

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

In re: Universal Underwriters Life	)	
Insurance Company	)	DOCKET NO. 06-065-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. Universal Underwriters Life Insurance Company is a stock insurance company organized under the laws of the State of Kansas, which primarily markets credit life and

credit disability insurance, along with some ordinary life insurance products. This Order shall refer to Universal Underwriters Life Insurance 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”), which discussed issues raised in the Report with the Department.

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

#### **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 “**CLAIMS PROCEDURES AND PROCESSING**” (page 9), the examiners find that the Company was not paying the life insurance benefits in accordance with the policy language, in violation of 8 V.S.A. § 4111(a). The policy requires the benefits be calculated on a decreasing schedule, whereas the Company was calculating benefits using a combination of the schedule and actual amounts owed in the underlying credit transaction. The examiners recommend that the Company audit the preceding 5 years’ benefits paid, and recalculate and remit the appropriate amounts.

In response, the Company agrees to audit claims paid during the 5 years preceding March 1, 2004, the approximate date on which the Company changed its procedure for calculating benefits. However, the Company disputes the interest rate, and argues that 8 V.S.A. § 3665(d) only applies where a judgment or settlement agreement is entered. The Company's argument is based on the second and third sentences of the subsection, which are quoted in the Response, while ignoring the first sentence: "If an insurer fails to pay timely a claim, it shall pay interest on the amount of the claim beginning 30 days after a beneficiary files a properly executed proof of loss." The statute is clear that such interest is not dependent on entry of a judgment or settlement agreement. The second sentence in the subsection simply clarifies that, in situations where a judgment or settlement agreement is entered, the interest does not accrue from that date of entry, but rather accrues 30 days after the proof of loss is filed. The interest is owed in all cases of untimely payment, whether a judgment or agreement is entered or not.

The Company also claims, without any support, that in the examination of another insurer, "it was agreed" that the payment of 6% interest did not apply to credit life insurance. The Company acknowledges that it learned of this agreement after its claims were reviewed, and hence, the Company cannot have relied on any such agreement. As a matter of law, the Department finds that 8 V.S.A. § 3665(c)(2) by its terms applies to all life insurance policies, as the legislature did not exempt credit life insurance policies from the statute. The Department concludes that credit life insurance companies must comply with the statute, and that any prior determination to the contrary is erroneous.

The Department accepts the Company's offer to audit the claims paid for the 5 years preceding March 1, 2004, which shall be completed within 90 days of the date of

this order, and shall be provided to the Department within 90 days in an Excel spreadsheet. Once the Department approves payments under the audit, the Company shall have 30 days within which to pay the interest owed. The violation of 8 V.S.A. § 3665(c)(2) warrants an administrative penalty of \$1,000.

The examiners find (at page 11) that the Company failed to refund unearned disability premiums in 8 cases, in violation of Regulation 84-1 § 3(9)(a). The Company realized this error when obtaining the documents for the examiners' review, and informed the examiners that payment has been made. The Company shall produce proof of payment within 30 days of the effective date of this order. The violations of this regulation warrant an administrative penalty of \$1,000.

The examiners reviewed 43 records representing certificates which had been canceled or rejected by the Company due to underwriting reasons, and find one instance in which a policy was canceled because the applicant was over the policy age limit, more than 75 days after the effective date of coverage. The examiners assert that this violates 8 V.S.A. § 4724(19), which prohibits the failure to comply with filed forms.

The Company agrees that the one instance was a violation of the regulation, but denied that the statute was violated, in that one error does not constitute a company practice. The Department disagrees that the statute requires multiple acts to constitute a violation. The Company further objected to the Report, arguing that the Report implies that insurers only have 75 days within which to detect material misrepresentations, in contrast to the incontestability clause in the policy which provides for a two-year period. The Department disagrees, finding that the Report makes no such implication. The violation addressed in the Report concerns only the failure to cancel a policy within 75

days, pursuant to the policy terms, when the application on its face demonstrated the applicant was ineligible. The violation of this statute warrants an administrative penalty of \$1,000.

Upon consideration, the Department adopts this section of the Report and the examiners' recommendation. The Company shall audit its credit life insurance claims from March 1, 1999 to March 1, 2004, within 90 days of the final order herein, and to remit payment within 30 days after the Department's approval of the audit.

8. In the "**CANCELED/REJECTED/AMENDED CERTIFICATES**" section (Report page 13), the examiners find that the Company had failed to cancel policies within 75 days on four policies reviewed. The examiners recommend that the Company take steps to ensure compliance with the 75-day provision in their contracts.

