

MARKET CONDUCT EXAMINATION REPORT

OF

EMPIRE FIRE & MARINE INSURANCE COMPANY

AS OF

AUGUST 31, 2009

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE**

**Property and Casualty Division
Market Conduct Section**

COMMONWEALTH OF VIRGINIA



JACQUELINE K. CUNNINGHAM
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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

I, Jacqueline K. Cunningham, Commissioner of Insurance of the Commonwealth of Virginia, do hereby certify that the annexed copy of the Market Conduct Examination Report of Empire Fire and Marine Insurance as of August 31, 2009, which took place at the company's offices in Atlanta, Georgia is a true copy of the original Report on file with the Bureau and also includes a true copy of the company's final response to the findings set forth therein, and of the Bureau's letter and the Order of the State Corporation Commission finalizing the Report.

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed
the official seal of this the Bureau
at the City of Richmond, Virginia,
this 3rd day of June, 2011.

A handwritten signature in cursive script, reading 'Jacqueline K. Cunningham', written over a horizontal line.

JACQUELINE K. CUNNINGHAM

Commissioner of Insurance

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INTRODUCTION

Pursuant to the authority of § 38.2-1317 of the Code of Virginia, a target examination has been made of the homeowner line of business written by Empire Fire and Marine Insurance Company at its managing general agent's office, ZC Sterling in Atlanta, Georgia.

The examination commenced September 13, 2010 and concluded December 6, 2010. Andrea D. Baytop, Richard L. Howell, and Edwin N. Millan, examiners of the Bureau of Insurance; and Joy M. Morton, Market Conduct Supervisor of the Bureau of Insurance, participated in the work of the examination. The examination was called in the Examination Tracking System on February 11, 2010 and was assigned the examination number of VA199-M19. The examination was conducted in accordance with the procedures established by the National Association of Insurance Commissioners (NAIC).

COMPANY PROFILE

Empire Fire and Marine Insurance Company was incorporated on March 16, 1954 under the laws of Nebraska and began business on July 31, 1954 to succeed the Empire Fire and Marine Automobile Insurance Company (a mutual carrier formed in 1947). The company was purchased by the U.S. Branch of Zurich Insurance Company, Zurich, Switzerland in 1979.

Effective November 15, 1984, Empire Fire and Marine Insurance Company was acquired by Universal Underwriters Insurance Company, a Zurich subsidiary. Zurich Holding Company of America, Inc. purchased the company from Universal Underwriters Insurance Company on December 1, 1986. Direct ownership is currently held by Zurich American Insurance Company through a transfer of all of the outstanding shares effective January 1, 1999. The company is licensed in the District of Columbia and 49

states. It also operates on a surplus lines or non-admitted basis in Puerto Rico and Oklahoma. The company is based in Omaha, Nebraska.*

The table below indicates when the company was licensed in Virginia and the lines of insurance that the company was licensed to write in Virginia during the examination period. All lines of insurance were authorized on the license date.

GROUP CODE: 0212	EMPIRE FIRE & MARINE
NAIC Company Number	21326
LICENSED IN VIRGINIA	11/13/1980
LINES OF INSURANCE	
Accident and Sickness	X
Aircraft Liability	X
Aircraft Physical Damage	X
Animal	X
Automobile Liability	X
Automobile Physical Damage	X
Boiler and Machinery	X
Burglary and Theft	X
Commercial Multi-Peril	X
Credit	X
Farmowners Multi-Peril	X
Fidelity	X
Fire	X
General Liability	X
Glass	X
Homeowner Multi-Peril	X
Inland Marine	X
Miscellaneous Property	X
Ocean Marine	X
Surety	X
Water Damage	X
Workers' Compensation	X

* Source: Best's Insurance Reports, Property & Casualty, 2010 Edition.

The table below shows the company's premium volume and approximate market share of business written in Virginia during 2009 for the line of insurance included in this examination.* This business was developed through captive and independent agents.

COMPANY AND LINE	PREMIUM VOLUME	MARKET SHARE
Empire Fire & Marine Insurance Company		
Homeowner	\$4,825,374	0.31%

* Source: The 2009 Annual Statement on file with the Bureau of Insurance and the Virginia Bureau of Insurance Statistical Report.

SCOPE OF THE EXAMINATION

The examination included a detailed review of the company's homeowner line of business written in Virginia for the period beginning September 1, 2008 and ending August 31, 2009. This review included rating and underwriting*, policy terminations, claims handling, forms, policy issuance*, statutory notices, agent licensing, complaint-handling, and information security practices. The purpose of this examination was to determine compliance with Virginia insurance statutes and regulations and to determine that the company's operations were consistent with the public interest. The Report is by test, and all tests applied during the examination are reported.

This Report is divided into three sections, Part One – The Examiners' Observations, Part Two – Corrective Action Plan, and Part Three – Examiners' Notes. Part One outlines all of the violations of Virginia insurance statutes and regulations that were cited during the examination. In addition, the examiners cited instances where the company failed to adhere to the provisions of the policies issued on risks located in Virginia. Finally, violations of other related laws that apply to insurers, characterized as "Other Law Violations," are also noted in this section of the Report.

In Part Two, the Corrective Action Plan identifies claims handling general business practices and violations in other areas that are subject to a monetary penalty.

In Part Three, the examiners cite any violations that are not considered a business practice. Also included in this section are recommendations regarding the company's practices that are not violations of Virginia insurance laws but require some action by the company. This section does not form the basis of any settlement offer made by the Bureau of Insurance (Bureau).

* Policies reviewed under these categories reflected the company's current practices and, therefore, fell outside of the examination period.

The examiners may not have discovered every unacceptable or non-compliant activity in which the company engaged. The failure to identify, comment on, or criticize specific company practices does not constitute an acceptance of the practices by the Bureau.

STATISTICAL SUMMARY

The files selected for the review of the termination and claims handling processes were chosen by random sampling of the various populations provided by the company. The rating and underwriting files were added to the examination after identifying issues during the policy issuance review. The relationship between population and sample is shown on the following page.

In other areas of the examination, the sampling methodology is different. The examiners have explained the methodology for those areas in corresponding sections of the Report.

The details of the errors will be explained in Part One of this Report. General business practices may or may not be reflected by the number of errors shown in the summary.

**Population
Sample Requested**

AREA	<u>Empire Fire & Marine</u>	<u>FILES REVIEWED</u>	<u>FILES NOT FOUND</u>	<u>FILES WITH ERRORS</u>	<u>ERROR RATIO</u>
<u>Homeowner</u>					
New Business ¹	<u>4</u> 4	4	0	4	100%
Renewal Business ¹	<u>5</u> 5	5	0	5	100%
Co-Initiated Cancellations ²	<u>331</u> 35	28	0	28	100%
All Other Cancellations ³	<u>410</u> 15	16	0	1	6%
Nonrenewals	<u>23</u> 5	5	0	5	100%
<u>Claims</u>					
Homeowner ⁴	<u>343</u> 53	50	0	33	66%

Footnote ¹ The rating files were obtained from the policy issuance sample and the population for 2010 was not requested.

Footnote ² The company was unable to provide accurate data in labeling the cancellation files.

Footnote ³ One cancellation file was added to Insured Requested from Company Initiated.

Footnote ⁴ Three claims were for Landlord policies and not reviewed.

PART ONE - THE EXAMINERS' OBSERVATIONS

This section of the Report contains all of the observations that the examiners provided to the company. These include all instances where the company violated Virginia insurance statutes and regulations. In addition, the examiners noted any instances where the company violated any other Virginia laws applicable to insurers.

RATING AND UNDERWRITING REVIEW

Homeowner New Business Policies

The Bureau reviewed four new business policy files received in the Policy Issuance category. The examiners found overcharges totaling \$11.78 and undercharges totaling \$13.00 during the review of these files. The net amount that should be refunded to insureds is \$9.54.

