’s products.

Upon consideration, the Department adopts this portion of the Report, and adopts the examiners' recommendations as modified herein. The Company shall devise a compliance plan for licensure, and submit the plan to the Department for approval within 90 days. The plan can include training loan officers to comply with 8 V.S.A. § 4813d, but must include compliance with the licensure requirements for actual solicitations, as they occur. The violations of 8 V.S.A. § 4813b warrant an administrative penalty of \$5,000.

13. In the "LEGAL ACTIONS INVOLVING OTHER INSURANCE DEPARTMENTS" section of the Report (page 25), the examiners note that the Company failed to comply with the requirements of Bulletin 30 for each of the years 2000, 2001 and 2002. The examiners list 13 reportable actions not reported by the Company, and point out the inaccuracy of the Company's initial response. The examiners recommend that the Company comply with Bulletin 30 in the future. In response, the Company states that it has implemented a procedure for logging and reporting legal actions, so as to comply with Bulletin 30 henceforth.

Upon consideration, the Department adopts this portion of the Report. The violations of Bulletin 30 warrant an administrative penalty of \$1,000.

ORDER

Based upon the Findings of Fact and Conclusions of Law set forth above, **IT IS THEREFORE ORDERED** by the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration that the MARKET CONDUCT EXAMINATION REPORT OF AMERICAN GENERAL ASSURANCE COMPANY OF SCHAUMBURG, ILLINOIS AS OF DECEMBER 31, 2002 BY VERMONT DEPARTMENT OF BANKING,

INSURANCE, SECURITIES AND HEALTH CARE ADMINISTRATION (which is incorporated herein by reference) shall be and hereby is adopted with the following modifications and clarifications:

14. As discussed in Paragraph 7 above, the Department adopts the **“SALES AND MARKETING”** section of the Report. The Company shall either discontinue the practice of offering to purchase reinsurance from related entities forthwith, or shall submit a revised group insurance contract or agency contract setting forth the offer, for the Department’s approval, within 30 days from the effective date of this order, and shall pay an administrative penalty of \$3,000.

15. As discussed in Paragraph 8 above, the Department adopts the **“CLAIMS PROCEDURES AND PROCESSING”** section of the Report. The Company shall pay the additional 6% interest owed on the claim, and shall audit the past 5 years’ claims to identify other claims paid more than 30 days after submission, and shall remit the additional interest to those claimants necessary to bring their interest payments up to the required 12%, within 60 days from the effective date of this order, shall provide the Department with a copy of the audit, and proof of payment, on Excel spreadsheet, within 30 days of the effective date of this order, and shall pay an administrative penalty of \$2,000.

16. As discussed in Paragraph 9 above, the Department adopts the **“PRODUCTION OF RECORDS”** section of the Report. The Company shall provide the Department with a formal record retention plan, which will account for the claims files and other documents covered by the regulation beyond the certificates, within 60 days of the expiration of the

appeal deadline of this Order, for the Department's approval. The Company shall pay an administrative penalty of \$5,000.

17. As discussed in Paragraph 10 above, the Department adopts the **"SUPERVISION OF CREDIT INSURANCE OPERATIONS"** section of the Report. The Company shall pay an administrative penalty of \$5,000.

18. As discussed in Paragraph 11 above, the Department adopts the **"RATES AND RELATED ISSUES"** section of the Report as modified therein. The Company shall provide the department with a plan for refunding the affected policyholders within 60 days of the effective date of this order, shall provide the Department with the completed review of the past 5 years' premiums within 90 days of the effective date of this order, shall provide the Department proof of the refunds of the voluntarily disclosed rating error within 90 days of the effective date of this order, and shall pay an administrative penalty of \$5,000.

19. As discussed in Paragraph 12 above, the Department adopts the **"PRODUCER LICENSING"** section of the Report, and the examiners' recommendations as modified. The Company shall devise a compliance plan for licensure, and submit the plan to the department for approval within 90 days. The plan can include training loan officers to comply with 8 V.S.A. § 4813d, but must include compliance with the licensure requirements for actual solicitations, as they occur. The violations of 8 V.S.A. § 4813b warrant an administrative penalty of \$5,000.

20. As discussed in Paragraph 13 above, the Department adopts the **"LEGAL ACTIONS INVOLVING OTHER INSURANCE DEPARTMENTS"** section of the Report. The Company shall pay an administrative fine of \$1,000.

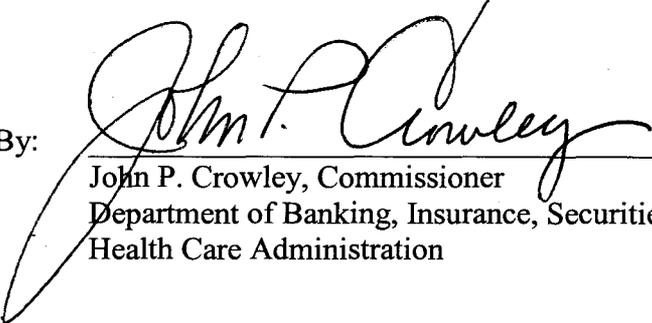
21. All penalties described above shall be paid to the Department no later than 10 days after the expiration of the appeal deadline of this Order, or other administrative or judicial order as appropriate.

PURSUANT TO 8 V.S.A. § 3574(c), THIS ORDER AND REMEDIAL ACTION SET FORTH HEREIN MAY BE APPEALED TO THE COMMISSIONER BY FILING AN ADMINISTRATIVE APPEAL WITHIN THIRTY (30) DAYS OF THE DATE SET FORTH BELOW. FURTHER REMEDIAL ACTIONS AND PENALTIES ORDERED UPON RECEIPT OF INFORMATION ORDERED HEREIN MAY BE APPEALED WITHIN THIRTY (30) DAYS OF SUBSEQUENT DECISIONS BY THE DEPARTMENT.

Dated at Montpelier, Vermont this 23rd day of August, 2006.

Department of Banking, Insurance,
Securities and Health Care Administration

By:



John P. Crowley, Commissioner
Department of Banking, Insurance, Securities and
Health Care Administration