

**BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
HELENA, MONTANA**

IN THE MATTER OF:	)	Case No. INS-2008-13
	)	
	)	
BANKERS FIDELITY LIFE INS. CO.	)	<b>CONSENT AGREEMENT</b>
4370 Peachtree Road NE	)	
Atlanta Georgia 30319	)	
<i>Respondent.</i>	)	

The State Auditor and Commissioner of Insurance of the state of Montana (Commissioner) and the Montana Insurance Department (Department), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, hereby make the following fact assertions and conclusions of law which justify and support disciplinary treatment:

**FINDINGS OF FACT**

1. Respondent BANKERS FIDELITY LIFE INSURANCE COMPANY is, and was at all pertinent times, an insurance company duly licensed to conduct business in the state of Montana.

2. With respect to Respondent's Medicare Supplement Plan B (hereinafter referred to as "Plan B"), on May 25, 1999, the Department approved a rate increase of 30%. On July 12, 1999, Respondent implemented a 20% increase to its "Preferred Underwriting Rates, and a 15% increase to its "Standard Underwriting Rates". On July 20, 2000, the Department approved a 10% rate increase to Respondent's "Preferred Underwriting Rate" and to its "Under 65-Disabled Standard Class". Respondent did not

apply such increases until July 5, 2001. On August 28, 2001, the Department approved a 14% rate increase of the premium rates applicable to Respondent's Plan B, but such increase was not implemented by Respondent subsequent to its approval.

3. With respect to Respondent's Medicare Supplement Plan B, Respondent applied an unapproved rate increase of 15% to its Preferred Underwriting Rates on June 1, 2006. On August 28, 2001, Respondent had sixteen (16) Montana insureds under its Plan B, and on June 1, 2006, it has one hundred thirty-three (133) Montana insureds under its Plan B.

4. With respect to Respondent's Medicare Supplement Plan C (hereinafter referred to as "Plan C"), on May 25, 1999, the Department approved a rate increase of 30%. On July 12, 1999, Respondent implemented a 20% increase to its "Preferred Underwriting Rates", and a 15% increase to its "Standard Underwriting Rates". On July 20, 2000, the Department approved a rate increase of 10% for Respondent's "Preferred Underwriting Rate", which Respondent did not implement subsequent to its approval. On August 28, 2001, the Department approved a rate increase of 14%, which Respondent did not implement subsequent to its approval.

5. With respect to Respondent's Medicare Supplement Plan C, Respondent applied an unapproved rate increase of 20% to both its "Standard Underwriting Rates" and its "Preferred Underwriting Rates" on June 1, 2006. On August 28, 2001, Respondent had zero (0) Montana insureds under its Plan C, and on June 1, 2006, it has four hundred eighty-eight (488) Montana insureds under its Plan C.

6. With respect to Respondent's Medicare Supplement Plan F (hereinafter referred to as "Plan F"), on May 25, 1999, the Department approved a rate increase of

30%. On July 12, 1999, Respondent implemented a 20% increase to its "Preferred Underwriting Rates", and a 15% increase to its "Standard Underwriting Rates". On July 20, 2000, the Department approved a rate increase of 10%, which Respondent did not implement subsequent to its approval. On August 28, 2001, the Department approved a rate increase of 14%, which Respondent did not implement subsequent to its approval.

7. With respect to Respondent's Medicare Supplemental Plan F, Respondent applied an unapproved rate increase of 20% to its "Preferred Underwriting Rates" on June 1, 2006. On August 28, 2001, Respondent had zero (0) Montana insureds under its Plan F, and on June 1, 2006, it has one hundred seventy-eight (178) Montana insureds under its Plan F.

#### **CONCLUSIONS OF LAW**

1. Pursuant to Mont. Code Ann. §2-5-1903, the State Auditor is the Commissioner of Insurance, and has jurisdiction in the matter.