- (1) The examiners found three violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.
 - a. In one instance, the company failed to use the correct discounts and/or surcharges.
 - b. In two instances, the company failed to use the correct public protection classification.
- (2) The examiners found four violations of § 38.2-5020 E 2 of the Code of Virginia. The company failed to charge the correct annual assessment for the Birth-Related Neurological Injury Fund.

Homeowner Renewal Business Policies

The Bureau reviewed five renewal business policy files received in the Policy Issuance category. The examiners found overcharges totaling \$14.11 and

undercharges totaling \$8.00 during the review of these files. The net amount that should be refunded to insureds is \$13.12.

- (1) The examiners found three violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.
 - a. In two instances, the company failed to use the correct public protection classification.
 - b. In one instance, the company failed to interpolate the premium correctly.
- (2) The examiners found five violations of § 38.2-5020 E 2 of the Code of Virginia. The company failed to charge the correct annual assessment for the Birth-Related Neurological Injury Fund.

TERMINATION REVIEW

The Bureau requested cancellation files in several categories due to the difference in the way these categories are treated by Virginia insurance statutes, regulations, and policy provisions. The breakdown of these categories is described below.

Homeowner Policies

Company-Initiated Cancellations – Homeowner Policies

NOTICE MAILED PRIOR TO THE 90TH DAY OF COVERAGE

The Bureau requested ten homeowner cancellations that were initiated by the company where the company mailed the notices prior to the 90th day of coverage in the initial policy period. The examiners reviewed five of these files. One cancellation was insured requested and reviewed under that category. Four cancellations were for Landlord policies and not reviewed. The examiners found no overcharges and no undercharges during the review of these files.

- (1) The examiners found five violations of § 38.2-610 A of the Code of Virginia. The company used an adverse underwriting decision (AUD) notice that was not substantially similar to the prototype found in Administrative Letter 1981-16.
- (2) The examiners found two occurrences where the company failed to comply with the provisions of the insurance policy.
 - a. In one instance, the company failed to give the insured 10 days written notice of cancellation where the notice was mailed prior to the 90th day of coverage.
 - b. In one instance, the company failed to mail the cancellation notice to the address shown on the policy.

NOTICE MAILED AFTER THE 89TH DAY OF COVERAGE

In addition, the Bureau requested 25 homeowner cancellations that were initiated by the company where the company mailed the notices on or after the 89th day of coverage in the initial policy period or at any time during the term of a subsequent renewal policy. The examiners reviewed 23 of these files. Two cancellations were for Landlord policies and not reviewed.

As a result of this review, the examiners found no overcharges and undercharges totaling \$76.00.

- (1) The examiners found 23 violations of § 38.2-610 A of the Code of Virginia. The company used an AUD notice that was not substantially similar to the prototype found in Administrative Letter 1981-16.
- (2) The examiners found one violation of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to properly calculate the return premium.
- (3) The examiners found one violation of § 38.2-2113 C of the Code of Virginia. The company failed to provide proper notice of the cancellation to the lienholder.

- (4) The examiners found 19 violations of § 38.2-2114 A of the Code of Virginia. The company cancelled a policy insuring an owner-occupied dwelling after the 90th day of coverage for a reason not permitted by the statute.
- (5) The examiners found eight violations of § 38.2-2114 C of the Code of Virginia. The company failed to provide 30 days' written notice to the insured when the company cancelled the policy after the 89th day of coverage.

All Other Cancellations – Homeowner Policies

NONPAYMENT OF THE PREMIUM

The Bureau requested five homeowner cancellations that were initiated by the company for nonpayment of the policy premium. The examiners reviewed all these files.

As a result of this review, the examiners found no overcharges and no undercharges.

The examiners found no violations in this area.

REQUESTED BY THE INSURED

In addition, the Bureau requested ten homeowner cancellations that were initiated by the insured where the cancellation was to be effective during the policy term. The examiners reviewed all of these files. One additional file was reviewed from the Notice Mailed Prior to the 90th Day of Coverage category.

As a result of this review, the examiners found overcharges totaling \$475.91 and no undercharges. The net amount that should be refunded to insureds is \$475.91 plus six percent (6%) simple interest.

The examiners found one violation of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to properly calculate the return premium.

Company-Initiated Non-renewals – Homeowner Policies

The Bureau requested five homeowner nonrenewals that were initiated by the company. The examiners reviewed all of these files.

The examiners found five violations of § 38.2-610 A of the Code of Virginia. The company used an AUD notice that was not substantially similar to the prototype found in Administrative Letter 1981-16.

CLAIMS REVIEW**Homeowner Claims**

The examiners reviewed 50 homeowner claims for the period September 1, 2008 through August 31, 2009. The findings below appear to be contrary to the standards set forth by Virginia insurance statutes and regulations. The examiners found overpayments totaling \$2,074.60 and underpayments totaling \$1,751.67 during the review of these files. The net amount that should be paid to claimants is \$1,359.67, plus six percent (6%) simple interest.

- (1) The examiners found four violations of 14 VAC 5-400-30. The company failed to document the claim file sufficiently to reconstruct events and/or dates that were pertinent to the claim.

These findings occurred with such frequency as to indicate a general business practice.

- (2) The examiners found 12 violations of 14 VAC 5-400-40 A. The company obscured or concealed from the first party claimant, directly or by omission, benefits, coverages or other provisions of an insurance contract that were pertinent to the claim.

- a. In one instance, the company failed to inform the insured of the Additional Living Expense coverage of the policy.

- b. In seven instances, the company failed to inform the insured of the replacement cost benefits under the Dwelling coverage of the policy.
- c. In four instances, the company failed to inform the insured of the replacement cost benefits under the Personal Property coverage of the policy.

These findings occurred with such frequency as to indicate a general business practice.

- (3) The examiners found two violations of 14 VAC 5-400-60 B. The company failed to notify the insured, in writing, every 45 days of the reason for the company's delay in completing the investigation of the claim.
- (4) The examiners found four violations of 14 VAC 5-400-70 A. The company failed to deny a claim or a part of a claim in writing.

These findings occurred with such frequency as to indicate a general business practice.

- (5) The examiners found two violations of 14 VAC 5-400-70 B. The company failed to provide a reasonable explanation of the basis for its denial in the written denial of the claim.
- (6) The examiners found five violations of 14 VAC 5-400-70 D. The company failed to offer the insured an amount that was fair and reasonable as shown by the investigation of the claim or failed to pay a claim.
 - a. In two instances, the company failed to properly pay the claim under the insured's Dwelling replacement cost coverage.
 - b. In one instance, the company failed to properly pay the claim under the insured's Personal Property coverage.

- c. In two instances, the company failed to properly pay the claim under the insured's Personal Property replacement cost coverage.

These findings occurred with such frequency as to indicate a general business practice.

- (7) The examiners found 26 violations of § 38.2-510 A 1 of the Code of Virginia.

- a. In 12 instances, the company misrepresented pertinent facts or insurance provisions relating to coverages at issue.

- b. In 14 instances, the company misrepresented the replacement cost provisions of the policy.

These findings occurred with such frequency as to indicate a general business practice.

- (8) The examiners found two violations of § 38.2-510 A 3 of the Code of Virginia.

The company failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

- (9) The examiners found two violations of § 38.2-510 A 10 of Code of Virginia. The

company made a claim payment to the insured that was not accompanied by a statement setting forth the correct coverage(s) under which the payment was made.

- (10) The examiners found eight occurrences where the company failed to comply with the provisions of the insurance contract.

- a. In one instance, the company failed to properly pay a replacement cost claim.

- b. In five instances, the company failed to include the mortgagee on the check.