In response, the Company appears to accept these findings, agreeing that "one error" was made, and notes that the Company has informed its employees to exercise greater care when reviewing certificates.

Upon consideration, the Department adopts this portion of the Report, and the examiners' recommendation. The Company shall pay an administrative penalty of \$500 for the untimely cancellations.

9. In the "**SALES AND MARKETING**" (page 16) section of the Report, the examiners find that the Company stopped auditing the dealers (creditors) in 1994, in violation of Regulation 84-1 § 11(1), and only resumed reviews in May 2003. The resumption of audits revealed numerous violations. The examiners recommend that the Company perform complete audits of all its dealers from January 1, 2000 to the present, and continue to perform periodic audits in the future. The examiners further recommend

that the Company ensure that each dealer establish a trust account, as required by Regulation 95-1 § 5, as the resumed audits found the dealers were not in compliance.

In its Response, the Company states that it believes it is now in compliance, having developed a formal audit plan, under which all of its accounts are under review currently. The Company notes that it terminated its agreement with one dealership which was noted by the examiners to have several problems, and has corrected the problems noted. The Company also responds that all dealers were notified, during the exam, that trust accounts are required, and the Company has included verification of trust accounts in its audit plan.

Upon consideration, the Department adopts this portion of the Report and the examiners' recommendations. The Company shall provide the Department with its formal audit plan, within 30 days of the expiration of the appeal deadline of this Order, for the Department's approval. The Company shall also perform an audit of all its accounts, from January 1, 2000 to December 31, 2005, within 180 days from the effective date of this Order, and shall provide the Department a report of the audit, summarizing what the Company reviewed, when it performed the tasks, and the results of the review. The failure to comply with regulations 84-1 and 95-1 over a ten-year period warrants an administrative penalty of \$5,000.

10. In the "**RATES AND RELATED ISSUES**" section of the Report (page 21), the examiners criticize the Company's rate filings for 1998 and 2001 for using the Loss Ratio at Prima Facie Rates instead of the Adjusted Loss Ratio, and note that the most recent filing contains a similar error which was corrected by the Department's consulting actuary. The Company stated that its actuary will exercise greater care in future filings.

The Department finds that this is a matter properly addressed in the rate filing process, to be resolved by the Department's actuary consultants, and that no penalty is warranted.

The examiners find 77 errors of greater than \$5 in reviewing the premiums charged to 198 life insurance purchasers, of which 72 were overcharges. The examiners find a further 16 errors of greater than \$5 in reviewing the premiums charged to 156 disability insurance purchasers, of which 12 were overcharges. In response, the Company agrees to develop a plan approved by the Department to audit all certificates issued during the exam period, as recommended by the examiners, and to make refunds with interest. The Company shall develop such a plan, and submit it to the Department for approval within 30 days of the effective date of this order.

The examiners find that, when the Company determined that a dealer has overcharged a customer, the Company refunds the overage to the dealer which is supposed to refund the customer. The Company's audits revealed that 6 of 22 dealers failed to remit the overage to the customer. The examiners recommend that the Company issue amended certificates and a letter explaining to the customer that a refund is due. The Company responds that it has implemented a procedure to notify insureds of premium decreases. The Company shall submit this procedure in writing to the Department for approval, within 30 days of the effective date of this order.

The examiners find that the Company permits dealers to submit certificates with handwritten changes which are not required to be initialed by the customer. The examiners recommend that the Company issue amended certificates and require handwritten changes be initialed. The Company responds that it has implemented a procedure to notify insureds of all changes, including handwritten changes. The

Company shall submit this procedure in writing to the Department for approval, which shall include the requirement that insureds initial handwritten changes, within 30 days of the effective date of this order.

The examiners found 7 policies with incorrect amounts of insurance, and the Company acknowledges an additional 8 such policies during the examination. Regulation 84-1 § 3 (10)(a)(i) limits credit life insurance to the total amount payable plus two monthly payments. In order to ensure compliance with this regulation, the examiners recommend that the Company require dealers to provide a copy of the finance contract with the application. The Company responds by agreeing that there were errors, but suggesting that a different solution be reached, for both legal and practical considerations.

Upon consideration, the Department determines that the verification of credit life insurance amounts can be accomplished as part of the dealer auditing process discussed in section 7, above. The Company shall include the verification of insurance amounts in its audit plan to be submitted under that section.

The examiners found an error in the single premium life factor formula in the Dealers Guide provided to dealers by the Company. The Company responds that the guide already has been changed. The Company shall submit a copy of the changed guide to the Department for approval within 30 days of the effective date of this order.

The multiple instances of premium overcharges, and the failure to ensure the reimbursements which were made actually reached the insured, warrants an administrative penalty of \$2,000.