2. Pursuant to Mon. Code Ann. §33-1-301, the Department is under the control and supervision of the Commissioner.

3. A person may not transact the business of insurance in the state of Montana or a business to a subject resident, located or to be performed in the state of Montana without complying with the applicable provisions of the Montana Insurance Code pursuant to Mont. Code Ann. §33-1-102.

4. Pursuant to Mont. Code Ann. §33-1-311, the Commissioner shall administer the Department to protect insurance consumers.

5. With respect to Respondent's Plan B, the Respondent violated Mont. Code Ann. §33-18-212(2), because it applied unapproved premium rates other than those approved by the Department on May 25, 1999, after such approval was given.

6. With respect to Respondent's Plan B, the Respondent violated Mont. Code Ann. §33-18-212(2), because it applied unapproved premium rates other than those approved by the Department on August 28, 2001, after such approval was given.

7. With respect to Respondent's Plan C, the Respondent violated Mont. Code Ann. §33-18-212(2), because it applied unapproved premium rates other than those approved by the Department on May 25, 1999, after such approval was given.

8. With respect to Respondent's Plan C, the Respondent violated Mont. Code Ann. §33-18-212(2), because it applied unapproved premium rates other than those approved by the Department on July 20, 2000, after such approval was given.

9. With respect to Respondent's Plan C, the Respondent violated Mont. Code Ann. §33-18-212(2), because it applied unapproved premium rates other than those approved by the Department on August 28, 2001, after such approval was given.

10. With respect to Respondent's Plan F, the Respondent violated Mont. Code Ann. §33-18-212(2), because it applied unapproved premium rates other than those approved by the Department on May 25, 1999, after such approval was given.

11. With respect to Respondent's Plan F, the Respondent violated Mont. Code Ann. §33-18-212(2), because it applied unapproved premium rates other than those approved by the Department on July 20, 2000, after such approval was given.

12. With respect to Respondent's Plan F, the Respondent violated Mont. Code Ann. §33-18-212(2), because it applied unapproved premium rates other than those approved by the Department on August 28, 2001, after such approval was given.

13. With respect to Respondent's Plan B, the Respondent violated Mont. Code Ann §33-18-212(2), one hundred seventeen (117) times because one hundred seventeen (117) Montana insureds accepted Respondent's services while Respondent applied unauthorized premium rates.

14. With respect to Respondent's Plan C, the Respondent violated Mont. Code Ann §33-18-212(2), four hundred eighty-eight (488) times because four hundred eighty-eight (488) Montana insureds accepted Respondent's services while Respondent applied unauthorized premium rates.

15. With respect to Respondent's Plan F, the Respondent violated Mont. Code Ann §33-18-212(2), one hundred seventy-eight (178) times because one hundred seventy-eight (178) Montana insureds accepted Respondent's services while Respondent applied unauthorized premium rates.

16. By violating Mont. Code Ann. §33-18-212(2) six hundred eighty-three (683) times, Respondent engaged in an unfair and deceptive trade practice in violation of Mont. Code Ann. §33-18-102(1).

### **AGREEMENT**

The Department and the Respondent hereby stipulate and agree to the following:

1. Respondent acknowledges that it was advised of the right to be represented by legal counsel and was represented by legal counsel that was satisfactory.

2. Respondent further acknowledges that it has read and understands each of the terms of this Consent Agreement and Final Order. Respondent further acknowledges that it enters this Consent Agreement voluntarily and without reservation, that it has not been promised or offered anything not included in this Consent Agreement in consideration for its commitment to this Consent Agreement, and that this Consent Agreement constitutes the only and entire agreement between the parties in this matter.

3. The Department and the Respondent agree to resolve the matter set forth above in the following manner:

a. the Department will not enforce against the Respondent to refund premiums to its insureds of amount overpaid due to the unlawfully application of rates and premiums by the Respondent between 1999 and the date of execution of this Consent Agreement;

b. the Department will not suspend or revoke, or institute a proceeding against Respondent to suspend or revoke, any of the Respondent's current authorizations to do business in the state of Montana, or seek any other disciplinary or regulatory action against the Respondent for the violations and conduct being the subject matter of this proceeding.