- c. In two instances, the company paid the insured more than he was entitled to receive under the terms of the policy.

Other Law Violations

Although not a violation of the Virginia insurance laws, the examiners noted the following as a violation of another Virginia law.

The examiners found three violations of § 52-40 of the Code of Virginia. The company failed to include the statement regarding insurance fraud on claim forms required by the company as a condition of payment.

REVIEW OF FORMS

The examiners reviewed the company's policy forms and endorsements used during the examination period and those that are currently used for the line of business examined. From this review, the examiners verified the company's compliance with Virginia insurance statutes and regulations.

To obtain copies of the policy forms and endorsements used during the examination period for the line of business listed below, the Bureau requested copies from the company. In addition, the Bureau requested copies of new and renewal business policy mailings that the company was processing at the time of the Examination Data Call. The details of these policies are set forth in the Review of the Policy Issuance Process section of the Report. The examiners then reviewed the forms used on these policies to verify the company's current practices.

Homeowner Policy Forms

POLICY FORMS USED DURING THE EXAMINATION PERIOD

The company provided copies of 36 forms that were used during the examination period to provide coverage on policies insuring risks located in Virginia.

The examiners found no violations in this area.

POLICY FORMS CURRENTLY USED

The examiners found no additional forms to review.

REVIEW OF THE POLICY ISSUANCE PROCESS

To obtain sample policies to review the company's policy issuance process for the lines examined, the examiners requested new and renewal business policy mailings that were sent after the company received the Examination Data Call. The company was instructed to provide duplicates of the entire packet that was provided to the insured. The details of these policies are set forth below.

For this review, the examiners verified that the company enclosed and listed all of the applicable policy forms on the declarations page. In addition, the examiners verified that all required notices were enclosed with each policy. Finally, the examiners verified that the coverages on the new business policies were the same as those requested on the applications for those policies.

Homeowner Policies

The company provided four new business policies mailed on the following dates: February 16, 23, March 4, and May 18, 2010. In addition, the company provided five renewal business policies mailed on March 17, 2010.

NEW BUSINESS POLICIES

- (1) The examiners found one violation of § 38.2-610 A of the Code of Virginia. The company failed to provide an AUD notice to the insured.
- (2) The examiners found three violations of § 38.2-2118 of the Code of Virginia. The company failed to provide the Replacement Cost coverage notice as required by the Code of Virginia.

RENEWAL BUSINESS POLICIES

The examiners found one violation of § 38.2-2124 of the Code of Virginia. The company failed to provide the Ordinance and Law notice as required by the Code of Virginia.

REVIEW OF STATUTORY NOTICES

To obtain sample policies to review the content of the statutory notices that the company is required to provide to insureds and used by the company for the line examined, the examiners used the same new business policy and renewal business policy mailings that were previously described. The details of these policies have been set forth previously under the Review of the Policy Issuance Process section of the Report. The examiners verified that the notices used by the company on all applications, on all policies, and those special notices used for vehicle and property policies issued on risks located in Virginia complied with the Code of Virginia.

General Statutory Notices

- (1) The examiners found one violation of § 38.2-305 B of the Code of Virginia. The company's Important Information Regarding Your Insurance notice did not contain all of the information required by this statute.
- (2) The examiners found one violation of § 38.2-604 B of the Code of Virginia. The company's long form Notice of Information Collection and Disclosure Practices did not contain all of the information required by this statute.
- (3) The examiners found one violation of § 38.2-610 A of the Code of Virginia. The company's AUD notice did not include language substantially similar to that of the prototype set forth in Administrative Letter 1981-16.

Statutory Property Notices

- (1) The examiners found one violation of § 38.2-2118 of the Code of Virginia. The company failed to have available the required notice summarizing the replacement cost provisions for owner-occupied dwellings.
- (2) The examiners found one violation of § 38.2-2120 of the Code of Virginia. The company failed to have available the notice summarizing the option of purchasing coverage for damage caused by water that backs up through sewers and drains.
- (3) The examiners found one violation of § 38.2-2125 of the Code of Virginia. The company's Flood Exclusion notice did not contain all of the information required by this statute.

Other Notices Used by the Company

The examiners found no violations in this area.

LICENSING AND APPOINTMENT REVIEW

A review was made of 22 new business policies in the Notice Mailed Prior to the 90th Day of Coverage category to verify that the agent of record for those policies reviewed was licensed and appointed to write business for the company as required by Virginia insurance statutes. In addition, the agent or agency to which the company paid commission for these new business policies was checked to verify that the entity held a valid Virginia license and was appointed by the company.

Agent

The examiners found one violation of § 38.2-1833 of the Code of Virginia. The company failed to appoint an agent within 30 days of the date of the application.

Agency

- (1) The examiners found one violation of § 38.2-1812 of the Code of Virginia. The company directly or indirectly paid commissions to an agency that was not appointed by the company.
- (2) The examiners found ten violations of § 38.2-1812 E of the Code of Virginia. The company paid commissions to a trade name that was not registered with the State Corporation Commission.

REVIEW OF THE COMPLAINT-HANDLING PROCESS

A review was made of the company's complaint-handling procedures and record of complaints to verify compliance with § 38.2-511 of the Code of Virginia.

The examiners found one violation of § 38.2-511 of the Code of Virginia. The company failed to maintain a complete complaint register in compliance with this statute.

REVIEW OF PRIVACY AND INFORMATION SECURITY PROCEDURES

The Bureau requested a copy of the company's information security program that protects the privacy of policyholder information. The company submitted its security information as required by § 38.2-613.2 of the Code of Virginia.

The examiners found no violations in this area.

PART TWO – CORRECTIVE ACTION PLAN

Business practices and the error tolerance guidelines are determined in accordance with the standards set forth by the NAIC. A seven percent (7%) error criterion is applied to claims handling. Any error ratio above this threshold indicates a general business practice. In some instances, such as filing requirements, rating and underwriting, forms, notices, and agent licensing, the Bureau applies a zero tolerance standard. This section identifies the violations that were found to be violations of Virginia insurance statutes and regulations and are subject to a monetary penalty.

General

Empire Fire & Marine Insurance Company shall:

Provide a Corrective Action Plan (CAP) with its response to this Report.

Rating and Underwriting Review

Empire Fire & Marine Insurance Company shall:

- (1) Correct the errors that caused the overcharges and undercharges and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as of the date the error first occurred.
- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' account.
- (3) Complete and submit to the Bureau, the enclosed file titled "Rating Overcharges Cited during the Examination." By returning the completed file to the Bureau, the company acknowledges that it has refunded or credited the overcharges listed in the file.
- (4) Use the rules and rates on file with the Bureau. Particular attention should be focused on the use of filed public protection classes.

- (5) Assess the permitted annual Birth-Related Neurological Injury Fund surcharge to the liability portion of the policy premium.

Termination Review

Empire Fire & Marine Insurance Company shall:

- (1) Correct the errors that caused the overcharges and undercharges and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as of the date the error first occurred.
- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' account.
- (3) Complete and submit to the Bureau, the enclosed file titled "Termination Overcharges Cited during the Examination." By returning the completed file to the Bureau, the company acknowledges that it has refunded or credited the overcharges listed in the file.
- (4) Provide an AUD notice containing substantially similar language as that of the prototype set forth in Administrative Letter 1981-16.
- (5) Calculate earned premium according to filed rules and policy provisions.
- (6) Cancel an owner-occupied dwelling policy after the 89th day of coverage only for reasons permitted by the statute.
- (7) Send the cancellation notice at least 30 days before the effective date of cancellation when it is mailed after the 89th day of coverage.