11. In the “**PRODUCER LICENSING**” section of the Report (page 29), the examiners find that the personnel at the various dealerships 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 accepts responsibility for ensuring compliance with the laws and regulations, and states that the Company is prepared to attempt to license any individual required to have a license but 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. There is an exception for persons who merely secure and furnish information about group policies, or enroll applicants in such polices, 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. However, the Company does not refute the examiners' findings that the dealership personnel were engaged in sales, without licensure.

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.

12. In the “**FINES, PENALTIES & FORFEITURES**” section of the Report (page 31), the examiners note that the Company failed to comply with the requirements of Bulletin 30 for each of the years 2000, 2001 and 2002. In response, the Company informed the examiners that they have designated an individual to make the annual report.

Upon consideration, the Department adopts this portion of the Report. The violations of Bulletin 30 warrant an administrative penalty of \$300.

### **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 UNIVERSAL UNDERWRITERS LIFE INSURANCE COMPANY OF OVERLAND PARK, KANSAS 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:

13. As discussed in Paragraph 7 above, the Department adopts the “**CLAIMS PROCEDURES AND PROCESSING**” section of the Report; the Company shall audit the claims paid for the 5 years preceding March 1, 2004, which shall be completed within 90 days of the date of this order, and shall be provided to the Department within 90 days in an Excel spreadsheet. The audit shall include the verification of insurance amounts, as discussed in paragraph 10. Once the Department approves payments under the audit, the Company shall have 30 days within which to pay the interest owed, shall provide proof of

payment of the unearned premium refunds within 30 days, and shall pay an administrative penalty of \$3,000.

14. As discussed in Paragraph 8 above, the Department adopts the **“CANCELED/REJECTED/AMENDED CERTIFICATES”** section of the Report. The Company shall pay an administrative penalty of \$500.

15. As discussed in Paragraph 9 above, the Department adopts the **“SALES AND MARKETING”** section of the Report. The Company shall provide the Department with its formal audit plan, within 30 days of the expiration of the appeal deadline of this Order, for the Department’s approval. The Company shall also perform an audit of all its accounts, from January 1, 2000 to December 31, 2005, within 180 days from the effective date of this Order, and shall provide the Department a report of the audit, summarizing what the Company reviewed, when it performed the tasks, and the results of the review. The Company shall pay an administrative penalty of \$5,000.

16. As discussed in Paragraph 10 above, the Department adopts the **“RATES AND RELATED ISSUES”** section of the Report as modified therein. The Company shall develop a plan to audit all certificates issued during the exam period, and submit it to the Department for approval within 30 days of the effective date of this order. The Company shall submit a procedure to notify insureds of premium decreases, and a procedure to notify insureds of all changes to certificates, in writing to the Department for approval, within 30 days of the effective date of this order. The Company shall submit a copy of the revised Dealers Guide to the Department for approval within 30 days of the effective date of this order, and shall pay an administrative penalty of \$2,000.

17. As discussed in Paragraph 11 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.

18. As discussed in Paragraph 12 above, the Department adopts the “**FINES, PENALTIES & FORFEITURES**” section of the Report. The Company shall pay an administrative fine of \$300.

19. 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.

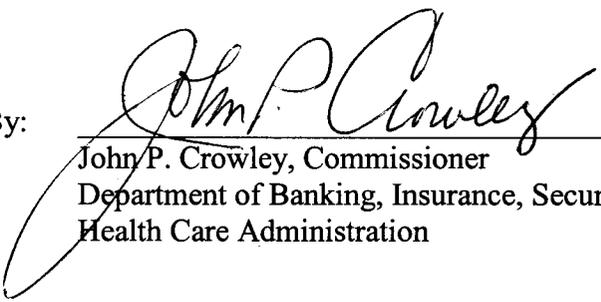
**PURSUANT TO 8 V.S.A. § 3574(c), THIS ORDER AND REMEDIAL ACTION SET FORTH HEREIN MAY BE APPEALED TO THE COMMISSIONER BY FILING AN ADMINISTRATIVE APPEAL WITHIN THIRTY (30) DAYS OF THE DATE SET FORTH BELOW. FURTHER REMEDIAL ACTIONS AND PENALTIES ORDERED UPON RECEIPT OF**

**INFORMATION ORDERED HEREIN MAY BE APPEALED WITHIN THIRTY  
(30) DAYS OF SUBSEQUENT DECISIONS BY THE DEPARTMENT.**

Dated at Montpelier, Vermont this 15<sup>th</sup> day of August, 2006.

Department of Banking, Insurance,  
Securities and Health Care Administration

By:

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