4. In consideration for the Department's concessions set forth in paragraph (3) of this Consent Agreement:

a. the Respondent will cease and desist applying, advertising, or otherwise implementing premiums and rates not approved by the Department;

b. the Respondent will, for a period of five (5) years from the date of execution of this Consent Agreement, affirm to the Department, by means of a written sworn statement or equivalent affirmation executed by a competent officer or director, concurrent with each application for a rate or premiums increase or decrease, that it is implementing, advertising, and otherwise applying only the rates and premiums for which approval is sought from the Department;

c. the Respondent will pay an administrative fine of seventy five thousand dollars (\$75,000.00), payable to the Montana Commissioner of Insurance, with payment of thirty seven thousand five hundred dollars (\$37,500.00) deferred for a period of five (5) years and payable only upon material breach of this Agreement or any other material violation of Montana law pertaining to Respondent's business activities and actionable under jurisdiction of the Montana Commissioner of Insurance and only if said material breach or material violation occurs within the foregoing five (5) year period; and

d. the Respondent specifically and affirmatively waives any further remedies, including but not limited to those provided under the Montana Administrative Procedures Act, Mont. Code Ann. §2-4-101, *et.seq.*, and that compliance with any and all terms and conditions of this Consent Agreement shall be the final compromise and settlement of the subject matter of this proceeding.

e. Respondent fully and forever releases and discharges the Commissioner, the Department of Insurance, and all department employees from any and all actions, claims, causes of action, demands, or expenses, for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this Consent Agreement.

5. The Department and the Respondent agree and stipulate that this Consent Agreement shall be incorporated and made part of the Final Order, as attached, to be issued by the Commissioner.

### NOTICES

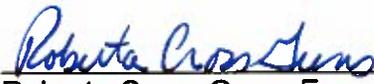
1. Respondent understands that, upon signing of the Final Order by the Commissioner or his designee, this Consent Agreement and Final Order will constitute and be an order of the Commissioner and failure to comply with the same may be separate violations of the applicable laws regulating the business of insurance in the state of Montana pursuant to, *inter alia*, Mont. Code Ann. §33-1-318, and will result in subsequent legal action by the Department potentially pursuing the violations identified within the four corners of this Consent Agreement as well as breaching the terms of this Consent Agreement.

2. Respondent further understands that this Consent Agreement is not effective until the Final Order is signed and served on the parties.

3. Respondent further understands that this Consent Agreement and the Final Order are deemed public records under the laws of the state of Montana and as such may not be sealed, kept confidential, or otherwise withheld from the public.

DATED this 25<sup>th</sup> of September, 2008.

  
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Kevin L. King, Esq.  
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& BORNONUS  
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ATTORNEY FOR RESPONDENT

  
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Roberta Cross Guns, Esq.  
MONTANA DEPT. OF INSURANCE  
840 Helena Avenue  
Helena, Montana 59601  
ATTORNEY FOR DEPARTMENT

**FINAL ORDER**

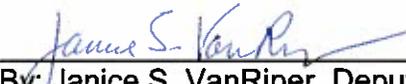
Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. §33-1-101, *et.seq.*, upon review of the forgoing Consent Agreement and good cause shown therefore;

IT IS HEREBY ORDERED that the foregoing Consent Agreement between the Montana Department of Insurance and Respondent Bankers Fidelity Life Insurance Company is hereby ADOPTED and INCORPORATED by reference;

IT IS FURTHER ORDERED that the Department of Insurance shall perfect service of the Final Order upon counsel for the Respondent by U.S. First Class mail.

DATED this 30<sup>th</sup> of September, 2008.

JOHN MORRISON  
State Auditor and Commissioner of Insurance

  
By: Janice S. VanRiper, Deputy State Auditor