Claims Review

Empire Fire & Marine Insurance Company shall:

- (1) Correct the errors that caused the underpayments and overpayments and send the amount of the underpayment to insureds and claimants.
- (2) Include six percent (6%) simple interest in the amount paid to insureds and claimants.
- (3) Complete and submit to the Bureau, the enclosed file titled "Claims Overpayments Cited during the Examination." By returning the completed file to the Bureau, the company acknowledges that it has paid the underpayments listed in the file.
- (4) Properly document the claim files so that all events and dates pertinent to the claim can be reconstructed.
- (5) Document the claim file that all applicable coverages have been discussed with the insured. Particular attention should be focused on both building and personal property replacement cost benefits.
- (6) Make all claim denials in writing and keep a copy in the claim file.
- (7) Offer the insured an amount that is fair and reasonable as shown by the investigation of the claim and pay the claim in accordance with the insured's policy provisions.
- (8) Properly represent pertinent facts or insurance provisions relating to the coverage at issue.

Review of Policy Issuance Process

Empire Fire & Marine Insurance Company shall:

Provide the replacement cost notice with all new business policies.

Review of Statutory Notices

Empire Fire & Marine Insurance Company shall:

- (1) Amend the Important Information Regarding Your Insurance notice to comply with § 38.2-305 B of the Code of Virginia.
- (2) Amend the long form Information Collection and Disclosure Practices notice to comply with § 38.2-604 B of the Code of Virginia.
- (3) Amend the Adverse Underwriting decision notice to comply with § 38.2-610 A of the Code of Virginia.
- (4) Develop a Replacement Cost notice that summarizes the minimum coverage needed for the replacement coverage to be effective.
- (5) Develop a Water Backup through Sewers and Drains notice that complies with § 38.2-2120 of the Code of Virginia.
- (6) Amend the Flood Exclusion notice to comply with § 38.2-2125 of the Code of Virginia.

Licensing and Appointment Review

Empire Fire & Marine Insurance Company shall:

- (1) Appoint agents within 30 days of the application.
- (2) Pay commissions only to agents that are appointed by the company.
- (3) Pay commissions only to trade names that have been filed with the Bureau.

Review of the Complaint-Handling Process

Empire Fire & Marine Insurance Company shall:

Maintain a complete complaint register in compliance with § 38.2-511 of the Code of Virginia.

PART THREE – EXAMINERS’ NOTES

The examiners also found violations that did not appear to rise to the level of business practices by the company. The company should carefully scrutinize these errors and correct the causes before these errors become business practices. The following errors will not be included in the settlement offer:

Claims

- Failure to provide a reasonable explanation of the basis in the insurance policy for the denial of a claim.
- Failure to make a claim payment to an insured that is not accompanied by a statement setting forth the correct coverage(s) under which the payment is made.
- Failure to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- Failure to comply with the provisions of the insurance contract.

RECOMMENDATIONS

We recommend that the company take the following actions:

Termination

- The company should not include the AUD notice language in cancellations for nonpayment of premium. The rights provided by an AUD are not applicable to such cancellations per § 38.2-2114 C 2 of the Code of Virginia.
- The company advised the insured of the right to review by the Commissioner of Insurance when canceling the policy within the first 89 days of coverage and when the insured requested cancellation of the policy. The right to review as set forth in § 38.2-2114 of the Code of Virginia only applies to company-initiated cancellations of policies that have been in effect for more than 89 days when the cancellation notice is mailed. While the examiners are not citing this as a violation of Virginia insurance statutes, the company should cease this practice as it is misleading to

insureds.

Statutory Notices

- The company should revise the second paragraph of the “How We Determine the Cost of Your Coverage” section of its Important Notice. It is misleading to insureds to indicate Virginia deems rate increases justifiable when the Bureau does not approve rates.
- The company should clearly indicate that the types of non-public information collected are the same as the types of information that are disclosed to others in its Notice of Financial Information Collection and Disclosure Practices.

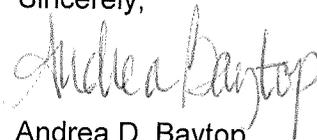
SUMMARY OF PREVIOUS EXAMINATION FINDINGS

This is the first time the Virginia Bureau of Insurance has conducted an examination of the company.

ACKNOWLEDGEMENT

The courteous cooperation extended by the officers and employees of the company during the course of the examination is gratefully acknowledged.

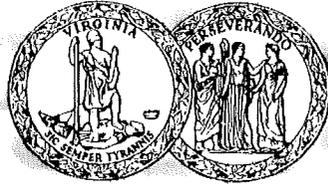
Sincerely,

A handwritten signature in cursive script that reads "Andrea D. Baytop".

Andrea D. Baytop
Senior Insurance Market Examiner

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206
<http://www.scc.virginia.gov/division/boi>

January 20, 2011

VIA UPS 2nd DAY DELIVERY

Mary Stotler
Manager Market Conduct Examinations
Zurich North America
4409 A Fieldgreen Road
Nottingham, MD 21236

Re: Market Conduct Examination
Empire Fire & Marine Insurance Company (NAIC# 21326)
Examination Period: September 1, 2008 – August 31, 2009

Dear Ms. Stotler:

The Bureau of Insurance (Bureau) has conducted a market conduct examination of the above referenced company for the period of September 1, 2008 through August 31, 2009. The Preliminary Market Conduct Examination Report has been drafted for the company's review.

Enclosed with this letter is a copy of the Preliminary Market Conduct Examination Report (Report), and copies of review sheets that have been withdrawn or revised since November 15, 2010. Also enclosed are several technical reports that will provide you with the specific file references for the violations listed in the Report.

Since there appears to have been a number of violations of Virginia insurance laws on the part of the company, I would urge you to review the Report closely. Please provide a written response. If the company disagrees with an item(s) or wishes to further comment on an item(s), please respond to the items in Part I of the Report using the format of the Report. The company does not need to respond to any particular item in Part I if it agrees with the Report. Please be aware that the examiners are unable to remove an item from the Report or modify a violation unless the company provides written documentation to support its position. If the company uses the same format (headings and numbering) as found in the Report, it is much easier to follow the company's points.

Secondly, the company should respond to the corrective action plan (CAP) outlined in Part II of the Report. In some cases, the issues that should be addressed may be broader than those that are in the CAP. In particular, if the examiners identified issues that were numerous but did not rise to the level of a business practice, the company should outline the actions they are taking to prevent those issues from becoming a business practice.

Thirdly, if the company has comments they wish to make regarding the Examiners' Notes in Part III of the Report, please use the same headings and numbering for the comments.

Of course, should the company wish to comment on any other part of the Report, please reference the heading of the section where the item is found.

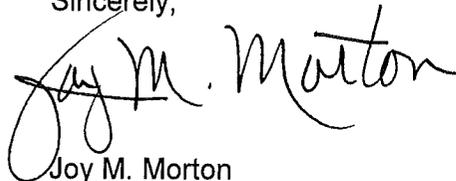
Finally, we have enclosed a CD containing an Excel spreadsheet that the company must complete and return to the Bureau with the company's response. This spreadsheet lists the files in which the examiners identified overcharges (rating and terminations) and underpayments (claims).

The company's response and the spreadsheet mentioned above must be returned to the Bureau by February 22, 2011.

After the Bureau has received and reviewed the company's response, we will make any justified revisions to the Report. The Bureau will then be in a position to determine the appropriate disposition of the market conduct examination.

We look forward to your reply by February 22, 2011.

Sincerely,

A handwritten signature in black ink that reads "Joy M. Morton". The signature is written in a cursive style with a large, looping initial "J".

Joy M. Morton
Supervisor
Market Conduct Section
Property & Casualty Division
(804) 371-9731
joy.morton@scc.virginia.gov

JMM
Enclosures

STATE CORP COMMISSION
BUREAU OF INSURANCE

11 FEB 23 AM 10: 14



February 22, 2011

VIA EMAIL AND OVERNIGHT MAIL

Ms. Joy Morton
Virginia Bureau of Insurance
P.O. Box 1157
Richmond, VA 23218

Dear Ms. Morton:

Tim Anders
Vice President
Alternative Programs
Programs & Direct Markets
13810 FNB Parkway
Omaha, NE 68154-8003

I have reviewed the Market Conduct Examination Report of Empire Fire and Marine Insurance Company. Please find the attached Report, on which we have added our comments regarding two findings, on pages 12-13, and pages 21-22. We have also attached the Corrective Action Plan and supporting documentation.

We will mail a hard copy to you today, via overnight mail.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Tim Anders'.

Tim Anders
Vice President, Alternative Programs
(402) 963-5032

800-216-7711
www.zurichna.com

Direct Line: 402-963-5032
Direct Fax: 402-963-5110
Email: tim.anders@zurichna.com

cc: Deborah Johnson, Sterling National Corp.

CORRECTIVE ACTION PLAN

FEBRUARY 22, 2011

FOR

EMPIRE FIRE & MARINE INSURANCE COMPANY

RESPONSE TO THE

VIRGINIA BUREAU OF INSURANCE

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

Property and Casualty Division

Market Conduct Section

MARKET CONDUCT EXAMINATION REPORT

AS OF

AUGUST 31, 2009

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Important Notice – Water Back-up or Sump Failure HO 95 07 0204

Virginia Flood Exclusion Notice (IL 90 05 1010)

Exhibit A – Documentation – Review Sheet 149674395

Exhibit B – Documentation – Review Sheet 1616911353

Part Two – CORRECTIVE ACTION PLAN

Rating and Underwriting Review

Empire Fire & Marine Insurance Company shall:

- (1) Correct the errors that caused the overcharges and undercharges and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as of the date the error first occurred.
- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' account.
- (3) Complete and submit to the Bureau, the enclosed file titled "*Rating Overcharges Cited During the Examination.*" By returning the completed file to the Bureau, the company acknowledges that it has refunded or credited the overcharges listed in the file.
- (4) Use the rules and rates on file with the Bureau. Particular attention should be focused on the use of filed public protection classes.
- (5) Assess the permitted annual Birth-Related Neurological Injury Fund surcharge to the liability portion of the policy premium.

Empire Fire & Marine Insurance Company appreciates the knowledge and professionalism exhibited by the examiners throughout the course of the examination. Our company takes compliance very seriously and we look forward to implementing this Corrective Action Plan. While we strive to provide the highest level of service to our customers and regret any errors found by the examiners, we do not believe that the errors cited amount to a general business practice.

Corrective Action:

The three cited errors and corrections for subject policies are:

- A renovation credit was not applied and the Virginia Birth-Related Neurological Injury Fund surcharge was not calculated correctly resulting in a net overcharge to the policyholder of \$9.54.
 - **Correction:** A return premium check of \$10.11 (\$9.54 + .57 interest) has been issued to the policyholder. The Virginia Birth-Related Neurological Injury Fund surcharge of .25% will be applied to the liability portion of the premium in lieu of total premium effective May 15, 2011.
- The incorrect PPC was used upon issuance of the policy and the Virginia Birth-Related Neurological Injury Fund surcharge was not calculated correctly resulting in a net overcharge to the policyholder of \$6.96.
 - **Correction:** A return premium check of \$7.38 (\$6.96 + 6% interest) has been issued to the policyholder. The payment reflects an overcharge of \$1.00 due to a misclassification of the PPC and the incorrect calculation of the Virginia Birth-Related Neurological Injury Fund surcharge of .25% as applied to the liability portion of the premium. The surcharge of .25% will be applied to the liability portion of the premium in lieu of total premium effective May 15, 2011.
- The Virginia Birth-Related Neurological Injury Fund surcharge was not calculated correctly resulting in a net overcharge to the policyholder of \$6.16.
 - **Correction** A return premium check of \$6.53 (\$6.16 + 6% interest) has been issued to the policyholder. The Virginia Birth-Related Neurological Injury Fund surcharge of .25% will be applied to the liability portion of the premium in lieu of total premium effective May 15, 2011.

The *Rating Overcharges Cited During the Examination* spreadsheet reflects the return premium on captioned policies. Additionally, manual rule 106 Protection Classification Codes

and Information was revised to mimic the Insurance Services Office (ISO's) rule pursuant to review sheet BOI Reference Number RHO002. The rule filing was acknowledged by the Virginia Bureau of Insurance for use with policies effective on and after November 1, 2010.

Empire Fire & Marine Insurance Company acknowledges errors in these instances however, wishes to clarify that every reasonable effort is expended to accurately rate policies using rates and rules that have been acknowledged and are on file with the Virginia Bureau of Insurance. Results of examination will be reviewed with Underwriting to address findings and prevent future occurrences.

Termination Review

Empire Fire & Marine Insurance Company shall:

- (1) Correct the errors that caused the overcharges and undercharges and send refunds to the insureds or credit the insureds' accounts for the amount of the overcharge as of the date the error first occurred.
- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' account.
- (3) Complete and submit to the Bureau, the enclosed file titled "Termination Overcharges Cited during the Examination." By returning the completed file to the Bureau, the company acknowledges that it has refunded or credited the overcharges listed in the file.
- (4) Provide an AUD notice containing substantially similar language as that of the prototype set forth in Administrative Letter 1981-16.
- (5) Calculate earned premium according to filed rules and policy provisions. Cancel an owner-occupied dwelling policy after the 89th day of coverage only for reasons permitted by the statute.
- (6) Send the cancellation notice at least 30 days before the effective date of cancellation when it is mailed after the 89th day of coverage.

Corrective Action:

The cited errors and corrections for subject cancellations are:

- Return premium was incorrectly calculated on one insured request cancellation
 - **Correction:** A return premium check of \$5.31 (5.01 + 6% interest) has been issued to the policyholder. Notification of the 2008 sale of the residence and the insured's request for an October 7, 2008 cancellation date was not received until July 24, 2009. The 2009 policy term was cancelled flat and the insured's requested October 7, 2008 effective date was honored. The examination report indicates a net return premium due to the insured of \$504.46 (\$475.91 + 6% interest). However, \$469.99 return premium was issued to the insured on August 11, 2009 as evidenced by the supporting documentation attached to the *Rating Overcharges Cited During The Examination* spreadsheet (**Exhibit 1**).

- 23 instances of the use of an Adverse Underwriting Decision (AUD/ Cancellation) notice that was not substantially similar to the prototype found in Administrative Letter 1981-16.
 - **Correction:** Empire Fire and Marine disagrees with the Examiner's indication that the notice of cancellation was not "*substantially similar*" to the prescribed language found in Administrative Letter 1981-16. The twenty-three findings are attributable to the use of the word "**may**" in the explanation of the insured's rights to obtain specific items of information and /or copies of documents, etc... upon which the cancellation notice was rendered. The use of the word "*may*" was found to be unacceptable as the insured does have the right to obtain further information in accordance with Administrative Letter 1981-16. To that end, the revised **AUD/Cancellation Notice (VA-CANC-I-1010)** is attached and was effective as of October 1, 2010. The remainder of the notice was/is substantially similar to the Virginia prototype.

- 19 instances where policies were cancelled mid-term for a reason not permitted by statute.

- **Correction:** 9 of 19 policies were cancelled mid-term as there was no insurable interest; the dwellings were sold. 4 were cancelled mid-term due to foreclosure; 6 were cancelled mid-term for vacancy. Underwriting has been advised that neither lack of insurable interest or vacancy are among the six permissible reasons for cancellation listed in § 38.2-2114 A of the Code of Virginia. Additionally use of a “*physical change in the property*” as a reason to cancel mid-term (after the underwriting period of 90 days), requires supporting evidence (two inspection reports). An exception now exists where foreclosure efforts by the secured party against the property covered by the policy have resulted in the sale of the property by a trustee under a deed of trust as duly recorded in the land title records of the jurisdiction in which the property is located. (As of July 1, 2009, this is a permissible reason for a mid-term cancellation of a homeowner’s policy. The scope of the examination period was from September 1, 2008 through August 31, 2009.)
- It is surmised that #5 above “*Calculate earned premium according to filed rules and policy provisions*” should be “*Calculate return premium...*” pursuant to Reference No. THO016 / Review Sheet 320489469 and §38.2-1906 D/34.
 - **Correction:** The policy should have been treated as an expiration as the renewal offer was mailed however, the insured did not respond with payment. Underwriting has clarified its procedures for valid reasons for property cancellations.
- The company failed to provide 30 days written notice to the insured when canceling after the 89th day of coverage.
 - **Correction:** The appropriate number of days required for prior notice of policy cancellation was not given for eight policy cancellations. Cancellation notice time frames have been reiterated with Underwriting.

Claims Review

Empire Fire & Marine Insurance Company shall:

- (1) Correct the errors that caused the underpayments and overpayments and send the amount of the underpayment to insureds and claimants.
- (2) Include six percent (6%) simple interest in the amount paid to insureds and claimants.
- (3) Complete and submit to the Bureau, the enclosed file titled "Claims Overpayments Cited during the Examination." By returning the completed file to the Bureau, the company acknowledges that it has paid the underpayments listed in the file.
- (4) Properly document the claim files so that all events and dates pertinent to the claim can be reconstructed.
- (5) Document the claim file that all applicable coverages have been discussed with the insured. Particular attention should be focused on both building and personal property replacement cost benefits.
- (6) Make all claim denials in writing and keep a copy in the claim file.
- (7) Offer the insured an amount that is fair and reasonable as shown by the investigation of the claim and pay the claim in accordance with the insured's policy provisions.
- (8) Properly represent pertinent facts or insurance provisions relating to the coverage at issue.

Corrective Action

- The company was cited for underpayments on 5 claims.
 - **Correction:** Checks have been issued for five underpayments totaling \$1,441.25 (\$1359.67 + 6% interest) to subject claimants as indicated on the attached *Claims Overpayments Cited During the Examination* spreadsheet.
- Examiners stipulated that claim files require appropriate documentation and payment in accordance with policy provisions.
 - **Correction:** The review of the Examiners' findings with Claims personnel to

emphasize and reinforce requirements/procedures addressing the need for the:

- Full documentation of pertinent events and dates that enable accurate reconstruction of the circumstances of the claim;
- Written documentation of claim denials coupled with a copies of the denials to the appropriate claim files;
- Written documentation of all applicable coverages that have been discussed with the insured with specific focus on the building and personal property replacement cost benefits; and
- The accurate representation and/or explanation of the policy provisions as related to the coverage at issue.

Empire Fire and Marine Insurance Company consistently strives to investigate and settle claims in a fair and reasonable manner and in accordance with the insured's policy provisions. To that end, all findings detailed in the Final Report will be discussed and Claims personnel will be advised of the necessary procedures to achieve and maintain compliance.

Review of Policy Issuance Process

Empire Fire & Marine Insurance Company shall:

Provide the replacement cost notice with all new business policies.

Corrective Action

- Attached Important Notice – Replacement Cost Virginia PH VA 03 0511 will be provided for all new and renewal policies effective May 15, 2011.

Review of Statutory Notices

Empire Fire & Marine Insurance Company shall:

- (1) Amend the Important Information Regarding Your Insurance notice to comply with § 38.2-305 B of the Code of Virginia.
- (2) Amend the long form Information Collection and Disclosure Practices notice to comply

with § 38.2-604 B of the Code of Virginia.

- (3) Amend the Adverse Underwriting decision notice to comply with § 38.2-610 A of the Code of Virginia.
- (4) Develop a Replacement Cost notice that summarizes the minimum coverage needed for the replacement coverage to be effective.
- (5) Develop a Water Backup through Sewers and Drains notice that complies with § 38.2-2120 of the Code of Virginia.
- (6) Amend the Flood Exclusion notice to comply with § 38.2-2125 of the Code of Virginia.

Corrective Action

- The *Important Information Regarding Your Insurance* on the renewal notice (RENLTR1010 VA) indicated that rates were filed and approved by the respective Departments of Insurance. Rates are file and use in Virginia and the Examiners conveyed that it was misleading to insureds to indicate that Virginia deems rate increases justifiable when rate submissions are not reviewed or filed on that basis and recommended deletion /revision (no cited violation) of that sentence.
 - **Correction:** The second paragraph of the renewal notice (RENLTR1010 VA) under *How We Determine the Cost of Your Coverage* was updated to delete indication of approval of rates by the Virginia BOI in compliance with § 38.2-604B of the Code of Virginia and attaches to new and renewal policies as of October 1, 2010.
- Examiners recommended (not cited as a violation) that the Privacy Notice should more clearly indicate that the types of non-public information collected is the same as the information that is disclosed. The notice provides the types of information collected under the Categories of Non-public Information We Collect, but the notice does not specify that these types may be disclosed.
 - **Correction:** The attached new privacy notice, **Zurich Privacy Notice U-GU-850 2010** is effective for all new and renewal policies April 1, 2011 and in compliance

with §38.2-604 B of the Code of Virginia.

- The Adverse Underwriting Decision (AUD/Cancellation Notice) is not compliant with § 38.2-610 A of the Code of Virginia.
 - **Correction:** The use of the word “*may*” was found to be unacceptable as the insured does have the right to obtain further information in accordance with Administrative Letter 1981-16 and § 38.2-610A as previously addressed. To that end, the revised AUD/Cancellation Notice is attached and was effective as of October 1, 2010.
- A Replacement Cost Notice summarizing the minimum coverage needed for the replacement coverage to be effective was not provided.
 - **Correction:** Attached **Important Notice – Replacement Cost – Virginia** is attached and is effective for new and renewal policies May 15, 2011 on owner occupied dwellings.
- The company must create a separate notice or clearly delineate the Water Backup offer in an existing notice to comply with § 38.2-2120 of the Code of Virginia. The Water Backup offer should not be confused with the Flood notice.
 - **Correction:** The company has updated the policy system to attach the offer of Water Backup coverage on attached HO 95 07 02 04 Important Notice on new and renewal policies as of October 1, 2010.
- The flood notice did not state that the insured could contact the company to obtain information regarding flood insurance and did not advise the insured that contents coverage could be included in a flood policy obtained from the National Flood Insurance Program.
 - **Correction:** Attached **IL 90 05 10 10 Virginia Flood Exclusion Notice** has been updated to comply with § 38.2-2125 of the Code of Virginia and is effective for new and renewal policies as of October 1, 2010.

Licensing and Appointment Review

Empire Fire & Marine Insurance Company shall:

- (1) Appoint agents within 30 days of the application.
- (2) Pay commissions only to agents that are appointed by the company.
- (3) Pay commissions only to trade names that have been filed with the Bureau.

Corrective Action

- The company failed to file with the Commission a written notice of appointment within 30 days of the execution of an insurance application.
 - **Disagree**: Empire Fire and Marine Insurance Company requests reconsideration of the citation. The agent was appointed with the company on the date the policy was quoted (10/8/2008) and through the time the policy was issued (11/3/2008). Documentation is attached in support of our assertion as **Exhibit A**.
- Examiners cited the company for paying commission to an agent or agency that was not a duly appointed agent or agency of the company.
 - **Disagree**: Empire Fire and Marine Insurance Company requests reconsideration of the citation. The effective date of subject policy was November 26, 2008 and the agent/agency at the time the policy *was issued* was appointed effective August 25, 2005. Documentation is attached in support of our assertion as **Exhibit B**.
- Two trade names not filed with the Virginia Bureau of Insurance appeared on the Declarations page.
 - **Correction**: The system was updated September 23, 2010 to reflect the trade names that are on file with the Virginia Bureau of Insurance.

Review of the Complaint-Handling Process

Empire Fire & Marine Insurance Company shall:

Maintain a complete complaint register in compliance with § 38.2-511 of the Code of Virginia.

Corrective Action

- The Examiners found one violation pertaining to the complaint handling process. The Examiners indicated that the Complaint register lacked only in the documentation of the number of days to resolve a complaint i.e. the number of days from the date the complaint was received to the date that a response was forwarded to the appropriate regulatory body.
 - **Correction:** A column was added to the Complaint Register in October 2010 to electronically calculate the "*Number of Days to Resolve*" a complaint.

PART THREE – EXAMINERS’ NOTES

The examiners also found violations that did not appear to rise to the level of business practices by the company. The company should carefully scrutinize these errors and correct the causes before these errors become business practices. The following errors will not be included in the settlement offer:

Claims

- Failure to provide a reasonable explanation of the basis in the insurance policy for the denial of a claim.
- Failure to make a claim payment to an insured that is not accompanied by a statement setting forth the correct coverage(s) under which the payment is made.
- Failure to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- Failure to comply with the provisions of the insurance contract.

COMPANY RESPONSE

Empire Fire & Marine Insurance Company has instituted the following practices in the claims process:

- Claims personnel will be directed to document denials with specific policy coverage/language supporting the action; and
- Coverages under which the payment is made will be conveyed to the claimant upon settlement;

Please be advised that Empire Fire and Marine Insurance Company makes every effort to promptly investigate all claims and comply with the provisions of the insurance contract. Errors are neither deliberate or with willful intent. However, investigation standards and insurance contract provisions will be reviewed with appropriate Claims personnel for clarification and to ensure compliance.

Recommendations

We recommend that the company take the following actions:

Termination

- The company should not include the AUD notice language in cancellations for nonpayment of premium. The rights provided by an AUD are not applicable to such cancellations per § 38.2-2114 C 2 of the Code of Virginia.
- The company advised the insured of the right to review by the Commissioner of Insurance when canceling the policy within the first 89 days of coverage and when the insured requested cancellation of the policy. The right to review as set forth in § 38.2-2114 of the Code of Virginia only applies to company-initiated cancellations of policies that have been in effect for more than 89 days when the cancellation notice is mailed. While the examiners are not citing this as a violation of Virginia insurance statutes, the company should cease this practice as it is misleading to insureds.

COMPANY RESPONSE

The Examiners recommendations are acknowledged and the Nonpayment and Company Request Cancellation Notices will be revised to delete reference that the insured has the right of review by the Commissioner.

Statutory Notices

- The company should revise the second paragraph of the “How We Determine the Cost of Your Coverage” section of its Important Notice. It is misleading to insureds to indicate Virginia deems rate increases justifiable when the Bureau does not approve rates.
- The company should clearly indicate that the types of non-public information collected are the same as the types of information that are disclosed to others in its Notice of Financial Information Collection and Disclosure Practices.

COMPANY RESPONSE

The company acted on both recommendations; please reference page 10 – 11 of the Corrective Action Plan.

ATTACHMENTS:

Rating/Termination Overcharges/Claims Underpayment Spreadsheet

Exhibit 1- Documentation of Return Premium For Insured Request Cancellation

AUD/Cancellation Notice (VA-CANC-I-1010)

Important Notice – Replacement Cost Virginia (PH VA 03 0511)

Zurich Privacy Notice U-GU-850 2010

Important Notice – Water Back-up or Sump Failure HO 95 07 0204

Virginia Flood Exclusion Notice (IL 90 05 1010)

Exhibit A – Documentation – Review Sheet 149674395

Exhibit B – Documentation – Review Sheet 1616911353

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206
<http://www.scc.virginia.gov/division/bo>

March 14, 2011

VIA UPS 2nd DAY DELIVERY

Ms. Mary Stotler
Manager Market Conduct Examinations
Zurich North America
4409 A Fieldgreen Road
Nottingham, MD 21236

Re: Market Conduct Examination
Empire Fire & Marine Insurance Company (NAIC# 21326)
Examination Period: September 1, 2008 – August 31, 2009

Dear Ms. Stotler:

The Bureau of Insurance (Bureau) has reviewed the February 24, 2011 response to the Preliminary Market Conduct Report (Report) submitted by Empire Fire and Marine Insurance Company (Company). The Bureau has referenced only those items in which the Company has disagreed with the Bureau's findings, or items that have changed in the Report. This response follows the format of the Report.

PART ONE – EXAMINERS' OBSERVATIONS

Cancellations Requested by the Insured

The \$475.91 overcharge was for THO042 and it has been revised to \$5.01.

Agent Licensing and Appointment

This violation has been withdrawn.

Agency Licensing and Appointment

- (1) This violation remains in the Report. The Company provided documentation for two different agencies. The Company stated that Vista Wholesale was appointed during the examination period and the agency changed its name to USI Insurance Services LLC (USI). If the agency only changed its name, the appointment would have remained effective. However, USI was licensed as a separate entity in Virginia. Since USI submitted and received commissions for

the application, it required its own appointment. The appointment for USI was not effective until January 19, 2009, 54 days after the policy effective date.

Complaint Handling Process

This violation remains in the Report. The Company must comply with the Virginia statute and record the number of days to resolve each written complaint. The complaint log should indicate the date the Company first received the complaint and when the complaint was resolved, in addition to the date it responded to the Bureau. The Company has not indicated how it complied with § 38.2-511 of the Code of Virginia.

PART TWO - CORRECTIVE ACTION PLAN

Rating and Underwriting Review

- (4) This item remains in the Report. The Bureau found three violations out of four files. With a 75 percent error ratio, these violations are considered a general business practice.
- (5) This item remains in the Report. The Bureau found three violations out of five files. With a 60 percent error ratio, these violations are considered a general business practice.

Termination Review

- (1) The overcharge for THO042 has been revised to \$5.01.
- (4) It is noted that the Company's revised AUD notice is substantially similar to the prototype in Administrative Letter 1981-16.
- (5) The wording in this section has been revised to correspond to Part One of the Report.

Statutory Notices Review

- (2) The company should revise the wording in its Privacy notice to comply with § 38.2-604 B 5 of the Code of Virginia. The notice should state that information in a report prepared by an insurance support organization may be retained by that organization and provided to others.

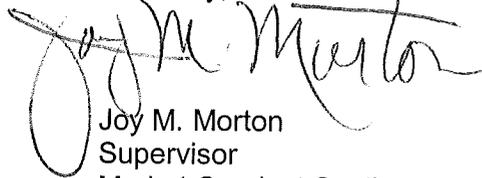
Licensing and Appointment Review

- (1) This item no longer appears in the Report.
- (2) This item remains in the Report.

Ms. Stotler
March 14, 2011
Page 3 of 3

Enclosed with this letter is a revised version of the Report, technical reports, and a withdrawn review sheet. The Company's response to this letter is due in the Bureau's office by March 31, 2011.

Sincerely,

A handwritten signature in black ink, appearing to read "Joy M. Morton". The signature is written in a cursive style with a large, looped initial "J".

Joy M. Morton
Supervisor
Market Conduct Section
Property and Casualty Division
(804) 371-9540
joy.morton@scc.virginia.gov

JMM/adb
Enclosure

STATE CORP COMMISSION
BUREAU OF INSURANCE

11 MAR 25 AM 9:44



March 24, 2011

VIA EMAIL AND OVERNIGHT MAIL

Ms. Joy Morton
Virginia Bureau of Insurance
1300 East Main Street
Richmond, VA 23219

Re: Market Conduct Examination
Empire Fire and Marine Insurance Company
Examination Period: September 1, 2008- August 31, 2009

Tim Anders, CPCU
Vice President
Alternative Programs
Programs & Direct Markets
13810 FNB Parkway
Omaha, NE 68154-8003

Dear Ms. Morton:

We have reviewed the revised version of the Market Conduct Examination Report of Empire Fire and Marine Insurance Company. We have no additional recommended changes or other comments at this time.

I will mail a hard copy of this letter to you today, via overnight mail.

Sincerely,

A handwritten signature in cursive script that reads 'Tim Anders'.

Tim Anders, CPCU
Vice President, Alternative Programs
Empire Fire and Marine Insurance Company
(402) 963-5032

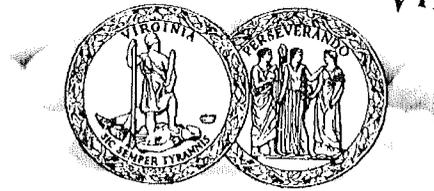
cc: Deborah Johnson, Sterling National Corp.

800-216-7711
www.zurichna.com

Direct Line: 402-963-5032
Direct Fax: 402-963-5110
Email: tim.anders@zurichna.com

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206
<http://www.scc.virginia.gov/division/boi>

March 28, 2011

VIA UPS 2nd DAY DELIVERY

Ms. Mary Stotler
Manager Market Conduct Examinations
Zurich North America
4409 A Fieldgreen Road
Nottingham, MD 21236

Re: Market Conduct Examination
Empire Fire & Marine Insurance Company (NAIC# 21326)
Examination Period: September 1, 2008 – August 31, 2009

Dear Ms. Stotler:

The Bureau of Insurance (Bureau) has concluded its review of the Company's response of February 24, 2011. Based upon the Bureau's review of the Company's letter, we are now in a position to conclude this examination. Enclosed is the final Market Conduct Examination Report of Empire Fire and Marine Insurance Company (Report).

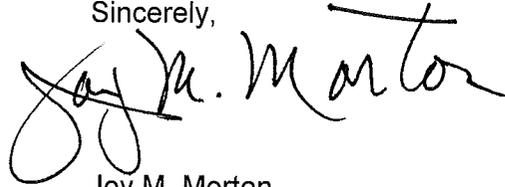
Based on the Bureau's review of the Report and the company's response, it appears that a number of Virginia insurance laws and regulations have been violated, specifically:

Sections 38.2-305 B; 38.2-510 A 1; 38.2-511; 38.2-604 B; 38.2-610 A; 38.2-1812 A; 38.2-1812 E; 38.2-1833; 38.2-1906 D; 38.2-2113 C; 38.2-2114 A; 38.2-2114 C; 38.2-2118; 38.2-2120; 38.2-2124; 38.2-2125; 38.2-5020 E; of the Code of Virginia and 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-A; and 14 VAC 5-400-70 D of the Virginia Administrative Code.

Violations of the laws mentioned above provide for monetary penalties of up to \$5,000 for each violation as well as suspension or revocation of an insurer's license to engage in the insurance business in Virginia.

In light of the above, the Bureau will be in further communication with you shortly regarding the appropriate disposition of this matter.

Sincerely,

A handwritten signature in black ink that reads "Joy M. Morton". The signature is fluid and cursive, with the first name "Joy" being particularly prominent.

Joy M. Morton
Supervisor
Market Conduct Section
Property & Casualty Division
(804) 371-9740
joy.morton@scc.virginia.gov

STATE CORP. COMMISSION
BUREAU OF INSURANCE

11 APR 22 AM 10:30



Mary Bannister, Deputy Commissioner
Property and Casualty
Bureau of Insurance
1300 E. Main Street
Richmond, VA 23219

400038

Your reference

Our reference

Date April 20, 2011

Market Conduct Examination Settlement Offer – Empire Fire and Marine

zurich Dear Ms. Bannister:

This will acknowledge receipt of the Bureau of Insurance's letter dated April 1, 2011 concerning the above-referenced matter.

"www.zurichna.com"

We wish to make settlement offer on behalf of the insurance company listed below for the alleged violations of Sections 38.2-305 B; 38.2-510 A 1; 38.2-511; 38.2-604 B; 38.2-610 A; 38.2-1812 A; 38.2-1812 E; 38.2-1833; 38.2-1833; 38.2-1906 D; 38.2-2113 C; 38.2-2114 A; 38.2-2114 C; 38.2-2118; 38.2-2120; 38.2-2124; 38.2-2125; 38.2-5020 E of the Code of Virginia and 14 VAC 5-400-30, 14 VAC 5-400-40 A; 14 VAC 5-400-A; and 14 VAC 5-400-70 D of the Virginia Administrative Code.

1. We enclose with this letter a check made payable to the Treasurer of Virginia in the amount of \$25,000.
2. We agree to comply with the corrective action plan set forth in the company's letter of Feb. 24, 2011.
3. We confirm that restitution was made in accordance with the company's letter of Feb. 24, 2011.
4. We further acknowledge the company's right to a hearing before the State Corporation Commission in this matter and waive the right if this offer of settlement is accepted by the State Corporation Commission.

This offer is being made solely for the purpose of a settlement and does not constitute, nor should it be construed as, an admission of any violation of law.

Sincerely,
Empire Fire and Marine Insurance Company

Craig Fundum
President

A handwritten signature in black ink, appearing to read 'Craig Fundum', written over a large, stylized circular flourish.

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
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www.scc.virginia.gov/boi

Empire Fire and Marine Insurance have tendered to the Bureau of Insurance the settlement amount of \$25,000 by their check numbered 3401059128 dated April 21, 2011, copies of which are located in the Bureau's files.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

110540091

AT RICHMOND, MAY 19, 2011

CLERK'S OFFICE

2011 MAY 19 AM 10: 09

DOCUMENT CONTROL

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

CASE NO. INS-2011-00080

EMPIRE FIRE AND MARINE INSURANCE,

Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-305 B, 38.2-604 B, 38.2-610 A, 38.2-2118, 38.2-2120, 38.2-2124, and 38.2-2125 of the Code of Virginia by failing to accurately provide the required notices to insureds; violated § 38.2-511 by failing to maintain a complete complaint register; violated §§ 38.2-1812 A and 38.2-1833 by paying commissions for services as an agent to persons who were not properly licensed and appointed; violated § 38.2-1812 E by paying commissions to a trade name that was not registered with the Bureau of Insurance; violated § 38.2-1906 D by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendant; violated §§ 38.2-2113 C, 38.2-2114 A, and 38.2-2114 C by failing to properly terminate insurance policies; violated § 38.2-5020 E by failing to charge the correct annual assessment for the Birth-Related Neurological Injury Fund; violated § 38.2-510 A 1, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-70 A, and 14 VAC 5-400-70 D, by failing to properly handle claims with such frequency as to indicate a general business practice.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Twenty Five Thousand Dollars (\$25,000), waived its right to a hearing, agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance dated February 24, 2011, and confirmed that restitution was made in accordance with its letter to the Bureau dated February 24, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Mary Stotler, Market Conduct Examinations, Zurich North America, 4409 A Fieldgreen Road,

Nottingham, Maryland 21236; and a copy shall be delivered to the Commission's Office of
General Counsel and the Bureau of Insurance in care of Deputy Commissioner Mary M.
Bannister.

A True Copy
Teste:

Joel M. Beck
Clerk of the
State Corporation Commission